REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

INCOME TAX BILL, 1995

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INTRODUCTION

The Bill fixes the rates of normal tax payable by individuals and companies (both in the Republic as well as the former Republics of Transkei, Bophuthatswana, Venda and Ciskei) and introduces amendments to the Income Tax Act, 1962 (Act No. 58 of 1962), hereinafter referred to as the principal Act, as well as amendments to the Income Tax Act, 1994 (Act No. 21 of 1994). Several substantive provisions relating to the harmonisation of the tax systems of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei are also provided for. The provisions with regard to the new method of determining tax payable on lump sum benefits and the incurral and accrual of interest, are dealt with in separate explanations at the beginning of this Memorandum.

DETERMINATION OF TAX PAYABLE ON LUMP SUM BENEFITS

Various provisions of the principal Act acknowledge that a person's taxable income for a year may consist of *regular* recurrent income, such as salary and business income, and *irregular* non-recurrent income, such as lump sum payments on termination of service, excessive farming profits derived in certain circumstances and special remuneration derived by mine proto-teams. Such *irregular* receipts are afforded special taxation treatment in that they do not increase the taxpayer's marginal tax rate, but are instead taxed at what may be described as the average rate of tax which is applicable to the *regular* income.

Clause 4 essentially introduces two amendments, both of which are intended to curb various schemes by which taxpayers artificially, for tax purposes, reduced their *regular* income in a year in which *irregular* amounts were received.

The first such scheme involved the making of a tax-deductible single-premium contribution to a retirement annuity fund equal to 15 per cent of the taxable amount of a lump sum payment received on termination of service. Such a deduction could easily reduce the taxable portion of *regular* income to zero, with the result that wealthy taxpayers were able to achieve a minimum tax rate of 17 per cent on pension or provident fund retirement benefits in excess of R1 million.

Subclause (a) amends the basic formula firstly by introducing a new symbol "D". This has the effect, in the calculation of a taxpayer's average rate of tax applicable to his *regular* income, of recognising only so much of his retirement annuity fund contributions as would have been allowed had he not received the *irregular* payment. The amendment affects all income subject to the concession. It should be noted that it does not place any restriction on the amount of the retirement annuity fund contributions which may actually be allowed as a deduction in the determination of the taxpayer's taxable income — it only restricts the use of such contributions to reduce the rate of tax payable.

The second method used to reduce the tax rate on lump sum payments is to arrange to have little or no *regular* income in the year of retirement, for

example, by arranging to postpone the receipt of a pension until the following year. The second amendment included in the new formula introduced by this subclause, provides that in respect only of lump sum payments on termination of service, tax is levied at the higher of the effective rates of tax for the current year and the preceding year. The formula in terms of which these rates are calculated is introduced by *subclause (f)*.

Where the taxpayer has incurred a loss or where he has received a large lump sum payment it may well happen that his lump sum payment exceeds his taxable income. Applying a rate of tax to the lump sum alone in such cases would result in tax being imposed on an amount higher than actual taxable income. A further proviso to section 5(10) provides that in such a case, the symbol "R" is determined in relation to the preceding year of assessment only and that the tax will be calculated on the taxpayer's total taxable income at the greater of the lowest marginal rate (at present 17 per cent) and the result of "R".

The following examples highlight the amendments. (In these examples all cents have been ignored so as to simplify the calculations.)

EXAMPLE 1

A taxpayer (66 years old) retires on 30 September 1995. He received the following income and claimed the following deductions:

	R	R
Salary (1/3/95 to 30/9/95)	140 000	
Less: Pension fund contributions (7½%)	10 500	129 500
Pension (1/10/95 to 29/2/96)	88 235	
Less: Retirement annuity fund contribution	13 235	75 000
Taxable Portion of lump sum benefit	1 000 000	
Less: Retirement annuity fund contribution	150 000	850 000
Total taxable income (1996)		1 054 500
Taxable income for 1995		103 125

Formula is $Y = \left(\frac{A}{B + D - (C + L)} \times (B - L)\right) + (L \times R)$

Step 1: Determine what figures the symols "B", "D", "C" and "L" represent for the current year:

"B" = R1 054 500
"D" = 150 000
"C" = 0
"L" = 1 000 000

Step 2: Determine "A" for the current year:

(ie $\frac{A}{B + D - (C + L)}$)

$= \frac{A}{1\,054\,500 + 150\,000 - (0 + 1\,000\,000)}$

$= \frac{A}{204\,500}$

Tax on R204 500	=	R26 100
		56 025 (R124 500 at 45%)
"A"	=	R82 125

Step 3: Determine "R":

$$1995 = \frac{A}{B - C}$$

$$= \frac{A}{103\ 125 - 0}$$

Tax on R103 125	=	R24 700
		9 944 (R23 125 at 43%)
"A"	=	R34 644

1996 = "A" already determined for 1996 — see step 2

"A" = R82 125

$$\text{"R"} = \text{the greater of } \frac{34\ 644}{103\ 125} = .336 \text{ (ie 33.6\%)}$$

$$\text{and } \frac{82\ 125}{204\ 500} = .40159 \text{ (ie 40.159\%)}$$

Therefore "R" = 40.159%

Step 4: Apply complete formula

$$\left(\frac{82\ 125}{1\ 054\ 500 + 150\ 000 - (0 + 1\ 000\ 000)} \times (1\ 054\ 500 - 1\ 000\ 000)\right) + (1\ 000\ 000 \times 40.159\%)$$

$$= \left(\frac{82\ 125}{204\ 500} \times 54\ 500\right) + 401\ 590$$

= 21 886 + 401 590

= R423 476

+	75	transition levy on R4 500 (R1 054 500 – R1 000 000 – R50 000) at 1.67%
	423 551	
–	5 125	rebates (R2 625 + R2 500)
	R418 426	normal tax for current year

EXAMPLE 2

A taxpayer (65 years old) retires on 31 March 1995. He received the following income and claimed the following deductions. He also receives a lump sum payment in respect of a retirement annuity fund on 31 October 1995:

	R	R
Salary (1/3/95 to 31/3/95)	10 000	
Less: Pension fund contributions (7½%)	750	9 250
Pension (1/4/95 to 29/2/96)	106 765	
Less: Retirement annuity fund contribution	16 015	90 750
Taxable portion of lump sum benefits		
Pension fund (31/3/95)	600 000	
Retirement annuity fund (31/10/95)	400 000	
TOTAL:	1 000 000	
Less: Retirement annuity fund contribution	150 000	850 000
Total taxable income (1996)		950 000
Taxable income for 1995		250 000

Formula is $Y = (\frac{A}{B + D - (C + L)} \times (B - L)) + (L \times R)$

Step 1: Determine what figures the symbols "B", "D", "C" and "L" represent for the current year:

"B" = R950 000
"D" = 60 000 (400 000 × 15%)
"C" = 600 000
"L" = 400 000

Step 2: Determine "A" for the current year:

(ie $\frac{A}{B + D - (C + L}$)

$= \frac{A}{950\,000 + 60\,000 - (600\,000 + 400\,000)}$

$= \frac{A}{10\,000}$

Tax on R10 000 = R1 750

"A" = R1 750

Step 3: Determine "R":

$1995 = \frac{A}{B - C}$

$= \frac{A}{250\,000 - 0}$

Tax on R250 000	= R 24 700	
	73 100	(R170 000 at 43%)
"A"	= R 97 800	

1996 = "A" already determined for 1996 — see step 2

"A" = R1 750

"R" = the greater of $\frac{97\,800}{250\,000}$ = .3912 (ie 39.12%)

and $\frac{1\,750}{10\,000}$ = .175 (ie 17.5%)

Therefore "R" = 39.12%

Step 4: Apply complete formula:

$(\frac{1\,750}{950\,000 + 60\,000 - (600\,000 + 400\,000)} \times (950\,000 - 400\,000)) + (400\,000 \times 39.12\%)$

$= (\frac{1\,750}{10\,000} \times 550\,000) + 156\,480$

= 96 250 + 156 480

= R252 730

– 5 125 rebates

R247 605 normal tax for current year

NB: No transition levy because taxpayer's taxable income excluding the lump sum payments amounts to less than R50 000.

In addition to the aforementioned amendments, *subclause (c)* firstly also removes references to obsolete provisions. Secondly, at present an amount payable to a director of a private company is not considered to be

remuneration as defined in the Fourth Schedule to the principal Act (unless the Commissioner has otherwise directed). A gratuity which is payable to such a director may qualify for relief under the provisions of section 7A(4A) or 10(1)(x) of the principal Act and any amount which remains to be taxed should fall under the provisions of section 5(10) of the principal Act which provides that such an amount is taxed according to a formula. However, the formula which is used in section 5(10)(d)(iA)(bb)(B) of the principal Act, determines the amount with reference to remuneration as defined in the Fourth Schedule. Directors' remuneration is, therefore not taken into account which has the result that the rate of tax which is to be applied to the gratuity remaining is the rate applicable to the total taxable income. This anomaly, is therefore addressed by the proposed amendment which extends the provisions to include directors' remuneration in "remuneration" as defined, for purposes of applying the formula.

INCURRAL AND ACCRUAL OF INTEREST

Clause 21 inserts a new section 24J into the principal Act in relation to the incurral and accrual of interest.

During the last number of years the issuing of financial instruments at a discount or the structuring of contracts in terms of which the payment of interest or related finance charges are deferred became quite popular, particularly from a tax point of view. In this regard certain issuers of such instruments submit that the discount or deferred interest payable in terms of such instruments is deductible for tax purposes in the year of assessment during which such instruments are issued, while the holders of such instruments argue that the discount or deferred interest only accrues to them in the year of assessment during which the instrument matures. Conflicting judgments of the special courts as to the timing of the deduction for tax purposes of such discounts or deferred interest has now given rise to further uncertainty in this regard.

