REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

INCOME TAX BILL, 1989

[W.P. 2—'89]

ISBN 0 621 11972 5

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM ON THE INCOME TAX BILL, 1989

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 loan levy on companies are also introduced. The latter provisions, as well as those dealing with Standard Income Tax on Employees, are dealt with in separate explanations at the beginning of this Memorandum.

STANDARD INCOME TAX ON EMPLOYEES (SITE)

SITE, as introduced last year, applies to so much of the net remuneration of an employee as was payable at a rate not exceeding R20 000 per annum in the case of a married woman or R12 000 per annum in any other case. In terms of the amendments proposed by this Bill, the applicable rate for persons other than married women is increased from R12 000 to R20 000, while in the case of a married woman SITE will apply to all net remuneration regardless of the rate at which it is paid.

The rate of SITE previously applicable to a married woman, namely 25 per cent less a deduction of R1 075, is contained in paragraph *(a)* of the definition of "annual tax" in paragraph 11B of the Fourth Schedule to the principal Act. As a progressive rate of tax (which is fixed in the Schedule to the Bill) now applies to a married woman's net remuneration in excess of R20 000, the said definition of "annual tax" is amended by *clause 22 (b)* to delete the rate referred to.

Section 6 of the principal Act is correspondingly amended by *clause 4 (1) (a) and (b)* to provide that a married woman is entitled to a primary rebate of R1 075, although not to the secondary rebates for children and for persons over the age of 60 years.

Aside from the SITE rules, a married woman is liable for the payment of tax in her own right if she is permanently separated from her husband or if she is the second or subsequent wife in a polygamous marriage. Such married women are at present taxable at the *unmarried person* rate or, if they are entitled to a child rebate, at the *married person* rate. These rates differ from the rate now fixed for a married woman who is a taxpayer in terms of the SITE rules. The expression "married woman" is now defined in section 1 of the principal Act, in terms of the amendment introduced by *clause 2 (b)*, so as to exclude the above-mentioned married women who are taxable otherwise than under the SITE rules.

The introduction of the definition of "married woman" has necessitated consequential amendments to section 7 (2) (by *clause 5*) and section 18 (by *clause 11*).

Section 11 *(n)* of the principal Act provides that retirement annuity fund contributions may be deducted *inter alia* to the extent of the greater of R3 500 less pension contributions or R1 750 for current contributions and

R1 800 for reinstatement contributions *per taxpayer unit*, ie ordinarily husband and wife. In terms of an amendment introduced last year, where husband and wife are separate taxpayers under the SITE rules, each spouse is entitled to a deduction of one-half of the above amounts, but may transfer any unused portion of the other spouse's entitlement. This rule necessarily entailed the wife having to obtain a directive from the Receiver of Revenue before her employer could take account of her contributions in the determination of her SITE. To obviate the issue of such directives, it is now proposed that the husband will be entitled to a deduction of the full amounts described above, while the wife will be entitled to one-half of those amounts, with no provision being made for a transfer from one spouse to the other. The appropriate amendment to section 11 *(n)* is introduced by *clause 8 (1) (b)*, while *clause 21* amends paragraph 2 (4) of the Fourth Schedule so as to remove the requirement that a married woman must obtain a directive before her employer may take her contributions into account for SITE purposes.

SITE is intended to apply only in circumstances where an employer is able to predict with reasonable accuracy the total remuneration which his employee is likely to receive. For this reason, SITE does not apply to *inter alia* part-time remuneration. Part-time remuneration is not defined in the Act, but the Commissioner is given power to define it in the PAYE deduction tables. As a result of the infinite variety of different ways in which employees render service, it has not proved possible to include in that definition all the types of remuneration to which SITE cannot be accurately applied.

It is accordingly proposed that SITE should be applicable only to remuneration which is payable within certain defined parameters. For this purpose, a definition of "standard employment" is inserted in paragraph 11B of the Fourth Schedule by *clause 22 (e)*. In terms of the amendments to paragraphs *(d)* and *(f)* of the definition of "net remuneration" introduced by *clause 22 (c) and (d)*, SITE will apply only to remuneration derived from standard employment or by way of an annuity payable by a pension fund or retirement annuity fund.

