REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

INCOME TAX BILL, 1988

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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 amendments to the Income Tax Act, 1962 (Act No. 58 of 1962), hereinafter referred to as the principal Act. Certain substantive provisions relating to the imposition of the minimum tax on companies are also introduced. The latter provisions, as well as a large number of amending provisions which relate to the introduction of Standard Income Tax on Employees, are dealt with in separate explanations at the beginning of this Memorandum.

STANDARD INCOME TAX ON EMPLOYEES (SITE)

The introduction of Standard Income Tax on Employees (hereinafter referred to as SITE) follows from Government's acceptance of a proposal to this effect made by the Margo Commission, which was designed to simplify the administration of income tax.

At the outset, two important points must be noted with regard to SITE: firstly, it is not a separate tax, but rather an alternative method of determining liability for normal (income) tax; and secondly, it is applicable only to so much of an employee's net remuneration (this expression is defined in *clause 41*) as is payable at a *rate* not exceeding R12 000 per annum in the case of an employee other than a married woman, or R20 000 per annum in the case of a married woman.

As is the case at present, remuneration paid during the course of the tax year will be subject only to the deduction of employees tax (PAYE), which will constitute an advance payment against the employee's ultimate liability for normal tax, whether that liability is determined under the SITE rules or the ordinary rules. The amount of SITE payable by an employee on his remuneration will be finally determined by his employer at the end of the tax year, or on termination of service during the year. If an employee's remuneration was subject *only* to SITE, in other words, no portion thereof became payable at a rate exceeding R12 000 or R20 000 per annum, and he has derived no other taxable income, the amount of SITE so determined will constitute his final liability for tax for that year, and he will not be required to submit an income tax return.

Liability for SITE

In terms of section 5 (1) *(c)* of the principal Act, the normal tax payable by an individual must be determined on his total taxable income derived during a full year of assessment. *Clause 3* of the Bill inserts a new subsection (1A) in section 5, which overrides the aforementioned provision. This subsection provides that—

(a) where a taxpayer's taxable income *includes* any net remuneration, his normal tax liability will not be less than the amount of SITE payable in respect of that remuneration; and

(b) where his taxable income was derived *solely* from net remuneration and was subject *only* to the payment of SITE, his liability will be equal to that SITE.

The effect of this subsection is that, in so far as remuneration subject to SITE is concerned, tax liability will be determined having regard to the annualized rate of that remuneration, whether or not it is derived for a full year. Furthermore, once SITE liability has been so determined in relation to remuneration, it is final and will not be refundable should the taxpayer, for example, have suffered a loss in carrying on another trade or business.

Remuneration subject to SITE

SITE applies to "net remuneration" as defined in subparagraph (1) of the new paragraph 11B of the Fourth Schedule to the principal Act, which is inserted by *clause 41*. In terms of this definition, net remuneration is the balance of any remuneration remaining after the deduction of the employee's current and arrear contributions to a pension fund or retirement annuity fund, but excluding certain types of remuneration which are payable in circumstances in which the employer will not be able to determine the employee's liability with reasonable accuracy. The exclusions are:

(a) any amounts which are taxable at the taxpayer's average rate of tax under section 5 (10) of the principal Act, for example a lump sum benefit from a pension fund;

(b) remuneration in the production of which the taxpayer has incurred deductible expenditure, for example commission earned by a representative who bears his own motor expenses. Such expenditure must, however, amount to at least 1 per cent of the remuneration in question;

(c) remuneration derived by a married woman from employment which is in any way connected with her husband's trade or from a private company of which her husband is a director or principal shareholder;

(d) part-time remuneration (this expression is to be defined by the Commissioner in the PAYE deduction tables);

(e) remuneration derived by a married woman if her husband's total gross income other than the remuneration in question does not exceed R7 500; and

(f) any annuity payable otherwise than by a pension fund or retirement annuity fund.

Tax periods

SITE must be determined by an employer at the end of the employee's "tax period" as defined in paragraph 11 B (1). This means any unbroken period during the year of assessment during which the employee was employed by one employer. However, in terms of the proviso to the definition, when a woman—

(a) becomes married, a tax period is deemed to have ended on the day preceding her marriage; or

(b) ceases to be married, a tax period is deemed to have ended on the date on which she ceases to be married.

Annual equivalent and annual tax

Paragraph 11 B (1) contains two further definitions, viz. "annual equivalent" and "annual tax".

Where SITE has to be determined in respect of a tax period which is less than a full year, it is necessary to determine the annual equivalent of the remuneration payable during the tax period. This is done by multiplying the remuneration by the ratio which a full year bears to the tax period. For example, if remuneration amounting to R8 400 is paid during a tax period of 7 months, the annual equivalent of that remuneration will be (R8 400 × 12/7) = R14 400.

Annual tax is an amount calculated in relation to so much of the annual equivalent of any net remuneration as does not exceed R20 000 in the case of a married woman or R12 000 in any other case. In the case of a married woman, annual tax is calculated at a flat rate of 25 per cent, less a deduction of R1 075. This deduction is in lieu of the rebates granted to other taxpayers, and section 6 of the principal Act is amended by *clause 4 (a)* to provide that a married woman who is taxed separately under the SITE rules is not entitled to any rebate under that section.

In the case of other employees, annual tax is calculated at the applicable rates of normal tax fixed for the year, less the rebates to which the employee is entitled under section 6 of the principal Act.

Determination of SITE

Subparagraphs (2) and (3) of paragraph 11 B determine how SITE is to be calculated at the end of a tax period. These subparagraphs provide in effect as follows:

(a) Where the tax period is a full year, SITE will be the amount of annual tax calculated in respect of so much of the total remuneration payable during the tax period as does not exceed the applicable limit of R12 000 or R20 000.

(b) Where the tax period is less than a full year and the employee has not received an "annual payment" (see paragraph *(c)* below), SITE will be the annual tax determined on so much of the annual equivalent of the total remuneration as does not exceed the applicable limit, divided by the ratio which a full year bears to the tax period.

(c) Special provision is made for the determination of SITE in cases where the tax period is less than a full year and the employee has received a holiday bonus, 13th cheque, reward for bravery or similar amount which is payable once annually or without

reference to a period. In these circumstances, SITE is calculated in accordance with the formula contained in subparagraph (3) *(b)* as follows:

Step 1: determine the annual tax on an amount equal to the bonus or similar payment plus the annual equivalent of the employee's ordinary remuneration (T1).

