
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

INCOME TAX BILL, 1991

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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. Substantive provisions with regard to an initial allowance on certain machinery and equipment are also introduced. Certain provisions are dealt with in separate explanations at the beginning of this Memorandum.

MINING TAXATION

Clause 1(1)(c): The definition of a "post-1966 gold mine" was necessary in the sense that it separated pre- and post-1966 gold mines as different gold mining rate formulas were applicable to the two categories of gold mines. Because a uniform gold mining rate formula for gold mines is being introduced this year, the definition is superfluous and is therefore deleted.

Clause 3: In terms of section 5(2A) of the principal Act, provision is made for the normal tax payable by a company in respect of taxable income derived from the mining of natural oil to be determined separately in respect of—

- (a) taxable income derived from the mining of liquid natural oil; and
- (b) taxable income derived from the mining of natural oil in the form of gas.

The reason for this is that there is, in addition to the normal tax payable, an additional normal tax payable by such a company on the taxable income as mentioned in (a) above.

Because there are now mines from which taxable income is derived from the mining of both liquid natural oil and natural oil in the form of gas from the same mine, it has been decided to do away with the separate determination of taxable income derived from the two forms of natural oil.

Clause 25(1): In terms of section 16(3) read with section 78(10) of the Value-Added Tax Act, 1991, a deduction for input tax in respect of sales tax is allowable if such sales tax is *inter alia* paid on the acquisition of consumable goods or maintenance spares and they are taken into use after the "commencement date" as defined in section 1 of the aforementioned Act. Clause 25(1) therefore introduces an amendment to ensure that such sales tax is recouped in terms of paragraph (j) of the definition of "gross income" in section 1 of the principal Act, if it forms part of the cost of such goods or spares allowable as a deduction of capital expenditure for mining purposes as contemplated in section 36 of the principal Act.

Clause 30: Paragraph (a) of the definition of "capital expenditure" in section 36(11) is amended to place beyond any doubt that interest or finance costs should not be included in the cost of capital expenditure.

Clauses 32 and 44(1)(a): In view of the fact that it has been decided that henceforth gold mines are also to be liable for provisional tax, the system of rendering half-yearly returns by persons involved in gold mining, will fall away. *Clause 32* therefore repeals section 67 of the principal Act. In terms of *clause 44(1)(a)* gold mines are included in the definition of "provisional taxpayer" in paragraph 1 of the Fourth Schedule to the principal Act. These amendments come into effect from years of assessment commencing on or after 1 July 1991.

Rates

The last phase of the lower uniform formula for gold mines is introduced in terms of paragraph 1(c) of the Schedule to the Bill.

The rate of tax in respect of mining companies (other than gold mining companies) is reduced from 50 per cent to 48 per cent and the surcharge from 9 per cent to 6 per cent in terms of paragraph 1(e).

TAXATION OF FRINGE BENEFITS

Motor vehicles

Company cars

Clause 50(1)(a) and (b): Because sales tax is to be replaced by a value-added tax, certain consequential amendments are introduced to the definition of "determined value" in paragraph 7 of the Seventh Schedule to the principal Act.

Clause 50(1)(c): The monthly taxable benefit in the case of the private use of a motor vehicle is currently determined in accordance with a scale in which the cost of the vehicle as well as its engine capacity is taken into account. After discussions with representatives of the motor industry, it has been agreed to change the basis by means of which the value of the benefit is determined to a far simpler system, namely, 1,2 per cent per month of the cost of the vehicle. In addition, the deductions in respect of petrol and maintenance set out in paragraph 7(4)(a) have been increased from R100 and R62 to R120 and R85, respectively.

Motor vehicle allowance schemes

With regard to motor vehicle allowance schemes, in determining a person's business expenses it is accepted that, unless accurate records are kept, the first 10 000 kilometres of the total distance travelled represent private travel and the balance is accepted as being for business purposes. In this regard the following amendments have been introduced by *clause 9*:

- (a) The deemed distance travelled for private purposes is increased from 10 000 kilometres to 12 000 kilometres; and
- (b) the assumption that the balance of the distance travelled represents business travel will only apply in respect of a total distance of 32 000 kilometres. Any claim for business travel which exceeds 20 000 kilometres must consequently be substantiated by accurate records.

At present employees tax is not withheld from a motor vehicle allowance and the full tax attributable to the unspent portion of such allowance is only recovered on assessment. The provisions introduced by *clause 44(1)(b)* will result in employees tax being withheld from 25 per cent of the allowance paid with effect from 1 August 1991.

Allowances in respect of uniforms, rations and lodging

At present, section 10(1)(n) confers an exemption in respect of allowances for any uniform, ration or lodging received by any member of the defence forces. The provisions of this section give rise to unequal tax treatment in respect of lodging between members of the defence forces and members of other bodies, for example the police force and certain private organizations. With regard to uniforms, exemption is already conferred by section 10(1)(nA). In addition, paragraph 8(3) of the Seventh Schedule to the principal Act already specifies that no value should be placed on the provision by an employer of meals or refreshments to his employees. The deletion of section 10(1)(n) in terms of *clause 12(1)(d)* ensures that these benefits are treated equally for all taxpayers.

