REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 1991

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INTRODUCTION

The Taxation Laws Amendment Bill, 1991, introduces amendments to the Marketable Securities Tax Act, 1948, the Estate Duty Act, 1955, the Income Tax Act, 1962, the Stamp Duties Act, 1968, the Sales Tax Act, 1978, and the Value-Added Tax Act, 1991.

CLAUSE 1

Marketable securities tax: Amendment to section 2 of the Marketable Securities Tax Act, 1948

Marketable securities tax is payable on the purchase consideration paid in respect of marketable securities purchased by a stockbroker on behalf of any person. During the course of his Budget Speech the Minister of Finance proposed that the rate of tax be decreased with effect from 1 April 1991, from 1,5 per cent to 1 per cent. The amendment introduced by this clause gives effect to that proposal.

CLAUSE 2

Estate duty: Amendment to section 5 of the Estate Duty Act, 1955

Where in terms of the first proviso to section 5(2) of the Estate Duty Act, 1955, it is established to the satisfaction of the Commissioner that property which is subject to a fiduciary, usufructuary or other like interest could not reasonably be expected to produce a return equal to 12 per cent of the market value of such property, he may reduce such rate of return. In a recent decision of the special court, however, it was held that the provisions of the abovementioned proviso may only be applied on the initiative of an heir or the executor. The purpose of this amendment is therefore to authorize the Commissioner to reduce the rate of return on his own initiative, especially in such cases where the value of such a right is to be determined for the purposes of the allowance thereof as a deduction in terms of section 4 of the Estate Duty Act.

CLAUSE 3

Beneficiation processes: Insertion of section 37E in the Income Tax Act, 1962

This clause provides for an accelerated write-off of the cost of machinery, plant and buildings used in the carrying on of a beneficiation process, and of any pre-production interest incurred on that cost. In addition, in the case of such machinery and plant, a total write-off in excess of the actual cost incurred may be allowed.

A "*beneficiation process*" is defined as any process whereby a locally sourced base mineral or intermediate product is processed to yield a further intermediate product or a final product. The process must, however, be

approved by a committee (see below), which will have to be satisfied that the process—

(a) substantially adds to the value of the product processed;

(b) is carried on on such a scale that it is competitive in the international market; and

(c) is carried on with the intention of exporting at least 60 per cent (or such lesser percentage as the committee may determine) by value of the product produced to countries outside the customs union.

The following processes are, however, excluded from the definition:

(1) A purification process in which the product remains otherwise unchanged;

(2) a physical process which merely changes the shape of the product; and

(3) any mining or connected operation.

Subsection (2) authorises the formation of the committee referred to above. In approving a beneficiation process for the purpose of the allowance, the committee is empowered to impose whatever conditions it considers are necessary to ensure that the provision is applied in such a way as to promote the carrying on of beneficiation processes.

The committee is also empowered, where a taxpayer has qualified for the enhanced write-off, to withhold certain other State assistance which would otherwise have been available to the taxpayer.

Under the normal income tax principles, the cost of industrial machinery, plant and buildings, and pre-production interest thereon, may only commence being written off after the items have been brought into use. Subsection (4) of the new provision provides, however, that expenditure on such items which the committee is satisfied will be used in a beneficiation process, may commence being written off immediately it is incurred.

In view of the fact that a write-off of more than the cost of the relevant machinery and plant may at the discretion of the committee be allowed, subsection (5) provides that where the taxpayer subsequently recovers or recoups any portion of that cost, he will be taxed on an amount equal to the amount actually recovered or recouped, increased in the same proportion as the deduction was increased.

The enhanced write-off is to be allowed only for beneficiation plants which commence being erected after the commencement date, which will be fixed by the State President.

Finally, if the taxpayer does not have sufficient tax base to fully absorb the deductions allowable, he may apply to the Commissioner for the issue of a negotiable tax credit certificate, instead of having an assessed loss determined. Such a certificate may be sold by him to, for example, a bank, which may then utilize the certificate in payment of its tax liability.

CLAUSE 4

Levy on financial services: Insertion of section 64A in the Income Tax Act, 1962

The new section 64A of the Income Tax Act which is introduced by this

clause, imposes the levy of 0,75 per cent of the interest income of persons rendering financial services, as announced in this year's Budget. In view of the fact that various important issues relating to the imposition of the levy are still being discussed with interested parties, the section as introduced does not contain all the final details of the levy. Instead, the Minister of Finance is empowered to determine various matters by notice in the *Gazette*.

The levy is imposed in terms of subsection (2) on the interest income which becomes payable to any person carrying on a "*financial service*". The latter expression is defined in subsection (1) as the activity carried on by a deposit-taking institution, and also the activities of any other person which in the opinion of the Minister are of a similar nature.

Subsection (1) also contains a definition of "*interest*", in terms of which the Minister is empowered to include any amounts other than interest in its ordinary sense, which he considers are similar to interest (for example, a discount allowed on the issue of a Bill).

The levy is payable on interest which becomes due and payable—

(a) during the period from 30 September 1991 to 30 November 1991; and

(b) during every period of three months thereafter,

and is payable within 21 days after the end of each such period. Interest will be payable at the prescribed rate (currently 15 per cent per annum) on any late payment.

The Minister is further empowered to provide for the following matters by notice in the *Gazette*:

(a) He may exempt any class or category of persons from the levy.

(b) He may declare any type of interest, or interest arising from any type of transaction, to be exempt from the levy.

(c) He may decide on the manner in which the institution liable for payment of the levy may recoup it.

(d) He may make whatever further provisions are necessary to facilitate the imposition and recovery of the levy.

Finally, the levy is in terms of subsection (8) deemed to be a tax on income. This means that, in terms of section 23(d) of the Income Tax Act, the payer of the levy will not be able to deduct it in the determination of his taxable income.

CLAUSE 5

Stamp duty: Amendment to section 1 of the Stamp Duties Act, 1968

This amendment is consequential upon the deletion of Item 18(4) of Schedule 1 to the Stamp Duties Act, 1968, by section 84 of the Value-Added Tax Act, 1991.