Step 2: determine the annual tax on the annual equivalent of the employee's ordinary remuneration only (T2).

Step 3: deduct T2 from T1 and divide this amount by the ratio which a full year bears to the tax period. The result is the amount of SITE payable on the bonus or similar payment.

Remuneration of married women

In terms of the amendment to the proviso to section 7 (2) of the principal Act which is introduced by *clause 5*, net remuneration earned by a married woman is not included in her husband's income if *all* her remuneration is subject *only* to SITE, in other words, no portion thereof was payable at an annualized rate of more than R20 000 per annum.

Contributions to pension funds and retirement annuity funds

Section 11 *(n)* of the principal Act prescribes certain fixed amounts which a taxpayer may contribute by way of current and reinstatement contributions to a retirement annuity fund. The expression "taxpayer" in this context means the husband in respect of his and his wife's income. In terms of the amendment to this section introduced by *clause 8 (1) (e)*, where a married woman is in terms of the SITE provisions a taxpayer in her own right, each spouse will be entitled to a deduction of one-half of the applicable fixed amount, plus any unused portion of the relevant deduction to which the other spouse was entitled.

Deduction of fund contributions for PAYE purposes

In terms of paragraph 2 (4) of the Fourth Schedule to the principal Act, an employer must for PAYE purposes reduce an employee's remuneration by any current contributions to a pension fund or retirement annuity fund which have been deducted by the employer from the employee's remuneration. *Clause 40* amends this paragraph to provide that both current and arrear or reinstatement contributions are now to be taken into account. In addition, the employer is permitted (but not obliged) to take into account any retirement annuity fund contributions which the employee proves he has paid himself.

In the case of a married woman employee, however, an employer may not take any retirement annuity fund contributions into account unless he has received an authorising directive from the receiver of revenue.

Deductions which have not been taken into account in the determination of SITE

Where an employee has made an allowable contribution to a retirement annuity fund which was not taken into account by his employer in the determination of SITE or has incurred allowable medical expendi-

ture, and he does not have other taxable income from which that expenditure can be deducted, he may in terms of paragraph 11B (4) apply to the Commissioner for a redetermination of SITE.

Refunds of PAYE

If at the end of a tax period it is found that an employee is liable only for SITE, ie his remuneration for the year (or the annual equivalent thereof if the tax period is less than a year) does not exceed the applicable limit of R12 000 or R20 000, and the total PAYE deducted by his employer exceeds the amount of SITE payable, the overpayment is refunded to the employee by the employer. The amount so refunded by the employer may be recovered by him from his next payment of PAYE which is due to the Commissioner. An employer may not, however, make a refund if the employee's remuneration or annual equivalent, as mentioned above, exceeds the applicable limit. In this case, the full amount of PAYE deducted must be shown on the relevant employees tax certificate.

The amendment to paragraph 29 of the Fourth Schedule, introduced by *clause 43*, authorises the making of a refund by an employer.

Return of personal particulars

In terms of paragraph 11B (6), SITE is to determined by an employer at the end of a tax period on the basis of the latest return of personal particulars (form IRP2) submitted to him by his employee. Where an employee's circumstances change and he fails to furnish his employer with a fresh IRP2 in sufficient time for the employer to make the correct SITE calculation, any excess SITE paid by the employee will be deemed to have been correctly payable. Where an employee does not submit any IRP2 to his employer, the employer must determine SITE at the highest applicable rate, ie the employee must be regarded as a single person under the age of 60 in the case of a male, or as a married woman in the case of a female.

Deduction in respect of married women's earnings

Section 20A of the principal Act grants a deduction to a taxpayer in whose income there has been included certain earnings of his wife. "Earnings" is defined for the purposes of this section as income derived from trade, and the deduction may accordingly not be granted in respect of a pension received by a married woman. This definition is now amended by *clause 16 (c)* so as to make the deduction applicable also to an annuity derived by a married woman from a pension fund or retirement annuity fund.

In terms of the amendment introduced by *clause 16 (a)*, a further deduction may now be granted under section 20A. This deduction will be equal to the "applicable percentage" of the wife's "taxable earnings" (subject to a maximum of R4 650), reduced by 20 per cent of so much of such taxable earnings as exceeds R16 000.

The expression "taxable earnings" means, in terms of the definition inserted by *clause 16 (e)*, a married woman's earnings as already defined for the purposes of the section, less the deductions allowable in respect of her pension fund and retirement annuity fund contributions and educational donations, and the deduction of R2 250 or 22,5 per cent of her earnings already allowable to her husband.

The "applicable percentage" is calculated at—

$$30 \times \frac{(I - 28\ 000)}{W}$$

(but limited to a maximum of 30 per cent) where "I" is the taxpayer's total taxable income and "W" is the wife's taxable earnings.

Clause 16 (d) amends the definition of "net earnings" to delete the references to sections 18 (the deduction for medical expenses, which is now allowed to the husband only) and 21*quat* (the deduction for physical disability expenditure, which is now included with medical expenses under section 18). In this regard see explanations on *clauses 14 and 17*.

MINIMUM TAX ON COMPANIES

Introduction. Clause 43 imposes a tax (called the minimum tax) on companies which distributed dividends amounting to R250 000 or more during the financial year ended 29 February 1988 or, where the financial year end of the company concerned is not the last day of February, the latest financial year of the company which ended before the said date. The tax is calculated at the rate of 25 per cent of a taxable amount arrived at by making certain deductions from the dividends distributed. Certain exemptions are provided. The minimum tax will be available for set off against normal tax or provisional tax in certain circumstances and any balance of the tax which has not been so set off or is not required for such set off by 1 October 1991, is to be refunded to the company concerned. The minimum tax is to be paid on declaration not later than 30 September 1988 or within a period allowed by the Commissioner.

Subclause (1) provides that the meaning assigned to a word or expression in the Income Tax Act is to be given that meaning when used in this clause, unless the context otherwise indicates, and provides the following definitions:

A *"company"* is a company as defined in paragraph *(a)* of the definition of "company" in section 1 of the Income Tax Act, provided the company is a South African company as defined in that section. This comprehends associations, corporations or companies (other than close corporations) which are incorporated or deemed to be incorporated under any law in force or previously in force in the Republic and bodies corporate formed or established or deemed to be formed or established by or under such a law. It follows that besides excluding close corporations, certain companies or bodies corporate which are established outside the Republic are also not regarded as companies for the purposes of this clause (except where the context otherwise indicates) and close corporations and excluded companies or bodies corporate are consequently not chargeable with the minimum tax. A unit portfolio under a unit trust scheme is also excluded from the definition as is a company which is not a South African company by reason of the fact that its registered office is in a country which formerly formed part of the Republic or which is formed, established or incorporated under the law of such a country after it became independent.