Benefits with regard to the cost of education

Subject to certain requirements, section 10(1)(nC) exempts occasional grants which accrue to an employee in respect of the expense of educating his child. The provisions of this section are closely connected to bursary schemes and consequently are deleted in terms of *clause 12(1)(e)*.

Retired and part-time employees

An employee who continues receiving a benefit from his previous employer after retirement is presently not subject to tax thereon. The reason for this exclusion was to ease administration. This concession has, however, been abused to a large extent in that several benefits, which are clearly in respect of services rendered, are granted to an employee after his retirement. There is, therefore, no option but to include retired employees in the definition of "employee" in paragraph 1 of the Seventh Schedule. This amendment is introduced by *clause 49* and applies in respect of persons who retire on or after 1 March 1992.

A part-time employee who is re-employed by his previous employer and continues to enjoy a benefit which arose from his full-time employment would have been taxed in respect of the relevant benefit were it not for the provisions of section 10(1)(nG). In view of the fact that the relief granted to retired employees, as explained above, lapses in respect of persons who retire on or after 1 March 1992, the exemption conferred by section 10(1)(nG) is withdrawn by *clause 12(1)(h)* with effect from the same date and the withdrawal will apply to benefits granted to persons who are re-employed on or after that date.

Gratuities in respect of the obtaining of educational qualifications

Section 10(1)(q) presently confers an exemption in respect of gratuities paid by an employer to his employee as a result of such employee obtaining certain educational qualifications. The payment may not, however, be linked to remuneration for services rendered. In view of the fact that this exemption is often abused and in the light of the general approach to fringe benefits, this exemption is withdrawn in terms of *clause 12(1)(i)*.

Bursary schemes

At present all *bona fide* bursaries, as well as amounts paid under an approved bursary scheme to any relative of an employee, are exempt from tax in terms of section 10(1)(qA). This concession has been abused to such a degree that it has been decided to withdraw the exemption. The relevant provision is thus withdrawn by *clause 12(1)(j)*.

Payment of employee's debt or release of employee from obligation to pay a debt

Under the provisions of paragraph 13(2) of the Seventh Schedule, no value is, *inter alia*, placed on any taxable benefit which is derived—

- (a) as a result of an employer bearing the cost of a telephone service

rendered to his employee in circumstances as set out in item (a) of that paragraph;

- (b) as a result of the release by an employer of any debts owed to him by his employee, if such release occurred after the death of the employee.

The concession in both (a) and (b) have been abused. In particular, the concession in (b) is often abused in conjunction with the current exclusion of a retired person from the definition of "employee" in paragraph 1 of the Seventh Schedule as loans are granted to a person before retirement, interest free or at a low rate of interest, and are written off after his death.

Items (a) and (c) of paragraph 13(2) of the Seventh Schedule are therefore deleted in terms of *clause 51* and such deletion is effective in respect of all such taxable benefits derived on or after 1 March 1992.

THE SITE SYSTEM

Clause 46 of the Bill contains various amendments to paragraph 11B of the Fourth Schedule to the principal Act which relate to the SITE system.

In terms of *subclause (a)*, certain consequential amendments are made to paragraph (c) of the definition of "net remuneration" as a result of the amendment of section 7(2) of the principal Act.

Subclause (b) amends paragraph (f) of the definition of "net remuneration" in order to include annuities paid by provident and benefit funds in that definition.

Subclause (c) adds a further three paragraphs (g), (h) and (i) to the definition of "net remuneration" in order to exclude the following amounts from the definition:

- (a) any remuneration paid or payable to a director of a company for services rendered to that company;
- (b) an allowance or advance in respect of travelling expenses as envisaged in paragraph (c) of the definition of "remuneration" in paragraph 1 of the Fourth Schedule to the principal Act; and
- (c) any remuneration received by a taxpayer against which an assessed loss may be set off in terms of section 20(1) of the principal Act.

Subclause (d) increases the maximum income level on which SITE is applicable from R40 000 to R50 000.

Subclause (e): Paragraph 11B(7) of the Fourth Schedule to the principal Act specifies that where an employer has determined and withheld an amount as representing the amount of SITE payable and such deduction does not differ by more than 5 per cent from the SITE payable as determined under the statutory scales, such deduction is deemed to be the correct amount of SITE. In view of the fact that the SITE limit has more than doubled since its inception, 5 per cent of the SITE liability may amount to a large amount. Consequently, the permitted difference of 5 per cent is reduced to 2 per cent.

SEPARATE TAXATION OF MARRIED WOMEN

Provisions were introduced last year which specified that the trade income of a married woman would be taxed separately. The process is

taken a step further this year in that the investment income of a married woman will also be taxed separately in her hands. The following provisions of the Bill are designed to attain this objective as well as to insert certain other amendments.

In consequence of the announcement in the Budget, *clause 4(h)* specifies that a married woman who has reached 65 years of age also qualifies for the additional rebate of R2 100.

Clause 7: An important structural amendment to section 7(2) of the principal Act is brought about by this clause in addition to amendments which will result in the investment income of a married woman being taxed separately in her hands. In terms of the present wording of the section, it is only the income of a married woman which may be deemed to be the income of her husband and not *vice versa*. In terms of the proposed wording, the income of either spouse (husband or wife) can, in certain circumstances, be deemed to be the income of the other spouse.

