
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

INCOME TAX BILL, 1987

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INTRODUCTION

The Bill fixes the rates of normal tax payable by individuals and companies for the current year of assessment and introduces certain amendments to the Income Tax Act, 1962 (Act No. 58 of 1962), hereinafter referred to as the principal Act.

CLAUSE 1 AND THE SCHEDULE

Rates of Normal Tax

Rates of normal tax are enacted by *clause 1* and the Schedule to the Bill.

Individuals

The rates for persons other than companies apply in respect of the year of assessment ending on 29 February 1988 or 30 June 1988, and are provided for in paragraph 1 of the Schedule. Progressive rates of tax are provided ranging between 15 per cent on the lowest income segment and 45 per cent which is reached on the income segment above R60 000 in the case of a married person or R42 000 in the case of an unmarried person. The tax determined in accordance with the rates tables is reduced by the rebates provided for in the principal Act.

Companies

The rates for companies apply in respect of years of assessment, i.e. financial years, ending during the 12-month period from 1 April 1987 to 31 March 1988, and are provided for in paragraph 1 (b) to (g), inclusive, of the Schedule. Those rates are as follows:

- (a) Taxable income derived otherwise than from mining: 50 cents per R1 (paragraph 1 (b) of the Schedule).
- (b) Taxable income derived from gold mining—
 - (i) by any mine other than a post-1966 gold mine: an amount determined in accordance with one of the formulae provided for in paragraph 1 (c) of the Schedule plus a surcharge equal to 25 per cent of the said amount (second proviso to the said paragraph 1 (c));
 - (ii) by a post-1966 gold mine: an amount determined in accordance with one of the formulae provided for in paragraph 1 (d) of the Schedule, plus a surcharge of 25 per cent of the said amount (second proviso to the said paragraph 1 (d)).
- (c) Taxable income in the form of "recoupments" of capital expenditure accruing to companies which are or have been gold mining companies: the average rate of tax, determined as provided, or

35 cents per R1, whichever is higher (paragraph 1 (e) of the Schedule).

- (d) Taxable income from diamond mining: a basic tax of 45 cents per R1, plus a surcharge equal to 25 per cent of the basic tax (paragraph 1 (f) of the Schedule).
- (e) Taxable income from mining operations (other than mining for gold or diamonds): 50 cents per R1 (paragraph 1 (g) of the Schedule). To the tax as calculated above a surcharge equal to 15 per cent of such tax is added (see proviso to subparagraph (g)). A further levy, by way of additional normal tax, is provided for in respect of taxable income from oil mining in terms of section 5 (2A) of the principal Act.

CLAUSE 2

Definitions: Amendment of section 1 of the principal Act

Subclause (1) (a) introduces a definition of "neighbouring country", which includes South West Africa, Botswana, Lesotho, Swaziland, Transkei, Bophuthatswana, Venda and Ciskei. The definition is of relevance in relation to the amendments introduced by clauses 7, 8, 9 (1) (d), 19, 22 (1) (a), 26 and 27, in which certain provisions affecting across-border transactions are proposed.

Subclause (1) (b) introduces an amendment to the definition of "prescribed rate", which refers to the rate of interest payable to or by a taxpayer under provisions of the principal Act. The amendment provides for a lower rate of 12 per cent to be payable with effect from 1 October 1987 in the case of interest payable under section 89quat (4) of the principal Act, i.e. interest payable to taxpayers to whom the provisions relating to the third payment of provisional tax apply. The amendment is necessary to prevent the use of section 89quat (4) as a means of making deposits, which amount to investments, at a rate which is unduly favourable compared with the rates applicable to conventional investments. In other cases the prescribed rate of 15 per cent remains in force. Either of the rates may be changed by the Minister of Finance by notice in the *Government Gazette*.