The *"tax year"* is the financial year of the company concerned in respect of which the minimum tax is payable, ie the financial year ended on 29 February 1988 or the latest financial year of the company which ended before that date if its year end is not the last day of February.

Subclause (2) imposes the minimum tax. The tax is calculated at the rate of 25 per cent of the taxable amount determined as provided in subclause (3) in respect of the tax year.

Subclause (3) provides that the taxable amount in respect of the tax year of the company concerned is the amount by which the sum of the dividends distributed by it during the tax year exceeds the sum of—

(a) the normal tax for which the company has or will become liable for the tax year and any foreign taxation on income, profits or gains derived by the company during that year; and

(b) any dividends received by or accrued to the company during the tax year, whether from a source within or outside the Republic.

Subclause (4) provides that for the purposes of this clause a dividend is deemed to have been distributed by a company on the date on which payment of the dividend was approved by the company, its directors or some other person acting on authority conferred by the memorandum or articles of association, whether the dividend was payable on that date or on a subsequent date.

Subclause (5) provides that the following companies are to be exempt from the payment of the minimum tax:

(a) A company whose dividend distributions during the tax year amounted in total to less than R250 000.

(b) A company whose receipts and accruals during the tax year from sources within and outside the Republic, excluding receipts and accruals of a capital nature, and dividends, amounted in the aggregate to not more than R100 000. If, for example, the company's receipts and accruals consisted entirely of dividends the company will be exempt.

(c) A company which during the tax year distributed a dividend to one or more shareholders who had on 24 June 1988 ceased to be shareholders in the company if the aggregate of the dividends so distributed amounted to not less than 75 per cent of the sum of all the dividends distributed by the company during the tax year. This situation could have arisen by reason of disinvestment by foreign shareholders or where a company was taken over by new shareholders. The purpose of the proviso is to ensure that changes of shareholdings within a group of companies will not be taken into account in determining such aggregate. For the purpose of the

proviso dividends to a close corporation or body corporate (eg an external company) will also be excluded from the aggregate in the appropriate circumstances.

(*d*) Any fixed property company referred to in section 11 *(s)* of the Income Tax Act, ie a fixed property company as defined in section 1 of the Unit Trusts Control Act, No. 18 of 1947. The dividends distributed by such a company (other than those of a capital nature) are taxable in full in the hands of its shareholders and the company is allowed to deduct such dividends from its income.

(*e*) Any company whose receipts and accruals are exempt from normal tax under the provisions of section 10 (1) *(t)* of the Income Tax Act.

(*f*) Any company the winding up or liquidation whereof has commenced not later than 30 September 1988. If, however, the steps necessary for the winding up or liquidation have not been taken within 12 months from the commencement of the winding up or liquidation the Commissioner may, having regard to the circumstances, withdraw the exemption and such withdrawal is deemed to have become effective from 30 September 1988.

Subclause (6). Every company which is liable for the minimum tax will be required to furnish a declaration to the Commissioner not later than 30 September 1988 or within such period ending later than that date as the Commissioner may allow, giving such information as may be required for the purposes of this clause. The Commissioner may notify any company, whether or not it is liable, that it is required to furnish the declaration.

Subclause (7). The minimum tax for which a company is liable is to be calculated by the company on the declaration and payment of the tax is to accompany the declaration and be made not later than 30 September 1988 or the period allowed by the Commissioner. In terms of the proviso to this subclause if the normal tax or foreign taxation referred to in subclause 3 *(a)* has not yet been finally determined, the company is required to estimate the amount thereof.

Subclause (8) provides for interest to be payable on any amount outstanding in respect of the tax after 30 September 1988 at the "prescribed rate" as defined in paragraph *(b)* of the relevant definition in section 1 of the Income Tax Act (at present 15 per cent per annum). Any excess payment of the minimum tax is to be refundable with interest at the rate provided in paragraph *(a)* of the said definition (at present 12 per cent per annum).

Subclause (9) empowers the Commissioner to raise an assessment in respect of any amount of the minimum tax which has not been paid in full as required by this clause.

Subclause (10) provides that any assessment raised by the Commissioner in respect of the minimum tax shall be subject to objection and appeal. The machinery provisions of the Income Tax Act relating to objections and appeals concerning assessments under that Act are *mutatis mutandis* to apply in respect of objections and appeals concerning assessments of the minimum tax.

Subclause (11). The minimum tax plus any interest thereon is to be a debt due to the State and is to be recoverable as provided in the Income Tax Act in respect of any tax and interest owed under that Act.

Subclause (12) provides for the utilisation by a company which has paid the minimum tax of the amount of that tax as a credit against unpaid provisional tax payable in respect of a period ending on or after the date of commencement of the Act (the Income Tax Act, 1988), or against any unpaid amount of normal tax which has become payable on assessment. It will be necessary for the company to apply for the credit to be so utilised, for administrative reasons.

Subclause (13) provides for the refund to the company concerned of any balance of the minimum tax remaining available as a credit on 1 October 1991, to the extent that it is not required for set off against provisional tax or normal tax which is due and has not been paid on the said date.

Subclause (14). If the winding up or liquidation of a company which has paid the minimum tax commences on or after 1 October 1988 and before 1 October 1991, the Commissioner may, if he is satisfied that all the formalities for the winding up or liquidation will be complied with within a period of 12 months after the commencement thereof, make a refund of the balance of the minimum tax which remains available as a credit and is not required for set off against provisional tax or normal tax which is or will be payable by the company.

Subclause (15) provides that certain machinery provisions of the Income Tax Act are *mutatis mutandis* to apply for purposes of the minimum tax.

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 28 February 1989 or 30 June 1989, and are provided for in paragraph 1 of the Schedule. Progressive rates of tax are provided ranging between 14 per cent on the lowest income segment and 45 per cent which is reached on the income segment above R80 000 in the case of a married person or R54 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, ie financial years, ending during the 12-month period from 1 April 1988 to 31 March 1989, 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 (a): In terms of paragraphs *(b)* and *(c)* of the definition of "married person", a taxpayer who is not married in the ordinary sense is regarded as a married person if—

(a) he or she was divorced before March 1962 and is entitled to a child rebate; or

(b) he or she is entitled to a child rebate and is the main supporter of that child.