"Standard employment" is defined as follows:

(a) Employment in terms of which the employee is required to render service for at least 22 hours per week. In determining whether employment meets with this requirement, no regard is had to temporary absences of the employee due to leave or exceptional circumstances (such as industrial action or suspension for disciplinary reasons), or to temporary reductions in working hours (such as reduced shifts).

(b) Employment in terms of which the employee is not permitted to work for another employer. Thus, for example, should an employee be employed for only 20 hours per week, but be forbidden by his employer to take other employment, he will be regarded as being in standard employment.

(c) Where any employer regularly or frequently employs persons for irregular periods, the Commissioner for Inland Revenue may, after consultation with the employer or with an association or body representing a group of employers, declare such employment to be standard employment. This provision may, for example, be applied in the case of temporary typists working for a service organisation.

In cases where paragraph *(c)* of the definition of "standard employment" applies, the Commissioner is also empowered, in terms of the amendments introduced by *clause 22 (a) and (f)*, to make such adjustments

as may be necessary to the determination of the annual equivalent of net remuneration and to fix the tax period at the end of which SITE is to be determined.

SITE is determinable only at the end of a tax period, which is defined as a continuous period of employment with one employer. Many large employers who operate through different branches register each such branch separately for PAYE purposes. Thus, when an employee is transferred between such branches, his remuneration and PAYE records are required to be transferred as well for the purpose of making a single SITE calculation at the end of the year. As this procedure causes administrative problems for many such employers, the definition of "tax period" is amended by *clause 22 (g)* so as to provide that a tax period will end on the transfer of an employee between one such branch and another.

An employer is required to finally determine SITE at the end of a tax period and, if the employee is then found to be liable only to SITE, the employer must refund any PAYE overdeducted and collect any shortfall. To obviate the employer having to make uneconomic adjustments, a new subparagraph (2A) is inserted in paragraph 11B by *clause 22 (h)*, to provide that the employer need not make an adjustment if the PAYE deducted is within R5 of the actual SITE liability.

LOAN LEVY ON COMPANIES

Clause 28 imposes a loan levy on companies. This levy is payable at the rate of 10 per cent of the normal tax payable in terms of the latest assessment issued to the company, bears simple interest at the rate of 16 per cent per annum and is repayable after 5 years.

Subclause (1) provides that any word or expression which is defined in the principal Act must be given that defined meaning when used in this clause, and also defines the expression "latest assessment". The latter expression means the latest asessment for normal tax purposes in respect of the latest year of assessment of a company, which has been issued and posted by the Commissioner not later than 15 July 1989. This is the assessment upon which the company's payment of loan levy must be based.

Subclause (2) imposes the loan levy on every company which was liable for the payment of normal tax in terms of its latest assessment.

Subclause (3) provides that the loan levy shall be payable at the rate of 10 per cent of each completed amount of R1 000 of normal tax payable in terms of the company's latest assessment. This means that the loan levy will be payable only in completed multiples of R100. In terms of the proviso to this subclause, the loan levy is not payable unless the amount thereof is at least R5 000.

The loan levy is not payable on any tax imposed as a surcharge (this exclusion applies only to mining companies), nor on any additional (penalty) tax imposed under section 76 of the principal Act.

Subclause (4) provides that where the Commissioner is satisfied that the normal tax payable in terms of a company's latest assessment was overcalculated due to an error, he may reduce the company's loan levy to the amount properly payable. In addition, where a company has lodged objection or appeal against its latest assessment and the Commissioner considers that the company has a reasonable prospect of succeeding with the objection or appeal, the Commissioner may permit the company to base its loan levy on the normal tax which will be payable if the objection or appeal is actually successful.

Subclause (5) exempts from the payment of the loan levy any company the liquidation or winding up of which has commenced not later than 31 July 1989. 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 withdraw the exemption.

Subclause (6) provides that the loan levy will be repayable not later than 31 July 1994. It is also provided that simple interest at the rate of 16 per cent per annum, calculated six-monthly in arrear, will be payable on the loan levy. The Minister of Finance may determine the manner in which interest is to be paid.

Subclause (7) provides that each company must calculate the amount of loan levy for which it is liable and pay this amount under cover of a declaration, in a form required by the Commissioner, not later than 31 July 1989.