CLAUSE 3

Secrecy: Amendment of section 4 of the principal Act

The amendments to section 4 of the principal Act which are introduced by *paragraphs (a) and (b)* of this clause enable the Commissioner for Inland Revenue to supply information to the Commissioner for Customs and Excise for the purpose of preventing or combating evasion of any tax, duty or levy administered by the latter Commissioner. Hitherto the existing secrecy requirements of the section prevented this. The Commissioner for Customs and Excise and officials of his Directorate will be required to preserve secrecy in respect of such information except in carrying out the provisions of the relevant fiscal law administered by that Directorate or by order of a competent court.

Paragraph (c) of this clause amends section 4 (3) so as to provide that on conviction, a person breaching the secrecy provisions may be sentenced to a fine not exceeding R5 000 instead of or in addition to the imprisonment for a period not exceeding two years for which the Act at present provides.

CLAUSE 4

Rebates: Amendment of section 6 of the principal Act

In terms of the amendments introduced by this clause the primary rebate of R880 granted to married persons is increased to R920, and the primary rebate of R620 granted to unmarried persons is increased to R650. The increased rebates will apply with effect from the 1988 tax year.

CLAUSE 5

Rebate in respect of foreign taxes on income: Introduction of new section 6 quat

In terms of the new section 6 *quat* introduced by this clause, relief by way of a rebate may be granted to residents of the Republic in respect of foreign taxes paid on income which is also subject to normal tax. Double taxation of this nature may arise where a South African resident is taxable in the Republic on income arising in a foreign country. The relief may be granted in substitution for relief available under a double taxation agreement. The relief is particularly necessary when there is no such agreement in force.

CLAUSE 6

Taxation of fringe benefits: Amendment of section 8 of the principal Act

Paragraph (a) of this clause modifies the provision in section 8 (1) (b) (ii) of the principal Act in terms of which the Minister of Finance may fix a rate per kilometre to be applied in determining the amount which an employee may, in respect of the business use of a motor vehicle, deduct from an allowance given to him by his employer. The amendment enables the Minister to prescribe the manner in which the rate per kilometre is to be determined. In addition, provision is made for the case where a motor vehicle is used *for business purposes* during only a part of the year, as the present provision is not entirely clear on this point. Where the employee has used more than one motor vehicle for business purposes, one of which was not primarily used for business purposes, it is now provided that the provision deeming the private use in certain circumstances to be 10 000 kilometres per year, must be applied separately to a vehicle not used primarily for business purposes.

Where an employee is away from home for business purposes for at least one night and receives an allowance to reimburse him for expenditure on accommodation and meals, he is in terms of section 8 (1) (c) of the principal Act not required to submit proof of that expenditure if the reimbursive allowance he receives does not exceed R100 per day. This amount is increased to R130 per day by *paragraph (b)*.

Paragraph (c) amends the provisions of section 8 (1) (c) (iii) of the principal Act which apply where an away-from-home-allowance is granted in addition to accommodation supplied by the employer. The amount of the allowance which may be granted in such a case without proof of expenditure is increased from R50 to R65.

Paragraph (d) amends section 8 (1) (d) of the principal Act so as to make it clear that the holder of a public office is not entitled to deduct from his allowance expenditure incurred for the purposes of his office where such expenditure is otherwise recoverable, e.g. where such expenditure is reimbursed out of public funds.

Paragraph (e) amends section 8 (1) (e) (i) of the principal Act so as to include in the list of holders of public offices any Ministerial Representative.

Paragraph (f) amends section 8 (4) (a) of the principal Act so as to provide for the inclusion in a taxpayer's income of any amount recovered or recouped by him in respect of any allowance granted under section 24F of the principal Act. Section 24F is introduced by *clause 17* and relates to the taxable income of film owners.

CLAUSE 7

Amounts deemed to be derived from sources within the Republic: Amendment of section 9 of the principal Act

Subclause (1) (a). In terms of section 9 (1) (b) of the principal Act, royalties in respect of patents, designs, trade marks and copyright are deemed to be derived from a source within the Republic where such royalties relate to the use of such patents etc. in the Republic. The proviso to that section excludes from the ambit of the basic provision amounts accruing in respect of the use of any copyright in a printed publication (otherwise than for certain advertising purposes) where the amounts accrue to non-residents or external companies. In terms of this subclause the proviso is amended so as not to apply in respect of such an amount accruing to residents of neighbouring countries or external companies registered, managed or controlled in neighbouring countries.