CLAUSE 6

Stamp duty: Amendment to section 5 of the Stamp Duties Act, 1968

Paragraph (iii) of the proviso to section 5(1) of the Stamp Duties Act, 1968, authorizes the Commissioner for Inland Revenue to allow a person, under such conditions as he deems fit, to denote the payment of stamp duty on certain instruments, by way of the issue of a special receipt instead of by means of adhesive stamps. The amendment introduced by this clause is twofold.

In the first instance it is consequential upon the substitution of Item 13A of Schedule 1 to the Stamp Duties Act. In the second instance it now also brings instalment credit agreements within the ambit of the aforementioned paragraph.

CLAUSE 7

Stamp duty: Amendment to section 23 of the Stamp Duties Act, 1968

In terms of Item 15(4) of Schedule 1, read with section 23(10) of the Act, stamp duty is levied in respect of the cancellation or redemption of company shares under compromises, arrangements or reconstructions in terms of various provisions of the Companies Act, 1973, if the holder of the cancelled or redeemed shares receives shares in a different company or is to receive cash or any asset from anybody. In addition, section 23(12A) provides that shares shall be deemed to have been cancelled or redeemed where *inter alia* the interests of the holders of such shares have been altered or varied by reason of the issue of shares so as to result in a material diminution of the interests of the holders of such shares. This last-mentioned provision has been circumvented by altering the interests of the holders of the shares for reasons other than the issue of shares. In terms of the amendment introduced by this clause the reference to the reason for such an alteration or variation in the interests of the holders of the shares, is therefore deleted.

CLAUSE 8

Stamp duty: Amendment to Item 13A of Schedule 1 to the Stamp Duties Act, 1968

In terms of Item 13A of Schedule 1 to the Stamp Duties Act, stamp duty is leviable on the execution of certain hire-purchase agreements or contracts or a financial lease as contemplated in paragraph 1 of Schedule 4 to the Sales Tax Act, 1978. By reason of the repeal of the last-mentioned Act and the introduction of a value-added tax, the definitions of the instruments liable for stamp duty under this Item are substituted by the definition of "*instalment credit agreement*" as defined in the Value-Added Tax Act, 1991.

CLAUSE 9

Stamp duty: Amendment to Item 15 of Schedule 1 to the Stamp Duties Act, 1968

Subclause (1)(a): The amendment introduced by this subclause provides for an exemption in respect of the issue of shares by an insurer if such issue is made in accordance with the transfer of insurance business as contemplated in section 25A of the Insurance Act, 1943.

Subclause (1)(b), (c), (d) and (e): Stamp duty of 1,5 per cent (ie. 15 cents for every R10 of the consideration, or part thereof) is payable under

Item 15(3) of Schedule 1 in respect of the registration of transfer of any marketable security.

It is proposed to decrease this duty to 1 per cent (ie. 10 cents for every R10 of the consideration, or part thereof) with effect from 1 April 1991. The stamp duty payable under Item 15 (cancellations and redemptions) and Item 15(5) (acquisitions involving nominees) of Schedule 1 is similarly decreased.

CLAUSE 10

Definitions: Amendments to section 1 of the Sales Tax Act, 1978

Subclause (1)(a): The amendment proposed by this subclause is of a textual nature in consequence of the repeal of the South African Mint and Coinage Act, 1964, and the South African Reserve Bank Act, 1944.

Subclause (1)(b): The amendment proposed by this subclause is of a textual nature intended to clarify the law to the effect that while foreign coins (other than gold coins) and foreign paper currency are excluded from the definition of "goods" for sales tax purposes, they are not so excluded when disposed of or imported as collectors' pieces of numismatic interest.

Subclause (1)(c): In view of the growth of trading trusts and legal arguments advanced regarding the legal status of a trust and the negative effect it has on the taxing rights of the State with regard to certain trust income, the amendment proposed by this subclause is designed to clarify the law in that regard, namely, that a trust fund is included in the definition of "*person*" for purposes of the Sales Tax Act.

CLAUSE 11

Exemptions: Amendment to section 6 of the Sales Tax Act, 1978

The amendment proposed by this clause is of a textual nature and does not alter the present position relating to the exemption from sales tax in respect of goods which are subject to the fuel levy imposed in terms of the Customs and Excise Act, 1964.

CLAUSE 12

Tax periods: Amendment to section 16 of the Sales Tax Act, 1978

The amendment proposed by this clause provides that there shall be a tax period applicable to any enterprise carried on by a vendor which ends on the day before the date fixed for the commencement of the levy of the value-added tax.

CLAUSE 13

Assessments: Amendment to section 19 of the Sales Tax Act, 1978

In terms of the proviso to section 19(3) of the Sales Tax Act, 1978, the Commissioner for Inland Revenue is empowered in any assessment of sales tax to remit or reduce the amount of any penalty payable under the provisions of section 25 of that Act if he is satisfied, or partially satisfied, that a failure to furnish an accurate return or declaration or to pay any amount of tax due was not due to an intent to avoid or postpone liability for the payment of tax.

However, it has been judicially held that the intent to avoid or postpone liability for the payment of the tax must be shown to be an intent on the part of the person responsible for the payment of the tax (eg. the seller) and that it was not possible in the absence of clear legislative authority to attribute to that person the intent of employees of that person, who acted contrary to his instructions, in considering whether any penalty should be remitted in whole or in part under the aforesaid proviso.

The amendment to the aforesaid proviso proposed by this clause is designed to close a loophole in the law whereby any person responsible for the payment of sales tax can escape blameworthiness for failing to pay the tax simply by shifting the blame to, say, his employees. In order to seek full remission of any penalty payable he argues that the failure was not due to any intent on his part. In terms of the proposed amendment the intent of both that person and any other person under his control will be taken into account in considering the aforesaid proviso.

CLAUSE 14

Evidence as to assessments: Insertion of a new section 27A in the Sales Tax Act, 1978

This clause proposes the introduction into the Sales Tax Act, 1978, of a new section numbered 27A. In terms of that new section, the production of any document under the hand of the Commissioner for Inland Revenue purporting to be a copy of or extract from any notice of assessment shall be conclusive evidence of the making of the assessment, and, except in proceedings on appeal against the assessment, shall be conclusive evidence that the amount and all the particulars of the assessment appearing in that document are correct.