Subclause (8) provides that where any loan levy is not paid by 31 July 1989, the company will be liable for the payment of interest on the outstanding amount at the prescribed rate (currently 18 per cent per annum), while *subclause (9)* gives the Commissioner the right to raise an assessment in respect of any unpaid loan levy.

Subclause (10) provides that the loan levy plus any interest thereon shall be a debt due to the State which may be recovered in any manner provided in the principal Act for the recovery of outstanding taxes.

Finally, *subclause (11)* provides that interest payable on the loan levy will not, as was the case with various loan levies imposed in the past, be exempt from normal 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 1990 or 30 June 1990, and are provided for in paragraph 1 of the Schedule. The rates are as follows:

Persons other than married women—a progressive rate 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.

Married women—a progressive rate ranging between 25 per cent and 38 per cent, which is reached on the income segment above R40 000.

As to the distinction in this regard between a "married person" and a "married woman", see the explanation of the definition of "married woman" contained in the section of this Memorandum dealing with SITE.

Companies

The rates for companies apply in respect of years of assessment, ie the financial year of the company concerned, ending during the 12-month period from 1 April 1989 to 31 March 1990, 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 the formula provided for in paragraph 1 *(c)* of the Schedule;

(ii) by a post-1966 gold mine: an amount determined in accordance with the formula provided for in paragraph 1 *(d)* of the Schedule.

(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 the higher (paragraph 1 *(e)* of the Schedule).

(d) Taxable income from mining operations (other than mining for gold): 50 cents per R1 (paragraph 1 *(f)* of the Schedule). To the tax calculated above a surcharge equal to 12 per cent of such tax is added (see proviso to subparagraph *(f)*). 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.

(e) Taxable income derived from long-term insurance business: 45 cents per R1 (paragraph 1 *(g)* of the Schedule).

CLAUSE 2

Definitions: Amendment of section 1 of the principal Act

Subclauses (a) and (b): See the separate explanation of SITE.

Subclause (c) deletes the definition of "new deep level gold mine" and "new gold mine". These definitions related to provisions of the principal Act which have ceased to have any practical effect.

Subclause (d) introduces amendments to the definition of "other deep level gold mine". The deletion of the reference to a new deep level gold mine is consequential upon the deletion of the definition of "new deep level gold mine" by subclause *(c)*. In terms of the further amendment the only mines coming within the definition will be those recognized by the Government Mining Engineer on or before 22 May 1989. The capital allowance under paragraph *(c)* of the definition of "capital expenditure" in section 36 (11) of the principal Act, as applicable to any "other deep level gold mine", will consequently be restricted to the mines so recognized.

CLAUSE 3

Secrecy provisions: Amendment of section 4 of the principal Act

The new subsection (2A) inserted in section 4 of the principal Act by paragraph *(a)* of this clause prohibits the publication or making known to any person other than an officer of Inland Revenue of the contents or tenor of any instruction or advice given by the Commissioner in the performance of his duties for or concerning the examination or investigation of the tax matters of any taxpayer or the fact that such an instruction or such advice has been given, or any information concerning the tax matters of a taxpayer or class of taxpayers. This subsection supplements the existing provisions of section 4 (1) which provide for secrecy to be observed by such officers in regard to information coming to their knowledge in the course of their duties.

In terms of the proviso to the new subsection (2A)—

(i) any taxpayer who is or may be affected by any examination or investigation of his tax matters will be free to publish or make known any information concerning his own tax matters;

(ii) the Commissioner and his staff are not limited in the exercise of their duties or powers, provided however that they observe the secrecy provisions of subsection (1); and

(iii) any person who has knowledge of any information published or made known by the taxpayer as contemplated in paragraph (i), or by the Commissioner or a member of his staff in the exercise of their duties or powers, will himself be free to publish or make such information known. Where, however, information in regard to any instruction by the Commissioner for the examination or investigation of any taxpayer has been obtained in some other manner, the prohibition on publication will apply.

Paragraph *(b)* of this clause introduces an amendment to subsection (3) of section 4 of the principal Act whereby any contravention of subsection (2A) is made an offence punishable with a fine not exceeding R5 000 or imprisonment for a period not exceeding two years or both such fine and such imprisonment.