Subclause (1) (b) inserts in section 9 of the principal Act two new subsections, numbered (4) and (5), deeming interest accruing on or after 21 September 1987 and gains made on or after that date on the maturity or disposal of bankers' acceptances to be derived from a source within the Republic where the technical source thereof is located in a neighbouring country and the person to whom the interest accrues or who makes such gains is, in the case of a person other than a company, ordinarily resident in the Republic or, in the case of a company, is a domestic company. These provisions are designed to counteract certain tax avoidance schemes. An exception is provided in respect of interest effectively connected with a business carried on by the person or company concerned through a permanent establishment in the neighbouring country.

CLAUSE 8

Investment income of certain foreign investment companies: Insertion of section 9A in the principal Act

The new section 9A introduced by this clause is designed to counteract tax avoidance schemes whereby residents of the Republic form investment companies and trusts in neighbouring countries and thereby locate the source of their investment income in those countries.

Certain words and terms have been defined in section 9A (1) for purposes of the section:—

A "foreign investment company" is one which is incorporated, registered, managed or controlled in a neighbouring country and is at any time during a relevant financial year of the company directly or indirectly controlled by one or more residents of the Republic, provided the profits of the company are normally derived wholly or mainly by way of investment income.

"Investment income" includes interest, dividends, certain rents, gains in respect of bankers' acceptances, certain gains in respect of in-

insurance policies and profits on the disposal of shares and options, regardless of the source of such income.

A “resident of the Republic” is a person (other than a company) who is ordinarily resident in the Republic or a domestic company (a term already defined in the principal Act), and also includes a trustee who holds an interest in any foreign investment company for the benefit of a resident of the Republic.

“*Untaxed profit*” means the profit derived by a foreign investment company which is attributable to investment income which would have been subject to normal tax had it been derived by the company from a source in the Republic, if the profit is derived from a source in a neighbouring country and is not subject to a tax in that country which is materially similar to normal tax. (To qualify, the tax of the neighbouring country must *inter alia* be levied at a rate of at least 40 per cent).

Section 9A (2) provides that where any resident of the Republic is or was a shareholder in a foreign investment company which derived untaxed profit, the portion of such untaxed profit which relates to his interest in the company, shall be deemed to have accrued to the resident from a source within the Republic on the last day of the company’s financial year.

Section 9A (3) provides rules for determining how much of the profits accrue to each resident of the Republic who has an interest in the foreign investment company, and section 9A (4) makes the decision of the Commissioner in the exercise of his discretionary power under section 9A (3) (b) subject to objection and appeal.

Taxpayers are required in terms of section 9A (5) to disclose to the Commissioner their interests in foreign investment companies and to furnish information, which will include details of untaxed profit, failing which the Commissioner may estimate the amount accruing.

In terms of section 9A (6) any tax levied under section 64A of the principal Act (non-residents tax on interest) or taxation levied on the profit in the neighbouring country, will be allowed as a rebate against the normal tax payable in the Republic.

Section 9A (7) deems any investment income which accrues to a resident of the Republic, or to a trustee for the benefit of such a resident, by reason of any donation, settlement or other disposition made by a resident of the Republic, to be from a source within the Republic. The purpose of this provision is to counter schemes involving trusts which are set up in neighbouring countries to avoid tax in the Republic.

Section 9A (8) deems a resident of the Republic to be a shareholder in a foreign investment company in certain circumstances; provides rules for determining when a company is deemed to be controlled by residents of the Republic and prescribes how the profit of a foreign investment company must be determined.

In terms of section 9A (9), directors’ fees and managerial or secretarial remuneration derived from a foreign investment company by a resident of the Republic who is a director of or shareholder in the company are deemed to be derived from a source within the Republic to the extent that they do not exceed the untaxed profit, as determined before the deduction of such fees or remuneration.

