REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 2000

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INTRODUCTION

The Taxation Laws Amendment Bill, 2000, introduces amendments to the Marketable Securities Tax Act, 1948, the Transfer Duty Act, 1949, the Estate Duty Act, 1955, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, the Eskom Act, 1987, the Value-Added Tax Act, 1991, the Income Tax Act, 1993, the Tax on Retirement Funds Act, 1996, the Uncertificated Securities Tax Act, 1998, the Demutualisation Levies Act, 1998, the Eskom Amendment Act, 1998, and the Skills Development Levies Act, 1999.

TAXATION OF FOREIGN DIVIDENDS

As was announced by the Minister of Finance in his Budget Review this year, a residence basis of taxation will be adopted with effect from years of assessment commencing on or after 1 January 2001. As a phased approach to this basis, foreign dividends became taxable with effect from 23 February 2000. Furthermore this measure brings South Africa a step closer towards internationally accepted tax principles for taxing foreign dividends. It also neutralises the effect of certain tax avoidance schemes to exploit the South African tax base.

In order to give effect to the proposal relating to the taxation of foreign dividends, it is proposed that a new section 9E be included in the Income Tax Act, 1962. Various other consequential amendments to for example the definitions in section 1 of the Act, the credit provisions in section 6*quat*, the taxation of foreign investment income provisions in section 9C, the controlled foreign entity provisions in section 9D and the provisions regulating Secondary Tax on Companies (sections 64B and 64C) are also proposed.

The new section 9E which mainly regulates the taxation of foreign dividends contains a number of definitions such as “controlled company”, “controlling company”, “designated country”, “effective date”, “fixed capital”, “foreign dividend”, “group of companies”, “proportionate amount of the profit”, “qualifying interest” and “resident”.

One of the most important definitions is the concept of a “foreign dividend”.

A foreign dividend is in broad terms defined as a dividend received by or which accrued to a person from a company to the extent that the dividend is declared from profits—

- derived from a source outside the Republic and which are not deemed to be from a source in the Republic; or
- deemed to be from a source in the Republic which have not been taxed in the Republic.

The definition of a foreign dividend also makes provision that certain amounts are deemed to be foreign dividends. These include—

- certain amounts which are deemed to be dividends declared by any company as contemplated in section 64C; or
- amounts derived by the shareholder from the disposal of any share in a company if such amounts represent undistributed profits in such company which were available for distribution to such shareholder.

These provisions are dealt with more fully under the sub-heading *Anti-avoidance measures.*

The definition of "resident" as contained in section 9C is used for purposes of the taxation of foreign dividends. The other definitions are to a large extent self-explanatory.

In terms of subsection (2) of the proposed legislation a foreign dividend is deemed to be from a source in the Republic.

Subsections (3) and (4) on the other hand provide for the determination of the amount of the foreign dividend that is to be included in a resident's gross income. In essence it provides that in the case of residents with shareholdings of 10 per cent or more, the dividend received is to be grossed up by the amount of the underlying corporate taxes paid in respect of the profits from which the dividend is ultimately distributed plus any withholding tax paid in respect of the dividend. In the case of portfolio shareholders (residents with a shareholding of less than 10 per cent) the dividend received is grossed up by the amount of the withholding tax only.

In the case of unit portfolios, which are defined to be companies for income tax purposes it is proposed that income in the form of foreign dividends be treated on the same basis interest income is treated. Section 10(1)*(iA)* is to be amended to provide that foreign dividends be exempt from tax in the hands of those unit portfolios if they had been distributed or if the Commissioner is satisfied that it will be distributed to unit holders. Section 9E(5) regulates the situation where the unit portfolio on-distributes foreign dividends, received by it or which accrued to the unit portfolio, to unit holders. Where such a distribution takes place the foreign dividend is deemed to have been declared directly to the unit holders. This will enable the unit holder to be taxed on the foreign dividend at the tax rates applicable to the unit holder, to claim withholding tax imposed in respect of the foreign dividend as a credit against the South African tax liability and in the case of an individual to utilise the applicable exemptions in respect of foreign dividend and interest income.

In order to reduce the administrative impact and compliance burden of determining the underlying corporate taxes and withholding tax imposed on a dividend, provision has been made for a taxpayer to elect that only the net amount of the dividend received after the deduction of foreign withholding taxes or the amount accrued to the resident reduced by the amount of foreign withholding tax imposed in respect of the dividend be included in the gross income of the resident. The election is contained in section 9E(6) and may be made on an annual basis. If the election is made it is only valid in respect of all dividends received by or accrued to the resident during the year of assessment in respect of which the election is made. Where the election is made no adjustment needs to be made in respect of underlying corporate taxes imposed on the profits declared as a dividend. The effect of the election is that a deduction is granted for foreign taxes attributable to the dividends included in the gross income of the resident during the relevant year of assessment and that those foreign taxes will therefore not be taken into account in granting foreign tax credits in terms of section *6quat.*

Certain relief measures are introduced in order to avoid economic double taxation. The relief measures can be subdivided in two categories:

- Firstly, an exemption method in terms of which the foreign dividend is exempt from tax.
- Secondly, a credit method in terms of which the dividends are taxed in South Africa, but credit is allowed in respect of certain foreign taxes paid.

Exemption mechanism

It is an accepted international principle (e.g. in Australia) to exempt certain foreign dividends completely. The rationale therefor is that it is expedient from an administrative point of view to exclude dividends in circumstances where the tax payable on the underlying profits to which the dividend relates is of such a magnitude that a credit equal to virtually the full amount of the domestic tax will have to be granted.

The following rules are proposed to regulate the exemption mechanism:

De minimis rule for South African resident companies — Section 9E(7)(a)

It is proposed that a *de minimis* rule be included in the Act, to provide that where the foreign income of a South African resident company, excluding income deemed to be from a source in the Republic and subject to South African tax, does not exceed 25 per cent of the total receipts and accruals of the company, the portion of the dividend relating to the foreign profits will not be regarded as a foreign dividend. This will avoid the necessity of calculating and taxing a small percentage of a dividend as a foreign dividend and to thereby reduce the administrative and compliance burden in administering this proposal.

<u>Example</u>

A South African resident company declares a dividend. Its undistributed reserves consist of profits which arose from South African sourced receipts or accruals (R75 million) and profits from receipts or accruals attributable to operations in the United Arab Emirates where it was not subject to tax on income (R25 million).

The company declares a dividend of R50 million. The dividend distributed to shareholders of the company who are South African residents will normally constitute a foreign dividend to the extent it was declared from foreign profits not taxed in South Africa. However, as 75 per cent or more of the receipts or accruals were derived from a source in the Republic no portion of the dividend declared constitutes a foreign dividend.

South African incorporated companies deriving dividends from foreign sources — Section 9E(7)(b)(i)

It is proposed that any dividend declared by a South African resident company from profits derived in and outside the Republic should be apportioned between South African and foreign source income. Only that portion of the dividend declared from profits available for distribution, which relates to income derived from sources outside the Republic should be regarded as a foreign dividend. This may, however,

effectively mean that dividends received by the company prior to 23 February 2000, will also be taxed retroactively if the dividends declared from these profits are taxable. It is, therefore, proposed that the on-distribution of foreign dividends which accrued to such a company prior to 23 February 2000, be excluded from the tax on foreign dividends.

South African incorporated companies with foreign branch operations — Section 9E(7)(b)(ii)

A dividend declared by a South African incorporated company from profits of a foreign branch will be dealt with in a similar manner as all other foreign dividends, as set out hereunder, and may, therefore, be excluded from South African tax if it meets certain other requirements. Such a dividend will, for example, not be taxable if—

- the dividend is declared from profits repatriated to the Republic prior to the effective date; or
- the branch is operated in a designated country which has a tax rate and system which is substantially the same as that of South Africa.

Companies listed on the Johannesburg Stock Exchange (JSE) - Section 9E(7)(c)

In order to address the administrative implications in respect of a large number of portfolio shareholders and the potential impact on the local market and the economy, it is proposed that the provisions relating to the taxation of foreign dividends should not apply to dividends declared by companies listed on the JSE. This will, however, only be the case where dividends are distributed to a resident shareholder that, together with connected persons in relation to such shareholder, has an interest of less than 10 per cent in the equity share capital of the listed company, and if at least 10 per cent of the equity share capital of the company is held in aggregate by South African residents. A similar exemption is proposed in respect of the proportionate amount of investment income deemed to be the income of resident shareholders in a listed company in terms of the controlled foreign entity provisions of section 9D. This exemption will apply where the proportionate amount of investment income is calculated with reference to the income of the listed company or of a subsidiary of the listed company. This measure is contained in the proposed new section 9D(9)*(g)*. If the listed company does not comply with the 10 per cent aggregate shareholding requirement on the date of declaration of the dividend and the foreign profits were not taxed in South Africa, the shareholders will be taxed on the foreign dividends and the credit provisions described below will apply.

Any foreign dividends received by JSE listed companies from their subsidiaries will be subject to the normal provisions relating to foreign dividends.

In order to remove the possibility of foreign companies operating in low tax rate countries listing on the JSE after the effective date in order to exploit the above exemption, it is proposed that a system be introduced whereby such listed companies will have to be approved before residents will qualify for the exemption.

Dividends received by shareholders with at least a 10 per cent shareholding (Section 9E(7)(d))

It is proposed that certain foreign dividends declared from profits that are taxed on a similar basis to that of the Republic and at a rate of 27 per cent or higher should be

exempt. In this regard, it was announced that certain treaty countries with a basis and rate of tax similar to the Republic, will be designated by the Minister of Finance by way of notice in the *Gazette*. The powers to designate such countries are contained in section 9E(8).

Any foreign dividends received from profits generated in any designated country will be exempt to the extent that the underlying profits were subject to tax at a rate of at least 27 per cent.

The exemption will not apply in respect of dividends distributed to shareholders who hold less then 10 per cent of the equity share capital in a company.

<u>Example</u>

A resident owns 10 per cent of the shares in a United States company which provides professional services. The profits of the company available for distribution have been taxed at a statutory tax rate of 35 per cent. A dividend of R95 000 is paid and withholding tax of R5 000 was imposed on the resident.

As the resident received the dividend from a company in a designated country, the underlying profits were taxed at a statutory rate of at least 27 per cent and the resident owns 10 per cent of the equity share capital of the company declaring the dividend, the dividend will be exempt. The withholding tax may not be set off against the resident's South African tax liability as the dividend is exempt.

Avoidance of double taxation — Section 9E(7)(e)

In order to avoid the economic double taxation of profits distributed by way of a dividend to a resident, provision is made for an exemption of the portion of a dividend declared from profits which-

- relate to investment income that has already been included in the income of a resident shareholder in terms of the provisions of section 9D.
- have or will be included in the taxable income of that company in terms of the Income Tax Act.

No credit for foreign taxes

Where a dividend is exempt in full or in part, the foreign taxes on income in respect of the profits from which the exempt dividend is distributed as well as foreign withholding taxes in relation to the dividend, will not be allowed as a credit against the South African tax liability. The reason therefor is that the exempt dividend is not subject to tax in South Africa.

Credit mechanism — Section 6*quat*

Determination of foreign tax paid

The rules governing the credit mechanism are to a large extent contained in the revised section 6*quat* and the new section 9E(3) and (4).