CLAUSE 4

Rebates: Amendment of section 6 of the principal Act

Subclause (a): The primary rebates granted to married and unmarried taxpayers are increased from R1 100 to R1 250 and from R750 to R850 respectively in terms of this subclause. In addition, a primary rebate of R1 075 is granted in the case of married women—see the separate explanation of SITE.

Subclause (b) introduces a consequential amendment.

Subclause (c): The parent of a dependent child between the ages of 18 and 26 years may be granted a rebate in respect of that child subject to certain conditions, *inter alia* that the child has not become liable for the payment of normal tax in his own right. Since the introduction of SITE last year, the position has obtained where a full-time student who works only during the university vacation may become liable for a small amount of SITE even though his total income for the year is well below the ordinary threshold of liability, with the result that his parent no longer qualifies for a rebate. The effect of the amendment introduced by this subclause, which in terms of *subclause (2)* applies retroactively to the year of assessment ended on 28 February 1989, is that a child rebate will still be granted where the child is liable for the payment of tax only under the SITE rules and not under the ordinary rules.

Subclause (d) increases the rebate for persons over the age of 65 years from R380 to R1 330.

CLAUSE 5

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

See the separate explanation on SITE.

CLAUSE 6

Certain dividends deemed to be interest: Insertion of section 8E in the principal Act

This clause inserts a new section, numbered 8E, in the principal Act, in terms of which dividends declared on certain types of shares are deemed to be interest.

Subsection (1) defines the following expressions:

"*Affected instrument*", which means—

(a) a redeemable preference share which is redeemable within three years from the date of issue or which may at the option of the shareholder be redeemed within that period, or a redeemable preference share in respect of which the shareholder has a "right of acquisition" which may be exercised within that period; or

(b) any share other than a redeemable preference share if—

(i) the shareholder has a "right of acquisition" which may be exercised within a period of three years from the date of issue of the share; and

(ii) the share enjoys dividend rights which are not the same as those of the ordinary shares in the company, or where the ordinary share of the company are divided into different classes, the shares enjoys dividend rights which are not the same as those of at least one of the classes of ordinary shares, or dividends on the share are to be calculated with reference to a specified rate of interest, or dividends on the shares are otherwise calculated having regard to the amount of capital subscribed for the share.

The effect of paragraph *(b)* above is that if the shareholder has a right to require someone else to acquire the share from him within three years AND he is entitled to a dividend which is to be calculated in any manner other than with regard to profits earned by the company, the share will be an affected instrument.

"*Effective date*", which means 23 March 1989.

"*Right of acquisition*", which means a right which a shareholder has to require any other party either to acquire the share from him, or to procure, facilitate or assist with the redemption or repayment of the share or the conversion of the share into a redeemable share.

Subsection (2) provides that any dividend declared on an affected instrument is deemed in the hands of the shareholder (but not in the hands of the company declaring the dividend) to be an amount of interest derived from a source within the Republic.

Subsection (3) provides that the new rule will apply—

(a) to all dividends declared on an affected instrument issued on or after the effective date; and

(b) in the case of an affected instrument issued before the effective date, to any dividend declared after the effective date AND after the earliest date upon which the shareholder could have redeemed the share or disposed of it in terms of a right of acquisition.

Excluded from paragraph *(b)*, however, are dividends which should have been declared before the effective date but are in fact declared after that date.

Subsection (4) provides that the new rule is not applicable—

(a) where the shareholder is a non-resident and the rate of tax on dividends is limited in terms of a double tax treaty between the Republic and the shareholder's country of residence; and

(b) in any case where the shareholder is exempt from tax.

CLAUSE 7

Exemptions: Amendment of section 10 of the principal Act

Prior to its amendment in 1987, section 10 (1) *(h)* of the principal Act exempted from tax interest derived by non-resident individuals and companies from certain Government and semi-government stocks and securities. In 1987, the exemption was withdrawn in the case of residents of the neighbouring countries with effect from 1 November 1987.

In the 1988 Income Tax Act, a concession was granted to individual investors in those countries who had committed themselves to long-term investments in such instruments, and they were permitted to continue to enjoy the exemption in respect of future interest earned on investments made before 1 November 1987. This concession (ie in relation to investments made before that date) is now extended to interest derived by companies whose shares are entirely owned by natural persons who are not residents of the Republic.