This definition is now amended so as to provide that any person who is entitled to a child rebate will automatically be regarded as a married person.

Subclause (b) deletes the definition of "dependant". This amendment is consequential upon the withdrawal of the rebate for dependants—see also the explanation on *clause 4 (d)*.

CLAUSE 3

Levy of normal tax: Amendment of section 5 of the principal Act

See the separate explanation on SITE.

CLAUSE 4

Rebates: Amendment of section 6 of the principal Act

Subclause (a): See the separate explanation on SITE.

Subclauses (b) and (c): The primary rebates granted to married and unmarried taxpayers are increased from R920 to R1 100 and from R650 to R750 respectively in terms of these subclauses.

Subclause (d) deletes section 6 (3) *(b), (c)* and *(d)*. The effect of this amendment is that taxpayers will no longer be entitled to the rebate in respect of life assurance premiums and contributions to provident funds, benefit funds and the unemployment insurance fund, nor to the R30 and R50 dependant's rebates.

Subclause (e): This is a consequential amendment.

CLAUSE 5

Income derived by married women: Amendment of section 7 of the principal Act

See the separate explanation on SITE.

CLAUSE 6

Amounts to be included in income: Amendment of section 8 of the principal Act

Where expenditure in respect of which a taxpayer has been granted an allowance or deduction under the various provisions listed in section 8 (4) *(a)* of the principal Act is recovered or recouped by him, the recoupment is included in his income under the provisions of that section. The amendment effected by *subclause (a)* adds to the list of allowances and deductions in respect of which this provision applies the allowance in respect of toll roads which is granted under the new section 24G of the principal Act, as introduced by *clause 20*.

Notwithstanding the abovementioned provisions, section 8 (4) *(e)* of the principal Act provides that where certain machinery or plant used by industrialists or co-operatives has been damaged or destroyed, any amount recovered or recouped in respect thereof may be deducted from the cost price of replacement machinery or plant instead of being included in income. The amendment to this provision introduced by *subclause (b)* is of a textual nature, and is necessitated by the fact that a deduction in respect of the relevant machinery or plant may now be granted under the new section 12B of the principal Act, as introduced by *clause 11*.

CLAUSE 7

Exemptions: Amendment of section 10 of the principal Act

Subclause (a): Prior to its amendment by the Income Tax Act, 1987, section 10 (1) *(h)* of the principal Act exempted from normal tax interest derived by non-resident individuals and external companies on certain Government and semi-government stock or securities. This exemption was withdrawn with effect from 1 November 1987 in the case of interest accruing to residents of the neighbouring countries. As was stated in the Explanatory Memorandum on the Income Tax Bill, 1987, the original purpose of the exemption was to attract investment capital from outside the rand monetary

area, but the previous wording of the provision had enabled schemes to be evolved whereby South African concerns were able to take advantage of the exemption by placing investments in companies controlled in neighbouring countries.

It has subsequently become clear that a large number of persons permanently resident in the neighbouring countries, particularly South West Africa, and who had committed themselves to long-term investments in such instruments, have been detrimentally affected by the withdrawal of the exemption.

In order to afford such persons the opportunity of re-arranging their affairs after these investments mature, the amendment effected last year has been relaxed and, in the case of persons other than companies, the exemption will continue to apply to interest earned on investments made prior to 1 November 1987.

The position of companies remains unchanged, and they will be taxable on all interest earned on or after that date, irrespective of when the relevant investment was made.

Subclause (b): Benefits payable under the Unemployment Insurance Fund have in the past not been regarded as taxable in the hands of recipients. The Margo Commission, being apparently of the opinion that there may be some doubt as to the correctness of this view, recommended (in paragraph 6.96 of its report) that a specific exemption be enacted. A new paragraph (mB) is now inserted in section 10 (1) to give effect to this recommendation.

Subclause (c) adds to the list of bodies which are exempt from tax under section 10 (1) *(t)* of the principal Act, the South African Housing Trust Limited.

CLAUSE 8

Deductions: Amendment of section 11 of the principal Act

Subclause (1) (a): Section 11 (bB) of the principal Act allows a deduction in respect of finance charges incurred by a taxpayer on the acquisition of any machinery, plant, aircraft, implement, utensil or article used by a taxpayer for the purposes of his trade, and also provides that the deduction so granted is to be in lieu of any other deduction or allowance which may be granted under any other provision of the principal Act. The latter provision has the effect, for example, that finance charges will not constitute part of the cost price of the asset where that cost is deductible under another provision of the Act.

As announced on 12 February 1988 by Mr K D S Durr MP, then Deputy Minister of Finance, it has been contended that this provision does not apply to certain trades such as mining, shipping and farming, and accordingly that the cost price of, for example, livestock acquired by a farmer, may, for the purposes of the deduction which he may claim in respect thereof, include finance charges. The amendment introduced by this subclause makes it clear that the relevant provision applies to all trades, and specifically also livestock. In terms of *subclause (2),* the amendment applies to livestock acquired on or after 13 February 1988.

Subclause (1) (b): A taxpayer may, under section 11 *(e)* of the principal Act, be granted an allowance in respect of the amount by which the value of movable assets used by him for the purposes of his trade has been diminished by reason of wear and tear. This section is amended so as to

provide, firstly, that no further deduction may be allowed where the full cost price of an asset has been allowed as a deduction under the new section 12B (see *clause 11*), and secondly, that an allowance may be made in respect of a diminution in value as a result of depreciation as well as wear and tear.

Subclause (1) (c): A taxpayer may under section 11 *(g*A*)* of the principal Act write off the cost price of patents, designs, trade marks, copyrights and similar property. The amendment effected by this subclause is intended to counter a tax avoidance scheme in terms of which such property held clearly as a capital asset by one company in a group is sold to another. The result of such a transaction is that while the selling company is not taxed on the selling price, the purchasing company is allowed to deduct the cost price.

In terms of the amendment, a deduction will not be allowed in respect of the cost of such property which has been acquired from a person who is resident in the Republic or a neighbouring country, or from a domestic company or a company which is registered, managed or controlled in a neighbouring country, if—

(a) one of the parties to the agreement is a company and the other party is directly or indirectly interested in more than 50 per cent of the shares in that company; or

(b) both parties are companies and a third party is directly or indirectly interested in more than 50 per cent of the shares in both companies.