Earlier this year, the Minister of Finance proposed in his Budget Speech that in order to reflect the economic reality of instruments of this nature and to remove any uncertainty with regard to the timing of deductions and accruals for tax purposes, appropriate amendments be made to the principal Act to introduce an accrual basis which will recognise the spreading of interest (including discounts and premiums) on a day to day basis (yield to maturity basis) for tax purposes.

The proposed section 24J will in broad terms be dealing with interest on instruments which can generally be described as interest-bearing arrangements.

It must be emphasised however that the proposed legislation will not interfere with general tax principles such as the source principle or the capital or revenue nature of interest accrued or incurred in respect of such arrangements, but will only deal with the timing of the incurral and accrual of interest in respect of such arrangements.

All amounts defined as interest will be spread over the period from the date a taxpayer acquired (whether on issue or transfer from another person) an instrument until the date of disposal or maturity thereof. The spreading will be effected by applying the compounding accruals basis (yield to maturity) over the term of such an instrument. At the outset it is important to point out that as far as the incurral of interest is concerned the new rules will apply to all "instruments" as defined, while the new rules relating to the accrual of interest will have a narrower application and are limited to "income instruments" only.

In order to make the application of the provisions more flexible, provision has been made for the spreading of interest on an accrual basis by applying an "alternative method" as defined. Such method is more fully dealt

with under the heading Alternative Method. Furthermore, it should be noted that the majority of commonly used instruments by most taxpayers are excluded from the proposed legislation as far as the accrual of interest is concerned.

Key definitions

Although numerous concepts are defined in subsection (1) of the proposed section, seven definitions may be regarded as key definitions, which provide for the calculation of an accrual amount in terms of the compounding accrual basis which is in terms of subsections (2) and (3) deemed to have been incurred or accrued during a specific year of assessment by an issuer or a holder in relation to an instrument for tax purposes. These definitions are "accrual amount", "adjusted initial amount", "accrual period", "income instrument", "instrument", "interest" and "yield to maturity".

Instrument

"Instrument" is defined as all forms of interest-bearing arrangements (whether in writing or not) in respect of which the new section 24J will apply. However, certain arrangements are specifically included and excluded from the ambit of the definition. Some of the arrangements specifically included are stock, bonds, debentures, bills of exchange, promissory notes, deposits with banks, any loan, advance or debt, any repurchase or resale agreement and any acquisition or disposal of any right to receive interest or the obligation to pay interest, as the case may be, in terms of an interest-bearing arrangement. Arrangements excluded are lease agreements and certain agreements qualifying for an allowance in terms of section 24(2). The section will apply to instruments—

- issued or deemed to have been issued after 15 March 1995; and
- issued on or before 15 March 1995 and transferred on or after the date of promulgation of the Income Tax Bill, 1995.

Income instruments

Not all taxpayers receiving interest under instruments will necessarily be affected by the proposed new section. As far as the accrual of interest is concerned the ambit of the section is limited to instruments defined as "income instruments".

"Income instruments" are instruments—

- the term of which will or is likely to exceed one year; and
- which are issued or acquired at a discount or premium or bears deferred interest. Deferred interest is more fully expanded on under the heading "other important definitions".

Examples of instruments which will not fall within the scope of section 24J are—

- savings accounts
- call accounts
- fixed deposits not exceeding one year
- fixed deposits the term of which is longer than one year but the interest, the rate of which does not vary, is paid annually.

Accrual period

In order to spread interest over the term of an instrument on a compounding accrual basis, interest is to be added to the outstanding capital portion of a debt and any unsettled interest referable to previous periods, at

regular intervals. The period at the end of which the interest is to be capitalised is defined as an "accrual period".

Such definition basically provides that —

- where regular payments at intervals of equal length (not exceeding 12 months per interval) are to be made during the term of an instrument, the accrual period will be the period between such regular payments; or
- any period elected by an issuer or holder, subject to the condition that it may not be longer than one year. Once an accrual period has been selected, it must be applied throughout the term of the instrument.

Adjusted initial amount

The determination of "adjusted initial amount" as defined, starts off with the initial amount in relation to an instrument, which is the consideration given or received by a taxpayer for the issue of an instrument or the consideration paid for the acquisition of an instrument by way of a transfer. The initial amount is thereafter to be increased by all accrual amounts (see explanation thereof below) in respect of all previous accrual periods and adjusted by all payments made or amounts received in terms of the instrument. The result of the aforementioned calculation is the balance at the end of an accrual period which is to be used in calculating the accrual amount for the following accrual period.

Yield to maturity

In order to spread interest on a compounding accrual basis over the term of an instrument a rate must be calculated, which rate, when applied to the adjusted initial amount in relation to each accrual period, will ultimately result in an amount equal to the redemption payment in relation to such instrument if the instrument is held by the taxpayer until the date of redemption of such instrument.

Such rate is defined as the "yield to maturity". Where a taxpayer does not calculate the accrual amounts in relation to an instrument on an ongoing basis during a year of assessment, the yield to maturity rate may be calculated at the end of a year of assessment for application thereof during such year of assessment in relation to such instrument.

The proviso to the definition of "yield to maturity" contains further provisions with regard to the calculation and recalculation of the yield to maturity in certain circumstances.

(a) Paragraph (a) of the proviso provides that in the case of a variable rate instrument, the yield to maturity must be recalculated with reference to the variable rate applicable on the date such yield is to be determined, whether at the end of an accrual period or a year of assessment in order to determine all amounts payable or receivable after such date.

(b) Paragraph (b) of the proviso provides that where there is a change in the variable rate in relation to an instrument, the yield to maturity must be redetermined with reference to —

  - the adjusted initial amount to be used in the determination of accrual amounts not yet determined, whether at the end of the previous accrual period or the previous year of assessment; and
  - such changed variable rate applicable on the date such yield to maturity is to be redetermined. An example in this regard is where an instrument is linked to a base rate which may change during the term of an instrument, ie a commercial bank's prime rate or the consumer price index. The future cash flows

to be taken into account at the time of recalculating the yield to maturity are to be determined with reference to the level of the variable rate at the time of recalculation and on the assumption that the variable rate will remain unchanged after the date of such determination. In practice, however, the redetermination needs to be done only at the time an accrual amount is to be calculated.

(c) Paragraph (c) of the proviso provides that the yield to maturity must be redetermined where a variation in the terms or conditions of the instrument takes place which will result in a change in such yield to maturity.

(d) Paragraph (d) of the proviso provides that the yield to maturity must be redetermined where there is a variation or alteration of the rights or interests of a holder to receive interest in terms of an instrument or the obligations of an issuer to pay interest in terms of an instrument. Examples in this regard are where the terms of an instrument provide for a change in the applicable interest rate which is to be used to determine the amounts payable or receivable in terms of the instrument, or for an early repayment of a portion of the debt or an increase in the underlying debt in terms of the instrument.

In the case of both paragraphs (c) and (d) of the proviso, the yield to maturity must be redetermined with reference to the adjusted initial amount to be used in the determination of accrual amounts not yet determined, whether at the end of a previous accrual period or the previous year of assessment. The effect thereof is that it will not be necessary to recalculate the yield to maturity from the acquisition of the instrument and accrual amounts previously determined and taken into consideration in the determination of a taxpayer's taxable income, will be unaffected.

Accrual amount

The accrual amount is one of the most important definitions of the proposed section 24J, as it represents the amount of interest determined after the integrated application of the various concepts defined in the section, which is finally deemed to have been incurred or accrued during a relevant year of assessment.

The accrual amount in relation to each accrual period is determined by multiplying the yield to maturity calculated in relation to an instrument by the adjusted initial amount with regard to a particular accrual period.

An accrual amount as calculated above is to be adjusted in certain circumstances as detailed in the proviso to the definition of accrual amount. The first paragraph of the proviso deals with the situation where a year of assessment ends within an accrual period. The accrual amount as determined for that accrual period should then be apportioned on a day to day basis over the term of such accrual period. Spreading on a straight-line basis will also be acceptable. Paragraph (ii) of the proviso regulates the circumstances where an instrument is disposed of during an accrual period. Likewise the accrual amount must be apportioned on a day to day basis to determine the relevant portion of the accrual amount which is attributable to the relevant transferor or transferee. Paragraph (iii) of the proviso permits a taxpayer to make an appropriate adjustment to an accrual amount by taking into account variations in interest as a result of amounts received or payments made other than at the end of an accrual period.

Other important definitions

In terms of the definitions of "adjusted gain on transfer or redemption of an instrument" and "adjusted loss on transfer or redemption of an instrument" an amount is calculated which will reflect the difference between

the net actual cash flows under the instrument disposed of or redeemed and the accrual amounts which have been or will be taken into account in the calculation of the taxpayer's taxable income.

"Deferred interest" is important in the sense that it is a qualifying factor in determining whether an instrument is an "income instrument" as defined. Deferred interest basically includes interest —

- which is calculated by applying a constant interest rate, but which is not payable within one year from the date it starts accruing; or
- payable or receivable which is not calculated by applying a constant interest rate throughout the term of an instrument.

However, any interest rate which is linked to a recognised base rate or index by applying a constant factor (for example prime rate plus 1 per cent) shall be regarded as a constant interest rate.

"Holder" a holder of an income instrument is a person who —

- has become entitled to any interest in terms of such income instrument; or
- at a particular time, if any interest payable in terms of such instrument was due and payable at that time, would be entitled to receive payment of such interest.