Commencement. Subclause (2) provides that the new section 9A is to

apply as from the commencement of years of assessment ended or ending on or after 21 September 1987.

CLAUSE 9

Exemptions from normal tax: Amendment of section 10 of the principal Act

Clause 9 (1) (a). In terms of section 10 (1) (cC) of the principal Act, certain associations formed under section 21 of the Companies Act, 1973, with the sole or principal object of building or acquiring houses or other residential accommodation are, subject to certain conditions, exempt from normal tax. Among such conditions is a requirement that the directors of the association must be independent persons who do not derive any remuneration for their services. In terms of the amendment introduced by this subclause, the requirement as to remuneration is relaxed to enable such an association to pay a reasonable remuneration. The Commissioner for Inland Revenue is empowered by the amendment to determine a ceiling for such remuneration according to the circumstances.

Clause 9 (1) (b). In terms of the new paragraph (cF) inserted by this subclause in section 10 (1) of the principal Act, an exemption is provided for any company, society or other association (other than a co-operative) formed with the sole or principal object of providing residential accommodation to aged persons (over 60 years of age), or persons who have retired by reason of ill-health or infirmity, in a building, housing complex or village. It is, *inter alia*, provided that at least one meal per day and nursing services are to be provided. The profits must be kept to a minimum and no distribution of profits may be made. The carrying on of any business not directly connected with the aforesaid sole or principal object, is not allowed.

Clause 9 (1) (c). A new paragraph (cG) is inserted in section 10 (1) of the principal Act in terms of which a person (other than a company) who is ordinarily resident in a country other than the Republic, or an external company which is managed and controlled in such a country, is to be exempt from normal tax on taxable income derived in the Republic from business carried on as owner or charterer of any ship, if that country grants a similar exemption from the tax imposed by it in respect of income which may be derived by a resident of the Republic from carrying on the same kind of business in that country. In practice, tax is imposed by a country when a foreign ship calls at a port in that country, and some other countries deny an exemption in respect of a South African ship because of the absence of reciprocal relief from South African tax.

Clause 9 (1) (d). Section 10 (1) (h) of the principal Act exempts from normal tax interest derived by an individual not ordinarily resident in the Republic, or by an external company, on stock or securities issued by the Government (including the South African Transport Services, a local authority, the Electricity Supply Commission or the South African Broadcasting Corporation), provided the individual or external company is not carrying on business in the Republic. In terms of the amendment introduced by this subclause, the exemption will not apply where the interest is derived by a person (other than a company) who is ordinarily resident in a neighbouring country, or by a company which is incorporated, registered, managed or controlled in such a country. The original purpose of the exemption was to attract investment from outside the rand monetary area, but the present wording has permitted schemes to be evolved whereby South African concerns have been able to take advantage of the exemption by placing the investments in companies controlled in neighbouring countries.

The amendments introduced by *clause 9 (1) (e)* and *(f)* increase the general exemption in respect of interest from R500 to R1 000.

CLAUSE 10

Deductions from income: Amendment of section 11 of the principal Act

The amendment to section 11 (o) of the principal Act which is introduced by this clause, is consequential upon the introduction by *clause 17* of the new section 24F. It is now provided that any allowance granted under the latter section is to be taken into account in the determination of the scrapping allowance under section 11 (o).

CLAUSE 11

Initial allowance in respect of industrial machinery and plant: Amendment of section 12 of the principal Act

In terms of the amendment to section 12 of the principal Act, the date by which industrial machinery or plant must be brought into use to qualify for the machinery initial allowance provided for in that section is extended from 31 December 1986 to 31 December 1988.

CLAUSE 12

Initial allowance in respect of industrial buildings: Amendment of section 13 of the principal Act

In terms of the amendments to section 13 of the principal Act introduced by this clause, the date by which the erection of an industrial building or improvements thereto must be commenced in order to qualify for the building investment allowance provided for in that section, is extended from 31 December 1986 to 31 December 1988, and the date by which the building must be brought into use or the improvements completed, is extended from 31 December 1987 to 31 December 1989.