Subclause (1) (d): Sections 11 *(n) (aa)* (A), 18, 18A and 20A (1) *(b)* of the principal Act now provide that the amount of the expenditure dealt with in the relevant section which may be allowed as a deduction, is to be determined as a given percentage of the taxpayer's taxable income. The determination of the deduction which may be allowed under any one of those provisions is thus dependent upon the amount allowed under the other provisions, and it is accordingly necessary to establish the order in which the various calculations are to be made. The effect of the amendment introduced by this subclause and similar amendments introduced in *clauses 14, 15 and 16* is that the relevant calculations must be made in the following order:

1 retirement annuity fund contributions under section 11 *(n) (aa)* (A);

2 educational donations under section 18A;

3 medical expenses under section 18; and

4 the new married women's earnings deduction under section 20A (1) *(b)*.

Subclause (1) (e): See the separate explanation relating to SITE, in regard to the deduction in respect of retirement annuity fund contributions allowable to spouses.

Subclause (1) (f): Where certain assets in respect of which a deduction is allowable under the principal Act are scrapped by the taxpayer before the full cost has been written off, the balance remaining may be allowed as a deduction under section 11 *(o)*. In terms of the amendment introduced by

this subclause, the scrapping allowance is extended to assets in respect of which the new sections 12B and 24G apply (see the explanations on *clauses 11 and 20*).

Subclause (1) (g): Section 11 *(p)* of the principal Act permits a deduction in respect of certain expenditure relating to scientific research. The amendment introduced by this subclause prevents a second deduction being claimed under this section in respect of such expenditure which has already been allowed as a deduction under another provision of the Act.

CLAUSE 9

*Marketing allowance: Amendment of section 11*bis *of the principal Act*

Section 11*bis* is amended in terms of this clause by the introduction of a general "at risk" rule. In terms of the proviso which is added to section 11*bis* (3) by *subclause (1) (a)*, where the exporter has made use of a loan or credit for the purpose of financing marketing expenditure and any portion of the loan is still outstanding at the end of the year of assessment, the deduction which may be allowed to him in respect of that expenditure is reduced by any portion of the outstanding loan for which he is not at risk. The proviso does not apply to marketing expenditure incurred in respect of a film, as the deduction of this expenditure is already regulated by section 24F. Marketing expenditure which is disallowed in any year under this proviso is carried forward and deemed to be expenditure incurred in the following year of assessment.

The at risk rule is set out in the new section 11*bis* (3A), which is inserted by *subclause (1) (b)*. This rule in effect provides that should no income accrue to the taxpayer in future from the trade in respect of which the expenditure was incurred, he must (save in so far as he may have effected *bona fide* insurance against loss) suffer an economic loss in repaying the loan.

In terms of *subclause (2)*, the at risk rule applies to any expenditure incurred on or after 23 February 1988, unless that expenditure is incurred in terms of a written contract formally concluded before that date.

CLAUSE 10

Hotel equipment allowance: Amendment of section 12A of the principal Act

The allowances under section 12A are withdrawn in respect of hotel equipment brought into use on or after 4 June 1988, and replaced by a write-off under section 12B—see the explanation on *clause 11*.

CLAUSE 11

Deduction in respect of machinery, plant, implements, utensils and articles: Insertion of section 12B in the principal Act

The new section 12B inserted in the principal Act by this clause gives effect to the recommendation of the Margo Commission that the cost of certain assets should be written off at the rate of 50 per cent in the first year, 30 per cent in the second year and 20 per cent in the third year. The provision applies in respect of the following assets:

(a) industrial machinery or plant, ie machinery or plant used directly in a process of manufacture or a process which in the opinion of the Commissioner is similar to a process of manufacture, brought into use on or after 1 January 1989 and used by the taxpayer himself;

(b) industrial machinery or plant which is let by the taxpayer to an industrialist and brought into use by him on or after 1 January 1989;

(c) machinery or plant brought into use on or after 1 January 1989 by an agricultural co-operative and used by it for the purpose of storing or packing farm products or for subjecting such products to a primary process;

(d) hotel equipment brought into use on or after 4 June 1988 and used by the taxpayer himself in an hotel;

(e) hotel equipment let by the taxpayer and brought into use on or after 4 June 1988 by the lessee in an hotel; and

(f) machinery, implements, utensils and articles brought into use by the taxpayer on or after 1 July 1988 and used by him for farming purposes.

In terms of subsection (3), the allowance is based on the cash cost of the relevant asset. However, where the asset has been acquired to replace another asset which was damaged or destroyed and an amount which was recouped in respect of the latter asset was under the provisions of section 8 (4) *(e)* of the principal Act not included in the taxpayer's income, the cost is reduced by the amount of that recoupment.

In terms of subsection (4), the allowance will not be granted—

(a) to a lessor of any asset unless the asset is let for a period of at least 5 years, or for the useful life of the asset if that is shorter than 5 years (this provision does not apply, however, to an operating lease as defined in section 23 A (1));

(b) any asset which forms part of a ship in respect of which an allowance has been granted under section 14; and

(c) any asset brought into use by a company and subsequently during the same year brought into use by another company, if both companies are managed, controlled or owned by substantially the same persons.

In terms of subsection (5), where a lessor has let an asset for the minimum period required by subsection (4), but before the expiry of the lease disposes of the whole or a portion of his interest in the lease or his right to receive rent under the lease, the allowance previously granted to him is recouped to the extent of the unexpired portion of the lease.

CLAUSE 12

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

The annual allowance granted in respect of industrial buildings under section 13 (1) of the principal Act is increased, in the case of buildings or improvements which commence on or after 1 January 1988, from 2 per cent to 5 per cent.

CLAUSE 13

*Allowance in respect of hotel buildings: Amendment of section 13*bis *of the principal Act*

The grading and investment allowances in respect of hotel buildings under section 13*bis* (2) and (7) are withdrawn in terms of the amendment introduced by *subclause (b)* in respect of buildings or improvements to buildings which are commenced on or after 4 June 1988.

In terms of the amendment introduced by *subclause (a)*, however, the annual allowance granted in respect of buildings or improvements commenced on or after that date is increased from 2 per cent to 5 per cent.

CLAUSE 14

Deduction in respect of medical expenditure: Amendment of section 18 of the principal Act

Subclause (b) expands the scope of section 18 so as to provide also for a deduction of expenditure incurred in respect of a physical disability. This expenditure was previously deductible under section 21*quat*, which is repealed by *clause 17*.