"Initial amount" is in the case of the issue of an instrument the consideration given or received (issue price) by the taxpayer and in the case of the transfer of an instrument the consideration payable or receivable (transfer price) by the taxpayer.

"Interest" — the definition is not exhaustive and includes the gross amount of any interest or related finance charges, discount or premium payable or receivable in terms of a financial arrangement.

"Issuer" — an issuer in relation to any instrument is a person who —

- has incurred interest in terms of such instrument; or
- at a particular time, if any interest payable in terms of such instrument was due and payable at that time, would be liable to pay such interest.

"Transfer" — the definition of transfer covers both the acquisition and disposal of an instrument by way of transfer, sale, assignment or disposal in any other way.

The phrases "issue", "issue price", "redemption", "redemption payment", "repurchase agreement", "resale agreement", "short selling", "term", "transfer price", "variable rate", "variable rate instrument" and "fixed rate instrument" are also defined.

Subsection (2) deems any interest incurred by an issuer in terms of an instrument or which is due and payable by him at any particular time during the term of an instrument, to have been incurred on a compounding accrual basis. Any issuer in relation to an instrument is therefore deemed to have incurred an amount of interest in relation to such instrument during a year of assessment which is equal to —

- the total amount of all accrual amounts in relation to all accrual periods falling (whether in whole or in part) within such year of assessment; or
- an amount determined in accordance with an alternative method in relation to such year of assessment in respect of such instrument.

Example 1

Incurral of interest

A taxpayer enters into an agreement in terms of which he receives an amount of R1 000 000 on 31 December 1995. An amount of R1 300 000 is repayable on 31 December 1997. The taxpayer's financial year ends on 28 February.

CASH FLOW	
MONTH	R
31 December 1995	1 000 000
31 December 1996	0
31 December 1997	(1 300 000)
	(300 000)

The yield to maturity assuming an annual accrual period is therefore 14.01754% per accrual period.

The incurral of R300 000 interest by the taxpayer is to be dealt with in accordance with section 24J(2) in the following manner:

Interest incurred for the 1995/6 tax year

= R1 000 000 × 0.1401754 × 60 / 366

= R22 980

Interest incurred for the 1996/7 tax year

= (R1 000 000 × 0.1401754 × 306 / 366) + (R1 140 175 × 0.1401754 × 59 / 365)

= R143 030

Interest incurred for the 1997/8 tax year

= (R1 140 175 × 0.1401754 × 306 / 365)

= R133 990

Total interest incurred in terms of section 24J(2)

= R22 980 + R143 030 + R133 990

= R300 000

Likewise subsection (3) deems any interest to which a holder has become entitled in terms of an income instrument, or any interest which he is entitled to receive at any particular time during the term of the instrument, to have accrued on an accrual basis. An amount of interest is therefore deemed to have accrued to a holder in relation to an income instrument which is equal to—

- the total amount of all accrual amounts in relation to all accrual periods falling (whether in whole or in part) within such year of assessment; or
- an amount determined in accordance with an alternative method in relation to such year of assessment in respect of such instrument.

Example 2

Accrual of interest

A taxpayer acquires a financial instrument with a term of 2 years at a discount of R1 200 000 on 31 December 1995. Interest is receivable 6-monthly, calculated at 3% of the face value of the instrument. The maturity date of the instrument is 31 December 1997 when the taxpayer will receive R10 000 000. The taxpayer's financial year ends on 30 June.

CASH FLOW	
Month	**R**
31 December 1995	(8 800 000)
30 June 1996	300 000
31 December 1996	300 000
30 June 1997	300 000
31 December 1997	10 300 000
	2 400 000

The yield to maturity assuming a 6-monthly accrual period is therefore 6.50308% per accrual period.

The accrual of R2 400 000 interest by the taxpayer is to be dealt with in accordance with section 24J(3) in the following manner:

Accrual for the 1995/6 tax year = R8 800 000 × 0.0650308

Deemed accrual = R572 271

Accrual for the 1996/7 tax year

31 December 1996 = (R8 800 000 + R572 271 – R300 000) × 0.0650308

= R589 977

30 June 1997 = (R8 800 000 + R1 162 248 – R600 000) × 0.0650308

= R608 834

Deemed accrual for the year = R1 198 811

1997/8 tax year accrual

= (R8 800 000 + R1 771 082 – R900 000) × 0.0650308

= R628 918

Total deemed accrual in terms of section 24J(3)

= R572 271 + R1 198 811 + R628 918
= R2 400 000

Subsection (4) deems the amounts as calculated in terms of the definitions of adjusted gain on transfer or redemption of an instrument and adjusted loss on transfer or redemption of an instrument to have accrued to or been incurred by a person for the purposes of the principal Act in the year of assessment during which the relevant instrument was so transferred or redeemed.

Example 3

Adjusted gain on transfer

A dealer in financial instruments acquired an instrument on 31 July 1995 for R920 000. The instrument will be redeemed on 31 July 1997 for R1 000 000. An annual coupon of R100 000 is receivable. The taxpayer sells

the instrument on 20 September 1996 for R981 000 which amount includes accrued interest.

As the instrument was transferred after the new rules came into operation, has a term of longer than 1 year and bears deferred interest, it is an income instrument as defined in section 24J.

CASH FLOW	
Date	**R**
31 July 1995	(920 000)
31 July 1996	100 000
31 July 1997	1 100 000
	280 000

The yield to maturity assuming an annual accrual period is therefore 14.91564% per accrual period.

Accrual 31/07/96 = R920 000 × 0.1491564
= R137 224

Adjusted initial amount on 31/07/96
= R920 000 + R137 224 − R100 000
= R957 224

Accrual until 20/9/96 = R957 224 × 0.1491564 × 50 / 365
= R19 558

Adjusted gain = R981 000 − R957 224 − 19 558
= R4 218

As subsections (2), (3) and (4) only govern the timing with regard to the incurral and accrual of interest or an adjusted gain or loss, the ordinary rules of the principal Act must still be satisfied before such interest, gain or loss is to be taken into account in the determination of a taxpayer's taxable income.

Subsection (5) determines that any amount of interest actually paid or received by a person in terms of an instrument which has been taken into account in the determination of an accrual amount or any other amount calculated in terms of an alternative method, which accrual amount or other amount is to be dealt with in terms of the provisions of subsections (2) and (3), will be disregarded for the purposes of section 11 or the definition of "gross income".

Subsection (6) provides for the situation that where the term of any instrument issued prior to 16 March 1995 is extended or the terms or conditions of such an instrument are varied materially after such date, such an instrument is deemed to have been issued after 15 March 1995. In such circumstances the provisions of this section shall apply to both the holder and the issuer in relation to such an instrument from the date of the extension or material variation of the instrument.'

Example 4

Extension of the term

A taxpayer advances an amount of R500 000 to another person in terms of an agreement on 28 February 1995 bearing interest at 15% per annum compounded annually. The advance including capitalised interest is repayable on 28 February 1997. On 31 March 1995 the agreement is amended by extending the date of repayment to 29 February 2000. The

accrued interest until 28 February 1997 is still payable on that date. The taxpayer's financial year ends on 28 February.

As a result of the provisions of section 24J(6) the agreement will be deemed to have been issued after 15 March 1995 and will therefore be an instrument as defined.

CASH FLOW	
Month	**R**
28 February 1995	(500 000)
29 February 1996	0
28 February 1997	161 250
28 February 1998	0
28 February 1999	0
29 February 2000	760 437
	421 687

The yield to maturity assuming an annual accrual period is therefore 15% per accrual period.

Year end — 29 February 1996

Accrual = R500 000 × .15 – (R500 000 × .15 × 1 /12)
= R75 000 – R6 250 (portion deferred until 28/2/1997)
= R68 750

Year end — 28 February 1997

Accrual = ((R500 000 + R75 000) × .15) + R6 250
= R86 250 + R6 250 (brought forward from 1996)
= R92 500

Year end — 28 February 1998

Accrual = (R500 000 + R161 250 – R161 250) × .15
= R75 000

Year end — 28 February 1999

Accrual = (R500 000 + R236 250 – R161 250) × .15
= R86 250

Year end — 29 February 2000

Accrual = (R500 000 + R322 500 – R161 250) × .15
= R99 187

Total accrual = R68 750 + R92 500 + R75 000 + R86 250 + R99 187
= R421 687

Subsection (7) deals with the situation where there are two or more holders or two or more issuers in relation to an instrument. In such an instance the cash flows taken into account by a holder in relation to an instrument in calculating the yield to maturity and the adjusted initial amount, must exclude all amounts payable or receivable by the other holder or issuer in relation to the instrument.

Subsection (8) limits the application of this section to allow a taxpayer to be either a holder or an issuer in relation to an instrument and not both in relation to the same instrument. A taxpayer will be a holder should he be entitled to receive more interest than he is liable to pay in terms of any instrument. Likewise, a taxpayer will be limited to an issuer should he be

liable to pay more interest than he is entitled to receive in terms of an instrument.

As certain taxpayers who hold instruments as trading stock apply a market valuation method to determine the value of such instruments at the end of a year of assessment, the yield to maturity basis of spreading interest may not be appropriate. Paragraph (a) of subsection (9) therefore, provides that taxpayers who are companies and whose business comprises the dealing in instruments (including the short selling of instruments) may elect that the provisions providing for the spreading of interest on an accrual basis will not be applicable to such instruments.

Paragraph (b), however, prescribes certain conditions before a company may apply market valuation in relation to instruments contemplated in paragraph (a):

- the election must be in writing and must be accompanied by a detailed statement setting forth full details of the proposed methodology to be applied;
- the election shall not take effect unless the Commissioner has, subject to such conditions as he may deem necessary, approved—
  - — the methodology to determine the market value; and
  - — the manner in which the market value is to be taken into account in the determination of the company's taxable income; and
- an election made by a company shall be binding upon the company.