The circumstances in which the section will apply are as follows:

- (a) Where income is derived by a spouse as a result of a donation, settlement or other disposition made on or after 20 March 1991 by the other spouse, or as a result of a transaction, operation or scheme entered into or carried out by that other spouse on or after that date, with the sole or main purpose of reducing, postponing or avoiding his (other spouse) liability for tax.
- (b) A spouse has derived income from service or from any trade which is connected to the trade of the other spouse, if the amount so earned by the spouse is excessive having regard to the services rendered or the extent of participation in such trade.
- (c) Any income derived by a married woman where—
 - (i) her husband's annual gross income does not exceed R10 000 per annum and she has elected that the provisions of section 7(2)(c) shall apply; or
 - (ii) her income consists of remuneration and by reason of an application by her, after the Commissioner has satisfied himself that the provisions of section 7(2)(c)(i) are applicable, he has issued a directive in respect of the year of assessment to such married woman's employer that the provisions of section 7(2)(c) will apply.

Clause 19: In terms of the amendments introduced by this clause, a married woman may also claim medical expenses which she has incurred in respect of her children as a deduction in terms of section 18 of the principal Act.

Clause 33 introduces certain consequential amendments to section 68 of the principal Act as a result of the amendments to section 7(2). Where a spouse neglects to declare income in his return of income which is deemed to be his income in terms of section 7(2), or neglects to submit a return of income in respect of such income, it is regarded as an omission or default as envisaged in section 76(1) of the principal Act. Consequently, the relevant spouse may also become liable for the additional tax envisaged in section 76(1) over and above the tax payable on such income. The proviso to section 68(1) of the principal Act in terms of which a spouse could make written application to the Commissioner to be taxed separately from the other spouse has also been deleted. This deletion is as a result of the fact

that separate taxation of spouses is being introduced as a general rule and this specific provision has become superfluous.

Clauses 35 and 38 introduce amendments which arise as a consequence of the deletion of the proviso to section 68(1) of the principal Act.

Section 91(3) of the principal Act provides that tax payable by a person who is married without community of property, may be recovered from the assets of his wife to the extent that the tax so payable is attributable to income which is included in such person's income by reason of the provisions of section 7(2) of the principal Act. As spouses are now taxed separately, this provision has become superfluous and is deleted in terms of *clause 39*.

Clauses 45(a) and 48 introduce certain consequential amendments by reason of the amendment of section 7(2) as well as the deletion of section 77(6).

SPECIAL BOARD FOR THE HEARING OF APPEALS WHERE THE AMOUNT UNDER DISPUTE DOES NOT EXCEED CERTAIN LIMITS

Clauses 36 and 37: At present, if a taxpayer is not satisfied with an assessment by the Commissioner, he is entitled to lodge an appeal to a special court constituted for the hearing of income tax appeals. The presiding officer in the case of a special court, is a judge (or, resulting from the amendment introduced in terms of *clause 36*, an acting judge) of the Supreme Court and he is assisted by two members.

In view of the fact that over the past few years the annual number of appeals lodged has increased drastically, there are long waiting periods before a case can be enrolled for hearing because the number of judges who may act as presiding officers, is limited. The need for a more streamlined system to deal with appeals more swiftly and to give taxpayers the chance to present their cases sooner, therefore arose.

In order to address these problems certain amendments have been made to section 83 of the principal Act and a new section 83A is being introduced.

Section 83A(2) introduces a special Board for the hearing of appeals. Simultaneously, a consequential amendment is being made to section 83(1) in order to allow for an appeal to the Board.

In terms of subsection (1) of the new section 83A, it is clear that the Board will be a tribunal of the first instance and an appeal will therefore be heard by the Board if—

- (a) the tax in dispute does not exceed R20 000 or, having regard to any assessed loss which may be carried forward, will probably not in total exceed the relevant amount; or
- (b) the Commissioner and the appellant agree thereto; or
- (c) no objection to the jurisdiction of the Board to hear the appeal is made at or before the hearing.

The Commissioner or the Chairman may, under certain circumstances, decide otherwise if, for example, a legal principal is involved. The intention behind the introduction of section 83A is therefore that small appeals where the amounts in dispute do not exceed certain limits, are to be heard by the Board, whilst appellants in those cases where larger amounts are in dispute

and which are normally of a more complex nature and also more time-consuming in occupying court hours, are given the opportunity to appeal directly to the special court.

In terms of subsection (3) the Board will consist of a Chairman who will be either an advocate or an attorney. If the Chairman considers it necessary, he may be assisted by an accountant or a representative of the commercial community.

Chairmen of the Board shall be appointed, by notice in the *Gazette*, for a period of five years by the Minister of Finance in consultation with the Judge-President of the Provincial Division where the Board is to sit.

In terms of subsection (5) the Commissioner will appoint a clerk to perform certain administrative functions. He will, for example, act as convenor of the Board in terms of subsection (7). He is also responsible for dispatching the relevant documents, which are to be presented to the Board, to the parties involved and members of the Board. Furthermore, he will also notify the relevant persons of the Chairman's decision in terms of paragraph (iii) of the proviso to subsection (9), as well as the Board's decision by way of a notice as contemplated in subsection (10)(d).