CLAUSE 8

Deductions: Amendment of section 11 of the principal Act

Subclause (a): Section 11 (bB) of the principal Act regulates the manner in which finance charges incurred in respect of the purchase of certain assets may be claimed as a deduction. It is specifically provided *inter alia* that a deduction of such charges may not be claimed under any other provision of the Act. In terms of an amendment introduced by the Income Tax Act, 1988, the application of this provision was extended to certain other assets. The manner in which this amendment was drafted, however, has permitted the provision to be interpreted in such a way that a deduction may in fact be claimed under any other applicable provision of the principal Act. The section is now rectified so as to make it clear that it applies to the exclusion of any other provisions of the Act.

Subclause (2) makes the amendment applicable in respect of assets acquired on or after 22 May 1989.

Subclause (b): See the separate explanation of SITE.

CLAUSE 9

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

The amendment introduced by this clause, in the form of the insertion of a new subsection numbered (3B) in section 11*bis* of the principal Act, gives effect to a joint press release by the Ministers of Finance and of Economic Affairs and Technology on 9 March 1989 to the effect that the marketing allowance available under that section would, in relation to marketing expenditure incurred on or after that date, be restricted to 20 per cent of the export turnover derived by the exporter.

Subsection (3B) *(a)* introduces a definition of "obligatory marketing expenditure", which in effect means expenditure which the taxpayer is contractually obliged to incur in terms of an agreement concluded by him before 9 March 1989.

Subsection (3B) *(b)* provides that in respect of expenditure (other than obligatory marketing expenditure) which is incurred on or after 9 March 1989, the deduction allowable under section 11*bis* may not exceed 20 per cent of the export turnover derived by the taxpayer on or after that date. Obligatory marketing expenditure incurred after that date is not affected by the amendment, and may be fully deducted in terms of the previous provisions of the law.

Subsection (3B) *(c)* provides that the amount of any marketing allowance to which the taxpayer would have been entitled but for the new provisions, may be carried forward to the next year of assessment.

CLAUSE 10

Deduction of expenses incurred by medical practitioners and dentists on courses and congresses: Insertion of section 16A in the principal Act

A new section, numbered 16A, is inserted in the principal Act by this clause for the purpose of granting a deduction to medical practitioners and dentists in respect of expenditure incurred by them in attending certain overseas courses.

Subsection (1) empowers the South African Medical and Dental Association to determine, with the concurrence of the Commissioner for Inland Revenue, how much of the expenditure incurred by the taxpayer is to be allowed as a deduction. As certain items of expenditure qualifying for deduction under this provision may also qualify for deduction under section 11 *(a)* or *(b)* of the Act, section 16A (1) prevents a double deduction by providing that the deduction under this section is in lieu of a deduction under any other provision of the Act.

The taxpayer will in support of his claim for a deduction be required to submit a certificate issued by the aforesaid Council to the effect that:

(a) He is a duly registered medical practitioner or dentist. It is not a requirement that the taxpayer be in private practice—a deduction may also be allowed to salaried doctors and dentists.

(b) He has incurred the expenditure outside the Republic (and outside the TBVC states), and that the relevant course—

(i) has been approved by the Council as a continuous training programme aimed at keeping him abreast of developments in his profession, but does not lead to the obtaining of an academic qualification;

(ii) does not last longer than six consecutive weeks; and

(iii) is directly connected with his profession.

In terms of subsection (2), the deduction will apply to expenditure incurred in respect of courses or congresses which commence on or after 1 March 1989.

CLAUSE 11

Deduction of medical expenses: Amendment of section 18 of the principal Act

See the separate explanation of SITE.

CLAUSE 12

Limitation of allowances to lessors: Amendment of section 23A of the principal Act

Section 23A, in its present form, limits the allowances available to lessors of certain machinery or plant. The applicable machinery or plant is defined *inter alia* as machinery or plant in respect of which a deduction is available under section 12 of the Act. In terms of amendments introduced by the Income Tax Act, 1988, the initial allowance available under section 12 was replaced by a write-off under the new section 12B introduced by that Act. Section 23A is accordingly amended so as to include a reference to assets which qualify for write-off under section 12B. At the same time, the section has been redrafted so as to correct certain technical deficiencies. The application of the section will in practice be unchanged.