The provisions of the new section are worded in accordance with the provisions of section 94 of the Income Tax Act, 1962.

CLAUSE 15

Taxable services: Amendment to Schedule 1 to the Sales Tax Act, 1978

The amendment proposed by this clause is of a textual nature in order to include a reference to the allowance applicable under section 12C(1) of the Income Tax Act, 1962, relating to certain machinery or plant.

CLAUSE 16

Exemptions: Certain sales of goods and taxable services rendered to various enterprises: Amendment to Schedule 2 to the Sales Tax Act, 1978

Paragraph 1 of Division I of Schedule 2 to the Sales Tax Act, 1978, makes provision for an exemption from sales tax in respect of the acquisition for use by any manufacturing enterprise of certain goods which meet with the requirements of the physical ingredient rule, ie. goods intended to be so used or dealt with in any manufacturing process that the goods or some element thereof will form an integral part of other goods to be manufactured or produced in such enterprise and will remain in the goods so manufactured or produced as an element or essential thereof in their completely manufactured or produced condition.

It has recently been brought to light that certain containers used in

the process of maturation or blending of liquor meet with the requirements of the aforementioned rule, although by and large such containers constitute capital goods which, with very few exceptions, are not permitted to be acquired free of sales tax under the provisions of the Sales Tax Act, 1978.

The amendment proposed by this clause serves to exclude such containers from the application of the physical ingredient rule, since the containers in question are substantially of a durable nature and do not represent consumable goods to the extent contemplated by that rule.

CLAUSE 17

Construction activities: Amendment to Schedule 3 to the Sales Tax Act, 1978

The amendment proposed by this clause is aimed at clarifying the law so as to make it clear that the mixing of concrete, mortar or asphalt will only be deemed to be a construction activity if such mixing is carried out by any person for delivery on site by that person in order to be incorporated in any building, other structure or work of a permanent nature. That was the understanding upon which the concession was originally introduced into the abovementioned Act.

CLAUSE 18

Exemptions: Certain goods imported into the Republic: Amendments to Schedule 5 to the Sales Tax Act, 1978

Subclause (1)(a), (b) and (c) confirms the amendments introduced by Government Notice No. R.2166 of 7 September 1990. *Subclause (1)(a)* provides that goods approved by the Commissioner for Customs and Excise forwarded free to any organization or body approved by him for the welfare of children may, subject to certain conditions imposed by that Commissioner, be imported into the Republic free of sales tax. *Subclause (1)(c)* brings certain items relating to the importation of goods as accompanied passengers' baggage into line with amendments thereto effected under the Customs and Excise Act, 1964.

Subclause (1)(d), (e), (f) and (g) makes provision for alterations to certain Heading Nos. in order to bring them into line with the same alterations effected in the Customs and Excise Act, 1964.

CLAUSE 19

Exemption: Certain goods in the form of foodstuffs: Amendment to Schedule 7 to the Sales Tax Act, 1978

The amendment proposed by this clause confirms the amendment introduced by Government Notice No. R.2015 of 24 August 1990 in terms of which provision was made for an exemption from sales tax relating to dairy powder blends as so classified and determined by the Minister of Agriculture under the Marketing Act, 1968.

CLAUSE 20

Withdrawal of certain Government Notices

In terms of Government Notice No. R.2015 of 24 August 1990 and Government Notice No. R.2166 of 7 September 1990, the Minister of Finance made certain amendments to Schedule 7 and Schedule 5 to the

Sales Tax Act, 1978, respectively. Those amendments have now been confirmed by the amendments proposed by *clauses 18 and 19* of this Bill and this clause proposes that the relevant Government Notices be withdrawn.

CLAUSE 21

Definitions: Amendments to section 1 of the Value-Added Tax Act, 1991

Subclause (a): The definition of "*commencement date*" is amended so as to provide that the commencement date shall be 30 September 1991.

Subclause (b): The definition of "*enterprise*" is amended so as to make provision for the following matters:

(i) *Public authorities* (See paragraph (b) of the definition as now proposed): Paragraph (b) now specifically provides that a public authority which carries on any activity in the form of a commercial, financial, industrial, mining, farming, fishing or professional concern is to be treated as carrying on an enterprise. In addition, a public authority may, as paragraph (b) at present reads, be treated as carrying on an enterprise where it makes supplies of goods or services which are the same as or similar to taxable supplies by other persons, provided the Treasury has notified it to this effect. The amendments delete the references to the Treasury and substitute references to the Minister and the Commissioner.

(ii) *Local authorities*: Subparagraph (ii) of paragraph (b) of the definition is deleted. In terms thereof all the activities of a local authority were to be treated as the carrying on of an enterprise. A new paragraph, numbered (c), is inserted in the definition limiting the activities of a local authority which are to be treated as the carrying on of an enterprise to those set out in that paragraph. These consist of activities relating to the supply of electricity, gas or water; the drainage, removal or disposal of sewage or garbage; the supply of goods or services incidental to or necessary for the supplies mentioned; the supply of goods and services which are the same or similar to taxable supplies by other persons carried on as a business which does or is intended to cover costs, if the Minister has determined that the business is an enterprise; and, in the case of a regional services council or joint services board, any other activities of that council or board. The amendments concerning local authorities which are proposed by *subclause (b)* should be read with the amendments proposed by *clause 24(a)*.

Subclause (c): The definition of "*prescribed tax rate*" is deleted as the tax rate is now provided in the amendments to section 7 of the Act.

Subclause (d): The amendment to the definition of "*trust fund*" is of a textual nature.

CLAUSE 22

Financial services: Amendments to section 2 of the Value-Added Tax Act, 1991

Subclause (a): The definition of "*life insurance policy*" is amended to include a funeral policy, a home service policy and an industrial policy.

Subclause (b): Section 2(4) is deleted as it is not considered to be necessary.