In terms of subsection (6) the Commissioner will determine the place of the hearing and such place will be a place which is closest to the appellant's residence. The Commissioner may, however, come to an agreement with the appellant that the hearing be heard at another place.

Representation in the Board is regulated by subsections (8) and (9). As far as the Commissioner is concerned, he will appoint a person from his office to represent him. In view of the fact that the proceedings of the Board are of an informal nature, it is expected of a natural person who has the capacity to act, to personally present his case before the Board. Provision is, however, made that on the submission of sound reasons, application may be made not to appear in person before the Board. The appellant may however, without any application, be represented by the person who prepared his return of income in respect of the relevant year of assessment.

Subsection (10) provides that the Chairman may determine the proceedings of the hearing as he sees fit, subject to each party having the opportunity to put his case to the Board in a reasonable manner. The proceedings will therefore be of an informal nature and the normal rules of the law of evidence will not apply.

Although the Board is not a court of record, the Chairman must still record his decision, the facts found and the reasons for his decision, briefly. The Chairman may also adjourn the proceedings to any time and place that may seem convenient. If the appellant fails to appear on the date of the hearing, the Commissioner may, on proof that the appellant had been notified of the date of hearing, request that the assessment be confirmed. On the other hand, if the Commissioner's representative fails to appear, the appellant may request that his appeal is allowed. Provision is, however, made to protect the rights of both the appellant and the Commissioner in cases where sound reasons for the non-appearance are furnished within seven days. If the appellant fails to clearly state his grounds of objection, they may be formulated by the Board upon the opening of the proceedings.

Subsection (11) provides that certain provisions of the principal Act are applicable *mutatis mutandis* to section 83A.

Subsection (12) stipulates that any decision of the Board, subject to the provisions of subsection (13), is final and conclusive.

Where neither the appellant nor the Commissioner is satisfied with a decision of the Board, the appeal may within the prescribed period be referred, in the case of the appellant in terms of subsection (13)(a) and in

the case of the Commissioner in terms of subsection (13)(b), to the special court for hearing.

An appeal which has been referred to the special court under subsection (13) is to be heard *de novo* by the special court in terms of subsection (14).

Although no provision in respect of the granting of costs by the Board is made, the provisions of section 83(17) have been extended to grant authorization to the special court to grant costs in a case where the special court substantially confirms the decision of the Board.

CLAUSE 1 AND THE SCHEDULE

Rates of normal tax

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

Individuals

The rates for persons other than companies apply in respect of the year of assessment ending on 29 February 1992 or 30 June 1992, and are provided for in paragraph 1 of the Schedule.

The rates are as follows:

- Married persons : a progressive rate ranging between 15 per cent on the lowest income segment (amounts less than R5 000) and 43 per cent which is reached on the income segment above R80 000.
- Unmarried persons : a progressive rate ranging between 14 per cent on the lowest income segment (amounts less than R5 000) and 43 per cent which is reached on the income segment above R56 000.
- Married women : a progressive rate ranging between 15 per cent on the lowest income segment (amounts less than R4 000) and 38 per cent which is reached on the income segment above R40 000.

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 1991 to 31 March 1992, and are provided for in paragraph 1(b) to (f) inclusive, of the Schedule.

Those rates are as follows:

- (a) Taxable income derived otherwise than from mining: 48 cents per R1 (paragraph 1(b) of the Schedule).
- (b) Taxable income derived from gold mining: an amount determined in accordance with the formula provided for in paragraph 1(c) 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(d) of the Schedule).
- (d) Taxable income from mining operations (other than mining for gold): 48 cents per R1 (paragraph 1(e) of the Schedule). To the tax calculated above a surcharge equal to 6 per cent of such tax is

added (see proviso to subparagraph (e)). 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: 43 cents per R1 (paragraph 1(f) of the Schedule).

CLAUSE 2

Definitions: Amendment of section 1 of the principal Act

Subclause (1)(a): The introduction of certain textual amendments.

Subclause (1)(b): The present practice of Inland Revenue is to tax a trustee, as the representative taxpayer in respect of income which is the subject of a trust, on the undistributed portion of that income to which a beneficiary has no vested right, at the progressive rates applicable to an unmarried person.

Subclause (1)(c): Refer to separate explanation on MINING TAXATION.

In respect of such income to which the beneficiary has a vested right, the conduit principle is applied and such a beneficiary is then taxed on such income.

The Witwatersrand Local Division of the Supreme Court has, however, recently held that because a trust is not a person as contemplated in the definition of "person" in section 1 of the principal Act, a trustee cannot be taxed as the representative taxpayer of the trust because no "person" exists to be represented. Consequently, the undistributed income of a trust in respect of which an ascertained beneficiary does not have a vested right, is not liable to income tax.

In order to restore the taxing rights of the Commissioner in this regard, the definition of "person" in section 1 of the principal Act is therefore amended to include a trust fund. The amendments introduced by *clause 27* merely confirm the conduit principle without affecting the Commissioner's taxing rights in terms of section 7.

Both these amendments are deemed to have come into operation as from the commencement of years of assessment which commenced or commence on or after 1 March 1986.