CLAUSE 13

Deductions from income in the form of dividends: Amendment of section 19 of the principal Act

The amendment to subsection (1A) of section 19 of the principal Act introduced by this clause is consequential upon the amendment introduced by *clause 9 (1) (e)*.

CLAUSE 14

Deduction in respect of the earnings of a married woman: Amendment of section 20A of the principal Act

The amendment introduced by this clause to section 20A of the principal Act increases the maximum deduction provided for in that section in respect of the earnings of a married woman from the greater of R1 800 or 20 per cent of her net earnings, to the greater of R2 250 or 22,5 per cent of her net earnings.

CLAUSE 15

Trading stock consisting of fixed property or shares exchanged for shares: Amendment of section 24A of the principal Act

Section 24A of the principal Act provides for a form of "roll-over" relief where trading stock consisting of fixed property or shares is exchanged

for shares. The consideration consisting of the shares acquired is not included in the trader's income. Those shares are, however, deemed to be trading stock and the cost thereof is deemed to be the cost of the trading stock given therefor. The provisions are designed to facilitate company mergers and reorganizations. Following upon a merger under which shares are acquired, those shares may in a later merger or reorganization be exchanged for yet other shares. The amendment introduced by this clause is designed to make it clear that the provisions of section 24A may, in appropriate circumstances, again be applied in respect of the later merger or reorganization.

CLAUSE 16

Deduction of expenditure incurred in respect of National Key Points: Amendment of section 24D of the principal Act

In terms of section 8 (4) (a) of the principal Act, any recoupment of expenditure in respect of a National Key Point allowed as a deduction under section 24D of that Act must be included in the taxpayer's income. Where such expenditure was incurred prior to 1 July 1983, amounts were paid to the taxpayers concerned in order to supplement the benefit of the tax deduction so as to ensure equality of treatment with other persons who had incurred such expenditure on or after the date mentioned and had been compensated in full and had not been granted any deduction under section 24D. The amendment introduced by this clause ensures that the recoupments in these cases are not taxable.

CLAUSE 17

Taxable income of film owners: Insertion of section 24F in the principal Act

The new section 24F introduced by this clause provides for special rules to be applied in respect of the deductions allowable to film owners in the determination of their taxable incomes. The new section defines various kinds of expenditure that may be incurred and provides special rules for dealing with each kind of expenditure. The kinds of expenditure in question, and the treatment thereof, are shortly as follows:

- (a) "*Production cost*" is defined in subsection (1) and is basically the cost of acquisition or production of a film ("film" is defined in that subsection to include cinematographic films, video tapes and video discs). The definition specifies various kinds of expenditure that may be incurred (e.g. the cost of acquiring story rights), but the list is not necessarily exhaustive. "Production cost" does not include expenditure incurred after the completion date of the film ("completion date" is defined), nor expenditure incurred in the marketing or promotion of or in soliciting orders for the film.
- (b) "*Post-production cost*" consists of items of expenditure of the same nature as those included in "production cost", which are incurred after the completion date, but excludes "print cost" ("print cost" is defined and is also excluded from "production cost").
- (c) A *film allowance* is granted under subsection (2) in respect of production cost and post-production cost. The allowance may not exceed the aggregate of such costs and is granted in lieu of any deductions or allowances which may otherwise be allowable under the principal Act. Subsection (3) provides how the amount of the film allowance is to be determined. The allowance is spread over the "*write-off period*" (defined in subsection (1) to be the period of 24 months commencing on the day after the

completion date of the film), but may be accelerated if the income from the film exceeds the write-off amounts as determined for the year of assessment. Where 75 per cent of the production cost and post-production cost is incurred and paid in the Republic, the production cost may be written off as to 50 per cent on the date of completion and the balance in the following year. The latter provision will apply to films produced for the local market. Any post-production cost in respect of these films will, however, be spread over the write-off period as described above. Subsection (4), however, limits the total film allowances to the amounts of production cost and post-production cost which have been paid by the film owner, plus any amounts of such costs which have not been paid and for which he is deemed by subsection (8) to be at risk. A special rule applies where any loan or credit has been used for the payment or financing of either cost: the amount regarded as paid is limited to so much of the loan or credit for which the owner is at risk.