Where resident shareholders hold at least 10 per cent of the equity share capital of the company declaring a foreign dividend, but the underlying profits were not taxed at a comparable rate and basis to that of South Africa in a country designated by the Minister of Finance, no exemption will apply. In such instance the dividend will be taxed but foreign tax payable on the underlying profits from which the dividend was distributed will be allowed as a credit against the South African income tax payable. The amount to be taxed in the hands of the resident is not the actual dividend, but the grossed-up amount which is equivalent of the pre-tax profit out of which the dividend was declared. A credit will, however, be granted for both the corporate tax and withholding taxes paid in respect of that profit.

The tax to be taken into account is not limited to the foreign tax paid by the company declaring the dividend, but a look-through approach will be adopted to determine the tax on the underlying profits. For this purpose a "qualifying interest" is defined which in essence means the indirect interest held by a resident shareholder through a chain of companies where each company in the chain of companies holds a direct interest of at least 10 percent in the company in the next tier. This is also the method used to a certain extent in a number of countries, but specifically in the United Kingdom. However, the UK test is limited to residents which are companies and it also includes a 10 per cent direct or indirect control of voting power test between the different tiers of companies.

Where the income from which the dividend is distributed is derived from more than one source of profits, the dividend will be deemed to be distributed on a *pro rata* basis from the profits derived by the company from the different sources.

Income in the context of taxes on income includes profits, income and gains. Furthermore, taxes on income imposed by national and certain lower tiers of government in a foreign country and capital gains taxes will qualify as a rebate against South African tax liability.

The following examples illustrate the credit mechanism:

Example 1

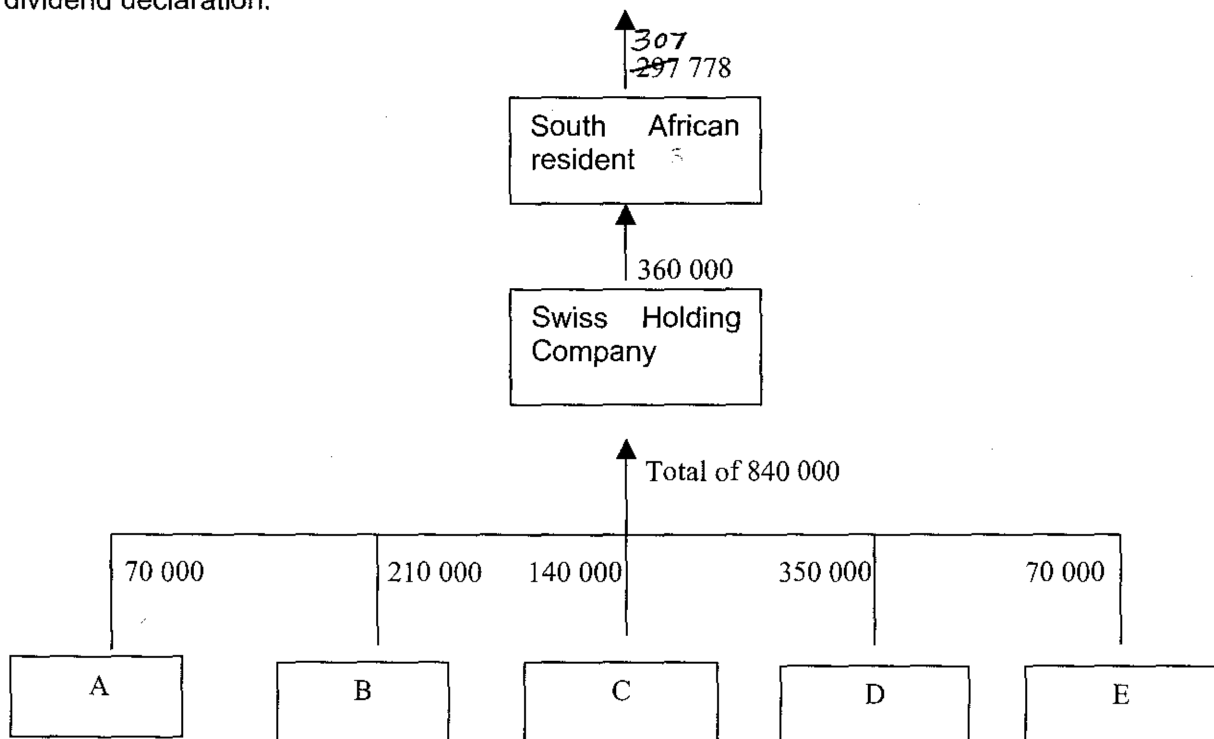
The South African resident owns all the shares in its foreign holding company in Switzerland. The Swiss company has interests in five companies:

- Company A, a wholly owned subsidiary in Namibia
- Company B, a wholly owned subsidiary in Switzerland
- a 50 per cent shareholding in company C, located in Australia
- a 50 per cent shareholding in company D, located in the Bahamas
- a 5 per cent interest in company E, located in Israel

The profits of the Swiss holding company available for distribution in respect of its financial year ending 31 December 1999 consist of dividends received in prior years. The relevant information from the perspective of the Swiss holding company is as follows: (C, D and E's figures reflect amounts attributable to the Swiss holding company's *pro rata* interest in the those companies)

Company	A R '000	B R '000	C R '000	D R '000	E R '000	Swiss Hold Co
Income	105	250	200	350	150	840
Tax	35	40	40	0	50	60
Profit	70	210	160	350	100	780
Dividend	70	210	160	350	100	390
Withholding	0	0	20	0	30	30
Net dividend	70	210	140	350	70	360

None of the companies received investment income which was imputed to the South African resident in terms of the provisions of section 9D. The Swiss company declares a dividend of R390 000 (50 per cent of its profits available for distribution) on 15 March 2000 and the South African resident distributes all its profits by way of a dividend declaration.



The taxable portion of the foreign dividend is determined as follows:

- Dividend declared by the Swiss company is deemed to be distributed pro rata from all sources of profit

- Profits distributed
  - A – R35 000 i.e. (70 000 ÷ 2), (designated; >10%, tax rate 35%) exempt
  - B – R125 000 i.e. (250 000 ÷ 2)(not designated) tax grossed-up profit
  - C – R70 000 i.e. (140 000 ÷ 2)(designated; >10%; tax rate 36%) exempt
  - D – R175 000 i.e. (350 000 ÷ 2)(not designated) tax grossed-up profit
  - E – R50 000 i.e. (100 000 ÷ 2)(< 10% interest) tax gross dividend

- Dividend taxable in hands of South African resident – R350 000 [125 000 + 175 000 + 50 000]
- Credit available for foreign taxes paid – R80 000 [20 000 + 15 000 + 22 500 + 22 500]
  - A – R0 exempt
  - B – R20 000 i.e. (40 000 ÷ 2) corporate tax
  - C – R0 exempt
  - D – R0 no tax
  - E – R15 000 i.e. (30 000 ÷ 2) withholding tax
  - Tax paid by holding company - R22 500 i.e. taxable portion of pre-tax profits distributed ((840 000 - 70 000 - 140 000) ÷ 840 000 x 60 000) ÷ 2; **or 75%** of (60 000 ÷ 2)
  - Withholding tax borne by resident – R22 500 i.e. taxable portion of dividend i.e. 75% [as determined above] x 30 000
- South African tax liability – R52 222 [25 000 + 27 222]
  - 350 000 x 30% = 105 000 [normal tax]
  - 105 000 - 80 000 = R25 000 [after foreign tax credit]
  - (360 000 – 90 000 [exempt dividend] - 25 000) x 12.5 ÷ 112.5 = R27 222 [STC]

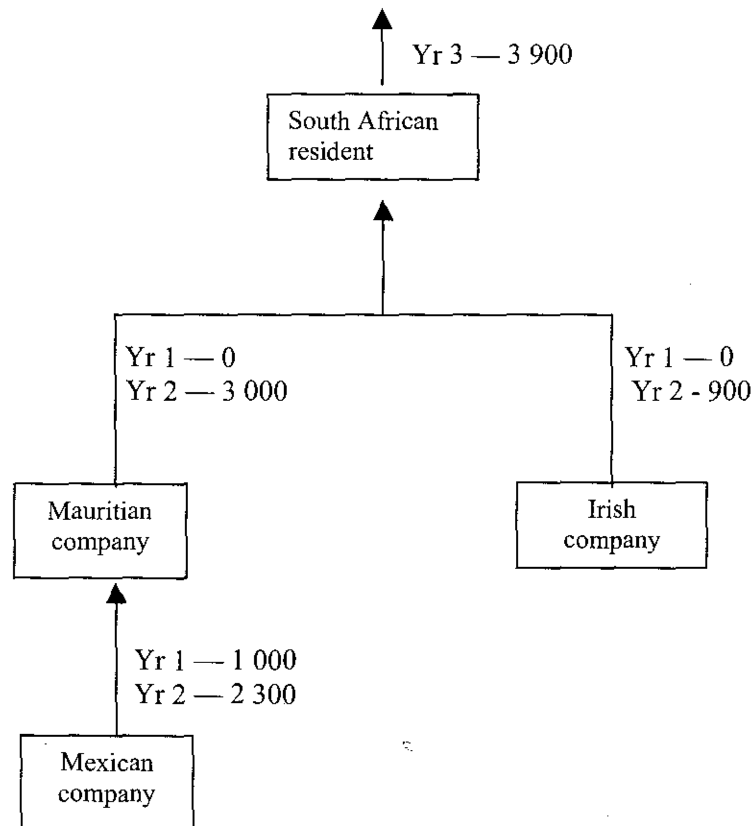
Example 2

A South African resident company has wholly owned subsidiaries in Ireland and in Mauritius. The Mauritian company owns 10 per cent of the shares in a company operating a holiday resort in Mexico and conducts no other activities. The Irish company conducts manufacturing operations.

The profits of the companies for 2 consecutive financial years are as follows:

Company	Irish Co Yr 1	Irish Co Yr 2	Mexican Co Yr 1 (10%)	Mexican Co Yr 2 (10%)	Mauritian Co Yr 1	Mauritian Co Yr 2
Income	500	1 500	2 000	3 000	1 000	2 300
Tax	50	150	680	1 020	0	0
Profit	450	1 350	1 320	1 980	1 000	2 300
Dividend	0	900	1 000	2 300	0	3 000

None of the countries in which the group operates imposes a withholding tax on dividends paid. The South African company on-distributes all dividends received by it in year 3. The tax liability in respect of the on-distribution of dividends is covered by funds generated from other activities of the resident company.



The South African tax position of the group is as follows:

Ireland, Mauritius and Mexico are not on the list of countries designated by the Minister of Finance and dividends from those countries will not qualify for an exemption.

Year 1

The Irish company is a controlled foreign entity (CFE), but has earned no investment income and has declared no dividend. Therefore no tax liability arise.

The Mauritian company is a CFE and the foreign dividend of R1 000 from the Mexican company constitutes investment income and is imputed to the South African resident in terms of section 9D(2). The amount to be included in gross income is the grossed up amount of the dividend, i.e. the pre-taxed profits from which it is distributed - R1 515 [R1 000 + (R1 000 ÷ R1 320 × R680)].