Subclause (1)(d): Removal of discretionary power of the Commissioner and the introduction of certain textual amendments.

CLAUSE 3

Levy of normal tax and rates thereof: Amendment of section 5 of the principal Act

Subclause (a): Refer to separate explanation on MINING TAXATION.

Subclause (b): Removal of the Commissioner's discretionary power.

CLAUSE 4

Rebates: Amendment of section 6 of the principal Act

Subclauses (a) and (b): The rebates against normal tax are limited to natural persons. A trust and a deceased estate will, for example, no longer be entitled to the primary rebate.

Subclauses (c), (d) and (e): The primary rebates granted to taxpayers are amended as follows:

Married persons : reduced from R2 100 to R2 000

Unmarried persons : reduced from R1 800 to R1 625

Married women : increased from R700 to R800.

Subclauses (f) and (g): The R120 rebate in terms of section 6(3)(e) in respect of persons over the age of 65 has been combined with the rebate allowable in accordance with section 6(3)(f).

Subclause (h): Refer to separate explanation on SEPARATE TAXATION OF MARRIED WOMEN.

CLAUSE 5

Rebate in respect of foreign income taxes on royalties: Amendment of section 6bis of the principal Act

Removal of the Commissioner's discretionary power and the introduction of textual amendments.

CLAUSE 6

Rebate in respect of non-residents tax on interest: Repeal of section 6ter of the principal Act

In view of the fact that the provisions in respect of non-residents tax on interest have already been deleted, section 6ter is repealed.

CLAUSE 7

Income of spouses: Amendment of section 7 of the principal Act

Refer to separate explanation on SEPARATE TAXATION OF MARRIED WOMEN.

CLAUSE 8

Payments on termination of services: Amendment of section 7A of the principal Act

Subclause (1)(a): The provisions of section 7A(4) whereby the accrual of certain amounts arising from the termination or impending termination of a person's services is spread over three consecutive years, is hereby deleted. Where an amount accrued to a person prior to 1 August 1991 and the taxpayer utilized the provisions of section 7A(4), such amount is deemed to have accrued to the taxpayer on the basis elected by the taxpayer prior to the deletion of the relevant section.

Subclause (1)(b): Removal of certain discretionary powers of the Commissioner.

CLAUSE 9

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

Refer to separate explanation on TAXATION OF FRINGE BENEFITS.

CLAUSE 10

*Amounts deemed to have accrued from sources within the Republic:
Amendment of section 9 of the principal Act*

Subclause (a): This amendment is of a textual nature.

Subclause (b): In terms of section 9(1)(fA) of the principal Act, the income of a person in respect of services rendered or work done for another person (hereinafter referred to as the concession holder), on, beneath or above the continental shelf, is deemed to be income from a source within the Republic, if such services are rendered or such work is done in the course of operations carried on by the concession holder in terms of any prospecting or mining lease. The provisions of this section are presently circumvented by the use of an intermediary between the person who renders the services and the concession holder. This clause therefore amends section 9(1)(fA) to ensure that the income is indeed deemed to be from a source within the Republic, irrespective of who conducts the operations. In addition thereto, the provisions of the relevant section are further amended to ensure that they are applicable to services rendered in the course of any operations which are connected to the operations carried out and irrespective of whether such operations are in terms of a prospecting or mining lease which has already been granted or is still to be granted.

CLAUSE 11

Distinction between capital and revenue: Amendment of section 9B of the principal Act

In terms of this clause, subsection (5) of section 9B is deleted. This results in the provisions of section 9B henceforth being applicable to affected shares which a taxpayer has acquired by means of an exchange as envisaged in section 24A.

CLAUSE 12

Exemptions: Amendment of section 10 of the principal Act

Subclause (1)(a): This subclause introduces a paragraph (cH) into section 10(1) of the principal Act exempting the receipts and accruals of a company, partnership, or other association or trust fund where such receipts and accruals are to be utilized by a person in terms of any law relating to mining operations obliging him to carry out the following in the course of mining, prospecting, quarrying or any other similar operations—

- (a) the rehabilitation of disturbances of the surface of land and the prevention and combating of pollution;
- (b) the protection of the surface of the land and water sources;
- (c) the demolition or removal of any building, structure or other thing to return, as far as is practicable, the surface back to its natural state.

Organizations will, however, only qualify for exemption if approved by the Commissioner subject to the conditions laid down by the Commissioner.

Subclause (1)(b): Section 10(1)(k) of the principal Act grants an exemption in respect of dividends received by or accrued to any person. Dividends distributed by a fixed property company are, however, amongst the exceptions to the exemption, because a deduction in respect of such dividends is granted in the hands of a property company in terms of section 11(s). The effect of this exclusion is that dividends which are received by or accrued to a person who is neither ordinarily resident in the Republic nor

carrying on any trade therein, is liable to both normal tax and non-resident shareholders' tax. The amendments introduced by this subclause result in non-residents being exempt from normal tax on dividends received from a unit trust in property shares.

Subclause (1)(c): The amendment is of a textual nature.

Subclause (1)(d) and (e): Refer to separate explanation on TAXATION OF FRINGE BENEFITS.