CLAUSE 13

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

Subclause (a): Section 28 of the principal Act provides special rules for the determination of the taxable income derived by a long-term insurer. At present, this taxable income is determined as the sum of 70 per cent of certain investment income derived by the insurer in the course of his business, and managerial or secretarial fees derived from subsidiary companies. In accordance with the Minister of Finance's announcement in his 1989/90 Budget, the first component of the calculation, ie 70 per cent of investment income, is replaced by a formula based on actual income derived less expenditure incurred. The formula is

$$T = I - E$$

in which formula —

(a) 'T' represents the taxable income to be determined.

(b) 'I' represents the gross amounts (including rental from the letting of property but excluding one-third of dividends received) derived from the investment of funds—

- within or outside the Republic in respect of business carried on in the Republic, and

- within the Republic in respect of business carried on outside the Republic,

but excluding such amounts attributable to business conducted with pension funds and retirement annuity funds, individual annuity business, interest on loan levy and business carried on in the TBVC states.

Save for the exclusion of one-third of dividends,'I' represents the same amounts which were previously subject to the 70 per cent calculation.

(c) 'E' represents 55 per cent of—

- the insurer's average selling expenses during the current and four preceding years of assessment, and

- other expenditure incurred by the insurer during the year of assessment in the course of his business,

but excluding expenditure which relates to any investment income which is not included under symbol 'I'.

Subclause (b): The determination of an insurer's taxable income is made exclusively under section 28 — other provisions of the Act do not

apply. As the new formula may in certain cases result in the determination of a loss, a new subsection (1B) is inserted in section 28 by this subclause to provide that such a loss may be carried forward in the usual manner under section 20 of the Act.

Subclause (2) provides that the new determination will apply in respect of years of assessment ended or ending on or after 1 April 1989.

CLAUSE 14

Deduction of capital expenditure of mines: Amendment of section 36 of the principal Act

Subclause (a): Section 36 (11) of the principal Act defines "capital expenditure" (qualifying as a deduction from income) and in terms of paragraph *(a)* of the definition this includes expenditure on mine equipment. Such expenditure is allowed in full in the year in which it is incurred but subject to the limitations imposed by section 36 (7C) to 36 (7F) of the principal Act. Paragraph *(a)* of the definition is amended by this subclause to exclude from that paragraph the expenditure specified in the new paragraph *(d)* added to the definition by subclause *(c)*. The expenditure so excluded will continue to be treated as capital expenditure but the deduction thereof will be spread over a number of years, as provided in the new paragraph *(d)*.

Subclause (b): In terms of paragraph *(c)* of the definition of "capital expenditure", certain gold mines and natural oil mines are granted a capital allowance at rates varying between 5 per cent and 10 per cent per annum. The capital allowance was first introduced into the principal Act in 1956 for gold mines operating at depths below a vertical depth of 7 500 feet from the surface. Subsequent amendments broadened the scope of the allowance but created the anomaly that certain gold mines, after having been granted the capital allowance at the rate and for the period to which they were entitled, could again become entitled to the capital allowance for a further period of 10 years.

The amendment to the definition of "other deep level gold mine" introduced by clause 2 *(d)*, the deletion of the definitions of "new deep level gold mine" and "new gold mine" by clause 2 *(c)* and the changed wording of paragraph *(c)* of the definition of "capital expenditure" introduced by this subclause eliminate the anomaly and in terms thereof the capital allowance available to gold mines will be as follows:

(a) in the case of any "post-1973 gold mine": 10 per cent per annum up to the end of the year of assessment immediately preceding the first year of assessment in respect of which the determination of the taxable income derived from the working of such mine does not result in an assessed loss or nil; and

(b) in the case of any "other deep level gold mine" (which is so recognized on or before 22 May 1989): 10 per cent per annum for a period of 10 years from the commencement of the year of assessment during which the mine is so recognized.

The deletions by this subclause of the references to "any post-1966 gold mine", "any new gold mine" and "any new deep level gold mine" are of a textual nature.