Paragraph (c) — The market value in respect of instruments shall be determined in accordance with commercially accepted practice consistently applied by the company concerned for financial reporting purposes to its shareholders.

Paragraph (d) — This paragraph provides that once the market valuation method has been applied to an instrument, such method is to be applied in respect of such instrument until it is redeemed or disposed of.

Paragraph (e) — Where any approval granted to a company was obtained by way of fraud or in consequence of any misrepresentation or failure to disclose any material fact by such company, the Commissioner shall, having regard to the full facts of the matter, withdraw such approval *ab initio*.

Paragraph (f) — If a company fails to comply with the provisions of subsection (9), the Commissioner's approval shall be deemed to have been withdrawn from the year of assessment during which the company so fails to comply, and that an appropriate adjustment be made to the taxable income of the company during such year of assessment, in order to ensure that—

- amounts overtaxed or undertaxed during prior years; and
- amounts overdeducted or underdeducted during prior years,

are appropriately adjusted.

Subsection (10) provides that any reference in section 24J to any payment made or amount payable or consideration given or received or any payment received or an amount received or receivable shall be construed as including a payment or an amount or consideration otherwise than in cash.

Subsection (11) provides that any decision of the Commissioner in the exercise of his discretion under the proposed section 24J, shall be subject to objection and appeal.

Alternative method

It is recognised that taxpayers are applying various other methods to reflect the spreading of interest for accounting purposes, the result of which does not differ significantly from the method prescribed in terms of the proposed section to determine an accrual amount.

Provision has, therefore, been made that a taxpayer may apply an "alternative method" as defined in relation to any class of instruments. The alternative method in relation to a class of instruments must however—

- conform with generally accepted accounting practice;
- be applied consistently in respect of such class of instruments for all financial reporting purposes; and
- achieve a result in so far as the timing of the accrual and incurral of interest is concerned which does not differ significantly from the result achieved by the application of the provisions of subsections (2)(a) and (3)(a).

A class of instruments will be regarded as a group of instruments which *inter alia* have similar characteristics pertaining to the terms and conditions, method of calculating interest, payment of interest, intervals of compounding or the description thereof.

Example 5

Alternative method

A taxpayer borrows an amount of R10 000 on 31 May 1995 at 17.55%. The loan agreement stipulates that the loan is repayable within 6 months in monthly instalments of R1 753. The taxpayer's financial year ends on 31 August. The method applied by the taxpayer to determine the interest incurred for the 1994/5 year of assessment is—

(a) based on the weighted outstanding capital and interest, if any, at the end of each month during the term of the loan;

(b) based on a straight-line spreading of interest;

(c) calculated by applying the rate and instalments in terms of the agreement; or

(d) based on the yield to maturity calculated according to section 24J,

and is consistently used in accordance with generally accepted accounting practice.

Interest payable is R518 ((6 × R1 753)—R10 000)

METHOD	1995 YEAR R	1996 YEAR R
(a) **Weighted capital**	412.90	105.10
Difference to YtM	45.03	(45.03)
Difference as % of interest	8.7%	(8.7%)
(b) **Straight-line**	259.00	259.00
Difference to YtM	(108.87)	108.87
Difference as % of interest	(21.0%)	21.0%
(c) **Calculated**	367.90	150.10
Difference to YtM	0.03	(0.03)
Difference as % of interest	0.0%	0.0%
(d) **Yield to maturity (YtM)**	367.87	150.13

The methods of calculation under options (a) and (c) are acceptable as alternative methods in these circumstances, as the requirement in paragraph (c) of the definition of alternative method has been met.

The method of calculation according to option (b) is not acceptable, as the difference in relation to the total interest results in a significant difference in spreading during the term of the instrument.

Consequential amendments

Apart from the introduction of the proposed section 24J in the Act, the following consequential amendments are proposed.

In the first instance an amendment to section 11(bB) of the principal Act is proposed to exclude from the operation of the proviso to such section, any finance charge which falls to be dealt with in terms of the provisions of the proposed section 24J. This amendment is deemed to have come into operation on 16 March 1995 and shall apply to any agreement entered into on or after that date.

Secondly, it is proposed that section 22(1) of the principal Act be amended to enable a company that has made an election which has taken effect as contemplated in the proposed new section 24J(9), to value its instruments held as trading stock, at the market value thereof as contemplated in such section. This amendment is deemed to have come into operation on 16 March 1995.

CLAUSE 1 AND SCHEDULE 1

Rates of normal tax

Rates of normal tax are enacted by *clause 1* and Schedule 1 to the Bill and such rates are applicable in the Republic of South Africa as well as the former Republics of Transkei, Bophuthatswana, Venda and Ciskei.

Individuals

The rates for persons other than companies apply in respect of the year of assessment ending on 29 February 1996 or 30 June 1996 and are provided for in paragraph 1 of Schedule 1.

The rates for both natural persons and persons other than natural persons consist of a progressive rate ranging between 17 per cent on the lowest income segment (amounts up to R5 000) and 45 per cent which is reached on the income segment above R80 000.

The rates for—

- natural persons are provided for in paragraph 1(a) of Schedule 1; and
- persons other than natural persons are provided for in paragraph 1(b) of Schedule 1.

In addition to these rates of tax, paragraph 1(c) of Schedule 1 provides for the imposition of the remaining portion of the transition levy which forms part of normal tax. The transition levy payable is calculated at the rate of 1,67 per cent of the amount by which the taxable income of the taxpayer exceeds R50 000.

Certain amounts are, however, not subject to the transition levy and must, therefore be excluded from taxable income when determining the transition levy. These are the taxable portions of lump sum benefits from approved pension, provident and retirement annuity funds as determined in accordance with the provisions of the Second Schedule to the principal Act,

as well as bonuses, gratuities or compensation on termination of services as contemplated in section 7A(4A) of the principal Act.

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 1995 to 31 March 1996, and are provided for in paragraphs 2(a) to (d) inclusive, of Schedule 1.

Those rates are as follows:

(a) Taxable income derived otherwise than from gold mining and long-term insurance business: 35 cents per R1, but in the case of a company which mines for gold and which is exempt from secondary tax on companies in terms of an option exercised by it, 48 cents per R1 of its non-gold mining taxable income (paragraph 2(a) of Schedule 1).

(b) Taxable income derived by a company from gold mining: an amount determined in accordance with one of the following formulae:

(i) where such company is not exempt from secondary tax on companies: $y = 43 - \frac{215}{x}$; or

(ii) where such company is exempt from secondary tax on companies: $y = 58 - \frac{290}{x}$

as provided for in paragraph 2(b) of Schedule 1.

(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 2(c) of Schedule 1).

(d) Taxable income derived from long-term insurance business where such taxable income has been determined under the provisions of section 28 of the principal Act: 45 cents per R1 (paragraph 2(d)(i) of Schedule 1).

(e) Taxable income derived from long-term insurance business where such taxable income has been determined under the provisions of section 29 of the principal Act: 30 cents per R1 in respect of the insurer's individual policyholder fund and 35 cents per R1 in respect of its company policyholder fund and corporate fund (paragraph 2(d)(ii) of Schedule 1).

Companies deriving taxable income in the former Republics of Transkei, Bophuthatswana or Ciskei are subject to a special phasing-in concession for years of assessment ending during the period 1 April 1995 to 31 March 1996, where the South African normal tax on such taxable income exceeds the tax that would have been payable on such taxable income under the laws of such former Republics.

This concession takes the form of a reduction in normal tax of an amount equal to 50% of the difference between the normal tax payable according to the provisions of the principal Act and the tax that would have been payable under a law of a former Republic.

eg South African normal tax	R60 000
Transkeian tax	R40 000
Difference	R20 000
Normal tax payable	R60 000
Less: 50% of difference (R20 000)	10 000
Adjusted normal tax payable	R50 000

CLAUSE 2

Definitions: Amendment of section 1 of the principal Act

Subclause (1)(a), (c), (d), (e), (f), (g), (h) and (i): At present the definitions of "benefit fund", "pension fund", "provident fund" and "retirement annuity fund" in section 1 of the principal Act contain various references to the expression "widow, child, dependant or nominee of the member". It is considered that the ambit of the words "dependant or nominee of the member" are wide enough to include a widow or child as well as to accommodate a widower. The relevant provisions of such definitions are therefore amended accordingly.

Subclause (1)(b): The proposed amendment deletes the definition of "married person" as this definition is now obsolete. This forms part of the removal of gender discrimination contained in the principal Act.

CLAUSE 3

Exercise of powers and performance of duties: Amendment of section 3 of the principal Act

The proposed amendment extends the scope of the provisions of section 3(4) of the principal Act to make the objection and appeal procedures applicable to certain other sections which contain discretionary powers and removes a reference to section 42 of the principal Act, which is to be repealed.

CLAUSE 4

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

See separate explanation on the DETERMINATION OF TAX PAYABLE ON LUMP SUM BENEFITS.

CLAUSE 5

Rebates: Amendment of section 6 of the principal Act

Subclause (a) is consequential upon the deletion of section 6(3) of the principal Act.

Subclause (b) removes the references to a taxpayer's marital status and gender and fixes a unified primary rebate for all natural taxpayers at R2 625 and a secondary rebate of R2 500 for persons over 65 years in respect of a year of assessment.

Subclause (c) deletes provisions which have become obsolete as a result of the withdrawal of the child rebate and with the insertion of the age rebate in section 6(2)(b).