Normal tax of R455 is imposed on the South African company, but in terms of section 6*quat* a credit is available for foreign tax of R515 paid in Mexico in respect of the

profits distributed by way of a dividend to the Mauritian CFE. R455 of the R515 tax paid in Mexico is credited against the South African normal tax liability. The excess of R60 is available for set-off against any STC liability which may arise when the Mexican dividend forms part of the South African company's profits available for distribution and which have been declared as a dividend by the South African company. However this amount would have been limited to R125 [12,5% of (R1 515 — (greater of R515 or R455))] had it been greater than R125.

No South African tax is payable in respect of this year, but a foreign tax credit of R60 is available for set-off against a future STC or normal tax liability in respect of Mexican profits within the following 3 years.

Year 2

The minutes of a directors meeting of the Irish company indicates that the dividend was distributed out of profits of year 2. The amount of the foreign dividend from the Irish company to be included in gross income is the grossed up amount of the dividend, i.e. the pre-taxed profits from which it is distributed - R1 000 [R900 + (R900 ÷ R1 350 × R150)].

Normal tax of R300 is imposed on the South African company on the Irish dividend, but in terms of section 6*quat* a credit is available for foreign tax of R100 paid in Ireland in respect of the profits distributed by way of a dividend to the South African company. After crediting the R100 foreign tax the normal tax liability is R200.

The Mauritian company is a controlled foreign entity and the foreign dividend of R2 300 from the Mexican company constitutes investment income and is imputed to the South African resident in terms of section 9D(2). The amount of the foreign dividend to be included in gross income is the grossed up amount of the dividend, i.e. the pretaxed profits from which it is distributed - R3 485 [R2 300 + (R1 980 ÷ R1 980 × R1 020) + (R320 ÷ R1 320 × R680)].

Normal tax of R1 045 is imposed on the South African company, but in terms of section 6*quat* a credit is available for foreign tax of R1 185 paid in Mexico in respect of the profits distributed by way of a dividend to the Mauritian CFE. R1 045 of the R1 185 tax paid in Mexico is credited against the South African normal tax liability and the R140 excess is available for set-off against any STC liability which may arise during the following 3 years when the Mexican dividend forms part of the South African company's profits available for distribution and which have been declared as a dividend by the South African company. However this amount would have been limited to R288 [12,5% of (R3 485 — (greater of R1 185 or R1 045))] had it been greater than R288.

The amount of the foreign dividend from the Mauritian company to the resident is exempt due to the fact that the dividend from the Mexican company has already been imputed to the South African resident in terms of the provisions of section 9D(2).

The total normal tax payable is R200 and a foreign tax credit of R200 [R60 + R140] is available for set-off against a future STC or normal tax liability in respect Mexican profits of subject to the 3 year carry-forward rule.

Year 3

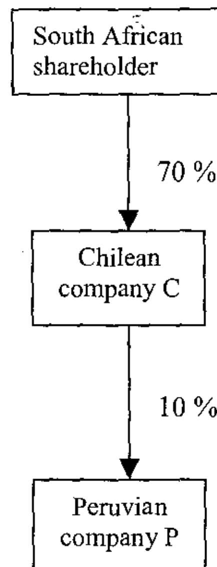
A dividend of R3 900 is declared by the South African company. In determining the net amount which is subject to STC the company may not set-off any of the foreign dividends received during the dividend cycle, i.e. R3 900.

The STC liability is R488 [R3 900 × 12,5%], but a foreign tax credit of R182 is available for set-off. The credit is determined by limiting the foreign tax credit in respect of the imputed foreign dividend of the Mauritian company to the profits actually distributed to the South African company. As the Mauritian company has not formally indicated from which year's profits it has declared the dividend, the distribution is deemed to have come from the most recent profits available for distribution first. Thus the foreign tax credit arising from Year 2 is R140 [2 300 ÷ 2 300 × R140] and from Year 1 is R42 [700 ÷ 1 000 × R60).

STC of R306 is payable and a foreign tax credit of R18 [R60 — R42] is available for set-off against a future STC or normal tax liability in respect of income from Mexico.

Example 3

Qualifying interest: The South African resident holds 70 per cent of the shares in C a Chilean company. C in turn holds 10 per cent in P a Peruvian company. Although the effective interest of the resident in company P is 7 per cent, the gross-up and credit provisions will take into account taxes on income payable by P. The reason therefor is that the direct interest of the resident in C and the direct interest of C in P are both 10 per cent or more.



Dividends received by shareholders with less than a 10 per cent shareholding (Portfolio investors)

Shareholders who have less than a 10 per cent shareholding will be taxed on their foreign dividends, but will be allowed a credit only in respect of the withholding tax paid offshore. However, where the shares are held in a company listed on the JSE,

which satisfies the 10 per cent in aggregate shareholding requirement, the dividend declared out of foreign source income will be exempt.

The amount to be taxed in the hands of a resident with a shareholding of less than 10 per cent will be the aggregate of the foreign dividend received and the withholding tax borne by the resident in respect of the foreign dividend. The withholding tax paid will be allowed as a credit against the South African tax liability in respect of the foreign dividend.

These provisions are consistent with international norms.

<u>Example 4</u>

A South African resident owns 9 per cent of the shares in a company conducting business in Germany. Annually the company distributes all its profits to shareholders in the form of dividends. The company has R10 million of taxable income and declares a dividend of R7 million after having paid an amount of R3 million in taxes on income. The resident receives a dividend of R535 500 after the deduction of R94 500 withholding tax. Thus the dividend plus the withholding tax was R630 000 which is 9 per cent of R7 million.

As the resident owns less than 10 per cent of the shares in the foreign company, the foreign dividend accruing to the resident will not qualify for an exemption. The amount on which the resident will be taxed is R630 000 (R535 500 plus R94 500). The resident will be able to claim the withholding tax of R94 500 against the resident's South African tax liability on the foreign dividend.

General

Investment income of controlled foreign entities (CFE)

In terms of the provisions of section 9D of the Income Tax Act, 1962, a proportionate amount of investment income of a CFE is imputed to a resident. It is proposed that the provisions of section 9D be extended to also include foreign dividends accrued to or received by the CFE with the result that these foreign dividends will also be imputed to the resident shareholder. To avoid double taxation in the hands of the resident, it is proposed that any foreign dividend declared by a CFE to another CFE or to the resident shareholder, should be exempt to the extent that the income from which the dividend is distributed was imputed to the resident. See section 9D(9)*(f)*.

As explained previously an exemption is provided to residents in respect of investment income of a CFE where such residents hold an interest in that CFE by virtue of their shareholding in a company listed on the JSE. The CFE in this instance can be either the JSE listed company or a subsidiary of a JSE listed company. See section 9D(9)*(g)*.

The principles relating to exemptions and credits for foreign taxes will also apply in respect of dividends of the CFE that are imputed to the resident shareholders. See the proviso to section 9D(4).

Secondary Tax on Companies (STC)

In the Budget Review it was mentioned that foreign dividends will not be allowed as a credit for purposes of the determination of STC. Where the amount of the dividend does not fall within the exclusions, i.e. where it was not derived from a designated country and the underlying profit was not taxed at a statutory rate of at least 27 per cent, the dividend will be taxable. In these circumstances it is proposed that no credit should be provided for purposes of the determination of STC.

On the other hand, to the extent that the dividend falls within the exclusions and is not taxable, such a dividend should be taken into account as dividends received during the dividend cycle in the determination of the STC payable. This is proposed by reason of the fact that the dividend has borne tax at a level which is substantially the same as in South Africa. An exceptional case is where a dividend is received by a resident from a controlled foreign entity to the extent that the underlying profits have already been imputed to the resident in terms of section 9D(2). Although such a dividend received from the CFE is exempt for normal tax purposes, it will not be allowed as a credit for purposes of the determination of STC. This ensures that the full effective tax rate of 37,8 per cent is applied to the profits of a CFE on distribution to the resident shareholder which is a company.

Where the foreign tax payable exceeds the South African income tax payable, the excess amount may be set off against any STC which becomes payable after the determination of the excess amount, limited to an amount by applying the STC rate to the profits attributable to the inclusion of the foreign income. Where, however, an amount of investment income of a controlled foreign entity is imputed to a resident company, the excess foreign tax may be set off against such company's liability for STC imposed on the on-distribution of any dividend which is subsequently received from the controlled foreign entity. This excess will, however, be limited to an amount determined by applying the STC rate to the amount of the taxable income attributable to the imputation of the income of the controlled foreign entity.

Anti-avoidance measures

Currently section 64C of the Income Tax Act, 1962, operates as an anti-avoidance measure in certain circumstances where a company may attempt to avoid the payment of STC. This is the case where a company would, for example, instead of declaring a dividend and paying STC thereon, lend the profits to a shareholder. Section 64C effectively neutralises such an initiative by deeming certain loans without a market-related rate of interest to be a dividend. It is proposed that the principles contained in section 64C of the Income Tax Act, 1962, relating to deemed dividends should also apply for purposes of the taxation of foreign dividends. Amounts distributed by a foreign company in the form of, for example, a loan, which would have been regarded as a dividend declared for purposes of STC, had such distribution been made from local source profits, will, therefore, also be regarded as a foreign dividend.

The provisions will, however, not apply where a company is being wound up or liquidated or whose corporate existence is finally terminated, and an amount is distributed by such company out of profits of a capital nature (other than profits of a capital nature derived from the disposal by such company on or after 23 February 2000 of any interest in any other company with retained profits which were available for distribution by such other company).

In this regard, it is also proposed that the scope of section 64C be extended. Currently the provisions include *inter alia* a loan by the company to the shareholder where no market related interest is charged and such amount is then deemed to be a dividend declared by the company for purposes of STC. It is recommended that the provisions should also include such a loan made by a company to any connected person in relation to a shareholder. Such a loan will then be deemed to be a dividend distributed by the company for STC purposes. Where a company makes a loan to a resident connected person in relation to resident shareholder under circumstances where it could have distributed a foreign dividend to the resident shareholder, such loan will be deemed to be a foreign dividend distributed to the shareholder for normal tax purposes.

A further method of avoiding the tax on foreign dividends may be to dispose of the shares instead of declaring a dividend. The accumulated profits in the company are, therefore, recovered without paying tax on the foreign dividend. In this regard, it is proposed that a provision be inserted in the Act to provide that where a disposal of shares takes place, the shareholder will be deemed to have received a dividend to the extent that the proceeds on the sale represents undistributed profits that could have been distributed to such shareholder in proportion to his or her shareholding and would have been taxable as a foreign dividend. The proposed deeming provisions of the disposal of shares will not apply to disposals of shares—

- by South African residents who at no time on and after 23 February 2000, held 10 per cent or more of the equity share capital of the company;
- to a South African resident where the resident after the disposal holds at least 10 per cent of the equity share capital of the company whose shares are sold;
- where the South African resident retains the same effective shareholding in the company whose shares are sold as prior to the disposal, except where one of the main purposes of the disposal is the avoidance, postponement or reduction of liability for the payment of tax, duty or levy;
- by a shareholder who acquired such shares from a non-resident unconnected person, to the extent that the undistributed profits were derived prior to the acquisition of the shares by the shareholder;
- to the extent that the proceeds from the disposal have been included in the income of the person disposing of the shares;
- where the Commissioner is satisfied that the disposal of the shares or the non-declaration of dividends by the company whose shares are sold was not effected as part of a scheme for purposes of avoiding the liability for tax, duty or levy, taking into account conditions as the Minister may prescribe by way of regulation.