Subclause (1)(f) and (g): In view of the fact that the years of assessment in respect of which the provisions of section 10(1)(nD) and (nF) applied, have lapsed, the relevant provisions have been deleted.

Subclause (1)(h), (i) and (j): Refer to separate explanation on TAXATION OF FRINGE BENEFITS.

Subclause (1)(k) adds KESCOR (Pty.) Ltd. to the list of bodies which are exempt from tax in terms of section 10(1)(t). This company was formed with the purpose of providing electricity as cheaply and economically as possible to the inhabitants of KaNgwane. The shares in the company are held by ESKOM (50 per cent) and 50 per cent by the KaNgwane Electricity Trust (as nominee for the KaNgwane Government).

Subclause (1)(l): Removal of the Commissioner's discretionary power.

Subclause (1)(m): Section 10(1)(zA) was amended last year to exempt subsidies paid by the State under any scheme for the promotion or financing of exports. The following further adjustments are made by *subclause (1)(m)*:

- (a) To exempt from tax, subsidies under a scheme which has been approved by the Minister of Trade and Tourism in concurrence with the Minister of Finance; and
- (b) interest that has been paid by the State in terms of the General Export Incentive Scheme in respect of any period falling after 1 April 1991, is also exempt from tax.

CLAUSE 13

Deductions: Amendment of section 11 of the principal Act

Subclauses (a), (b), (c) and (d): Removal of discretionary powers of the Commissioner as well as amendments of a textual nature.

Subclause (e) inserts a new paragraph (hA) in section 11 of the principal Act, under which a deduction is allowed to a person who is carrying on the trade of mining, prospecting, quarrying or similar operations in respect of any reasonable amount paid by him to a company, partnership, or association or trust fund referred to in the proposed section 10(1)(cH), to be applied for the purposes as contemplated in the last-mentioned section.

CLAUSE 14

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

In terms of this clause the deduction in respect of marketing expenditure in terms of section 11bis is withdrawn and no deduction will be allowed in respect of marketing expenditure incurred after 31 March 1992.

In terms of the amendment made to section 11bis(3B) the deduction in respect of accumulated marketing expenditure that has not been allowed

because of the limitation thereon in terms of that section, will be extended by one year, until 31 March 1993.

CLAUSE 15

Employees training allowance: Repeal of section 11sept of the principal Act

This clause repeals the provisions of section 11sept as these provisions have become obsolete.

CLAUSES 16 AND 17

Deduction in respect of certain machinery or plant and hotel equipment: Repeal of sections 12 and 12A of the principal Act

Clauses 16 and 17 repeal the provisions of sections 12 and 12A respectively, as these provisions have become obsolete.

CLAUSE 18

Deductions from income from mining: Amendment of section 15 of the principal Act

Clause 18 introduces a consequential amendment to section 15 of the principal Act by reason of the deletion of section 12.

CLAUSE 19

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

Section 18 of the principal Act is amended to—

- (a) remove certain discretionary powers of the Commissioner;
- (b) bring about consequential amendments; and
- (c) allow a married woman to claim medical expenses incurred in respect of her children, as a deduction. The general rule in respect of medical expenses will therefore be that the spouse who has paid the medical expenses may claim the deduction irrespective of whether it was to his benefit or that of his spouse or children.

CLAUSE 20

Deductions to educational institutions: Amendment of section 18A of the principal Act

In terms of this clause section 18A of the principal Act is amended to—

- (a) remove a discretionary power of the Commissioner;
- (b) bring about consequential amendments; and
- (c) insert a further paragraph in the definition of “educational fund” so that donations made by a company to a trust fund which are to be used exclusively for educational and training purposes in respect of primary and secondary education, will also qualify as a deduction in terms of section 18A. Such fund must, however, be approved by the Minister of Finance and the sum of all the donations in respect of which prospective donors have irrevocably committed themselves, must, at the time of the approval of such fund, not be less than R1 million.

CLAUSE 21

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

This clause introduces consequential amendments to section 19 in relation to measures that were introduced last year to phase out the tax concessions in respect of *inter alia* certain building society dividends. These amendments are introduced to make it clear that no deduction is allowable in terms of section 19(3) in respect of—

- (a) income from an investment that has been made on or after 1 March 1990 in a paid-up fixed period share;
- (b) income received on or after 1 March 1995 in respect of an investment contemplated in section 19(5A), irrespective of when that investment was made; and
- (c) income received or accrued from an investment as contemplated in section 10(4).

Furthermore, section 19(4) has been amended to ensure that the phasing-out measures shall not apply in respect of an investment in a paid-up fixed period share which was made before 1 March 1990. Such an investment will, therefore, retain the full benefit of the section 19(3) deduction until the earlier of the date on which the investment matures or 28 February 1995.

CLAUSE 22

Valuation of trading stock: Amendment of section 22 of the principal Act

In terms of section 78(10) of the Value-Added Tax Act, 1991, a vendor is entitled to an input tax in respect of sales tax paid on certain items of stock if such stock is withdrawn from his stock only after the "commencement date" as defined in that Act. This clause therefore introduces a provision which determines that where any sales tax has been recouped in this manner by way of input tax in accordance with section 8, and such stock is still included in the person's closing stock in respect of that year, the value of that closing stock must be reduced by the value of the sales tax.