CLAUSE 23

Imposition of value-added tax: Amendments to section 7 of the Value-Added Tax Act, 1991

Subclause (a): In terms of the amendments proposed by this subclause the rate of value-added tax is to be 12 per cent.

Subclause (b): The amendments to section 7(3) are textual and relate to the deletion of the definition of "prescribed tax rate" by *clause 21(c)*.

CLAUSE 24

Certain supplies of goods or services deemed to be made or not made: Amendments to section 8 of the Value-Added Tax Act, 1991

Subclause (a): The amendments to section 8(6) are consequential upon the amendments to the definition of "*enterprise*" introduced by *clause 21(b)* in respect of local authorities. In terms of those amendments the activities of a local authority are restricted to the activities referred to in the new paragraph (c) inserted in the definition of "enterprise". In consequence of the amendments to section 8(6)—

(a) where a local authority supplies electricity, gas or water or services consisting of the drainage, removal or disposal of sewage or garbage or supplies services incidental to or necessary to the aforesaid supplies, and does not make any charge for the relevant supply, the local authority will be deemed to make that supply when any amount of rates on fixed property becomes payable to the local authority by the person to whom the supply is made; or

(b) where the local authority is a regional services council or joint services board, that council or board is deemed to supply services in respect of its general activities to any person paying any amount of any levy.

This amendment should be read with the amendment to section 10(15) introduced by *clause 26(e)* in terms of which the consideration for any supply deemed by section 8(6) to be made to any person is to be the amount of rates or any levy (together with tax) paid by that person. (The tax payable is calculated on the consideration, less the tax.)

Subclause (b): In terms of section 17(2) of the Act the deduction of input tax borne by a vendor is denied when the tax relates to the acquisition of goods acquired for entertainment purposes or goods consisting of motor cars, except in certain circumstances not dealt with here. When any such goods are subsequently sold by the vendor concerned that sale is in terms of section 8(14) not treated as a taxable supply for VAT purposes. In terms of the amendment to section 8(14) introduced by this subclause, the provisions of that section will also apply where the goods were acquired before 30 September 1991 and a deduction of input tax in respect thereof would have been denied under section 17(2) if that section had then been applicable. The reference in section 8(14) to paragraph 2(b) of the Seventh Schedule to the Income Tax Act is deleted and the exception contemplated in that reference (the granting of a fringe benefit consisting of the right to use an asset) will not apply.

Subclause (c): Where a vendor makes a supply of goods or services which were acquired or imported by him only partly for the purpose of consumption, use or supply in the course of making taxable supplies and such goods or services were immediately prior to such supply still held or utilized by him only partly for the said purpose, the supply so made by the vendor is, in terms of the new section 8(16) introduced by this subclause,

deemed to be made wholly in the course or furtherance of his enterprise. In such case, assuming the supply to be a taxable supply, the supply will (unless zero rating applies) be subject to VAT on the full value of the supply. The vendor will, however, be entitled under section 16(3)(h) of the Act to deduct as input tax the portion of the tax payable by him in respect of the original acquisition by him of the goods or services which did not previously qualify for deduction as input tax. Fixed property acquired prior to the commencement date by a vendor who is a natural person and which is used mainly as his private dwelling is excluded from this section, provided no input tax credit has been claimed in terms of section 16(3)(f) as a result of the change of use of the dwelling after the commencement date. Fixed property used by a natural person mainly for private purposes but partly for business purposes before the commencement date, will therefore not be subject to tax when sold provided no input tax in respect of the acquisition of the property is ever claimed.

CLAUSE 25

Time of supply: Amendment to section 9 of the Value-Added Tax Act, 1991

Subclause (a): In terms of section 8(9) of the Act VAT is leviable in respect of the transfer of goods or the provision of a service to a separately identifiable branch of an enterprise permanently located at premises outside the Republic in respect of which an independent system of accounting is maintained (the supplies of goods or services by the branch not being subject to VAT). Such transfer of goods or provision of a service is treated as a supply. In terms of the amendment introduced by this subclause to section 9(2)(e) of the Act, the time of such supply is to be the time at which the goods in question are delivered to the branch or the time at which the service in question is performed, as the case may be. The reference to the removal of the goods is deleted in order to remove any doubt as to the meaning of the provision.

Subclause (b): The Credit Agreement Act provides that the purchaser, in the case of so-called door-to-door sales, may cancel the agreement of purchase within a prescribed period. Section 9(2)(b) of the VAT Act provides that in these circumstances the time of supply is the day after the last day of the prescribed period. Under instalment sale transactions (commonly known as hire-purchase agreements) goods are also sold door-to-door, but in the case of these transactions the supply is deemed to take place at the earlier of the date of delivery or the date on which any payment of consideration is received by the supplier. The amendment proposed by this subclause has the effect that the time of supply of instalment credit agreements cannot take place until the prescribed period in which the purchaser can cancel, has passed.

CLAUSE 26

Value of supply of goods or services: Amendments to section 10 of the Value-Added Tax Act, 1991

Subclause (a): The amendment to section 10(4)(a) is of a textual nature.

Subclause (b): This amendment to section 10(8) deletes the references to "licence", ie a motor vehicle licence, as the issuing of such a licence is not subject to VAT. Section 10(8) provides a valuation rule where a vendor applies repairs, maintenance or insurance in respect of a motor vehicle for a purpose other than consumption, use or supply in the course of making taxable supplies, eg. where the vehicle is used for private purposes. In such

a case section 18(1) operates to reverse any deduction of input tax which the vendor has claimed in respect of these items. The exclusion of a motor vehicle licence from section 10(8) is necessary as no input tax could have been claimed in respect of such licence.

Subclause (c): The first amendment to section 10(9) is of a textual nature. The amendment to the proviso makes it clear that the change in use of goods or services for the purpose of making taxable supplies, must decrease by more than 10 per cent of total use or application before an adjustment need or may be made.

Subclause (d): The amendment proposed by this subclause is to make it clear that in determining the value of the private use of motor cars for the purposes of the tables to be published in the *Gazette* only repairs, maintenance and insurance will be taken into account.