CLAUSE 6

When income is deemed to have accrued or to have been received: Amendment of section 7 of the principal Act

Section 7(2)(c) of the principal Act includes the income of a married woman (if she so elects) in the income of her husband if she is the sole breadwinner of the family. These provisions have become obsolete as a result of the introduction of the unified rate structure for all natural persons.

CLAUSE 7

Date of receipt or accrual of antedated salaries or pensions and of certain retirement gratuities: Amendment of section 7A of the principal Act

Subclause (a): This subclause removes a gender discrimination. See also the explanation with regard to *clause 2(1)(c), (d), (e), (f), (g), (h) and (i)*.

Subclause (b): Section 7A(4A) of the principal Act provides that the normal tax payable on amounts received by or accrued to a taxpayer by way of a bonus, gratuity or compensation on termination or impending termination of his services, is determined in accordance with the formula contained in section 5(10) (refer to the explanation under *clause 4* as far as the application of such formula is concerned) if certain conditions are met.

Such amounts are not normally paid out of pension or provident funds, but recently several such funds have made such payments. The view is held that as payments from such funds are specifically dealt with by the provisions of the Second Schedule, they do not fall within the ambit of section 7A(4A). Arguments to the contrary have, however, been received and this amendment merely places it beyond any doubt that such payments are excluded from the provisions of section 7A(4A).

Subclause (c): This subclause removes a gender discrimination and shall come into operation on a date to be fixed by the Minister of Finance by notice in the *Gazette*.

Subclause (d): This subclause removes a gender discrimination.

CLAUSE 8

Certain amounts to be included in income or taxable income: Amendment of section 8 of the principal Act

Subclause (1)(a): It has come to light that a tax avoidance scheme which involves a combination of the granting of the right of use of a motor vehicle by an employer to his employee together with the payment of a travelling allowance to such employee, is being actively marketed.

Briefly the main features of the scheme are as follows:

(a) the employer leases a vehicle from a financial institution;

(b) he grants the right of use of such vehicle to the employee;

(c) the employee pays a rental consideration for such vehicle equal to the value of the fringe benefit; and

(d) an allowance based on the rate per kilometre prescribed under the provisions of section 8(1)(b), is paid to the employee.

The effect of the scheme is firstly, that because the allowance is based on the rate per kilometre, the full amount will be deemed to be expended in terms of section 8(1)(b), and secondly, that the consideration paid for the vehicle cancels the taxable benefit in respect of the right of use of the vehicle.

In order to neutralise the effect of this scheme, two amendments are proposed. The first of such amendments is introduced by this subclause and provides that where an employee receives an allowance contemplated in section 8(1)(b) of the principal Act, in respect of a so-called "company car" as envisaged in paragraph 7 of the Seventh Schedule, the portion of the allowance which is expended by the employee for business purposes may not be determined on the rate per kilometre basis, ie actual expenditure must be claimed.

The date of commencement of this amendment is 1 September 1995.

The second of such amendments is introduced by *clause 47(1)(c)*.

Subclause (1)(b): The amendment introduced by this clause should be read with the amendment introduced by *clause 13*. At present section 8(4)(b) of the principal Act provides that recoupments of allowances made under the principal Act in respect of any ship which is replaced by a further ship, will under certain circumstances not be taxed. Such recoupments are, however, to be deducted from the cost of the further ship for the purpose of calculating the allowances under section 14 of the principal Act in respect of such further ship.

The effect of this amendment is that such recoupments may not in future be deducted from the cost of the further ship, where the amount is recouped as a result of a loss, sale or disposal of a ship which takes place on or after 1 April 1995.

Subclause (1)(c): It is proposed that ships and aircraft which are acquired on or after 1 April 1995 will fall within the ambit of section 12C of the principal Act — see *clause 13*. It is therefore also necessary to include these two items within the recoupment provisions of section 8(4)(e) which provides for a roll-over of the recoupment where an asset has been damaged or destroyed and a contract has been concluded to replace such asset within a period of one year and such asset is brought into use within three years and is to be used for a further five years. This subclause introduces such an amendment.

Subclause (1)(d): This amendment is consequential upon the amendment proposed by *subclause (1)(c)*.

CLAUSE 9

Circumstances in which amounts are deemed to have accrued from sources within the Republic: Amendment of section 9 of the principal Act

Subclause (a): Section 9(1)(e) of the principal Act deems amounts which are derived by employees of the Government whilst stationed outside the Republic, to be from a source within the Republic. The argument has been raised that a person who holds a public office does not fall within the ambit of these provisions because he neither renders services for the Government nor does he have an employment contract. In order to remove any uncertainty in this regard these provisions have been extended to include the holder of a public office.

This subclause also deletes obsolete provisions and introduces a textual amendment.

Subclause (b): Section 9(1)(g) deems certain pensions to be from a source within the Republic. With the reincorporation of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei into the Republic, it is

necessary to deem services rendered in such former Republics to be rendered in South Africa to ensure that such pensions granted to persons in respect of such services are taxable in the Republic.

CLAUSE 10

Exemptions: Amendment of section 10 of the principal Act

Subclause (1)(a) and (d): Section 10(1)(h) and (hA) of the principal Act grant an exemption in respect of interest derived *inter alia* by an individual who is not ordinarily resident in the Republic. The concept of "ordinary residence" can be difficult to apply and there are many taxpayers who are abusing this provision by claiming to have emigrated from South Africa, although they still spend much time here. It is accordingly proposed that to qualify for exemption under these provisions, the recipient of interest will in addition to being ordinarily resident outside the Republic, also have to be physically absent from the Republic for a period or periods of at least 183 days in aggregate during the year of assessment in which the interest is received or accrued. This requirement will apply in respect of interest received or accrued on or after 1 April 1995 — see *subclause (2)*.

Subclause (1)(b) and (c): The amendments are of a textual nature.

Subclause (1)(e): The amendment removes a gender discrimination and shall come into operation on a date to be fixed by the Minister of Finance by notice in the *Gazette*.

Subclause (1)(f): The amendment removes a gender discrimination.

CLAUSE 11

Exemption of capital element of purchased annuity: Amendment of section 10A of the principal Act

Subclause (a): This clause removes a gender discrimination. See also *clause 2(a), (c), (d), (e), (f), (g), (h) and (i)*.

Subclause (b): The scrapping of the Sixth Schedule on 1 March 1993 resulted in the final payment under a purchased annuity which becomes payable on the death of the purchaser also falling to be dealt with under the provisions of section 10A of the principal Act. The problem which arose out of this is that having regard to the wording of section 10A(2) the exemption is not available to the purchaser's estate. This proposed amendment therefore extends the exemption conferred by section 10A(2) of the principal Act, to the taxpayer's estate (whether deceased or insolvent) with effect from the repeal of the Sixth Schedule, ie 1 March 1993.

CLAUSE 12

General deductions allowed in determination of taxable income: Amendment of section 11 of the principal Act

Subclause (1)(a): This amendment is consequential upon the introduction of section 24J into the principal Act. See separate explanation on the INCURRAL AND ACCRUAL OF INTEREST.

Subclause (1)(b) and (c): These amendments remove gender discriminations.

CLAUSE 13

Deduction in respect of certain machinery, plant, implements, utensils and articles: Amendment of section 12C of the principal Act

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

Subclause (b): The amendment introduced by this subclause grants a deduction in terms of section 12C of the principal Act in respect of ships and aircraft acquired on or after 1 April 1995. See *clauses 14 and 15*.

Subclauses (c) and (d): These amendments are consequential upon the amendment introduced by *subclause (b)*.

CLAUSE 14

Deductions in respect of ships: Amendment of section 14 of the principal Act

Special write-off provisions apply to the acquisition of certain ships whereby 40% of the cost or estimated cost may be written off in the year in which the contract for the acquisition is concluded and the balance is written off at 10% per annum, commencing in the year in which the ship is brought into use.

The accelerated allowance of 40% was granted to encourage the development of the South African maritime and has served a good purpose in the past. However, the cost to the fiscus by way of foregone revenue has been considerable, particularly because the generous allowance has lent itself to tax avoidance schemes.

The amendments introduced by this clause are directed mainly to withdrawing the above allowances in respect of ships acquired on or after 1 April 1995. See also *clauses 8 and 13*.

Subclause (a): This amendment deletes obsolete provisions.

Subclause (b): This amendment removes a discretionary power of the Commissioner.

Subclause (c): Section 14(1B) of the principal Act provides that where a subsidiary company has purchased a ship from its parent company, the subsidiary company may, under certain circumstances, continue with the allowances in respect of such ship. As the allowances in respect of ships are now to be granted in terms of section 12C of the principal Act, this amendment introduces references to section 12C. The amendment is therefore of a consequential nature.

Subclause (d): The amendment introduced by this subclause restricts the application of section 14(1)(a) and (b) and (1C) to ships which were acquired under a contract which was formally and finally signed by every party to the contract prior to 1 April 1995.

CLAUSE 15

Deductions in respect of aircraft: Amendment of section 14bis of the principal Act

Accelerated depreciation allowances are granted to aircraft owners under the provisions of section 14*bis* of the principal Act at the rate of 40% in the first year during which the aircraft is brought into use, 25% in the second and third years and 10% in the fourth year. In his Budget Speech on 15 March 1995, the Minister of Finance announced that these accelerated depreciation allowances were to fall away and aircraft which were or are

acquired by taxpayers on or after 1 April 1995 will now fall within the ambit of section 12C of the principal Act. The present write-off provisions will, however, continue to apply to an aircraft acquired under a contract which was formally and finally signed by every party to the contract prior to 1 April 1995. This clause introduces these proposed amendments. See also *clause 13*.