Subclause (c) provides that any medical expenditure paid by a married woman who is taxed separately from her husband under the SITE rules, is deemed to have been paid by her husband. Such expenditure will thus (subject to the limit imposed in terms of *subclause (d)*) be deductible from the husband's income.

The deduction which may at present be claimed under section 18 is limited, in the case of taxpayers under the age of 65 years, to certain maximum amounts. Section 18 (2) is now amended by *subclause (d)* so as to provide that such taxpayers may now claim so much of their expenditure as *exceeds* a minimum amount, namely the greater of R1 000 or 5 per cent of their taxable income.

Taxpayers over the age of 65 years may, as in the past, claim a deduction of all their medical expenditure, without being subject to a minimum or maximum deduction.

CLAUSE 15

Educational donations: Amendment of section 18A of the principal Act

This amendment relates to the order in which various deductions are to be calculated. See the explanation on *clause 8 (1) (d)*.

CLAUSE 16

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

See the separate explanation on SITE.

CLAUSE 17

*Expenditure incurred in respect of physical disability: Repeal of section 21*quat *of the principal Act*

The deduction previously allowed under section 21*quat* of the principal Act in respect of expenditure incurred as a result of a physical disability has now been incorporated with the deduction allowable under section 18 in respect of medical expenses. See the explanation on *clause 14 (b)*.

CLAUSE 18

Standard deduction: Repeal of section 24E of the principal Act

In terms of section 24E of the principal Act, a standard deduction of R300 in the case of a married person or R200 in the case of an unmarried person may be granted in lieu of the combined deduction to which the taxpayer may be entitled under sections 18 (medical expenses), 18A (educational donations), 21*quat* (physical disability expenditure) and expenditure allowable under section 11 *(a)* in respect of tools used by an artisan or technician. The major item of expenditure covered by this section is in most cases medical and physical disability expenditure, and in view of the fact that the deduction now allowable under section 18 of the principal Act in respect of both items is subject to a minimum claim, the standard deduction is no longer justified. The repeal of section 24E is accordingly proposed by this clause.

CLAUSE 19

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

Section 24F (4) *(a)* and (7) *(a)* provide that where a film owner has utilized a loan for the financing of certain expenditure, the deduction which may be allowed to him in respect of that expenditure is limited to the amount of the loan for which he is at risk on the last day of the year of assessment. The application of these provisions is not entirely clear where the film owner had utilized such a loan, but had already repaid it by the end of the year of assessment. The amendment to these provisions introduced by *subclauses (1) (a) and (b)* makes it clear that the at risk rule is to be applied only to any portion of such a loan which remains owing at the end of the year.

Subclause (1) (c) amends section 24F (7) so as to provide that any expenditure for which a film owner is under that provision deemed not to be at risk and in respect of which a deduction is therefore not granted, may be carried forward to the following year of assessment.

In terms of *subclause (2) (a)*, the above amendments are to apply with effect from 7 April 1987, the date on which section 24F came into operation.

Subclause (1) (d): Section 11*bis* of the principal Act permits an exporter to claim a double deduction in respect of certain marketing costs which have been allowed as a deduction under section 11 or 17. Section 24F (7) restricts the latter deduction to amounts for which the taxpayer is at risk, while section 24F (9) *(b)* further restricts the deduction of agents' fees and commissions under section 11*bis* to a maximum of 30 per cent of income derived. These restrictions have not proved effective in limiting the incurral of excessive marketing expenditure, nor have they served to stimulate the development of the local film industry.

Section 24F (9) *(b)* is accordingly replaced in terms of the amendment introduced by this subclause by a new provision in terms of which the cumulative total amount of marketing expenditure, inclusive of agents' commissions, which may be allowed as a deduction under section 11*bis* may not exceed an amount equal to 2,5 times the local production cost of a film, less the foreign production cost thereof. Any expenditure disallowed in the application of this formula is carried forward to the following year of assessment.

In terms of the new subsection (11) which is added by *subclause (1) (e)*, if an allowance has been determined in an earlier year in accordance with the above formula, and additional foreign production costs are incurred in a later year with the result that the formula, as calculated in the later year, produces a smaller amount of marketing expenditure which may be allowed as a deduction, the assessment for the earlier year will be reopened and the marketing expenditure for that year will be limited to the amount permissible in terms of the latest formula determination.

In terms of *subclause (2) (b)*, the above amendments apply to film contracts concluded on or after 23 February 1988, the date on which the proposed amendments were announced by the then Deputy Minister of Finance, Mr K D S Durr MP.

CLAUSE 20

Toll roads: Insertion of section 24G in the principal Act

Section 24G of the principal Act, as introduced by this clause, provides certain special rules for determining the taxable income of toll road operators. These rules are necessary mainly because the largest item of expenditure incurred by a toll road operator, namely the cost of construction of the road, would by reason of the provisions of paragraph (ii) of the proviso to section 11 *(e)* of the principal Act not be allowable as a deduction (the latter provision prohibits a deduction in respect of works of a permanent nature).

The section regulates the deduction of expenditure incurred in respect of the following matters:

Permanent work—This means earthworks, tunnels, bridges and structures forming a permanent part of a road, and includes buildings erected to house the tolling equipment.

Road pavement—This means generally the wearing surface of the road, road signs, lighting, guard rails, etc, and also the various parts of an emergency telephone system.

Ancillary services—This includes service stations, emergency facilities, shops, rest areas, hotels, etc, which are accessible from a toll road.

Interest.

Major rehabilitation of the road pavement.

Repair or maintenance of a toll road.

The abovementioned items of expenditure may in terms of subsection (2), but subject to the limitation imposed by subsection (5), be deducted in the following manner:

Permanent works, road pavement, major rehabilitation of road pavement and erection or construction of ancillary services—the annual allowances determined under subsection (3); and

Repair or maintenance of toll roads or ancillary services and interest incurred—deductible in full when incurred.

In terms of subsection (3), a separate annual allowance is determined each year in respect of the expenditure incurred during that year, and the allowance is calculated by dividing that expenditure by the lesser of the remaining number of years during which the taxpayer is entitled to operate the toll road, and—

(a) in the case of expenditure on permanent works and the erection or construction of ancillary services, 25 years; or

(b) in the case of expenditure on road pavements or major rehabilitation thereof, 8 years.

The effect of the annual allowances is that expenditure incurred during any year will be written off evenly over the shorter of the remainder of the original tolling period or the applicable period of 8 or 25 years.