The instalments of expenditure referred to in the new paragraph *(d)* added by subclause *(c)* also qualify for the capital allowance by virtue of the new subparagraph (v) now inserted in paragraph *(c)* but, in terms of the new paragraph *(gg)* now added to the proviso to paragraph *(c)*, only from the first day of the year of assessment following the year of assessment in

which the relevant instalment was deemed to be payable. Paragraph *(hh)* now added to the proviso provides that where a change of ownership of a mining property occurs, the portion of the effective value relating to any asset in respect of which the provisions of the new paragraph *(d)* are applicable, qualifies for the capital allowance as from the first day of the year of assessment following the year of assessment during which the change of ownership occurred.

Subclause (c): As a result of the acceptance by the Government of certain of the proposals of the Technical Committee on Mining Taxation, expenditure on certain mine equipment which presently qualifies for immediate redemption under paragraph *(a)* of the definition of "capital expenditure" in section 36 (11) of the principal Act, becomes redeemable in a number of successive equal annual instalments in terms of a new paragraph *(d)* added to that definition by this subclause. The assets the expenditure on which is to be dealt with in this way are defined therein. The assets include housing for occupation by employees (not being houses intended for sale), infrastructure in respect of residential areas developed for sale to employees, hospitals, schools and shops mainly for the use of employees, recreational buildings and facilities mainly for use by employees, any railway line for the transport of minerals from the mine to the nearest public transport system or outlet and motor vehicles intended for the private or partly private use of employees. The expenditure in question will be dealt with in this way where the payment thereof becomes due on or after 1 July 1989.

The redemption period for these assets will be 10 years except in the case of vehicles intended for the private or partly private use of employees, in which case the redemption period will be 5 years.

Where it is shown to the satisfaction of the Commissioner that the life of the relevant mine will be shorter than these periods, the Commissioner may shorten the redemption period.

Where any of these assets are scrapped or disposed of before the full cost has been allowed as a deduction, the balance remaining is to be allowed.

CLAUSE 15

Objections: Amendment of section 81 of the principal Act

Section 81 of the principal Act deals with objections against assessments. In terms of subsection (1), objections must be lodged within 21 days after the date of the relevant assessment, unless the Commissioner in terms of his powers under subsection (2) is satisfied that reasonable grounds exist for delay in lodging the objection.

Subclause (a) extends the relevant period from 21 to 30 days, while *subclause (b)* makes any decision of the Commissioner under subsection (2) not to condone a late objection, subject itself to objection and appeal.

CLAUSE 16

Appeals: Amendment of section 83 of the principal Act

Section 83 of the principal Act deals with appeals against the disallowance of objections by the Commissioner.

In terms of subsection (7) *(a)*, an appeal must be noted within a period of 30 days, and no provision is made for the condonation of late appeals. In terms of the new paragraph *(b)* introduced by this clause, the Commissioner is given power to condone a late appeal if he is satisfied that there were

reasonable grounds for the late appeal, and his decision not to condone a late appeal is made subject to objection and appeal.

In terms of the present paragraph *(b)*, a taxpayer is limited at the hearing of an appeal to the grounds of his original objection. In terms of the new paragraph *(c)* now introduced, the Commissioner or the special court may permit the appellant to amend his grounds.

CLAUSE 17

Interest on refunds made following an appeal: Amendment of section 88 of the principal Act

Section 88 of the principal Act provides *inter alia* that where a taxpayer becomes entitled to a refund of tax following a successful appeal to the special court or Supreme Court, he is also entitled to interest on the refund. The Commissioner for Inland Revenue has in the past interpreted this provision as entitling the taxpayer also to interest where the Commissioner has decided to concede an appeal before the court hearing. The Supreme Court has recently held, however, that this practice of the Commissioner is wrong, and that interest is payable to a taxpayer only if his appeal is actually heard and upheld by the court.

The Commissioner's previous practice should, in fairness to the taxpayer, be continued, and section 88 is accordingly amended so as to specifically provide that interest is payable where the Commissioner decides to concede an appeal prior to the court hearing.

Subclause (2) contains a substantive provision which ratifies past payments of interest by the Commissioner in such circumstances.