<u>Example</u>

A South African company has a wholly owned subsidiary in a tax haven Z, where profits on international trading activities were accumulated over a number of years. The subsidiary has undistributed profits of R50 million which were subject to tax of R2,5 million in country Z. The only assets of the subsidiary are a loan to another group company and investments administered by a New York fund manager. All the shares are sold to an offshore financial institution for an amount of R45 million. The South African company will be subject to tax on a deemed foreign dividend of R45 million. A credit for foreign tax paid of R2,25 million [45 ÷ 50 × 2,5] will be available for set-off against the South African tax liability.

Commencement date of provisions

It was announced in the Budget Review that the taxation of foreign dividends will come into effect on 23 February 2000, and will apply in respect of all dividends accrued to or received by residents on or after that date, as well as dividends which accrued to a resident before that date, but which are received after that date.

The second leg of the effective date was proposed to close the opportunity for companies that may have considered backdating dividend declarations. In order to avoid hardship, it is proposed that where the dividend was declared prior to 23 February 2000, but paid on or after that date, the provisions relating to the taxation of foreign dividends should not apply if—

- the dividend was declared by a company listed on a recognised stock exchange; or
- in any other case, an affidavit or sworn declaration is provided by the Chief Executive Officer, as well as—
  - ♦ an external auditor of the company; or
  - ♦ if the company is situated in a country which does not require compulsory appointment of an external auditor, a registered public accountant of the same standing as a qualified chartered accountant,

  that the dividend was actually declared by the company before that date.

In these cases the date of accrual of the dividend to shareholders will be the only relevant date irrespective of the date on which the shareholder receives the dividend.

PUBLIC BENEFIT ORGANISATIONS

As announced by the Minister of Finance in his Budget Review, the provisions regulating the taxation aspects of public benefit organisations have been reviewed. The proposed provisions discussed in this section give effect to that announcement.

The new provisions were developed by taking into consideration—

- the recommendations contained in the 9th Interim Report of the Commission of Inquiry into certain Aspects of the Tax Structure of South Africa (Katz Commission);
- the views expressed in the Report of the Portfolio Committee on Finance on the Katz Report; and
- the input from various interested parties.

In essence, the new measures cover three broad areas, namely—

- the exempt status of public benefit organisations for income tax purposes;
- the deductibility for income tax purposes of donations made to certain public benefit organisations; and
- various consequential amendments such as the exemption of public benefit organisations for other taxes and duties administered by the Commissioner.

Exempt status for income tax purposes

The exempt status of public benefit organisations have been dealt with in a somewhat fragmented way over the years, as different kinds of public benefit organisations are exempt under different provisions. It has also been argued that the provisions are too limiting in granting exemption. The purpose of the new measures

is, therefore, to regulate the exempt status of public benefit organisations in a more organised and systematic manner and to, at the same time, extend the ambit thereof.

The main body of the measures regulating the exemption mechanism is contained in the new proposed section 30 of the Income Tax Act, 1962. This section, together with the new section 10(1)*(c*N*)*, which actually grants the exemption to a public benefit organisation approved by the Commissioner, will replace the existing exemptions contained in section 10(1)*(c*B*)*, *(c*C*)*, *(c*D*)*, *(c*F*)*, *(c*I*)*, *(c*J*)*, *(f)* and *(f*A*)*. No distinction will be made between funds (entities solely involved in raising funds) and institutions actually carrying on the public benefit activities. The provisions governing funds and institutions have now been combined and the definition of a public benefit activity now also includes the providing of funds to public benefit organisations.

The logic of the proposed section 30 works as follows—

- The Minister of Finance must in the first instance determine the public benefit activities which a public benefit organisation may carry on to become entitled for exempt status. The criteria to be applied by the Minister in this regard is that the activity should be of a philanthropic and benevolent nature, having regard to the needs, interests and well-being of the general public. See in this regard paragraph *(a)* of the definition of "public benefit activity", read together with subsection (2). Provision is also made that the notice containing the list of public benefit activities must be tabled in Parliament as soon as possible. Furthermore, the activities so determined must be incorporated into section 30 of the Income Tax Act within 12 months from the date that the new measures come into operation.
- Once the Minister has determined the list of public benefit activities, a public benefit organisation, which is a defined term, whose sole object must be the carrying on of a public benefit activity, may apply to the Commissioner to be approved as a public benefit organisation. The Commissioner must then evaluate the matter to determine whether the public benefit organisation complies with the criteria set out in section 30. The main body of criteria is contained in section 30(3) of the proposed section. In addition thereto the public benefit organisation must also subscribe to the requirements of the definition of a "public benefit organisation". Some of the main requirements listed in section 30(3) are the following—
  - ➢ the public benefit organisation must comply with such other conditions as the Minister may prescribe (section 30(3)*(a)*);
  - ➢ it must submit a copy of its constitution, will or other instrument to the Commissioner;
  - ➢ at least three unconnected persons must accept fiduciary responsibility of the public benefit organisation;
  - ➢ it is required to utilise its funds solely for its sole object;
  - ➢ surplus funds may only be invested in certain prescribed investments. Investments (other than business undertakings and trading activities) acquired by way of donation, bequest or inheritance may be retained in the form so acquired;
  - ➢ on dissolution it must transfer its assets to similar approved public benefit organisations;
  - ➢ it may not trade except under the circumstances prescribed in section 30(3)*(b)*(iv).

Four exclusion categories exist in respect of trade:

Firstly a *de minimis* rule which provides that gross income from trade may not exceed the greater of 15 per cent of gross receipts or R25 000.

The second category allows related trading activities, substantially the whole of which are directed toward cost recovery and which do not cause unfair competition in relation to taxable entities.

The third category permits certain unrelated trading activities which are of an occasional nature and which are substantially carried out with voluntary assistance without compensation.

The fourth category is a list of undertakings or activities which the Minister may approve having regard to certain criteria as contained in section 30(2)*(b)*(iv)*(dd)*.

Where a public benefit organisation acquired a business undertaking or trading activity before 1 January 2001, by way of a donation inheritance or bequest, it may retain it for a period of 5 years. Such undertaking or activity must, therefore, be transferred to a separate taxable entity within 5 years. Special exemptions have been provided for in the Stamp Duties Act and the Transfer Duty Act to facilitate this.

- public benefit organisations are not permitted to accept donations which are revocable or conditional under the circumstances described in the relevant section (section 30(2)*(b)*(v));
- the Commissioner must be furnished with copies of amendments to the public benefit organisation's constitution (section 30(3)*(b)*(vi));
- public benefit organisations may also not take part in schemes entered into for the reduction, postponement or avoidance of tax (section 30(3)*(c)*);
- remuneration to employees, office bearers, members or other person may not be excessive (section 30(3)*(d)*);
- the public benefit organisation must conform to certain reporting standards (section 30(3)*(e)*);
- where the public benefit organisation provides funds to non-approved public benefit organisations it must take reasonable steps to ensure that the funds are used for the purpose for which they have been provided (section 30(3)*(f)*);
- the public benefit organisation must be registered in terms of section 13(5) of the Non-Profit Organisations Act, 1997 (section 30(3)*(g)*).

Section 30(4) contains a transitional measure to ease the administrative burden on both public benefit organisations and SARS. Where the constitution of a public benefit organisation does not strictly comply with the relevant provisions of section, 30, it shall be deemed to so comply where the person acting in a fiduciary capacity furnishes the Commissioner with a written undertaking that the public benefit organisation will comply with the provisions of the Act. In general, however, most public benefit organisations will have to be formally evaluated by SARS over the next 5 years.

Section 30(5) deals with the circumstances under which the Commissioner may withdraw the exemption of a public benefit organisation.

Section 30(6) obliges the public benefit organisation to transfer the public benefit organisation's assets to another approved and unconnected public benefit organisation upon such withdrawal.

Section 30(7) regulates the taxation of accumulated net revenue of the public benefit organisation upon failure to transfer its assets upon such withdrawal.

Section 30(8) provides for the circumstances under which a public benefit organisation, which lost its exempt status, may re-apply for exemption.

Section 30(9) and (10) govern issues such as record keeping, the furnishing of information, etc.

Section 30(11) makes the Commissioner's discretion subject to objection and appeal.

Section 30(12) provides for certain penalties in the case where an offence was committed.

Once the Commissioner has approved a public benefit organisation, it is exempt from income tax in terms of section 10(1)*(c*N*)*.

The last issue which requires clarification is the exempt status of entities which previously qualified for exemption under section 10(1)*(c*B*)*(i)*(ee)* and *(ff)*. These entities carry on activities such as—
- providing social and recreational amenities or facilities for members of certain companies, societies or other associations; and
- the promotion of the common interests of persons carrying on any particular kind of business, profession or occupation.

Organisations carrying on these activities will not be able to qualify for exemption under section 30, as such activities would not normally be of a philanthropic or benevolent nature.

The provisions of section 10(1)*(d)* of the Income Tax Act, 1962, have, therefore, been extended to regulate the exempt status of organisations of such a nature. In essence applications by such organisations will be evaluated and approved by the Commissioner in terms of conditions prescribed by the Minister of Finance.

Deductibility of donations to certain public benefit organisations for income tax purposes

The second area covered by this proposal is the deductibility of donations to certain public benefit organisations. In this regard the provisions of the existing section 18A have been substituted to simplify the measures and to broaden the ambit thereof. Currently only donations to certain types of educational institutions or funds qualify for deduction. In the Budget Review the Minister of Finance announced that the current provisions would be extended to—
- pre-primary schools that offer an approved educare programme;
- primary schools;
- organisations mainly involved in preventing HIV infection or providing care to those whose livelihoods have been impoverished by AIDS;
- childrens' homes providing care to abandoned, abused or orphaned children; and
- organisations mainly involved in caring for destitute aged persons.

The new provisions, therefore, allow the Minister to approve certain public benefit activities for purposes of section 18A. Donations to approved public benefit organisations carrying on such activities will, therefore, qualify for a tax deduction. Donations to public benefit organisations providing funds solely to approved public benefit organisations carrying on the qualifying activities will also qualify for a tax deduction. Such funding public benefit organisations must, however, distribute at least 75 per cent of their funds received by way of tax deductible donations.

A further extension of the section is the increase in the limit of the deduction in the case of individuals from 2 per cent to 5 per cent. Both companies and individuals will qualify for the new limit of the greater of R1 000 or 5 per cent of taxable income with effect from 1 March 2000. The new categories of public benefit activities will, however, only come into operation from a date to be determined by the President by proclamation in the *Gazette*.

Subsection (2) of the new provision provides for the issue of receipts in respect of tax deductible donations and the contents of such a receipt.

Subsection (3) provides for the value to be placed on the donation of property in kind.

Subsection (4) makes the provisions of section 30(7) and (8) *mutatis mutandis* applicable to public benefit organisations contemplated in section 18A.

Subsection (5) provides for the circumstances under which the Commissioner may notify a public benefit organisation that donations to it will no longer qualify for a tax deduction.

As in the case of section 30, the list of section 18A qualifying activities determined by the Minister must be incorporated into section 18A of the Income Tax Act within 12 months from the date the new measures come into operation.