- (d) The amount of "*print cost*" and *marketing expenditure* which may be deducted under sections 11 and 17 of the principal Act, is also limited to the amounts for which the film owner is at risk, as described in paragraph (c) above.
- (e) The "*at risk*" rule is set out in subsection (8). A film owner is deemed to be at risk in respect of expenditure incurred only if the payment of the amount incurred, or the repayment of a loan used to pay such an amount, would result in an economic loss to him were he to derive no income from the film. For example, should the film owner be granted such a loan subject to the condition that he could be called upon to repay the loan only out of income derived from the film, he would not be at risk in respect of the relevant expenditure. The purpose of the provisions regarding "*at risk*" is to prevent the deduction from income of expenditure which, although incurred, does not have to be paid unless income is derived, and to achieve a measure of matching of income and expenditure.
- (f) *Section 11bis of the principal Act: Marketing expenditure*

Section 11*bis* of the principal Act provides for the deduction by an exporter of a marketing allowance in respect of marketing expenditure, which is in addition to the deduction allowed in respect of such expenditure under section 11 or 17 of the principal Act. Subsection (9) of the new section 24F limits the application of section 11*bis*, in so far as it is applicable to marketing expenditure incurred in respect of a film, to a "*South African export film*", which is defined in subsection (1) of the new section, so as to ensure that a certain proportion of the production cost and the post-production cost is incurred in the Republic. Subsection (9) also provides that the amount of commission, fee or other remuneration paid or payable by a film owner by way of marketing expenditure qualifying for the exporters' allowance shall be limited to 30 per cent of the income of the film owner from the exploitation of the film. This rule does not, however, apply to so much of such commission, fee or other remuneration payable by the film owner to another person as has been disbursed by that person by way of such marketing expenditure incurred on behalf of or as agent for the film owner.

- (g) It is possible that a film which initially qualifies as a South African export film, later no longer so qualifies. *Subsection (10)* pro-

vides for this eventuality. The Commissioner is required to revise any assessment for an earlier year in which the film qualified as an export film but has later ceased so to qualify, on the basis that the film was not a South African export film.

Commencement. In terms of subclause (2) the new section 24F is to apply with effect from the commencement of years of assessment ended or ending on or after 7 April 1987 (the date on which the Minister of Finance made an announcement in regard to the proposed legislation). The new provisions will not, however, apply to any film acquired by a film owner under a written agreement formally and finally signed by every party thereto before that date.

CLAUSE 18

Taxable income of co-operatives: Amendment of section 27 of the principal Act

The amendments effected by this clause affect certain deductions from income allowed to agricultural co-operatives under section 27 of the principal Act.

Paragraph (a) of this clause extends the date by which machinery or plant must be brought into use to qualify for the special machinery initial allowance under section 27 (2) (d) (i) from 31 December 1986 to 31 December 1988.

Paragraph (b). In terms of section 27 (2) (f) an agricultural co-operative is allowed as a deduction from its income amounts repaid on loans used in respect of storage buildings, but the concession is limited to the first year of assessment of the co-operative commencing on or after 1 April 1977 or any of the nine succeeding years of assessment. In terms of the amendment, if the ninth succeeding year commenced not later than 31 March 1987 the deduction may also be granted for the year of assessment succeeding such ninth year.

Paragraph (c) of this clause extends the date by which the erection of a building or improvements thereto must be commenced in order to qualify for the storage building investment allowance provided for in section 27 (2) (i) from 31 December 1986 to 31 December 1988, and the date by which the storage building must be brought into use, or on which the improvements thereto must be completed, from 31 December 1987 to 31 December 1989.

CLAUSE 19

Definitions for undistributed profits tax purposes: Amendment of section 49 of the principal Act

In terms of the amendment introduced by this clause to the definition of "total net profits", any amount included in the income of a company under the provisions of the new section 9A (2) introduced by *clause 8*, (i.e. certain untaxed profit of a foreign investment company deemed to be income of the company) is not to be included in the company's total net profits for undistributed profits tax purposes.