CLAUSE 23

Deductions not allowed in the determination of taxable income: Amendment of section 23 of the principal Act

Section 23(b) of the principal Act prohibits the deduction of domestic and private costs as well as expenditure incurred in connection with premises not occupied for the purposes of trade. However, if any part thereof is used for the purposes of trade, a deduction is nevertheless allowed. The test as to whether any premises are used for the purposes of trade, is a question of fact and often very difficult to establish. In the past, various disputes have arisen in this connection, especially with regard to expenses relating to the maintenance of a study at home. The amendment introduced by this clause now requires that in order to qualify for a deduction, the relevant part—

- (a) must be specifically equipped for purposes of the person's trade; and
- (b) must be used regularly and exclusively for purposes of trade.

CLAUSE 24

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

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

CLAUSE 25

Prohibition of double deductions: Insertion of section 23B in the principal Act

The amendment introduced by this clause prohibits the allowance of any double deductions or allowances except in instances where the Act expressly allows it and the allowance thereof is reliant upon it being a prerequisite that the deduction is allowable under any other section of the Act.

Reduction of cost of certain assets: Insertion of section 23C in the principal Act

Clause 25 also inserts a new section 23C which is consequential upon the introduction of value-added tax (VAT) and provides that where, for the purposes of the application of the principal Act, the cost of acquisition of an asset or the cost of services rendered to a taxpayer is to be taken into consideration and VAT was imposed in respect of the supply to or the importation by the taxpayer of such asset or service and he is entitled to an input tax in respect of such VAT, the VAT shall be excluded from the cost of the asset or the amount of the expenditure.

In addition, subsection (2) of the new section 23C provides that where a taxpayer is in terms of section 16(3) read with section 78(10) of the Value-Added Tax Act, 1991, entitled to a deduction of input tax in respect of sales tax, such sales tax shall be deemed to have been recovered or recouped as contemplated in section 8(4)(a) of the principal Act.

CLAUSE 26

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

The amendment is of a consequential nature as a result of the deletion of section 12 and the introduction last year of section 12C.

CLAUSE 27

Income of trusts and beneficiaries of trusts: Insertion of section 25B in the principal Act

Refer to explanation in regard to the amendment of the definition of "person" contained in clause 2(1)(b).

CLAUSE 28

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

The amendments introduced by this clause amend section 27 of the principal Act in order to—

- (a) introduce certain consequential amendments;
- (b) remove a discretionary power of the Commissioner; and
- (c) delete obsolete provisions.

CLAUSE 29

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

Subclause (a) amends section 28(1)(c) of the principal Act to prevent the double deduction of expenses as contemplated in section 28(1A) in the determination of the taxable income of a long-term insurer.

Subclause (b) amends section 28(1A) of the principal Act to make provision for—

- (a) regional services levies and regional establishment levies payable by a long-term insurer in terms of the KwaZulu and Natal Joint Services Act, 1990; and
- (b) the levies payable in terms of section 16 of the Financial Services Board Act, 1990,

to qualify as deductions in the determination of a long-term insurer's taxable income.

CLAUSE 30

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

Refer to separate explanation on MINING TAXATION.

CLAUSE 31

Non-resident shareholders' tax: Amendment of section 42 of the principal Act

The amendment introduced by this clause is consequential upon the exemption from normal tax of dividends in terms of the Income Tax Act, 1990.

The amendment has the effect that the deceased estate of a non-resident will now again be liable to non-resident shareholders' tax.

CLAUSE 32

Half-yearly returns by gold mines: Repeal of section 67 of the principal Act

Refer to separate explanation on MINING TAXATION.

CLAUSE 33

Income of spouses: Amendment of section 68 of the principal Act

Refer to separate explanation on SEPARATE TAXATION OF MARRIED WOMEN.

CLAUSE 34

Penalty on default: Amendment of section 75 of the principal Act

This clause allows for an increase in the penalty in respect of a person found guilty of an offence.

CLAUSE 35

Assessments: Amendment of section 77 of the principal Act

Refer to separate explanation on SEPARATE TAXATION OF MARRIED WOMEN.

CLAUSE 36

Appeals to the special court: Amendment of section 83 of the principal Act

Refer to separate explanation on SPECIAL BOARD FOR THE HEARING OF APPEALS.

CLAUSE 37

Special Board for hearing income tax appeals: Insertion of section 83A in the principal Act

Refer to separate explanation on SPECIAL BOARD FOR THE HEARING OF APPEALS.

CLAUSE 38

Persons by whom normal tax is payable: Amendment of section 90 of the principal Act

Refer to separate explanation on SEPARATE TAXATION OF MARRIED WOMEN.

CLAUSE 39

Recovery of tax: Amendment of section 91 of the principal Act

Refer to separate explanation on SEPARATE TAXATION OF MARRIED WOMEN.

CLAUSE 40

Public officers of companies: Amendment of section 101 of the principal Act

This clause increases the penalty imposed by the Commissioner in terms of section 101(8) from "R2" to "R10" per day.

CLAUSE 41

Taxable income derived by a farmer from sugar cane fields: Amendment of paragraph 17 of the First Schedule to the principal Act

In terms of this clause the Commissioner's discretionary power contained in paragraph 17 of the First Schedule to the principal Act, is removed.