Consequential amendments

Apart from the regulation of the above-mentioned two areas around public benefit organisations, the new measures also necessitate the introduction of consequential amendments to provisions regulating other taxes and duties administered by the Commissioner. It is for this reason that consequential amendments are also proposed to *inter alia* the Transfer Duty Act, 1949, the Estate Duty Act, 1955, the Stamp Duties Act, 1968, the Skills Development Levies Act, 1999, and the donations tax provisions in the Income Tax Act, 1962.

TAXATION OF EMPLOYMENT COMPANIES AND TRUSTS

As mentioned in the Budget Review this year, it continues to be a popular tax saving method for employees to offer their services to their employers through the medium of private companies or close corporations. In certain instances even a trust is used for this purpose. This effectively enables them—

- to defer the payment of tax by avoiding the liability for employees' tax;
- to be taxed at the company rate as opposed to the higher marginal rates applicable to individuals; and
- to circumvent the limitation of deductions of expenses associated with employment income.

In 1990 certain provisions were inserted in the Fourth Schedule to the Income Tax Act, to provide that persons providing personal services (i.e. labour brokers), are subject to the payment of employees' tax, unless an exemption certificate is granted. These provisions do, however, not address the circumstances where a company is not a labour broker, but still makes available the services of an individual to be rendered to a client, which would normally have been rendered in terms of a contract of employment.

In order to discourage the use of corporate entities as intermediaries to provide personal services to a client which are, in essence, services provided in terms of a contract of employment, it is proposed that—

- the remuneration payable to such a company, close corporation or trust by the client be subject to employees' tax;
- the allowable deductions of such a company, close corporation or trust for tax purposes be limited to the amount of the remuneration paid to the shareholder or other employees of the company or close corporation;
- the income of such a company or close corporation be taxed at a rate of 35 per cent.

These provisions will, to the extent that they relate to the relevant entity, apply in respect of any—

(a) company, close corporation or trust which is a labour broker as defined in the Fourth Schedule to the Act, other than a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5) of the said Schedule; or

(b) company, close corporation or trust (referred to as a personal service company or personal service trust) where any service rendered on behalf of the company or trust to its client is rendered personally by any connected person in relation to such company, close corporation or trust, and—

(i) such person would be regarded as an officer or employee of such client, if such service was performed other than through the company, close corporation or trust; or

(ii) such person (or the company, close corporation or trust) is subject to the control or supervision of such client as to the manner in which the duties are performed or as to his hours of work; or

(iii) the amounts paid or payable for such person's services consist of or include earnings of any description which are payable on regular daily, weekly, monthly or other intervals; or

(iv) where more than 80 per cent of the income which is derived during the year of assessment from services rendered, consists of income received from one client of the company, close corporation or trust,

except where such company, close corporation or trust employs more than 3 full time employees (other than such person) during the year of assessment, none of whom are connected persons in relation to such person. All these employees must be involved on a full-time basis in the business of such company or trust of rendering such services.

The definitions of "personal service company" or "personal service trust" will be introduced in the Fourth Schedule to the Income Tax Act, 1962, while the provisions limiting the deductions of certain costs will be contained in the proposed new section 23*(k)* of the Act. The new rate of 35 per cent is prescribed in schedule 1 to this Bill.

It is proposed that the provisions—

- relating to the limitation of the deductions and the determination of the rate of tax, apply in respect of years of assessment commencing on or after 1 April 2000 and which end during the 12 month period ending 31 March 2001; and
- which makes provision that the remuneration paid to the company be subject to employees tax, apply with effect from 1 August 2000.

WITHDRAWAL OF TAX EXEMPTION OF ESKOM

Prior to its repeal by the Eskom Amendment Act, 1998 (Act No. 126 of 1998), section 24 of the Eskom Act, 1987 (Act No. 40 of 1987), provided that Eskom was exempt from the payment of any income tax, stamp duty, levies or fees which would otherwise have been payable by Eskom in terms of any law, excluding customs and excise and sales tax.

Section 24 was, thereafter, repealed with effect from 18 December 1998, being the date on which the Eskom Amendment Act, 1998, came into operation. It is argued that the repeal of this section was, however, made subject to provisions that—

- the Minister of Finance must determine the tax values of Eskom's capital assets for the purpose of calculating depreciation allowances; and
- in granting any special tax allowances to Eskom, the Commissioner shall obtain prior approval of the Minister of Finance.

The Eskom Amendment Act, 1998, also endeavoured to repeal the specific exemptions in respect of marketable securities tax, transfer duty and stamp duty. The references in the Eskom Amendment Act, 1998, to the provisions relating to the exemption contained in the Marketable Securities Tax Act, 1948, the Transfer Duty Act, 1949, and the Stamp Duties Act, 1968, were, however, incorrect with the result that the withdrawal of these exemptions were not properly effected.

A further aspect of the matter is that Eskom was effectively entitled to an exemption from income tax in terms of two provisions namely the repealed section 24 of the Eskom Act, 1987, as well as section 10(1)*(cA)* of the Income Tax Act, 1962, which exempts certain bodies established by law.

In order to properly address Eskom's exemption from taxes, duties and levies, it is proposed that the provisions contained in the Eskom Amendment Act, 1998, be deleted and that a new section 24 be inserted in the Eskom Act, 1987, to provide that the provisions of section 10(1)*(cA)* of the Income Tax Act, 1962, shall not apply in respect of Eskom or any company all the shares of which are held by Eskom. A provision will also be inserted to provide for the determination of the tax values of the capital assets of Eskom or its successor for purposes of calculating the wear and tear or depreciation allowances when it becomes a taxable entity. The determination will be made by the Minster of Finance after consultation with the Minister of Public Enterprises and the Minister of Mineral and Energy. It is furthermore, proposed that the following provisions be deleted—

- section 10(1)*(cK)* of the Income Tax Act, 1962, which grants an exemption in respect of the receipts and accruals of a company, the sole object of which is to supply electricity and of which Eskom is a member; and
- section 10(1)*(t)*(xii), which grants an exemption to KESCOR (Pty) Ltd. This company was formed on 11 May 1990, with purpose of providing electricity as cheaply and economically as possible to the inhabitants of KaNgwane. The

shares in the company were allocated on an equal basis to Eskom (50 per cent) and the KaNgwane Electricity Trust (50 per cent).

It is, furthermore, proposed that the appropriate amendments to the Marketable Securities Tax Act, 1948, the Transfer Duty Act, 1949, and the Stamp Duties Act, 1968, be made to withdraw the exemptions from marketable securities tax, transfer duty and stamp duty.

As far as the withdrawal of the exemptions of Eskom, its subsidiaries and KESCOR are concerned, the amendments are deemed to have come into operation on 1 January 2000.

AMENDMENT OF INQUIRY PROVISIONS

The provisions relating to inquiries in terms of the various tax Acts, provide that the Commissioner may authorise any person to conduct an inquiry for the purposes of the administration of the relevant Act. A judge of the High Court may, therefore, on application by the Commissioner grant an order in terms of which such person is designated to act as presiding officer at the inquiry.

For the purposes of such an inquiry, the presiding officer so designated has the same power to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act, 1962. The President of the Special Court may also, where any person during the sitting of a court willfully insults a member of the court or any officer of the court attending at the sitting, or willfully interrupts the proceedings of the court or otherwise misbehaves himself, in terms of section 85 of the Income Tax Act, 1962, make an order committing that person to imprisonment or order that person to pay a fine. It is proposed that the provisions of the various acts relating to inquiries be extended to also provide that the presiding officer shall have the same powers in relation to contempt committed during the proceedings of an inquiry, as are vested in the President of the Special Court.

The provisions on Inquiries provide that the person whose affairs are being investigated shall be entitled to be present throughout the inquiry, unless the presiding officer otherwise directs. This implies that if during such inquiry, the affairs of any other taxpayer are subject to the inquiry, the person shall not be entitled to be present. It is, therefore, proposed that this provision be amended to provide that such person may be present at the inquiry during the entire time that his affairs are being investigated.

The provisions are also amended to clarify that any person who is being questioned may have a legal representative present during his or her appearance.

The provisions relating to Inquiries in terms of the Income Tax Act, 1962, and the VAT Act, 1991, provide that that the person designated as the presiding officer shall be subject to the secrecy provisions contained in those Acts. It is proposed that these provisions be extended to provide that the secrecy provisions shall apply to any person present at the questioning of any person, including the person being questioned. A subsection is also added to provide that if any person fails to comply with the secrecy provisions, such person shall be guilty of an offence and be liable on conviction to a fine or imprisonment for a period not exceeding 2 years.

A new provision is also added which provides that the evidence given under oath or solemn declaration at the inquiry may be used by the Commissioner in any subsequent proceedings to which the person whose affairs are being investigated is a party, or to which a person who had dealings with such person is a party. A person may also not refuse to answer any question on the grounds that it may incriminate him or her. Such incriminating evidence shall, however, not be admissible in any criminal proceedings against the person giving the evidence, other than in proceedings where such person stands trial on a charge in connection with an offence relating to failing or refusing to give evidence or gives false evidence.

A provision is also introduced to provide that such an inquiry shall proceed notwithstanding the fact that any other civil or criminal proceedings have commenced or will commence.

ADJUSTMENT OF FINES

The Adjustments of Fines Act, 1991 (Act No. 101 of 1991) makes provision that if any law provides that on conviction of an offence a person may be sentenced to undergo a prescribed maximum period of imprisonment or, in the alternative, to pay a fine and the maximum amount of the fine is not prescribed, the maximum fine which may be imposed must be determined at a ratio as set out in that Act, by taking into account the maximum period of imprisonment prescribed by such law.

Currently, the maximum amount of the fine is determined at a ratio equivalent to R60 000 where the maximum period of imprisonment prescribed is 3 years and R300 000 where the period of imprisonment prescribed is 15 years.

It is proposed that the provisions in the various Acts administered by the Commissioner, which makes provision for fines and imprisonment, be amended to delete the amount of the maximum fine contained in that section, which will have the effect that the provisions of the Adjustments of Fines Act, 1991, will apply.

CLAUSE 1

Marketable Securities Tax: Amendment of section 3 of the Marketable Securities Tax Act, 1948

See notes on WITHDRAWAL OF TAX EXEMPTION OF ESKOM.

CLAUSE 2

Marketable Securities Tax: Amendment of section 9C of the Marketable Securities Tax Act, 1948

See notes on AMENDMENT OF INQUIRY PROVISIONS.

CLAUSE 3

Transfer Duty: Amendment of section 9 of the Transfer Duty Act, 1949

Subclause (a): See notes on WITHDRAWAL OF TAX EXEMPTION OF ESKOM.

Subclauses (b), (c), (d) and (e): See notes on PUBLIC BENEFIT ORGANISATIONS.

Subclause (f): This amendment is consequential upon the repeal of the Insurance Act, 1943 (Act No. 27 of 1943).

CLAUSE 4

Transfer Duty: Amendment of section 11D of the Transfer Duty Act, 1949

See notes on AMENDMENT OF INQUIRY PROVISIONS.

CLAUSE 5

Transfer Duty: Amendment of section 15 of the Transfer Duty Act, 1949

See notes on ADJUSTMENT OF FINES.

CLAUSE 6

Estate Duty: Amendment of section 1 of the Estate Duty, 1955

This amendment is consequential upon the repeal of the Insurance Act, 1943 (Act No. 27 of 1943).