CLAUSE 18

Interest on underpayments and overpayments of provisional tax: Amendment of section 89quat of the principal Act

Section 89*quat* of the Act provides for the payment of interest to certain provisional taxpayers on overpayments of provisional tax. As the assessments concerned may also be reduced following an appeal, it could be contended that in such cases the taxpayer is entitled to the payment of interest under both provisions. Section 89*quat* is accordingly amended so as to provide that no interest will be payable under that section for any period in respect of which interest is payable under section 88.

Subclause (2) makes the amendment applicable from the date on which interest became payable in terms of section 89*quat*.

CLAUSE 19

Tax avoidance: Amendment of section 103 of the principal Act

This clause inserts a new subsection, numbered (5), in section 103 of the principal Act. In terms of paragraph *(a)* of that subsection, where any taxpayer has under a transaction, operation or scheme reduced his liability for normal tax by ceding his right to receive any interest in exchange for an amount of dividends, the Commissioner may ignore that session.

In terms of paragraph *(b)*, this provision will apply to any transaction, operation or scheme entered into on or after 22 December 1989, and also to any transaction, operation or scheme entered into before that date if the taxpayer is not contractually obliged to continue with the scheme.

CLAUSE 20

Employees tax: Amendment of paragraph 1 of the Fourth Schedule to the principal Act

This clause introduces a consequential amendment arising from the repeal of section 29 of the principal Act some years ago.

CLAUSES 21 AND 22

See the separate explanation of SITE.

CLAUSE 23

Provisional tax: Amendment of paragraph 18 of the Fourth Schedule to the principal Act

In terms of paragraph 18 (1) *(d)* of the Fourth Schedule, persons over the age of 65 years are exempt from the payment of provisional tax if their taxable income does not exceed R20 000 and is derived solely from investments, and they do not carry on business. In terms of the amendment introduced by this clause, the exemption ceiling is increased from R20 000 to R25 000.

CLAUSES 24, 25 AND 29

Fringe benefits tax: Amendment of paragraphs 1 and 7 of the Seventh Schedule to the principal Act

In terms of Government Notice No. 714 dated 14 April 1989, the official rate of interest used for the purpose of quantifying the benefit of an interest free or low interest loan was increased from 13 per cent to 16 per cent with effect from 1 June 1989, while Government Notice No. 715 dated 14 April 1989 increased, also with effect from 1 June 1989, the scale of values to be placed on the private use of an employer-owned motor vehicle.

As required by paragraph 20 (2) of the Seventh Schedule, those amendments are confirmed by *clauses 24 and 25,* while *clause 29* withdraws the relevant notices.

CLAUSE 26

Statements of fringe benefits: Repeal of paragraph 18 of the Seventh Schedule to the principal Act

Paragraph 18 of the Seventh Schedule requires every employer to submit by not later than 31 May of each year a statement of the fringe benefits granted to his employees during the period to the end of February of that year. It is considered that the benefit of such a statement to the Commissioner no longer justifies the amount of administrative work required from employers to compile it, and the relevant paragraph has accordingly been repealed.

As the repeal takes effect on 1 March 1989, employers will not be required to submit such a statement for the tax year ending on 28 February 1989.

CLAUSE 27

Offences: Amendment of paragraph 19 of the Seventh Schedule to the principal Act

The amendment introduced by this clause is consequential upon the repeal by *clause 26* of paragraph 18 of the Schedule.

CLAUSE 28

Limitation of deductions in respect of films

Owners of films produced for the export market at present qualify for a marketing allowance in terms of section 11*bis* of the principal Act. This allowance is subject to certain limitations imposed under section 24F of the Act. In terms of Circular N101/3/1 issued on 15 May 1989 by the Head: Film Industry, the income tax concessions in respect of films are to be replaced by a subsidy system.

This clause introduces a substantive provision to provide that sections 11*bis* and 24F will not apply to films in respect of which a subsidy is payable under the new scheme.

CLAUSE 29

Loan levy on companies

See the separate explanation on the loan levy.

CLAUSE 30

See the explanation of *clause 24*.

CLAUSE 31

Commencement

This clause provides that the amendments introduced by the Bill will, unless otherwise stated in the amendment itself, apply as from the commencement of years of assessment ended or ending on or after 1 January 1990.

CLAUSE 32

This clause provides the short title of the Bill.