Subclause (e): The amendment to section 10(15) relates to supplies of goods and services by local authorities, and should be read with the amendments introduced by *clause 21(b)* and *clause 24(a)*. The amendment introduced by this subclause is dealt with in the portion of this Memorandum dealing with the amendment introduced by *clause 24(a)*.

CLAUSE 27

Zero rating: Amendments to section 11 of the Value-Added Tax Act, 1991

Subclause (a): Movable goods removed from the Republic by the recipient for conveyance to an export country are in terms of paragraph (d) of the definition of "*exported*" in section 1 regarded as exported provided they meet the conditions of the paragraph. The amendment to section 11(1)(a) makes it clear that when any of the relevant conditions of the paragraph have been met the supply will be zero rated.

Subclauses (b) and (c): The amendments to section 11(1)(b) and (h) are of a textual nature.

Subclause (d): In terms of the new section 11(1)(hA) introduced by this subclause zero rating is to apply in respect of "petroleum oil and oils obtainable from bituminous minerals, known as crude". The importation of these items is exempt from tax under Heading No. 27.09.00 in Schedule 1 to the Act. The zero rating will apply in respect of supplies of these items made within the Republic.

Subclauses (e) and (f): Provision is made in the new paragraph (j) inserted in section 11(1) for the zero rating of supplies of brown bread as already defined in a Regulation published in the *Gazette* and of maize meal graded as super maize meal, special maize meal, sifted maize meal or unsifted maize meal.

CLAUSE 28

Exempt supplies: Amendment to section 12 of the Value-Added Tax Act, 1991

In terms of the amendment to section 12(g) of the Act introduced by this clause the exemption therein provided for is modified so as to apply to transport services supplied in the course of a transport business to fare-paying passengers. The effect of an exemption is that input tax is not deductible by the vendor concerned. The limitation of the exemption in the manner proposed will result in the supply by a vendor to, say, his employees

of free transport not falling within the exemption, and input tax incurred for the purpose of such a supply, when made in the course or furtherance of his enterprise, will be deductible. Similar considerations are applicable in the case of a welfare organization which operates a free bus service for the inmates of an orphanage or old-age home.

CLAUSE 29

Importation of goods: Amendments to section 13 of the Value-Added Tax Act, 1991

The amendments to section 13 are of a textual nature.

CLAUSE 30

Calculation of tax payable: Amendments to section 16 of the Value-Added Tax Act, 1991

The amendments are of a textual nature.

CLAUSE 31

Permissible deductions in respect of input tax: Amendment to section 17 of the Value-Added Tax Act, 1991

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

Subclause (b): The prohibition of the deduction of input tax in respect of goods and services acquired by the vendor for the purposes of entertainment is relaxed by section 17(2)(a)(i).

Where such goods or services are used for making taxable supplies in the ordinary course of an enterprise which continuously or regularly supplies entertainment for a consideration and for which supply a charge which covers the cost of such entertainment is made, input tax may be deducted. This section was intended to allow, for example, restaurants, hotels and caterers to claim their input tax deductions. The present wording of the section allows vendors other than those intended to claim their inputs and the amendment restricts the deduction to those originally envisaged, ie. where tax is paid on the acquisition of goods or services used wholly or mainly for making taxable supplies in the course of an enterprise which supplies entertainment at a charge which covers the cost thereof.

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

Subclause (d): The amendment introduced by this subclause further relaxes the prohibition on the deduction of entertainment expenses mentioned in *subclause (b)*. A welfare organization may claim input tax on goods and services acquired for the purpose of making supplies in the furtherance of its aims or objectives, such as the provision of food, beverages, accommodation, recreation and hospitality.

CLAUSE 32

Adjustments: Amendments to section 18 of the Value-Added Tax Act, 1991

Subclause (a): The amendment to section 18 is intended to place it beyond doubt that goods and services acquired before the commencement date, which are held or applied for the purpose of making taxable supplies

on or after such date, will if applied wholly for purposes other than this purpose be deemed to be a taxable supply in the course of the enterprise.

Subclause (b): In terms of section 18(2) an adjustment must be made if the extent of the use of any goods or services for the purpose of making taxable supplies has decreased. To the extent there has been a reduction, such goods or services are deemed to have been supplied by way of a taxable supply. A *de minimus* rule applies and where the cost of the asset does not exceed R40 000 no adjustment has to be made. The amendments introduced by this clause restrict this rule to capital goods or services and provide that the amount of R40 000 excludes tax. This subclause also introduces an amendment to section 18(2) which is similar to the amendment to section 18(1) introduced by *subclause (a)*.

Subclause (c): In terms of the amendments to section 18(3) of the Act introduced by this clause, the provisions of that section (whereby the granting of a fringe benefit to an employee or office holder is deemed to be a supply of goods or services) are modified so as to apply where the fringe benefit consists of a supply of goods or services, thus excluding from the operation of that section fringe benefits which do not constitute such a supply, eg. financial services such as the granting of a loan.

The reference in the proviso to this section to a subsidy in respect of any loan or interest is in consequence unnecessary and is deleted. In certain circumstances fringe benefits which fall within the definition of "*entertainment*" and for which no input tax is allowed could have been included in this section. The reference to paragraph 2(c) of the Seventh Schedule to the Income Tax Act has been deleted and all fringe benefits which constitute the supply of entertainment have been excluded.

Subclause (d): Section 18(4) provides for the case where goods or services (other than goods or services in respect of the acquisition of which a deduction of input tax was or would be denied by section 17(2)) were acquired by a person after the commencement date in such circumstances that no deduction of input tax was made in relation thereto but the goods or services are subsequently applied by him or a partnership of which he is a member wholly or partly for consumption, use or supply in the course of making taxable supplies. In such a case the goods or services are deemed to be supplied to that person, or the partnership, in the tax period during which the goods were applied for the said purpose and that person or the partnership as the case may be, must be allowed to make a deduction under section 16(3)(f) of an amount equal to the tax fraction of the lesser of—

(a) the cost of the goods or services, including tax; or

(b) the open market value of the goods or services at the time the supply is deemed to be made,

multiplied by the percentage of the intended use of the goods or services for the purpose of making taxable supplies.