CLAUSE 7

Estate Duty: Amendment of section 3 of the Estate Duty Act, 1955

This amendment is consequential upon the repeal of the Insurance Act, 1943 (Act No. 27 of 1943).

CLAUSE 8

Estate Duty: Amendment of section 4 of the Estate Duty Act, 1955

See notes on PUBLIC BENEFIT ORGANISATIONS.

CLAUSE 9

Estate Duty: Amendment of section 8D of the Estate Duty Act, 1955

See notes on AMENDMENT OF INQUIRY PROVISIONS.

CLAUSE 10

Estate Duty: Substitution of section 23 of the Estate Duty Act, 1955

This amendment is consequential upon the repeal of the Insurance Act, 1943 (Act No. 27 of 1943).

CLAUSE 11

Estate Duty: Amendment of section 28 of the Estate Duty Act, 1955

See notes on ADJUSTMENT OF FINES.

CLAUSE 12 AND SCHEDULE 1

Income Tax: Rates of normal tax

Rates of normal tax payable by persons (other than companies) and companies are enacted by *clause 12* and Schedule 1 to the Bill.

Persons other than companies

The rates for persons (other than companies) apply in respect of the year of assessment ending on 28 February 2001 or 30 June 2001 and are provided for in paragraph 1 of Schedule 1.

The rates for persons (other than companies and trusts) and special trusts consist of a progressive rate structure ranging between 18 per cent on the lowest income segment (amounts up to R35 000) and 42 per cent which is reached on the income segment above R200 000.

The rates for trusts (other than special trusts) consist of a rate of 32 per cent on taxable income which does not exceed R100 000 and 42 per cent on the income exceeding R100 000.

The rates for—

- persons (other than companies) and special trusts are provided for in paragraph 1*(a)* of Schedule 1; and
- trusts (other than special trusts) are provided for in paragraph 1*(b)* of Schedule 1.

A "special trust" is defined as a trust created solely for the benefit of a person who suffers from:

(i) any "mental illness" as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973); or

(ii) any serious physical disability,

where such illness or disability incapacitates such person from earning sufficient income for the maintenance of such person. Where the person for whose benefit the trust was created dies before or on 28 February 2001, such trust will be deemed not to be a special trust and the rates provided for in paragraph 1*(b)* of Schedule 1 will apply in respect of such trust.

business corporation or an employment company) derived by a company which has its place of effective management outside the Republic and which carries on trade through a branch or an agency within the Republic: 35 cents per R1 (paragraph 2*(g)* of Schedule 1).

(h) Taxable income derived by a qualifying company which has been granted tax holiday status in terms of section 37H of the Income Tax Act, 1962: zero cents per R1 (paragraph 2*(h)* of Schedule 1).

For purposes of paragraphs *(b)* and *(c)*—

(i) "small business corporation" means any close corporation or any private company incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), of which the entire shareholding of such company is during the year of assessment held by shareholders or members that are natural persons, where—
   - *(aa)* the gross income of the close corporation or company for the year of assessment does not exceed R1 million;
   - *(bb)* none of the shareholders or members at any time during the year of assessment of the company or close corporation holds any shares or has any interest in the equity of any other company as defined in section 1 of the Act (other than a listed company or a unit trust); and
   - *(cc)* not more than 20 per cent of the gross income of the company or close corporation consists collectively of investment income and income from the rendering of a personal service;
   - *(dd)* such company is not an employment company;

(ii) "personal service" means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, broking, commercial arts, consulting, draftsmanship, education, engineering, entertainment, health, information technology, journalism, law, management, performing arts, real estate, research, secretarial services, sport, surveying, translation, valuation or veterinary science, which is performed personally by any person who holds an interest in the company or close corporation referred to in the definition of "small business corporation";

(iii) "investment income" means any income as defined in section 9C of the Income Tax Act, but including—
   - *(aa)* dividends; and
   - *(bb)* any proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property;

(iv) "employment company" means any company—
   - *(aa)* which is a labour broker as defined in the Fourth Schedule to the Act, other than a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5) of the said Schedule; or
   - *(bb)* which is a personal service company as defined in the Fourth Schedule to the Act.

CLAUSE 13

Income Tax: Amendment of section 1 of the Income Tax Act, 1962

Subclauses (1)(a), (b), (d) and (h): See notes on TAXATION OF FOREIGN DIVIDENDS.

Subclause (1)(c): This subclause deletes, in paragraph *(d)* of the definition of "company", the exclusion as it relates to section 10(1)*(e)*. This provision had the effect of excluding certain entities, which are partially exempt from the payment of income tax in terms of section 10(1)*(e)*, from being a company as defined. Such entities, not being a registered company or a body corporate, were assessed using the tax rate applicable to individuals. The amendment is introduced to ensure that all entities enjoying the exemption in terms of section 10(1)*(e)* are treated uniformly and are subject to the same tax rates.

Subclause (1)(e): This subclause deletes an obsolete provision.

Subclause (1)(f): As announced in the Budget Review, payments in respect of restraints of trade made to natural persons or employment companies will be included as income in the hands of the recipient and deducted in the hands of the payer over the period of the restraint or 3 years, which ever period is longer. This applies to all payments made on or after 23 February 2000.

A new paragraph *(c*A*)* is inserted in the definition of "gross income" to include in gross income any compensation for any restraint of trade imposed on any person who—

- is a natural person;
- is or was a labour broker as defined in the Fourth Schedule (other than a labour broker in respect of which a certificate of exemption has been issued in terms of such Schedule);
- is or was a personal service company as defined in the Fourth Schedule; or
- is or was a personal service trust as defined in the Fourth Schedule.

In this regard amendments are also effected to section 11 and section 23 of the Act to regulate the deductibility of these payments. See *clauses 22 and 28.*

Subclause (1)(g): All private sector pension funds are required to register with the Registrar of Pension Funds and to comply with the provisions prescribed by the Pension Funds Act, 1956 (Act No. 24 of 1956). A pension fund is required to hold sufficient assets to satisfy the rights and reasonable benefit expectations of the members of the fund.

A substantial amount of excess assets have, however, accumulated over the years and the total amount of surplus in South African retirement funds is estimated to be in the region of approximately R80 billion.

The Registrar has in the past refused to register rules which would permit the employer to participate in surplus assets of a retirement fund, other than by way of a reduction in their contribution rates to the fund.

Subsequent to a recent judgment of the Supreme Court of Appeal, the Appeal Board established in terms of the Financial Services Board Act, 1990 (Act No. 97 of 1990), found that nothing in the Pension Funds Act, 1956, prevents the repatriation of any residual surplus in a retirement fund to the employer on liquidation of the fund, if an appropriate rule providing therefor is in place. The Financial Services Board, has now issued a circular explaining the circumstances under which consideration will be given to registering such a rule change.

In the event of any such rules being amended and surpluses being refunded to employers, the view is held that such surplus should be subject to tax in the hands of the employers. Although the existing provisions of the Income Tax Act allow for the taxation of certain amounts recouped, it is proposed that legislative amendments be introduced to ensure that the full amount of any repatriation of the surplus assets to employers is taxed.

As was announced in the Budget Review, these provisions came into operation with immediate effect and, therefore, apply in respect of any amount of surplus assets repatriated by a retirement fund, which is received by or accrues to the employer on or after 23 February 2000.

Provisions are also introduced to disallow the set-off of any assessed loss of the employer against income of this nature. The reason for introducing such a provision is to ensure that employers will not be able to arrange that the repatriation takes place in a year of assessment in which the employer is in an assessed loss position, thereby avoiding or postponing taxation on the repatriation. The United Kingdom introduced such a provision for a similar reason.

Subclause (1)(i): This amendment is of a textual nature.

Subclause (1)(i): The definition of "prescribed rate" currently provides for a specific rate of interest in respect of—

- interest payable to any taxpayer under the provisions of section 89*quat*(4); and
- interest payable in any other case.

The definition, furthermore, provides that the Minister of Finance may from time to time fix a different rate by notice in the *Gazette*. In order to remove the reference to a specific rate in the Act, which is in any event determined from time to time by the Minister, it is proposed that the definition be amended to only refer to such rate determined by the Minister.

Subclause (1)(k): This amendment is of a textual nature.

CLAUSE 14

Income Tax: Amendment of section 4 of the Income Tax Act, 1962

Subclause (a): This amendment is consequential upon the amendments relating to PUBLIC BENEFIT ORGANISATIONS, and will allow the publication of a list of approved public benefit organisation.

Subclause (b): See notes on ADJUSTMENT OF FINES.

CLAUSE 15

Income Tax: Amendment of section 6 of the Income Tax Act, 1962

This clause increases the primary rebate from R3 710 to R3 800, and the rebate in respect of persons over 65 years from R2 775 to R2 900.

CLAUSE 16

Income Tax: Amendment of section 6quat of the Income Tax Act, 1962

See notes on TAXATION OF FOREIGN DIVIDENDS.

CLAUSE 17

Income Tax: Amendment of section 8 of the Income Tax Act, 1962

Subclause (1)(a): This amendment is consequential upon the amendment to section 8(1)*(f)* by section 14 of the Revenue Laws Amendment Act, 1999 (Act No. 53 of 1999).

Subclause (1)(b): This amendment is consequential upon the insertion of paragraph *(eB)* in the definition of "gross income" in section 1 of the Income Tax Act, 1962. This proposal is, however, aimed at avoiding double taxation where the amount has already been included in gross income in terms of the aforementioned paragraph *(eB)*.

Subclause (1)(c): This amendment is consequential upon the insertion of section 12D in the Income Tax Act, 1962, by *clause 23.*

CLAUSE 18

Income Tax: Amendment of section 9C of the Income Tax Act, 1962

See notes on TAXATION OF FOREIGN DIVIDENDS.

CLAUSE 19

Income Tax: Amendment of section 9D of the Income Tax Act, 1962

See notes on TAXATION OF FOREIGN DIVIDENDS.

CLAUSE 20

Income Tax: Insertion of section 9E in the Income Tax Act, 1962

See notes on TAXATION OF FOREIGN DIVIDENDS.

CLAUSE 21

Income Tax: Amendment of section 10 of the Income Tax Act, 1962

Subclause (1)(a), (c) and (d): See notes on PUBLIC BENEFIT ORGANISATIONS.

Subclause (1)(b) and (k): See notes on WITHDRAWAL OF TAX EXEMPTION OF ESKOM.

Subclause (1)(e), (f), (h), (i) and (j): See notes on TAXATION OF FOREIGN DIVIDENDS.

Subclause (1)(g): This amendment is consequential upon the repeal of section 19 and the amendment of section 10(1)*(i)*(xv) of the Income Tax Act, 1962.

CLAUSE 22

Income Tax: Amendment of section 11 of the Income Tax Act, 1962

Subclause (1)(a): The introduction of paragraph *(c*A*)* to section 11 is proposed to provide for the deduction of any amount actually incurred by any person in the course of the carrying on his trade, as compensation in respect of any restraint of trade imposed on any other person, to the extent that such amount constitutes income in the hands of the recipient. The amount shall be allowed to be deducted over the number of years, or part thereof, during which the restraint of trade applies or three years, whichever period is longer.