CLAUSE 20

Exemptions from undistributed profits tax: Amendment of section 50 of the principal Act

Clause 20 (1) (a) amends section 50 (*d*) of the principal Act so as to exempt from undistributed profits tax any company which satisfies the Commissioner that shares representing not less than 50 per cent of the equity share capital were throughout the specified period held directly or indirectly by one or more external companies which are public companies as contemplated in section 38 (2) (*a*) of the principal Act, and derive the greater portion of their profits from sources outside South Africa, or by such companies and certain other shareholders as indicated in the amendment. The amendment is deemed to have taken effect as from the commencement of years of assessment ended or ending on or after 1 January 1983.

Clause 20 (1) (b) substitutes a new paragraph for paragraph (*h*) of section 50 of the principal Act, in terms of which a mutual building society is exempted from the payment of undistributed profits tax.

CLAUSE 21

Exemptions from donations tax: Amendment of section 56 of the principal Act

In terms of the amendment to section 56 of the principal Act introduced by this clause, donations by or to a company, society or other association of persons exempted from normal tax in terms of the new paragraph (*cF*), inserted in section 10 (1) of the principal Act by *clause 9 (1) (b)*, are to be exempt from donations tax. The company, society or association in question is one providing residential accommodation and other facilities to certain aged or retired persons in the circumstances contemplated in the said paragraph (*cF*).

CLAUSE 22

Exemptions from the non-residents tax on interest: Amendment of section 64C of the principal Act

In terms of the amendment introduced by *subclause (1) (a)*, the exemption from the non-residents tax on interest provided for in section 64C (*a*) of the principal Act in respect of interest accruing from the Government (including the South African Transport Services, any local authority, the Local Authorities Loans Fund, the Electricity Supply Commission, the South African Reserve Bank, the South African Broadcasting Corporation and the Development Bank of Southern Africa) will, with effect from 1 November 1987, not apply in respect of stock or securities (including Treasury Bills). This amendment should be read with the amendment to section 10 (1) (*h*) of the principal Act introduced by *clause 9 (1) (d)*.

Subclause (1) (b) deletes, with effect from 1 November 1987, paragraph (*bA*) of section 64C of the principal Act in terms of which interest accruing to residents of South West Africa was exempt from the non-residents tax on interest.

Subclause (1) (c) adds a proviso to section 64C (*k*) of the principal Act in terms of which a late application may be made to the Minister of Finance for an exemption under that provision in respect of interest on a loan used for long-term industrial or mining development, if such interest was exempt from tax under a double taxation agreement with a foreign

country but such exemption has ceased to apply because of the termination of the agreement, and the Minister is satisfied that an application for exemption under the said provision would have been approved if the application had been made prior to the granting of the loan.

Subclause (1) (d) adds a new paragraph (*n*) to section 64C of the principal Act providing for an exemption from the non-residents tax on interest where the loan or credit on which the interest in question is payable is subject to regulations under Government Notice No 603 of 27 March 1987 (the international debt standstill), and the interest was prior to 1 July 1987 exempt from the tax under a double taxation agreement (such agreement having been terminated).

CLAUSE 23

Annual notice by the Commissioner requiring returns for the assessment of taxes: Amendment of section 66 of the principal Act

The amendment is consequential upon the raising of the general interest exemption from R500 to R1 000 by *clause 9 (1) (e)*.

CLAUSE 24

Farmers: Disposal of livestock on account of drought: Amendment of paragraph 13A of the First Schedule to the principal Act

In terms of paragraph 13A of the First Schedule to the principal Act, a farmer who has disposed of livestock on account of drought may deposit the proceeds with the Land Bank and the proceeds are then not regarded as being gross income. If the amount deposited is withdrawn within four years, the amount withdrawn is deemed to be gross income. If at the end of the period of four years the amount deposited has not been withdrawn in full, the balance remaining is deemed to be gross income. In terms of the amendment introduced by this clause, the period of four years is extended to six years.