CLAUSE 16

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

Subclauses (a), (b), (c) and (g): These amendments are consequential upon the deletion of section 6(3) of the principal Act.

Subclauses (d) and (e): These amendments are of a textual nature.

Subclause (f): This proposed amendment extends the definition of "handicapped person" in section 18(3) of the principal Act to a person who suffers from a mental illness as defined in the Mental Health Act, 1973 (Act No. 18 of 1973).

CLAUSE 17

Set-off of assessed losses: Amendment of section 20 of the principal Act

This amendment deletes obsolete provisions.

CLAUSE 18

Deduction of alimony, allowance or maintenance: Amendment of section 21 of the principal Act

This amendment is consequential upon the deletion of the definition of "married person" in section 1 (*clause 2*) and section 6(3) (*clause 5*) of the principal Act.

CLAUSE 19

Amounts to be taken into account in respect of values of trading stocks: Amendment of section 22 of the principal Act

Subclause (1)(a): This amendment is consequential upon the introduction of section 24J in the principal Act. See also the separate explanation on the INCURRAL AND ACCRUAL OF INTEREST.

Subclause (1)(b): Section 22(5)(d) and (e) of the principal Act provides for the fixing of a LIFO (last-in-first-out) reserve and the phasing out thereof. Both the Transkei and Bophuthatswana Income Tax Acts contained provisions which allowed for trading stock to be valued on a LIFO basis. As a result of the reincorporation of these former Republics into the South African tax system, such valuation basis must be brought in line with the valuation of trading stock in terms of section 22 of the principal Act.

This subclause provides for the introduction of two further paragraphs to section 22(5) of the principal Act, namely, paragraphs (f) and (g).

Paragraph (f) provides that where trading stock held and not disposed of by a person who carried on trade in the former Republic of Transkei or the former Republic of Bophuthatswana, at the end of the last year of assessment in which he was liable for tax under a law of such a former Republic (ie the last year of assessment ending prior to 1 April 1995) has been determined in accordance with the provisions of such a law which are similar to the provisions of section 22 of the principal Act, the provisions of section

22(5)(d) and (e) of the principal Act shall *mutatis mutandis* apply to such person.

Paragraph (g) provides that if paragraph (f) is applicable—

(i) the LIFO reserve will be determined in relation to trading stock held and not disposed of by the taxpayer at the beginning of the year of assessment immediately succeeding the aforementioned last year; and

(ii) the reference in the second proviso to section 22(5)(e) to the amount of the LIFO reserve allowed as a deduction during the 1990 year of assessment, shall be construed as a reference to the amount of LIFO reserve determined in accordance with the new provisions of paragraph (g)(i).

The effect of this proposed amendment is that the LIFO reserve for persons who carried on trade in the former Republic of Transkei or Bophuthatswana will be phased out from the commencement of a year of assessment ending on or after 1 April 1995, ie it will be reduced by 25% in such first year. During succeeding years the LIFO reserve must be reduced by the relevant percentage contemplated in paragraphs (vi) to (x) of the proviso to paragraph (e).

Subclause (1)(c): The second proviso to section 22(8) of the principal Act provides that where a taxpayer distributes any trading stock *in specie*, the market value of such trading stock is to be included in his income. A distribution *in specie* includes a reduction in share capital. The amendment proposed in terms of this clause eliminates any uncertainty whether or not a reduction in capital encompasses a reduction in the share premium of a relevant company.

CLAUSE 20

Limitation of allowances granted in respect of certain assets: Amendment of section 23D of the principal Act

Section 23D provides that where certain assets which are let by a taxpayer to a lessee were acquired from the lessee, the allowances in terms of section 11(e) and (o), 12C, 13, 14 or 14*bis* are calculated on an amount not exceeding the lesser of the cost of such asset to such lessee or the market value thereof on the date of acquisition by the taxpayer. It is proposed that the provisions of section 23D be extended to include assets which consist of intangible property, such as inventions, patents etc contemplated in section 11(gA).

Subclause (1)(b): Schemes have now been devised whereby a sublessee is interposed between the taxpayer and the lessee, resulting in the provisions possibly being circumvented. The proposed amendment now widens the scope of section 23D so that where a sublessee or a connected person in relation to such sublessee is interposed, the asset remains subject to the provisions of section 23D.

The amendments are applicable to assets acquired on or after 1 July 1995.

CLAUSE 21

Incurral and accrual of interest: Insertion of section 24J in the principal Act

See separate explanation on the INCURRAL AND ACCRUAL OF INTEREST.

CLAUSE 22

Determination of taxable income derived from insurance business: Amendment of section 29 of the principal Act

The proposed amendment is consequential upon the introduction of a unified rate structure for natural persons.

CLAUSE 23

Determination of taxable income of certain persons in respect of international transactions: Substitution of section 31 of the principal Act

The amendment proposed by this clause substitutes the provisions of section 31 of the principal Act. These provisions will be used to address tax avoidance schemes involving the manipulation of prices for goods and services under cross border transactions between connected persons. In accordance with international precedent in many developed countries, it is the intention that such transfer pricing rules may also be applied to counter the abusive practice of thin capitalisation.

Thin capitalisation

A company may be financed in various ways, eg by *equity capital* or by *debt capital* or a combination of debt and equity. A company is said to be "thinly capitalised" when its equity capital is small in comparison to its debt capital.

Because a company and its investors may be treated differently for tax purposes, depending on whether the return to the investor originates from debt or equity financing, thin capitalisation may be used as an effective tax avoidance device.

On the company side, payments of interest are generally deductible in the determination of its taxable income while dividends are not, giving a company provided with a loan a taxation advantage over a company provided with equity capital.

In the case of a foreign investor, interest would normally fall within the ambit of section 10(1)(hA) of the principal Act and would therefore be exempt from normal tax. Several countries have introduced comprehensive provisions to counter thin capitalisation, allowing the recharacterisation of debt as equity and consequently the denial of the interest expense as a deduction if the debt/equity ratio exceeds a prescribed ratio. However, such an approach requires very detailed and complex provisions. Many countries on the other hand prefer to apply the *arm's length principle* contained in their transfer pricing legislation to counter such abusive practices.

The proposed provisions of section 31 of the principal Act include within its ambit, the granting of financial assistance. This will enable the Commissioner to adjust the interest rate in terms of a loan which is not market related on the basis of the *arm's length principle.*

The following is provided for in the proposed section 31 of the principal Act.

Subsection (1) introduces definitions in respect of "goods", "international agreement" and "services". It is important to note that paragraph (c) of the definition of "services" includes the granting of financial assistance, including a loan, advance or debt and the provision of security or a guarantee. This ensures that a scheme involving thin capitalisation could be dealt with under the provisions of section 31.

Subsection (2) provides that the Commissioner, in the determination of a taxpayer's taxable income, may adjust the consideration in respect of a transaction to reflect an arm's length price for the goods or services.

These provisions may in a broad sense be regarded as transfer pricing rules.

Subsection (3): Although the aforegoing provisions may also be applied to counteract thin capitalisation schemes, the provisions of the proposed subsection (3) are more specifically aimed at counteracting such schemes and include in the net, not only connected persons but also persons in whom the investor has a 25% interest as well as schemes whereby back-to-back financial assistance is granted.

It must be mentioned that the Commissioner's discretion is subject to objection and appeal in terms of section 3 of the principal Act.

Finally, any amount adjusted or disallowed in terms of this section will be deemed to be a dividend for STC purposes. See also *clause 30.*

CLAUSE 24

Determination of taxable income derived by persons previously assessable under certain other laws: Insertion of section 37F in the principal Act

Determination of taxable income derived from small business undertakings: Insertion of section 37G in the principal Act

The first amendment introduced by this clause, namely the insertion of section 37F, results from the reincorporation of the former self-governing territories and the former Republics of Transkei, Bophuthatswana, Venda and Ciskei into the South African tax system.

With such reincorporation, regard must be had to anything that was done or occurred in a previous year which could have a bearing on the taxpayer's taxable income under the principal Act. For example, if a taxpayer had an asset in respect of which a depreciation allowance was granted under the tax laws of a former Republic, the tax value of such asset brought forward from the previous year will be taken into consideration when determining an allowance under the principal Act. Likewise an assessed loss brought forward from the previous year will be taken into consideration when determining the taxable income under the principal Act.

A transitional provision was introduced by section 42 of the Income Tax Act, 1994, which dealt only with the former self-governing territories and the former Republic of Venda. Such transitional provision has been repealed (see *clause 55*) and is replaced by a permanent section introduced into the principal Act in terms of this clause.

The second amendment introduced by this clause deals with the determination of taxable income derived by a small business undertaking.

The Commission of Inquiry into certain aspects of the tax structure of South Africa under the chairmanship of Prof M Katz (the Tax Commission) proposed measures which would reduce the compliance burden and cash flow constraint of small enterprises. One of the recommendations is that small enterprises be allowed to elect to be taxed on a cash-flow basis which would allow revenue and expenditure to be recognised only when cash is received or payment is made. The recommendation was accepted in principle as relief to small business in this area will ease the magnitude of their working capital requirements.

Before introducing specific legislation in this regard, it is necessary to consult further with interested parties and organisations to establish

acceptable criteria to identify a small business undertaking and the most effective relief measures that can be granted.

This amendment, therefore, merely introduces enabling legislation, allowing the Minister of Finance to issue regulations to facilitate tax compliance requirements in respect of small business undertakings.

A regulation made by the Minister in terms of this provision may—

(a) prescribe what constitutes a small business undertaking having regard to a variety of circumstances such as the nature, turnover, taxable income or profit etc, of the undertaking;

(b) provide for a variation of any provision of the principal Act relating to the determination of the taxable income derived from a small business undertaking;

(c) provide for the relaxation of various administrative requirements; and

(d) generally make such other provisions as the Minister considers necessary to facilitate the carrying on of small business undertakings.