Subsection (5), however, limits the amount which may be deducted in any year in respect of the annual allowances and the repair or maintenance of the road or ancillary services to the taxable income derived by the taxpayer during the year from the exploitation of the toll road and interest arising out of the financing or exploitation of the road. Any amount disallowed under the provisions of this subsection is carried forward to the following year of assessment.

CLAUSE 21

Partnerships: Insertion of section 24H in the principal Act

Section 24H of the principal Act, as inserted by this clause, introduces two rules applicable to persons carrying on trade or business in partnership. Firstly, where a partner's liability is limited (most commonly under a partnership *en commandite*), he will not be entitled to deduct expenditure incurred by the partnership in excess of his liability, and secondly, income which accrues to a partnership will be deemed to accrue simultaneously to the partners individually.

Subsection (1) defines the concept of a "limited partner". This means a member of a partnership *en commandite*, an anonymous partnership or any similar partnership, whose liability towards creditors of the partnership is limited to the amount of his contribution to the partnership or is in any other way limited.

In view of the fact that a limited partner may not disclose to outsiders the fact that he is a partner, and may not take any part in the running of the partnership business, there is at present some doubt whether such a partner can himself be said to be carrying on the business of the partnership. Subsection (2) has accordingly been introduced to make it clear that such a partner will be deemed to be carrying on the trade or business of the partnership.

Subsection (3) provides that the total amount of the deductions or allowances which may be granted to a limited partner in respect of the business of the partnership may not exceed the sum of the partner's liability towards creditors and the amount of income which has accrued to him from the business. The marketing allowance under section 11*bis* is excluded from this provision, however, for the reason that it is a double deduction which is dependent upon the relevant expenditure having qualified for deduction under the ordinary provisions of the Act.

Any amounts disallowed under subsection (3) may in terms of subsection (4) be carried forward to the following year of assessment.

In terms of the law which applies at present, the income of a partnership accrues in common to all the partners, and no partner is individually entitled to any portion thereof until the date upon which they have agreed to distribute the profits of the partnership. It follows therefore that no portion of the partnership income can be assessed to tax until the partners themselves decide to distribute it. This fact has led to partners artificially arranging the distribution date under partnership agreements so as to postpone liability for tax.

Subsection (5) *(a)* accordingly provides that income which accrues to a partnership is simultaneously deemed to accrue in appropriate shares to the individual partners, while subsection (5) *(b)* provides that each partner will be entitled to deduct an appropriate share of expenditure incurred by the partnership.

In *bona fide* cases where partnership accounts have been drawn to a date other than the last day of the year of assessment, the partners may apply to the Commissioner in terms of section 66 (13)*ter* of the principal Act to continue to submit returns of income drawn to that date, in which case the partners' liability for tax will not be affected by this amendment.

CLAUSE 22

Deduction in respect of storage buildings used by co-operatives: Amendment of section 27 of the principal Act

The annual allowance granted to co-operatives in respect of storage buildings under section 27 (2) *(b)* of the principal Act is increased, in the case of buildings or improvements which commence on or after 1 January 1988, from 2 per cent to 5 per cent.

CLAUSE 23

Taxable income of long-term insurers: Amendment of section 28 of the principal Act

In terms of section 28 (1) of the principal Act, the taxable income of a long-term insurer is determined as a percentage of certain investment income and managerial or secretarial remuneration derived by it. That percentage is increased in terms of the amendment introduced by this clause, from 40 per cent to 70 per cent.

CLAUSES 24 TO 30

Donations tax: Amendment of sections 54, 55, 56, 57, 60, 61 and 64 of the principal Act

Introduction. Clauses 24 to 30 introduce amendments to the donations tax provisions of the principal Act in terms of which donations taking effect on or after 16 March 1988 will be subject to a flat-rate of tax of 15 per cent of each donation which is subject to the tax. Where the donor is a natural person donations taking effect during his year of assessment, as applicable for normal tax purposes, and amounting in value to a total of R20 000 or less during that year will be exempt from the tax. The existing exemption in respect of donations to a donor's children is, subject to a transitional provision, withdrawn. The present cumulative basis of taxing donations is abolished with effect from 16 March 1988. These changes are introduced in anticipation of the introduction of a capital transfer tax. Apart from the basic changes mentioned here the present donations tax provisions are not materially altered by the Bill. The amendments introduced by the various clauses are indicated briefly below.

Clause 24. In terms of the amendments to section 54 of the principal Act the tax is charged in respect of any donation which takes effect on or after 16 March 1988. The present cumulative basis is abolished except as regards donations which took effect before that date, as *clause 47 (b)* of the Bill provides that the amendments to the donations tax provisions will apply as respects donations taking effect on or after the said date.

Clause 25 introduces amendments to section 55 of the principal Act, deleting the definition of "*cumulative taxable value*" which as indicated above is no longer necessary and introducing an amendment to the definition of "*fair market value*" as it affects farming property. A donor of such property may elect to have the property valued at the Land Bank value rather than the fair market value. A technical difficulty has arisen as a result of the fact that the English text refers to "farming operations" whereas the Afrikaans text refers to "boerdery" which in terms of a court decision has a more restrictive meaning. The amendment introduces the concept of a "farming undertaking", which requires the operations in question to be viewed as a whole to determine whether farming is or is not being carried on.

Clause 26 introduces amendments to section 56 of the principal Act, as follows:

(i) *Paragraph (a)* withdraws the exemption conferred by paragraph *(gA)* of section 56 (1), in respect of donations made by a company which is managed and controlled in South West Africa; this exemption has no practical effect as the principal Act no longer applies in South West Africa.

(ii) The amendments introduced by *paragraphs (b) and (c)* are of a textual nature.

(iii) *Paragraph (d)* introduces amendments to section 56 (2) *(a)* and *(b)* whereby

— the existing exemption (maximum of R5 000 for a year of assessment) in respect of casual gifts is restricted to persons other than natural persons (eg a private company), and

— the existing exemption in respect of donations to a donor's children (maximum of R20 000 × the number of children, on the cumulative basis) is abolished and a new exemption is introduced, applicable only to donations made by a natural person and taking effect on or after 16 March 1988. The exemption is limited to so much of the sum of the values of the donations as does not exceed R20 000 during the year of assessment and is additional to any of the exemptions applicable under section 56 (1) or (2) *(c)* of the principal Act, eg the exemption in respect of a donation to the spouse of the donor. In terms of the proviso the donations tax in respect of a donation made by a donor to his children on or before 24 June 1988 is not to exceed the tax that would have been payable under the donations tax provisions of the Act as applicable before the amendment thereof by the Income Tax Act, 1988.