Subclause (1)(b) and (c): This amendment is consequential upon the insertion of section 12D in the Income Tax Act, 1962, by *clause 23.*

Subclauses (1)(d) and (e): These amendments are consequential upon the repeal of the Insurance Act, 1943 (Act No. 27 of 1943), and the promulgation of the Long-term Insurance Act, 1998 (Act No. 52 of 1998).

CLAUSE 23

Income Tax Act: Insertion of section 12D in the Income Tax Act, 1962

One of the entrenched principles of the South African tax system is that a deduction in respect of the wear and tear or depreciation in respect of buildings or other structures or works of a permanent nature is not normally granted for tax purposes. The reasoning behind this principle is that works of a permanent nature have a longer lifespan or period of use and are, therefore, not subject to wear and tear and depreciation to the same extent as machinery and plant. Permanent is, however, a relative concept and in determining whether or not a structure or work is intended to last for a sufficiently long time to be permanent, regard must be had to not only the nature of the structure, but also to the use to which it is to be put.

Over the years the allowance has been extended to certain types of works of a permanent nature. This includes, for example, buildings used by hotelkeepers or used in the process of manufacture, and permanent structures used by certain co-operative societies for storage.

International companies have recently started expressing their interest in the exploration of certain gas fields in Southern Africa. The development of natural gas is an important contributing factor to the economic development of Southern Africa. The possibility of such exploration is, however, dependent on the economic viability thereof and the disallowance of the depreciation of pipelines could have an adverse effect on the investment decision. This is so as investors are reluctant to commit to substantial outlays on pipeline networks which, under the current tax system, are disqualified from any such allowance. To this end the depreciation allowance would

encourage and support the significant capital investments which would be required for such a project.

Similarly, the tax-exempt status of Eskom is about to be withdrawn. Eskom will, therefore, become subject to income tax and the disallowance of the depreciation on the installation of new transmission cables from the date it becomes a taxable entity may have a detrimental effect on the cost of supplying electricity.

Comparative studies also show that a depreciation allowance on transmission lines and pipelines is granted for tax purposes in a number of countries. It is, therefore, clear that internationally it is an acceptable practice to grant a deduction in respect of a greater spectrum of permanent structures of this nature.

It is, therefore, proposed that the depreciation allowances be extended to include—

- pipelines used for the transmission of natural oil, which means any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth's crusts and refined by-products of such liquid or solid hydrocarbon or combustible gas;
- railway lines and electricity and telephone transmission lines.

In order to give effect to this proposal a new section 12D is inserted into the Income Tax Act.

The depreciation allowance will, however, only be available in respect of new and unused structures, which are used directly by the owner thereof in carrying on its sole business of transmitting or transporting the relevant products.

The following write-off periods are proposed, in respect of—

- pipelines used for transporting natural oil — 10 years;
- electricity and telephone transmission lines - 20 years; and
- railway lines - 20 years.

The depreciation allowance will be granted in respect of all new and unused assets contracted for and the construction, erection or installation of which was commenced on or after 23 February 2000. In terms of the normal tax principles, the depreciation allowance will only commence in the year that the assets are first brought into use by the owner thereof.

The allowance will, furthermore, only be allowed where the asset is used directly by the taxpayer—

- in the production of his income; and
- in the carrying on of his sole business of the transportation of the relevant products.

CLAUSE 24

Income Tax: Substitution of section 18A of the Income Tax Act, 1962

See notes on PUBLIC BENEFIT ORGANISATIONS.

CLAUSE 25

Income Tax: Repeal of section 19 of the Income Tax Act, 1962

This clause deletes an obsolete provision.

CLAUSE 26

Income Tax: Amendment of section 20 of the Income Tax Act, 1962

See notes on insertion of paragraph *(e*B*)* in the definition of "gross income" in section 1 of the Income Tax Act, 1962, by *clause 13*.

CLAUSE 27

Amendment of section 22 of the Income Tax Act, 1962

It was mentioned in the Budget Review that consideration will be given to the amendment of section 22 of the Income Tax Act, 1962, to withdraw the LIFO (last-in-first-out) option for valuing marketable securities. This amendment gives effect to this proposal and deletes certain obsolete provisions.

CLAUSE 28

Income Tax: Amendment of section 23 of the Income Tax Act, 1962

Subclause (1)(a): Section 23*(d)* of the Income Tax Act, 1962, currently provides that no deduction shall be allowed in respect of any tax, duty, levy, interest or penalty imposed under the Act, any additional tax imposed under section 60 of the Value-Added Tax Act, 1991 and any interest or penalty payable in consequence of the late payment of any tax, duty or levy payable under any Act administered by the Commissioner, the Regional Services Councils Act, 1985 and the KwaZulu and Natal Joint Services Act, 1990.

It is proposed that this provision be amended to also include the Skills Development Levies Act, 1999, and therefore to disallow the deduction of any interest or penalty payable in terms of that Act as a deduction for income tax purposes.

Subclause (1)(b): In so far as this subclause—

- inserts paragraph *(k)*, see notes on TAXATION OF EMPLOYMENT COMPANIES; and
- inserts paragraph *(l):* It is proposed that a new paragraph be added to section 23 to disallow the deduction of any expenses in respect of the payment of any restraint of trade, except as provided for in section 11*(c*A*)*.

CLAUSE 29

Income Tax: Amendment of section 23B of the Income Tax Act, 1962

Section 23B of the Income Tax Act, 1962, currently provides that where an amount qualifies for a deduction or an allowance under more than one provision of this Act, a deduction or allowance in respect of such amount or any portion thereof, shall not be allowed more than once in the determination of the taxable income of any person.

It is proposed that this section be amended to refer to any amounts taken into account in the determination of the taxable income of the person. This has always been the interpretation of the provisions, but an amendment is proposed to provide clarity in this regard.

CLAUSE 30

Income Tax: Amendment of section 23F of the Income Tax Act, 1962

As far as the limitation of the deduction of expenditure incurred in respect of the acquisition of trading stock is concerned, the provisions of section 23F are amended to provide that—

- where a taxpayer has disposed of any trading stock during any year of assessment in the ordinary course of his trade for any consideration the full amount of which will not accrue to him during such year; and
- any expenditure incurred in respect of the acquisition of such trading stock was allowed as a deduction under the provisions of section 11*(a)* or *(b)*, or was otherwise taken into account during that year or any previous year of assessment,

the amount of the expenditure will be deemed to have been recovered or recouped and be included in the income of the taxpayer in the year of assessment during which such trading stock was disposed of.

There shall, however, be allowed to be deducted in—

- that year, so much of such expenditure which bears to the full amount of such expenditure, the same ratio as the amount of such consideration which has accrued to the taxpayer during such year bears to the full amount of such consideration;
- any subsequent year of assessment, so much of such expenditure which bears to the full amount of such expenditure, the same ratio as the amount of such consideration which has accrued to the taxpayer during such subsequent year bears to the full amount of such consideration; or
- any year of assessment during which it is shown by the taxpayer that the consideration will never accrue to him, so much of such expenditure as has not been allowed as a deduction in terms of the provisions of the section, to the extent that the expenditure was actually paid.

A further subsection is added to provide for the case where a right or interest in an asset that is trading stock is disposed of, which has the effect that the remaining right or interest may not constitute trading stock. In this instance, the expenditure which was previously allowed as a deduction, which relates to the right or interest held and not disposed of (which may no longer constitute trading stock) will be deemed to have been recovered or recouped by the taxpayer and included in his income for such year of assessment.

CLAUSE 31

Income Tax: Insertion of section 23H in the Income Tax Act, 1962

As was mentioned in the Budget Review, a number of legislative amendments are being introduced to address certain tax avoidance schemes. In this regard, a new section 23H is proposed, which provides that where any person has incurred any expenditure, which is or was allowable as a deduction in terms of the provisions of section 11*(a)*, *(b)*, *(c)* or *(d)* of the Income Tax Act, 1962, the amount allowed to be deducted in any year of assessment shall be limited to the expenditure relating to goods supplied, services rendered or benefits the person will become entitled to during the relevant year of assessment.

These provisions will, however, not apply—

- where all the goods or services are to be supplied or rendered within 6 months after the end of the year of assessment during which the expenditure was incurred, or such person becomes entitled to the full benefit in respect of which the expenditure was incurred within such period; or
- where the aggregate of all amounts of expenditure incurred by such person, which would otherwise be limited by this section, does not exceed R50 000; or
- to any expenditure to which the provisions of sections 24I, 24J, 24K or 24L apply; or
- to any expenditure actually paid in respect of any unconditional liability to pay an amount imposed by legislation.

The Commissioner has a discretion, which is subject to objection and appeal, to determine that if the apportionment of the expenditure in accordance with the section does not reasonably represent a fair apportionment of such expenditure in respect of the goods, services or benefits to which it relates, he may direct that such apportionment be made in such other manner as appears fair and reasonable to him.

If it is during any year of assessment shown by any person that—

- the goods or services in respect of which the expenditure is incurred, will never be received by or be rendered to him; or
- he will never become entitled to any other benefit in respect of which the expenditure is incurred,

the expenditure will be allowed in that year, to the extent that such expenditure has actually been paid by him.

CLAUSE 32

Income Tax: Repeal of section 24B of the Income Tax Act, 1962

Deletion of obsolete provision.

CLAUSE 33

Income Tax: Amendment of section 28 of the Income Tax Act, 1962

These amendments are consequential upon the repeal of the Insurance Act, 1943 (Act No. 27 of 1943), and the promulgation of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and the introduction of new provisions regulating the taxation of long-term insurers in the Income Tax Act, 1962.

CLAUSE 34

Income Tax: Amendment of section 28bis of the Income Tax Act, 1962

This amendment is consequential upon the repeal of the Insurance Act, 1943 (Act No. 27 of 1943).

CLAUSE 35

Income Tax: Insertion of section 30 in the Income Tax Act, 1962

See notes on PUBLIC BENEFIT ORGANISATIONS.

CLAUSE 36

Income Tax: Amendment of section 38 of the Income Tax Act, 1962

See notes on TAXATION OF FOREIGN DIVIDENDS.

CLAUSE 37

Income Tax: Amendment of section 55 of the Income Tax Act, 1962

Section 55(2)*(k)* of the Income Tax Act, 1962, and section 1(2)*(g)* of the Estate Duty Act, 1955, previously read exactly the same, referring to the application for a determination of the surface value of farming property. The appropriate section of the Estate Duty Act was, however, amended by the Abolition of Restrictions on the Jurisdiction of Courts Act, 1996 (Act No. 88 of 1996), to delete the words which provide that the decision of the Board of the Land Bank shall be final. The reason therefor being that the provision could possibly have been regarded as unconstitutional as it denied the relevant person the right to administrative action. No similar amendment was done in respect of donations tax, and it is, therefore, proposed that section 55(2)*(k)* of the Income Tax Act, 1962, be amended to bring it in line with the corresponding provisions of the Estate Duty Act, 1955.

CLAUSE 38

Income Tax: Amendment of section 56 of the Income Tax Act, 1962

See notes on PUBLIC BENEFIT ORGANISATIONS.

CLAUSE 39

Income Tax: Amendment of section 64B of the Income Tax Act, 1962

See notes on TAXATION OF FOREIGN DIVIDENDS.

CLAUSE 40

Income Tax: Amendment of section 64C of the Income Tax Act, 1962

See notes on TAXATION OF FOREIGN DIVIDENDS.