The section does not allow any deduction of input tax where the goods and services are subsequently applied by the vendor for the purposes of making taxable supplies if the goods or services were acquired before the commencement date. The amendments now permit the deduction of an amount of input tax in terms of section 16(3) in these circumstances, to the extent that there is a change of use which takes place subsequent to the commencement date.

Subclause (e): Section 18(5) has the same purpose as section 18(4) except that it applies to goods and services which were partly used for the making of taxable supplies, whereas section 18(4) deals with goods and services which were used wholly for other purposes. The amendments proposed also restrict the deduction of input tax in terms of section 16(3) to

the extent that the change of use of the goods or services takes place subsequent to the commencement date.

Subclause (f): In the calculation of the amount of input tax contemplated in section 18(5) which is dealt with in *subclause (e)*, a formula is used. One of the elements of the formula, namely B, is the cost of goods and services and the amendment provides that the cost includes tax. This is because the tax fraction will have to be applied to this figure.

Subclause (g): The amendment by this clause also makes it clear that in the application of another element of the formula the change in use of goods and services for making taxable supplies must increase by more than 10 per cent of total use or application before a change need or may be made.

Subclause (h): As in the case of clause 32, the proviso to section 18(5) is a *de minimis* rule and no adjustments are required when the cost of goods or services is less than R40 000. The amendments to the proviso restrict the proviso to capital goods and services and provides that the cost of goods and services excludes tax.

CLAUSE 33

Irrecoverable debts: Amendment to section 22 of the Value-Added Tax Act, 1991

The amendment is of a textual nature.

CLAUSE 34

Tax period: Amendment to section 27 of the Value-Added Tax Act, 1991

Subclause (a): Section 27 of the Act provides for the periods (called tax periods) in respect of which vendors will be required to furnish returns and pay tax. Category A and B vendors will have tax periods of two months. Category C vendors will have tax periods of one month and Category D vendors will have tax periods of six months. Subsection (3) of section 27 provides for Category C vendors. Among the vendors falling within Category C will be those vendors having or expected to have annual taxable supplies exceeding R30 million in total. The amendment introduced by this subclause requires a vendor to include in the total value of his taxable supplies the taxable supplies of any branches, divisions or separate enterprises which are registered as separate vendors under section 50(2) of the Act. A vendor who falls within Category A, B or D will, when his total taxable supplies in a period of 12 months have exceeded R30 million or his total taxable supplies in an ensuing period of 12 months are likely to exceed that amount, cease to fall within Category A, B or D and will, as respects all his enterprises, branches and divisions, fall within Category C.

Subclauses (b), (c) and (d): The amendments are of a textual nature.

CLAUSES 35 AND 36

Appeals: Amendment to section 33 of, and insertion of section 33A in, the Value-Added Tax Act, 1991

In terms of these clauses the Act is amended so as to provide for the hearing by a board of appeals in respect of assessments and against certain decisions of the Commissioner. The Board is to be established in terms of a new section, numbered 83A inserted in the Income Tax Act by the

Income Tax Bill, 1991, for the purpose of hearing income tax appeals. In terms of the new section 33A inserted in the Value-Added Tax Act by this clause, the board will also hear value-added tax appeals. The functions of the Board and the reasons for its establishment are dealt with fully in the Explanatory Memorandum on the Income Tax Bill, 1991. What is said there applies also in respect of VAT. The Board will have jurisdiction to hear appeals in respect of assessments of tax where the amount of tax in dispute does not exceed R20 000 and also any appeal against a refusal by the Commissioner to register a person as a vendor or his decision to cancel, or his refusal to cancel, the registration of a vendor or his refusal to make a refund. In essence most of the provisions of section 83A of the Income Tax Act will also be applicable for the purposes of section 33A of the Value-Added Tax Act.

CLAUSE 37

Penalty and interest for failure to pay tax when due: Amendments to section 39 of the Value-Added Tax Act, 1991

In terms of section 39 of the Act, penalty and interest are imposed for the late payment of tax. The section provides that the penalty will be imposed where the tax is paid after the period prescribed in the Act or the happening of an event, depending on the circumstances. In terms of section 39(4) penalty and interest is imposed on tax payable on the importation of goods if it is not paid on the date on which the goods are entered for home consumption. The Commissioner for Customs and Excise, however, allows the deferment of the payment of duties and tax in certain circumstances. The amendment proposed will ensure that in these circumstances liability for penalty and interest will only arise if the payment is received after the extended period allowed for payment. In terms of section 39(4) penalty and interest is imposed on the tax that is payable in terms of section 7(3)(a) on excise duty if it is paid later than the date on which the goods are entered for home consumption. As the excise duty is not payable on the date the goods are entered for home consumption but periodically as prescribed by the Commissioner for Customs and Excise, the amendment proposed by this clause provides that liability for the penalty and interest on late payment will only arise if the tax is payable after the date on which liability for payment of excise duty arises.

CLAUSE 38

Separate enterprises, branches and divisions: Amendments to section 50 of the Value-Added Tax Act, 1991

In terms of section 50 of the Act, a vendor may apply for the separate registration of any separate enterprise carried on by him or any branch or division of an enterprise to be carried on by him. The amendments introduced by this clause are as follows:

(a) The wording of the first part of section 50(6) is changed to make it clear that any direction or determination of the Commissioner under section 15 or 27 in respect of the vendor will apply equally to each separate enterprise, branch or division separately registered under section 50. (Section 15 relates to the accounting basis of the vendor and where the invoice basis of accounting or the payments basis of accounting is applicable in the case of a vendor that basis must be applied in respect of each such separate enterprise, branch or division. Section 27 relates to the tax period of a vendor, ie where the vendor is placed in Category A, B or C: the tax period of each separate enterprise, branch or division will consequently be the same. An exemption is made in the proviso

added by this clause to section 50(6), and is dealt with in paragraph (b) below).