CLAUSE 25

Lump sum benefits paid by pension, provident and retirement annuity funds: Amendment of paragraph 7 of the Second Schedule to the principal Act

The amendment introduced by this clause is of a textual nature.

CLAUSE 26

Gains under insurance policies: Amendment of paragraph 1 of the Sixth Schedule to the principal Act

The amendment introduced by this clause extends the definition of "insurance policy" in paragraph 1 of the Sixth Schedule to the principal Act, to include a policy issued by an insurer incorporated, formed or established in a neighbouring country, which is materially similar to policies issued by domestic insurers. The amendment is necessary to ensure that the object of the Sixth Schedule, viz. to prevent insurance policies from being used as deposit accounts, is achieved.

CLAUSE 27

Gains under insurance policies: Insertion of paragraph (1A) in the Sixth Schedule to the principal Act

The new paragraph (1A) which is inserted by this clause in the Sixth

Schedule to the principal Act, is aimed at schemes or arrangements whereby non-standard insurance policies are taken out with insurers in neighbouring countries by companies or trustees acting for the benefit of residents of the Republic, in order to avoid tax on any gains made. If the resident receives any amount funded directly or indirectly out of a benefit paid under such a policy, or out of the proceeds of such a policy, the amount is to be dealt with as an insurance benefit.

CLAUSE 28

Fringe benefits: Amendment of the definition of "official rate of interest" in paragraph 1 of the Seventh Schedule to the principal Act

The amendment introduced by this clause confirms the amendment made by the Minister of Finance under Government Notice No 2683 of 19 December 1986, reducing the official rate of interest from 15 to 13 per cent. That rate is applied for the purpose of determining the value of the benefit of an interest-free or low-interest loan to an employee. The Government Notice is withdrawn by *clause 31*.

CLAUSE 29

Fringe benefits: Residential accommodation: Amendment of paragraph 9 of the Seventh Schedule to the principal Act

The value to be placed on free or low-rent residential accommodation enjoyed by an employee as part of his remuneration is determined in accordance with a formula based on his other remuneration. An abatement of R20 000 is provided in the formula, which has the effect of excluding that amount from the employee's remuneration for purposes of the calculation. The formula is, however, not applicable if the employee, his spouse or minor child has a right of option or pre-emption granted by the employer, or by another person by arrangement with the employer, or any associated institution such as a pension fund, to acquire the accommodation. The amendment introduced by *paragraph (a)* of this clause extends this provision to cover the case where the employee, his spouse or minor child may become the indirect owner of the accommodation by virtue of a controlling interest in a company (which in terms of the definition of "company" in the Act includes a close corporation).

Where the accommodation is owned by the employee, his spouse or minor child, the formula does not apply and the value of the benefit is taken to be the amount of rent paid by the employer for the accommodation. The amendment introduced by *paragraph (b)* of the clause extends this provision so as to apply where the accommodation is indirectly owned by the employee, his spouse or minor child by virtue of a controlling interest in a company (or close corporation) or otherwise.

CLAUSE 30

Fringe benefits: Phasing-in of benefit resulting from an interest-free or low-interest housing loan: Amendment of paragraph 14 of the Seventh Schedule to the principal Act

The taxation of the benefit enjoyed by an employee in respect of an interest-free or low-interest housing loan is phased in over seven years.

The amendment introduced by this clause to paragraph 14 of the Seventh Schedule to the principal Act denies this benefit to so much of the value of the benefit as is granted in substitution for cash remuneration or with the sole or principal object of providing the employee with the advan-

tage of the phasing-in, bringing the paragraph into line with other phasing-in provisions.

CLAUSE 31

This clause withdraws Government Notice No 2683 of 19 December 1986. See the section of this Memorandum dealing with *clause 28*.

CLAUSE 32

In terms of this clause the amendments to the principal Act introduced by the Bill are for the purposes of assessments of normal tax and undistributed profits tax to apply from the commencement of years of assessment ending on or after 1 January 1988, unless otherwise provided.

CLAUSE 33

This clause provides the short title.