CLAUSE 42

Determination of taxable income from farming: Amendment of paragraph 19 of the First Schedule to the principal Act

The amendment introduced by this clause is consequential upon the deletion of the non-residents tax on interest during 1988.

CLAUSE 43

Determination of normal tax on abnormal farming receipts or accruals: Amendment of paragraph 20 of the First Schedule to the principal Act

This clause amends the minimum rate of tax to be applied to a farmer's excess farming profits as a result of expropriation. The new tax rate is

equivalent to the rate applicable to the lowest income segment of the tax scales.

CLAUSE 44

Definitions: Amendment of paragraph 1 of the Fourth Schedule to the principal Act

Subclause (1)(a): Refer to separate explanation on MINING TAXATION.

Subclause (1)(b): Refer to separate explanation on TAXATION OF FRINGE BENEFITS.

CLAUSE 45

Deduction of employees tax: Amendment of paragraph 2 of the Fourth Schedule to the principal Act

Subclause (a): Refer to separate explanation on SEPARATE TAXATION OF MARRIED WOMEN.

Subclause (b) amends paragraph 2 of the Fourth Schedule to the principal Act to allow an employer to reduce the remuneration of an employee who is entitled to a rebate under section 6(3)(f) of that Act, with the amount of such employee's contributions to a medical scheme contemplated in section 18(1)(a), before employees tax is deducted from the employee's remuneration.

CLAUSE 46

SITE: Amendment of paragraph 11B of the Fourth Schedule to the principal Act

Refer to separate explanation on SITE SYSTEM.

CLAUSE 47

Returns by employees to employers: Amendment of paragraph 12 of the Fourth Schedule to the principal Act

This clause deletes the provisions of paragraph 12(4) of the Fourth Schedule which have become obsolete.

CLAUSE 48

Decisions by the Commissioner: Amendment of paragraph 26 of the Fourth Schedule to the principal Act

Refer to separate explanation on SEPARATE TAXATION OF MARRIED WOMEN.

CLAUSES 49, 50 AND 51

Fringe benefits: Amendment of paragraphs 1, 7 and 13 of the Seventh Schedule to the principal Act

Refer to separate explanation on TAXATION OF FRINGE BENEFITS.

CLAUSE 52

Initial allowance in respect of certain assets

In view of the fact that a deduction will be allowed in terms of the Value-Added Tax Act, 1991, in respect of the full input tax on capital goods delivered to a vendor on or after 30 September 1991, the possibility exists that many vendors will defer the purchase of capital goods until after that date to obtain the benefit of the input tax. To prevent this potential damming-up effect, an initial allowance equal to 15 per cent of the cost of any machinery, plant, implement, utensil, article, ship or aircraft (hereinafter referred to as the asset) is introduced by *clause 52*, which will be allowed to a taxpayer in the year of assessment in which the asset was for the first time brought into use by him for the purposes of his trade, if—

- (a) a deduction or allowance in respect of the asset is allowable to the taxpayer in terms of the provisions of section 11(e), 12B, 12C, 14 or 14bis of the principal Act;
- (b) the asset was acquired by the taxpayer on or after 1 April 1991; and
- (c) sales tax became payable by the taxpayer in respect of the acquisition of the asset.

For the purposes of *clause 52*, the cost to the taxpayer of the asset, is deemed to be the cost thereof as contemplated in section 12C(2) of the principal Act.

In terms of *subclause (4)* no initial allowance shall be granted in respect of—

- (a) a motor car as contemplated in section 17(2)(c) of the Value-Added Tax Act, 1991; and
- (b) an asset acquired for the purposes of being let in the course of a “rental enterprise” as defined in the Sales Tax Act, 1978.

It is important to note that the initial allowance is not an allowance that will be granted in addition to any other deduction or allowance that may be allowed in terms of any other section of the principal Act in respect of the asset. The initial allowance is therefore only an accelerated depreciation in respect of the asset. *Subclause (5)* therefore provides for the following rules where an initial allowance is granted and a deduction or allowance in respect of such asset may also be granted in terms of any of the following sections of the principal Act:

- (a) Section 11(e)—the value of the asset is to be reduced by the amount of the initial allowance;
- (b) section 11(o)—the amount of the allowance in terms of the last-mentioned section is to be reduced by the value of the initial allowance;
- (c) section 12B—the deduction is to be reduced in the third year from 20 per cent to 5 per cent of the cost of the asset;
- (d) section 12C—the deduction is to be reduced in the fifth year from 20 per cent to 5 per cent of the cost of the asset;
- (e) sections 14 and 14bis—the cost or adjustable cost (as the case may be) of the asset is to be reduced by the amount of the initial allowance.

In the last instance *subclause (6)* provides that the recoupment provisions contained in section 8(4)(a) of the principal Act, shall apply in respect of any amount allowed as an initial allowance.

CLAUSE 53

Commencement of certain amendments

This clause provides that the amendments introduced by this Bill 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 1992.

Clauses 36 and 37 will, however, only come into effect from a date to be fixed by the Minister of Finance by notice in the *Gazette*.

CLAUSE 54

This clause provides the short title of the Bill.