(b) In terms of section 27(4) a vendor carrying on a farming enterprise as a separate enterprise or a branch or division may, subject to compliance with that section, apply for that separate enterprise, branch or division to be placed in Category D, ie the category of vendors whose tax periods extend over six months. In terms of the proviso to section 50(6) added by this clause, the fact that the vendor is in respect of any separate enterprise, branch or division placed in Category A or B, ie the category of vendors whose tax periods extend over two months, will not prevent the Commissioner from placing in Category D any separate farming enterprise or any separate branch or division in which farming operations are carried on, provided the requirements of section 27(4) are met. If, however, the vendor is placed in Category C, ie the category of vendors whose tax periods extend over one month, all his enterprises, branches and divisions will fall within that Category and the option of falling within Category D will not be applicable in respect of any separate farming enterprise, division or branch.

CLAUSE 39

Pooling arrangements: Substitution of section 52 of the Value-Added Tax Act, 1991

This clause substitutes an amended section for section 52 of the Act.

Section 52(1), as it reads at present, provides that a pool for the sale of various farming products (ie a pool contemplated in section 52 of the Marketing Act, No. 59 of 1968), must be treated as an enterprise or part of an enterprise of the board or body managing the pool. This provision is amended by this clause so as to apply only when a written application is made by the board or body for the pool to be treated in this way. It is further provided that the enterprise or part of an enterprise represented by the pool will be deemed to be carried on separately from the members of the board or body; that the pool may be registered separately under section 50; and that the board or body may elect to be treated as a principal and not an agent of its members.

Section 52(2) provides for a rental pool scheme operated for the benefit of some or all the owners of time-sharing interests as defined in section 1 of the Property Time-sharing Control Act, No. 75 of 1983, to be a separate enterprise and to be separately registered under section 50. This clause amends this provision to make it clear that such separate enterprise is carried on separately from the owners and for the rental pool scheme to be treated as a principal and not as an agent for the owners.

CLAUSE 40

Agents and auctioneers: Amendments to section 54 of the Value-Added Tax Act, 1991

In terms of section 54(4) an auctioneer is defined as a vendor who carries on an enterprise which comprises or includes the supply by him by auction of goods as auctioneer or agent for or on behalf of another person. Section 54(5) provides that the principal and auctioneer may agree to have a supply by auction of goods which is not a taxable supply treated as if the supply were made by the auctioneer and not the principal. The reason why this would normally be done would be to ease the practical problem of distinguishing between taxable and non-taxable supplies. The amendment

proposed in this clause brings within the ambit of these sections sales on national fresh produce markets which are not conducted as auctions.

CLAUSE 41

Offences: Amendment to section 58 of the Value-Added Tax Act, 1991

The amendment is of a textual nature.

CLAUSE 42

Additional tax in case of evasion: Amendment to section 60 of the Value-Added Tax Act, 1991

The amendment is of a textual nature.

CLAUSE 43

Contract price or consideration may be varied according to rate of value-added tax: Amendment to section 67 of the Value-Added Tax Act, 1991

Section 67 deals with the circumstances where in terms of an agreement or law the consideration for the supply of goods or services has been fixed and subsequently value-added tax is imposed, increased, withdrawn or decreased. Section 67(1) and (2) provide for the variation of the consideration in these circumstances. The amendment introduces a new subsection (3) which deals with the situation where fees, charges or other amounts are fixed by laws or measures having the force of law, and the fees, charges or other amounts have not been changed to take into account the imposition, increase, decrease or withdrawal of the tax. The new section provides for the variation of the consideration for the supply of the relevant goods or services in these circumstances.

CLAUSE 44

Diplomatic tax relief certificates: Amendment to section 69 of the Value-Added Tax Act, 1991

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

CLAUSE 45

Prevention of or relief from double taxation in Republic and specified country: Amendment to section 75 of the Value-Added Tax Act, 1991

In terms of section 75(2) of the Act provision is presently made for intergovernmental payments, on a reciprocal basis, between the South African Government and the governments of specified countries which are parties to agreements to eliminate double taxation. The purpose of the payments will be to mitigate the effects of double taxation on the governments of the participating countries. The section restricts the payments to those situations where the same supply of goods or services will be liable to tax in the hands of a South African business and also in the hands of businesses in specified countries. The amendment introduced by this clause widens the circumstances in which intergovernmental payments can be made to include the situation where tax will be levied in one country (called the first country) and borne by persons in the other contracting country (called the second country). The amount of the tax that will be payable is

the amount levied in the first country and borne by persons who carry on business or are resident in the second country, provided that it may not exceed the amount which would have been payable at the rate applicable in the second country. It also excludes tax levied in the first country on any supply of goods or services if no value-added tax would be payable in the second country on a similar supply of goods and services or if the goods and services are used or consumed in the first country.

CLAUSE 46

Amendments by the Minister: Amendment to section 76 of the Value-Added Tax Act, 1991

In terms of section 76(1)(d) of the Act the Minister of Finance is empowered to "amend the provisions of section 11 of the Act so as to provide that tax in respect of such supplies of basic foodstuffs as the Minister may determine, be levied at the rate of zero per cent". Amendments applying the rate of zero per cent in respect of such foodstuffs are introduced by *clause 27(f)* and this clause substitutes in section 76(1)(d) a provision which allows the Minister to amend the Act by notice in the *Gazette*, prior to the commencement of the first session of Parliament in 1992, so as to overcome any transitional or other difficulty which may arise in regard to the application of the Act or to make such further provisions as he considers fair and reasonable. Any amendment made under this provision will lapse 30 days after the end of the first session of Parliament in 1992 but this will not detract from the validity of the amendment before it so lapsed. It would be necessary for Parliament to approve in the normal way any amendment made by the Minister if it is to continue to be applicable after the first session of Parliament in 1992.

CLAUSE 47

Transitional matters: Amendments to section 78 of the Value-Added Tax Act, 1991

Subclauses (a) and (b): The amendments to section 78(1) and (2) are of a textual nature.

Subclause (c) introduces a new subsection, numbered (3A), making it clear that retrospective taxation under the Act will not occur—

(a) where a rental agreement was entered into before the commencement date in respect of goods which were not goods as defined in section 1 of the Sales Tax Act (eg. fixed property) and the goods were provided for a period which ended before that date; or

(b) where services were performed under an agreement entered into before that date and the performance of the services was completed before that date or in respect of a period which ended before that date and the services did not come within the definition of "taxable service" in section 1 of the Sales Tax Act.