Clause 27. The amendment is of a textual nature. A donation made by a married woman not living permanently apart from her husband will in terms of section 57 of the principal Act, as amended by this clause, continue to be deemed to be a donation by her husband. The R20 000 exemption provided in section 56 (2) *(b)* of the principal Act, as amended by *clause 26 (d)*, will thus apply to the married couple jointly.

Clause 28 introduces an amendment to section 60 (2) of the principal Act. That provision deals with the situation where a donor has made more than one donation during the year of assessment and it then becomes necessary to apply the exemption under section 56 (2) *(a)* or *(b)* to a particular donation. The rule that will be applicable (which is an adaptation of an existing rule) is that the exemption is to be calculated according to the order in which the donations took effect.

Clause 29. The amendment to section 61 of the principal Act is of a consequential nature.

Clause 30 substitutes a new section for section 64 of the principal Act, in terms of which a single donations tax rate of 15 per cent of the value of the property disposed of under a donation is substituted for the present

progressive rates applicable on the cumulative basis and ranging between 3 per cent and 25 per cent of the cumulative value of donations made since 24 March 1955. The new rate applies to donations taking effect on or after 16 March 1988.

CLAUSES 31 TO 36

Non-residents tax on interest: Repeal of sections 64A to 64F of the principal Act

In consequence of the abolition of non-residents tax on interest with effect from 16 March 1988, sections 64A to 64F of the principal Act are repealed in so far as they apply to interest accruing on or after that date.

CLAUSE 37

Half-yearly payments of tax by gold mines: Amendment of section 67 of the principal Act

In terms of section 67 of the principal Act, persons engaged in gold mining are required to submit half-yearly estimates of their income and to pay the amounts of tax reflected in such returns. The relevant payments are to be made within two months of the close of the half-year to which they relate, and any payments made late are subject to the payment of interest in terms of section 89 of the Act.

The latter section provides for the calculation of interest on the basis of completed months, with the result that a late payment will in fact become subject to interest only after it has been outstanding for a full month. In terms of the amendment introduced by this clause, interest on late payments of this tax will in future be determined on a daily basis.

CLAUSE 38

Deduction in respect of the cost of livestock: Insertion of paragraph 8 in the First Schedule to the principal Act

A farmer is entitled to deduct from his income the full cost of the acquisition of livestock but, unlike other traders in respect of their trading stock, is not required to include in income the cost price of trading stock still held by him at the end of the year of assessment. Instead, a farmer must include in income the "standard value" of livestock held at the end of the year, which value is, particularly in the case of breeding stock, considerably less than the cost. Paragraph 8 of the First Schedule to the principal Act, as inserted by this clause, is intended to give effect to the recommendation of the Margo Commission that, while farmers should continue to be allowed to bring in the standard values of livestock, losses on livestock account should not be available for set off against non-farming income.

Subparagraph (1) provides that the deduction which may be allowed in respect of the cost price of livestock is limited to an amount which, together with the (standard) value of livestock held at the beginning of the year, does not exceed the income derived from farming and the (standard) value of livestock held at the end of the year. Any excess is carried forward to the following year of assessment.

Example: Assume that a farmer has on hand livestock to the value of R1 000 at the begining of the year. His livestock purchases during the year amount to R8 000, his sales amount to R5 000 and the value of livestock on hand at the end of the year is R1 500. His trading account will be drawn thus:

Opening stock	R1 000	Income	R5 000
Purchases	8 000	Closing stock	1 500
		Loss	2 500
	R9 000		R9 000

In this case, the amount of expenditure which may be deducted in respect of the cost price of the livestock purchases is calculated under subparagraph (1) as follows:

Income received	R5 000
Add closing stock	1 500
	6 500
Less opening stock	1 000
Deduction allowable	R5 500

It will be seen that the purchases have been reduced by the loss on the trading account, R2 500, and this amount is carried forward.

In terms of subparagraph (3), these provisions will not apply—

(a) where it can be shown by the farmer that he no longer holds the livestock in question; or

(b) to so much of any expenditure which falls to be dealt with under these provisions as, together with the opening value of livestock held, exceeds the fair market value of the farmer's livestock at the end of the year.

To illustrate situation *(b)* above, assume that the farmer in the example above is able to show that, as a result of drought, the fair market value of all his livestock at the end of the year is R3 000. The following calculation will be made:

Expenditure to be disallowed	R2 500
Add value of opening stock	1 000
	3 500
Deduct market value	3 000
Allowable	R 500

The amount to be disallowed is therefore reduced to R2 000.

In terms of *subclause (2)*, the new provisions will apply to the cost of livestock incurred on or after 31 May 1988.

CLAUSE 39

Farming capital expenditure: Amendment of paragraph 12 of the First Schedule to the principal Act

The deduction permissible under paragraph 12 (1) *(j)* of the First Schedule in respect of farming machinery, implements, utensils and articles is withdrawn in respect of such assets brought into use on or after 1 July 1988. This deduction has been replaced by an allowance under the new section 12B, introduced by *clause 11.*

CLAUSES 40 TO 43

See the separate explanation on SITE.

CLAUSE 44

Fringe benefits: Amendment of paragraph 7 of the Seventh Schedule to the principal Act

The Minister of Finance, acting under paragraph 20 (1) *(c)* of the Seventh Schedule to the principal Act, amended in terms of Government Notice No. 956 of 11 May 1988 the scale of values to be applied for fringe benefit taxation purposes to the private use of an employer-owned motor vehicle. The revised values came into operation on 1 June 1988. In terms of paragraph 20 (2), however, that amendment will lapse on the date of promulgation of the Income Tax Act, 1988.

The amendment is accordingly re-enacted by this clause, and the Government Notice is withdrawn by *clause 46*.

CLAUSE 45

See the separate explanation on minimum tax.

CLAUSE 46

See the explanation on *clause 44*.

CLAUSE 47

Commencement of certain amendments

Subclause (a) provides that the amendments introduced by the Bill (other than those relating to donations tax) will apply, except where otherwise stated in the amendment itself, as from the commencement of years of assessment ended or ending on or after 1 January 1989.

Subclause (b) provides that the donations tax amendments will apply to donations taking effect on or after 16 March 1988

CLAUSE 48

This clause provides the short title of the Bill.