CLAUSE 25

Non-resident shareholders' tax: Repeal of Part III of Chapter II of the principal Act

The Tax Commission pointed out that South Africa is in a unique position amongst competing developing economies in that non-resident equity investors are taxed at a comparatively higher rate than domestic equity investors, the difference being the imposition of non-resident shareholders' tax (NRST). In addition, this creates an imbalance between foreign debt and equity investments as interest flowing to non-residents is exempt from taxes.

It is accordingly proposed that dividends (other than interim dividends) declared on or after 1 October 1995 and interim dividends which have been approved by the board of directors or any other authorised person on or after that date, be exempt from non-resident shareholders' tax.

This clause therefore repeals Part III of Chapter II which contains sections 41 to 47, inclusive, of the principal Act.

CLAUSE 26

Donations by a body corporate at the instance of any person: Substitution of section 57 of the principal Act

This amendment removes a gender discrimination and has the effect that the R20 000 annual exemption from donations tax will be available to both husband and wife.

CLAUSE 27

Donations by spouses married in community of property: Insertion of section 57A in the principal Act

This amendment is consequential upon the removal of the gender discrimination in section 57 of the principal Act. See *clause 26*.

With the extension of the R20 000 exemption to each spouse, it has become necessary that specific provision be made for donations which are made out of a joint estate of spouses married in community of property. This clause therefore provides that where a person who is married in community

of property makes a donation out of the joint estate, such donation shall be deemed to have been made in equal shares by the spouses. A R30 000 donation by the wife will therefore be deemed to be a donation of R15 000 made by the wife and a donation of R15 000 made by the husband.

Where the donation is made out of property which is excluded from the joint estate, the above rule will not apply and the donation will be treated as being made solely by the person making the donation.

CLAUSE 28

Levy on financial services: Amendment of section 64A of the principal Act

Section 64A of the principal Act provides for a levy on financial services. This levy is payable *inter alia* by banks. The Banks Amendment Act, 1994 (Act No. 26 of 1994), has extended the provisions of the Banks Act, 1990 (Act No. 94 of 1990), to branches of foreign institutions.

The amendments proposed by this clause are therefore consequential upon such extended provisions and has the effect that such branches will also be subject to the levy.

CLAUSE 29

Levy and recovery of secondary tax on companies: Amendment of section 64B of the principal Act

Subclause (1)(a): This amendment is consequential upon the amendment introduced by *subclause (1)(b)*.

Subclause (1)(b): Section 64B(5)(c) provides an exemption from secondary tax on companies (STC) in respect of dividends declared out of profits derived during years of assessment ending not later than 31 March 1993, if such dividend was declared in the course of the liquidation or winding up of a company, or in anticipation of the deregistration of a company under a rationalisation scheme envisaged in section 48 of the Taxation Laws Amendment Act, 1988.

It is proposed to extend the provisions of the exemption in three ways:

(1) to allow that the dividend may also be distributed in *anticipation* of liquidation or winding up;

(2) to remove the restriction in respect of companies who are deregistering under a rationalisation scheme, ie dividends declared by any company in anticipation of deregistration will now qualify for the exemption; and

(3) to exempt all dividends distributed out of capital profits irrespective of when such profits were derived, if such distribution takes place in anticipation of the liquidation or winding up or deregistration of the company.

It is, however, also proposed that a proviso be added to this section providing that where the company is not liquidated or deregistered within six months from the dividend declaration or such further period as is in the circumstances of the case reasonably necessary, the exemption shall be deemed not to have applied, STC shall become payable and such STC shall be recoverable from the shareholders in the same proportion as the dividend was distributed.

Subclause (1)(c): The Income Tax Act, 1994, introduced an exemption from STC in respect of dividends declared by a wholly owned subsidiary to its holding company. The STC is therefore only levied once the dividends flow out of the group to the ultimate shareholders. Where, however, the

holding company is an exempt institution, no STC would be levied when the dividends are declared to shareholders as the exempt institution is also exempt from STC.

The amendment introduced by this subclause therefore firstly excludes exempt institutions from the exemption provided for in section 64B(5)(f).

Secondly, two further restrictions are being introduced in relation to the subsidiary in that the holding company must have held all the shares in the subsidiary for at least 12 months prior to the declaration of the relevant dividend and that the dividend must be declared solely out of profits earned by the subsidiary whilst it was held by the holding company. Furthermore dividends are excluded from the term profits.

The above proposed amendments shall come into operation on the date of promulgation of this Act and apply to dividends declared on or after that date.

CLAUSE 30

Secondary tax on companies: Certain amounts distributed deemed to be dividends: Amendment of section 64C of the principal Act

Subclauses (a) and (b): These amendments are of a textual nature.

Subclause (c): This amendment deems an amount which has been adjusted or disallowed in terms of section 31 of the principal Act, to be a dividend for STC purposes.

Subclause (d): At present section 64C(4)(h) provides that loans or advances made in anticipation of the liquidation of a company will not be deemed to be a dividend for purposes of section 64B. This exemption was necessitated by the fact that only capital profits distributed *during the course of* (and not *in anticipation of*) the liquidation or winding up of a company are not subject to STC. With the proposed extension of the provisions of section 64B(5)(c) (see *clause 29(1)(b)*) it is no longer necessary to provide a separate exemption for such loans or advances as the provisions of section 64B(5)(c) will apply thereto.

This subclause therefore deletes section 64C(4)(h) of the principal Act.

CLAUSE 31

Assessments and recording thereof: Amendment of section 77 of the principal Act

This amendment removes a gender discrimination.

CLAUSE 32

Additional assessments: Amendment of section 79 of the principal Act

The amendment is consequential upon the deletion of paragraph 12 of the Fourth Schedule to the principal Act.

CLAUSE 33

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

At present the principal Act provides that companies with a taxable income in excess of R20 000 and individuals with a taxable income in excess

of R50 000 may make a third provisional tax payment within six months after the end of their year of assessment, to avoid the liability for interest which may become payable by them in terms of section 89*quat* of the principal Act. The majority of individuals and companies use a 28/29 February year-end and are thus required to render both their first provisional tax payment for the current year and their third such payment for the preceding year, on 31 August. This results in a peak in the workload of persons completing provisional tax returns and Inland Revenue, which has to process them.

To alleviate this peak, it is proposed that the "effective date" by which the third provisional tax payment may be made, be extended for one month until 30 September in the case of individuals as well as companies who use a 28/29 February year-end.

This clause introduces the proposed amendment to the definition of "effective date" in section 89*quat* of the principal Act which will apply to any provisional tax payment made in respect of the 1995 and subsequent years of assessment.

CLAUSE 34

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

The amendments introduced by this clause remove gender discriminations.

CLAUSE 35

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

The amendment introduced by this clause removes a gender discrimination and applies to any person who retires from employment on or after a date to be fixed by the Minister of Finance by notice in the *Gazette*.

CLAUSE 36

Lump sum benefits: Amendment of paragraph 4 of the Second Schedule to the principal Act

The amendment introduced by this clause removes a gender discrimination and applies to any person who retires from a fund on or after a date to be fixed by the Minister of Finance by notice in the *Gazette*.

CLAUSE 37

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

The effect of the proposed amendment is that 35% of the allowance contemplated in section 8(1)(d) which is granted to holders of a public office will be subject to employees tax deductions. The amendment shall apply from the commencement of years of assessment commencing on or after 1 March 1996.

CLAUSE 38

Employees tax deductions: Amendment of paragraph 2 of the Fourth Schedule to the principal Act

This amendment is consequential upon the deletion of section 6(3) and the introduction of the age rebate in section 6(2)(b).

CLAUSE 39

Employees tax deductions: Substitution of paragraph 11 of the Fourth Schedule to the principal Act

The amendment is consequential upon the deletion of paragraph 12 of the Fourth Schedule to the principal Act.

CLAUSE 40

Standard Income Tax on Employees (SITE): Amendment of paragraph 11B of the Fourth Schedule to the principal Act

Subclause (a): The amendment is consequential upon the deletion of paragraph 12 of the Fourth Schedule to the principal Act.

Subclause (b): The amendment introduced by this clause removes a gender discrimination and deletes obsolete provisions.

Subclause (c): The amendment is consequential upon the deletion of paragraph 12 of the Fourth Schedule to the principal Act and now requires that when determining the amount of SITE, the employer must be in possession of a written declaration by the employee that he would be over 65 years on the last day of the year of assessment before allowing the rebate in respect of a person who is over the age of 65 years.

CLAUSE 41

Employees tax deductions: Deletion of paragraph 12, and the heading thereto, of the Fourth Schedule to the principal Act

The amendment deletes obsolete provisions.

CLAUSE 42

Employees tax deductions: Deletion of paragraph 12A, and the heading thereto, of the Fourth Schedule to the principal Act

This amendment is consequential upon the introduction of a unified rate structure.

CLAUSE 43

Employees tax deductions: Amendment of paragraph 15 of the Fourth Schedule to the principal Act

This amendment deletes obsolete provisions.

CLAUSE 44

Provisional tax: Amendment of paragraph 19 of the Fourth Schedule to the principal Act

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

Subclause (c): This amendment removes a gender discrimination.

CLAUSE 45

Employees tax deductions: Amendment of paragraph 30 of the Fourth Schedule to the principal Act

The amendment is consequential upon the deletion of paragraph 12 of the Fourth Schedule to the principal Act.