These provisions will apply notwithstanding the issue on or after the commencement date of an invoice in respect of the relevant supply or the payment on or after that date of any amount of consideration in respect of the supply. (Section 78 already provides separately for those cases where there is no material difference or only a technical difference between the charging provisions of the Sales Tax Act and the Value-Added Tax Act and for cases where transactions or the making of supplies are commenced before and end on or after the commencement date.)

Subclause (d): Section 78(4) of the Act provides for an adjustment to be made where in respect of a supply of goods or services which is subject to VAT sales tax has been paid on a portion of the value on which VAT is payable. Apart from textual changes this subclause provides that the amount to be deducted from the value must exclude any portion of that amount which represents sales tax.

Subclause (e): The amendments to section 78(5) of the Act which are introduced by this subclause are of a textual nature.

Subclause (f): Section 78(6) of the Act provides that where, on or after 25 March 1991 (the date on which the Value-Added Tax Bill became available) and before the commencement date a payment is made or an invoice is issued in respect of consideration for the supply of any goods or services (sales tax not being payable) and the payment or invoice relates to the provision of goods or the performance of services on or after the commencement date, the supply of the goods or services is deemed to be made on the commencement date. To assist vendors who inadvertently and with no intention to avoid tax, accepted payments for goods or services to be provided or performed after the commencement date and made no provision for tax, the date of 25 March 1991 has been changed to the date of promulgation of the principal Act. In terms of the proviso to section 78(6) this provision will not apply in respect of payments customarily made at regular intervals for the supply of goods or services still to be made. This clause introduces various textual amendments and, in addition, amends the proviso so as to apply also to invoices customarily issued at regular intervals.

Subclause (g): The amendment introduced by this subclause to the Afrikaans version of section 78(8) of the Act is of a textual nature.

Subclause (h): In terms of section 78(9)(a) of the Act a disposal of fixed property under an agreement of sale concluded before the commencement date will not be treated as a supply of goods for the purposes of the Act. As this provision reads it is "subject to the provisions of subsection (6)". The quoted words are deleted and the revised wording makes it clear that section 78(9)(a) will apply notwithstanding the provisions of subsection (6). (The provisions of subsection (6) are briefly described above.)

Subclause (i): The amendments introduced by this subclause to the Afrikaans version of section 78(9)(b) of the Act are of a textual nature.

Subclause (j): The amendments introduced by these subclauses to section 78(10) of the Act are designed—

(a) to make it clear that the deduction by way of an inclusion in input tax in respect of sales tax on consumable goods and maintenance spares on hand on the commencement date refers to sales tax directly borne by the vendor concerned on sales tax to him of such goods and spares;

(b) to require that stock be taken on 29 September 1991 of the materials, consumable stock or maintenance spares on hand and that properly prepared stock lists be retained; and

(c) to empower the Commissioner, where the vendor's records are not adequate enough to determine the sales tax borne by him, to allow a reasonable calculation of the amount of sales tax.

Subclause (k) introduces a new subsection, numbered (10A), which applies in the case of a vendor who has borne sales tax in respect of his opening trading stock on the commencement date. This situation arises in the case of persons who were not required to be registered as vendors under

the Sales Tax Act, but who are, as from the commencement date of VAT, vendors for the purposes of VAT. Such a vendor will be permitted to include the sales tax on any such stock of this kind as input tax deducted by him under section 16(3) of the Act when he supplies the stock, provided he has taken stock of the items concerned and he retained properly prepared stock lists. The Commissioner may, where the keeping of records can be dispensed with without prejudice to revenue collections, allow the vendor to deduct the sales tax over a period of two years or a shorter period.

Subclause (l): The amendment to section 78(11)(a) of the Act which is introduced by this subclause is of a textual nature.

Subclause (m): The rate of value-added tax applicable for the purposes of section 78(11) of the Act (ie on the value of goods held on the day before the commencement date by a person who was a vendor under the Sales Tax Act but on the commencement date is not a vendor for VAT purposes) is in terms of the amendment introduced by this subclause to be 12 per cent, ie the ordinary rate applicable under section 7 of the Act. The amendment is consequential upon the deletion by *clause 21(c)* of the definition of "prescribed tax rate" and the amendments to section 7 of the Act introduced by *clause 23*.

CLAUSE 48

Exemptions from tax on the importation of goods: Amendments to Schedule 1 to the Value-Added Tax Act, 1991

Subclause (a): This subclause introduces an exemption in respect of goods forwarded free to an organization or body which cares for the welfare of children. The exemption is subject to various conditions which apply to the corresponding exemption from customs duty.

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

Subclause (c): The exemptions in respect of alcoholic beverages, cigarettes, perfumery and other goods imported as passengers' baggage are brought into line with the corresponding exemptions from customs duty.

Subclauses (d), (e) and (f): The amendments are of a textual nature.

CLAUSE 49

Zero rate: Supply of goods used or consumed for agricultural, pastoral or other farming purposes: Amendments to Schedule 1 to the Value-Added Tax Act, 1991

In terms of section 11(1)(g) of the Act read with Schedule 2 to the Act certain inputs used for agricultural, pastoral or other farming purposes are zero rated. The purpose of this concession is to reduce potential cash flow difficulties of farmers on large purchases and to reduce the number of refunds which would have to be made to them. The amendments introduced by this clause are intended to bring the English and Afrikaans texts into line and to widen the concession to include all seeds.

CLAUSE 50

Repeal of sections 10 to 20

The repealed sections are those which amend the provisions of the Sales Tax Act. That Act has, in terms of section 85 of the Value-Added Tax

Act, 1991, been repealed with effect from the commencement date defined in section 1 of that Act. The repeal of the Sales Tax Act has thus not yet become effective. It will be necessary, in order that the repeal thereof will in due course become fully effective, that sections 10 to 20 also be repealed from the same date.

CLAUSE 51

Short title

This clause provides the short title.