CLAUSE 46

Fringe benefits: Amendment of paragraph 5 of the Seventh Schedule to the principal Act

Paragraph 5(2) of the Seventh Schedule provides that where an asset consisting of movable property (excluding marketable securities) is acquired by an employer in order to dispose of it to the employee, the value to be placed on such asset shall be the cost thereof to the employer.

Where an asset was "acquired" by an employer by way of a financial lease, he is normally entitled to acquire the asset on termination of the lease. The cost to the employer on termination of the lease is normally negligible, although the actual value of the asset may be much more.

This clause therefore introduces an amendment to the first proviso to paragraph 5 which excludes a leased asset from the provisions of the proviso, thus having the effect that such an asset will have to be valued at market value in the determination of the value of the taxable benefit.

CLAUSE 47

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

Subclause (1)(a) and (b): Section 32 of the Income Tax Act, 1994, introduced an amendment to provide for the determination of the "determined value" of a motor vehicle in cases where an employee is transferred to an associated institution and retains the right of use of the same motor vehicle. The amendment did not, however, address the problem which is being experienced and has therefore been reversed.

The proposed amendment now addresses the following situation.

Where an employee is transferred from one company to another within the same group and the new employer acquires a motor vehicle which had previously been allocated to the same employee to enjoy the right of use thereof, the new employer is entitled to base the determination of the "determined value" on his cost price of the motor vehicle, effectively reducing the taxable benefit of the employee. The proposed amendment adds a paragraph (b) to the proviso to paragraph 7(1) of the Seventh Schedule, which provides that in cases where an employee and vehicle are both transferred to an associated institution, the determined value of the vehicle shall be determined as at the date on which the employee for the first time became entitled to the right of use of the vehicle.

Subparagraph (1A) which was introduced in 1994 is deleted by *subclause (1)(b)*.

Subclause (c): This amendment also addresses the scheme described in *clause 8(1)(a)*.

The proposed amendment prohibits the employee from reducing his taxable benefit by any consideration paid, if he is paid an allowance contemplated in section 8(1)(b).

It is proposed that this amendment comes into effect on 1 September 1995.

Subclause (1)(d): It has become common practice for employers to provide an employee with the use of a second or even third motor vehicle which is used mainly for private purposes by the employee or his family. In such a case, the employee is saved the cost of having to acquire a family vehicle and it is considered that the employee should be taxed on a value which represents this real benefit more closely.

In his Budget Speech on 15 March 1995, the Minister of Finance proposed that with effect from 1 May 1995 the value of the taxable benefit to be placed on any second or subsequent vehicle, be 2% per month of the determined value of the motor vehicle.

The amendment proposed by this subclause, gives effect to this proposal.

As from 1 May 1995 the value of the taxable benefit in relation to the vehicle having the highest value will be calculated at 1,2% per month of the determined value of such vehicle, while the value of the taxable benefit in relation to every other vehicle will be calculated at 2% per month of the determined value of such other vehicle.

CLAUSES 48 AND 49

Fringe benefits: Amendment of paragraphs 11 and 12 of the Seventh Schedule to the principal Act

These amendments are consequential upon the deletion of paragraphs 13A and 14 of the Seventh Schedule to the principal Act. See *clauses 50 and 51*.

CLAUSES 50, 51 AND 52

Fringe benefits: Deletion of paragraphs 13A, 14 and 15, and the headings thereto, of the Seventh Schedule to the principal Act

These amendments delete obsolete provisions.

CLAUSE 53

Amendment of section 24 of the Income Tax Act, 1994

Section 24(1)(g) of the Income Tax Act, 1994, introduced three new paragraphs into section 64B(5) of the principal Act, namely paragraphs (e), (f) and (g). As STC was introduced with effect from 17 March 1993, the commencement date for this section was also given as that date. One of the new paragraphs, namely (f), introduced a voluntary exemption from STC where a subsidiary declares a dividend to its holding company. That paragraph provides that the company may make an election that a dividend be exempt from STC in terms of such paragraph if a written election has been submitted to the Commissioner by not later than the last day on which STC would have been payable, *or such later date as the Commissioner may approve*. The intention was that in exercising his discretion, the Commissioner would only allow elections made in respect of dividends declared after the date of promulgation of the Income Tax Act, 1994, namely 25 November 1994. This has given rise to numerous enquiries and requests that the Commissioner

should give consideration to elections made after 25 November 1994, but in respect of dividends declared prior to that date. This was never the intention and in order to clarify the position it is proposed that the date of commencement of section 24(1)(g) of the Income Tax Act, 1994, in so far as it relates to section 64B(5)(f) of the principal Act, be deemed to be 25 November 1994.

CLAUSE 54

Amendment of section 41 of the Income Tax Act, 1994

The proposed amendment sets out in more detail the dates on which the various sections of the principal Act became applicable to taxpayers in the former Republic of Venda.

CLAUSE 55

Repeal of section 42 of the Income Tax Act, 1994

The provisions of section 42 of the Income Tax Act, 1994, were of a transitional nature and have now been incorporated into the proposed section 37F. See *clause 24* in this regard. It is therefore proposed that this section be repealed.

CLAUSE 56

Specific provisions for certain sections of the principal Act as applied to the former Republics of Transkei, Bophuthatswana, Venda and Ciskei

With the reincorporation of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei into the South African tax system certain transitional measures have to be provided for in relation to benefit funds, pension funds, provident funds and retirement annuity funds.

This proposed amendment provides that where:

(a) a benefit fund, pension fund, provident fund or retirement annuity fund was approved for purposes of the tax laws of the former Republic of Transkei, Bophuthatswana, Venda or Ciskei, they will continue to be accepted as approved for purposes of the South African tax system until 28 February 1997. This concession is, however, only applicable if the funds submit copies of their rules to the Commissioner before 29 February 1996. The proviso to *subclause (1)* provides that if the Commissioner is satisfied that such a fund should not have been approved, he may determine that the provisions of this clause will not apply to such fund. The discretion exercised by the Commissioner is subject to objection and appeal; and

(b) a superannuation, pension, provident or dependants' fund or pension scheme was established by a law of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei or such a fund was established for the benefit of any local authority of such former Republic, they will be deemed to have been established by law in the Republic.

CLAUSE 57

Application of the principal Act

The proposed amendment gives the authority for the principal Act (excluding the provisions relating to NRST) as well as any regulation,

Proclamation or Government Notice issued in terms of the Act, to apply to the former Republics of Transkei, Bophuthatswana and Ciskei.

The following dates of commencement are applicable:

(a) for purposes of the levy on financial services — from a calendar quarter ending on or after 30 September 1995;

(b) for STC purposes — to any dividend declared during a year of assessment commencing after 1 April 1995;

(c) where the provisions relate to a year of assessment —

(i) for persons other than companies — from the commencement of years of assessment ending on or after 29 February 1996; and

(ii) for companies — from the commencement of years of assessment ending on or after 1 April 1995; and

(d) in any other case — from 1 March 1995.

Subclause (2)(a) provides that where a tax which is similar to a tax imposed by the principal Act is also imposed under a law of a former Republic, such law will not be applicable.

Subclause (2)(b): Where a law of a former Republic imposes a tax which is not similar to a tax imposed under the principal Act, such law will no longer apply in respect of —

(i) the former Republic of Transkei, to any —

(aa) undistributed profits tax payable in respect of years of assessment ending after 1 April 1995;

(bb) non-residents tax on interest payable in respect of interest accruing during years of assessment ending after 1 April 1995;

(cc) special tax, local tax, general stock tax or general levy payable in respect of years of assessment ending after 1 April 1995; and

(dd) tax on investment income payable in respect of interest paid or dividends declared during years of assessment ending after 1 April 1995;

(ii) the former Republic of Bophuthatswana, to any —

(aa) non-residents tax on rentals payable in respect of any rental received or accrued;

(bb) management fees tax payable in respect of management fees derived;

(cc) non-resident partnership profits tax payable in respect of any profits accrued; and

(dd) withholding tax on fees paid to non-residents payable in respect of any fees derived,

during years of assessment ending after 1 April 1995; and

(iii) the former Republic of Ciskei, to any withholding tax on interest, royalties, certain salaries etc and loans or advances payable in respect of any amount paid or payable during years of assessment ending after 1 April 1995.

This amendment together with that introduced by *clause 58(3)* has the effect that all taxes imposed in terms of the laws of former Republics, will no longer be imposed as from 1 October 1995.

Subclause (3) provides that where any reference is made in the principal Act to a law which is not yet applicable in the former Republics of Transkei, Bophuthatswana and Ciskei, such a law shall be deemed to be applicable in the said former Republics for purposes of the principal Act.

CLAUSE 58

Repeal of laws

The tax laws of the former Republics of Transkei, Bophuthatswana and Ciskei are repealed together with the Taxation Laws Amendment Act, 1987, of the former Republic of Venda which was not repealed when repealing Venda's tax laws last year.

Subclause (2) provides for the recovery of any outstanding taxes or levies in terms of certain laws repealed.

Subclause (3) provides that the tax laws of the former Republics are repealed with effect from 1 October 1995. This has the effect that, read together with *clause 57(2)(b)*, various taxes on dividends are still payable in respect of dividends declared up to 30 September 1995. These taxes have been retained for a period to compensate partially for the fact that no STC is payable on dividends in the former Republics. However, the date on which the imposition of such taxes on dividends will cease, corresponds with the date of repeal of NRST in terms of the principal Act.

CLAUSE 59

Commencement of certain amendments

This clause provides that the amendments introduced by this Bill will apply for purposes of assessments in respect of normal tax, except where otherwise stated in the amendment itself or where the context otherwise indicates, as from the commencement of years of assessment ended or ending on or after 1 January 1996.

CLAUSE 60

This clause provides the short title of the Bill.