CLAUSE 41

Income Tax: Amendment of section 66 of the Income Tax Act

See notes on TAXATION OF FOREIGN DIVIDENDS.

CLAUSE 42

Income Tax: Amendment of section 70 of the Income Tax Act

See notes on TAXATION OF FOREIGN DIVIDENDS. This provision places a duty on resident companies to notify resident shareholders of the amounts of foreign dividends received by them.

CLAUSE 43

Income Tax: Amendment to section 74C of the Income Tax Act

See notes on AMENDMENT TO INQUIRY PROVISIONS.

CLAUSE 44

Income Tax: Amendment of section 75 of the Income Tax Act, 1962

See notes on ADJUSTMENT OF FINES.

CLAUSE 45

Income Tax: Amendment of section 83 of the Income Tax Act, 1962

Section 83(19) currently provides that the President of the Special Court may indicate which judgments or decisions of the court he or she considers ought to be published for general information. A copy of the judgement or decision of the court so indicated must then be referred to the appellant, or his representative with a written request that the appellant grant his consent in writing to the publication thereof. If the appellant fails to give his written consent to such publication, the

registrar of the court must refer the matter back to the President who may authorise the publication of the judgment or decision, if he is satisfied—

- that the appellant's consent to publication has been unreasonably withheld; and
- that such judgment or decision is in a form which does not reveal the identity of the appellant concerned in the case.

In the past, these provisions have been accepted and followed with very few problems. Recently, however, publishers and academics have voiced the opinion that the provisions of section 83(19) should be reviewed. The reason for this is the fact that important principles concerning taxation in general and the provisions of the Act in particular may go unreported where the taxpayer refuses permission for publication. In essence, these parties propose that permission for the publication of judgments should be withheld in exceptional circumstances only. The presiding judges are sufficiently aware of the sensitivity of a specific case and are, therefore, in as good a position as the taxpayer to decide whether a specific judgment should be reported or not. The reporting of judgments will in terms of the proposal now be in the sole discretion of the President of the Special Court, but still in the format that will not reveal the identity of the appellant. It is, therefore, proposed that subsection (19) be amended to this effect.

CLAUSE 46

Income Tax: Amendment of section 84 of the Income Tax Act, 1962

See notes on ADJUSTMENT OF FINES.

CLAUSE 47

Income Tax: Amendment of section 85 of the Income Tax Act, 1962

See notes on ADJUSTMENT OF FINES.

CLAUSE 48

Income Tax: Substitution of section 99 of the Income Tax Act, 1962

Currently section 99 of the Income Tax Act, 1962, provides that the Commissioner may declare a person to be the agent of a taxpayer and the person so declared an agent may be required to make payment of any tax due by such taxpayer from any moneys which may be held by the agent or due by the agent to the taxpayer whose agent he has been declared to be. It is proposed that this provision be extended to also include any outstanding penalties and interest.

CLAUSE 49

Income Tax: Amendment of section 101 of the Income Tax Act, 1962

See notes on TAXATION OF FOREIGN DIVIDENDS.

CLAUSE 50

Income Tax: Amendment of section 104 of the Income Tax Act, 1962

See notes on ADJUSTMENT OF FINES.

CLAUSE 51

Income Tax: Amendment of section 106 of the Income Tax Act, 1962

See notes on TAXATION OF FOREIGN DIVIDENDS.

CLAUSE 52

Income Tax: Amendment to paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962

See notes on TAXATION OF EMPLOYMENT COMPANIES AND TRUSTS.

CLAUSE 53

Income Tax: Amendment of paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962

See notes on TAXATION OF EMPLOYMENT COMPANIES.

CLAUSE 54

Income Tax: Amendment of paragraph 1 of the Seventh Schedule to the Income Tax Act, 1962

The definition of "official rate of interest" currently provides for a specific rate of interest.

In terms of paragraph 20 of the Seventh Schedule, the Minister of Finance may by notice in the *Gazette* amend the definition so as to vary the rate of interest specified therein. It is proposed that the definition be amended to only refer to such rate determined from time to time by the Minister.

CLAUSE 55

Income Tax: Amendment of paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962

Currently the Act provides that the benefit of any holiday accommodation provided by an employer to an employee be calculated at the cost of the accommodation, where such accommodation is hired by the employer from any person other than an associated institution in relation to the employer. In any other case, the benefit is calculated at the lower of—

- a fixed rate of R100 per person per night; or

- the prevailing rate per day.

This is especially beneficial where the employer owns the holiday accommodation. It is therefore proposed that the provisions be amended to subject to tax the actual cost of providing the accommodation.

It is proposed that this provision be amended to delete the reference to the fixed amount of R100 and to determine the value at the actual cost to employer in the case of rented accommodation, or in any other case to the rate at which such accommodation could normally be let.

CLAUSE 56

Income Tax: Amendment of paragraph 19 of the Seventh Schedule to the Income Tax Act, 1962

See notes on ADJUSTMENT OF FINES.

CLAUSE 57

Income Tax: Amendment of paragraph 20 of the Seventh Schedule to the Income Tax Act, 1962

Subclause (a): This amendment is consequential upon the amendment to the definition of "official rate of interest".

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

Subclause (c): Deletion of obsolete provision.

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

CLAUSE 58

Customs and Excise: Amendment of section 1 of the Customs and Excise Act, 1964

The amendments to the definitions in section 1(1) are consequential upon the proposed imposition of an air passenger tax in terms of section 47B of the Act.

CLAUSE 59

Customs and Excise: Insertion of section 47B in the Customs and Excise Act, 1964

In his Budget Review, the Minister of Finance proposed the introduction of an air passenger tax on international air travel from the Republic. Section 47B is inserted to give effect to that proposal.

The proposed provisions provide that the chargeable passenger (defined in subsection (1)) will be liable for the tax. In most cases, the operator (also defined in subsection (1)), will be the airline and in practice, the amount of the tax will be

included in the ticket price. The tax must be collected by the operator or his agent and paid over to SARS.

Subsection (1) contains definitions which include "agent", "airline", "airport", "carriage", "chargeable aircraft", "chargeable passenger", "flight", "operator", "passenger", "reward" and "tax".

Both the definition of "chargeable passenger" and "flight" give effect to the concept that the tax will only be levied on passengers departing from an airport in South Africa to a destination outside South Africa.

The definition of "passenger" already excludes certain persons in respect of whom the tax will not be payable. They include the following—

- members of the flight crew;
- cabin attendants;
- persons not carried for reward who are employees of the operator and who satisfy certain other requirements.

The definition of "operator" is important in the sense that the section places a number of responsibilities on an operator such as the fact that the operator will be responsible for collecting the tax. An operator includes—

- a person who has management over a chargeable aircraft;
- any airline; or
- any person who owns or hires an aircraft or in whose name it is registered.

In terms of subsection (2), the tax is charged on the carriage on a chargeable aircraft of any chargeable passenger. The general rate of the tax will be R100 per passenger, but provision is made that the Minister may, by notice in the *Gazette*, lower the rate in respect of flights to certain countries in Africa. The subsection also provides for the criteria that the Minister must take into consideration in deciding whether the rate should be lowered.

Although it is provided for that a chargeable passenger shall be liable for the tax, the tax must be collected and is payable by the operator or his agent which may be appointed and registered as provided for in subsection (5).

Subsection (2) furthermore prescribes the moment when the tax actually becomes due, i.e. when the aircraft first takes off on the passenger flight. Payment of the tax is for the benefit of the National Revenue Fund and must be made in accordance with the rules to be prescribed. Subsection (2) also deems the air passenger tax to be a duty leviable under the Customs and Excise Act, except for purposes of any customs union agreement under section 51 of the Act. The deeming provision is also subject to the provisions of the new section 47B which regulates the tax.

In addition to the exclusions in the definition of "passenger", subsection (3) also excludes certain passengers as chargeable passengers, such as—

- children under the age of 2 years and who have not been allocated a separate seat before boarding the aircraft;
- passengers carried for no reward in pursuance of a requirement imposed under a law, for example, deportees;
- passengers carried for no reward for purposes of inspecting matters relating to the aircraft, for example, flight operations inspectors to inspect the aircraft crew;

- passengers carried (whether for reward or not) in pursuance of any international agreement or convention or certain other obligations, subject to the approval of the Commissioner, for example, international assistance,
- passengers in transit through the Republic.

Subsection (4) provides for the registration of operators (defined in subsection (1)). In terms of paragraph *(e)*, the pilot of a chargeable aircraft must produce proof of registration of the operator or a certificate from the Commissioner that the operator is not liable to register and a passenger manifest together with the report outwards to the Controller for the purpose of section 7(3).

In terms of subsection (5) the operator may appoint an agent who, if registered by the Commissioner, may act on behalf of the operator. The Commissioner may under certain circumstances refuse to register an agent or cancel or suspend the registration of an agent. Paragraph *(e)* provides for the *mutatis mutandis* application of sections 44, 98 and 99(1) in respect of the operator or agent.

Subsection (6) relates to the furnishing of security by the aircraft operator and the agent.

Subsection (7) provides for matters relating to the keeping and rendering of accounts and payment of the tax. In this regard the enabling provision provides for payment of the tax by the operator or agent at such time, in such manner and at such place as may be prescribed by rule. These rules will be published before 1 November 2000.

Subsection (8) contains certain penal provisions in respect of certain offences arising from fraudulent tax evasion, false statements made, etc.

Subclause (2) provides that the proposed section 47B shall come into operation on 1 November 2000 and shall apply to any carriage of a chargeable passenger on any flight which commences on or after that date.

CLAUSE 60

Customs and Excise: Amendment of section 49 of the Customs and Excise Act, 1964

Section 49(1) provides that whenever Parliament has approved as contemplated in section 231 of the Constitution, any agreement with the government of any country or countries or group of countries, the agreement (or any protocol or other part or provision thereof) is enacted into law as part of the Customs and Excise Act, when published in accordance with the provisions of subsection (1) (amendment of General Notes to Schedule No. 1 of Part 1 of Schedule No. 1 to give effect to the provisions of such agreement) or (1A) (origin provisions) of section 48 or section 49(5) (other provisions to be administered under the Act). The proposed subsection (5B) empowers the Minister to include in any notice published under subsection (5), the full text of any agreement or protocol except the protocol or other part or provision thereof published under section 48(1A) and if so included, the whole agreement or protocol is enacted into law as part of the Act, as contemplated in section 49(1)*(a)*. The whole agreement or protocol if so published, therefore becomes law as part of the Act, although it may contain provisions which do not require expressly or by implication (subsection (5)) to be administered in terms of the Act.

The amendment is deemed to have come into operation on 24 November 1999, the date the Revenue Laws Amendment Act, 1999 (Act No. 53 of 1999), was published in the *Gazette*.

The amendments to subsection (1)*(a)* and *(b)*(i) are consequential upon the insertion of subsection (5B).

CLAUSE 61

Customs and Excise: Amendment of section 75 of the Customs and Excise Act, 1964

Presently section 75(1)*(b)* only provides for a rebate of customs duties on imported goods described in Schedule No. 4 to the Act. The proposed amendment provides for the inclusion of fuel levy in section 75(1)*(b)*.

The amendment is made retrospective to 1 July 1987, the date the fuel levy was introduced, in view of existing provisions in Schedule No. 4 for a rebate of fuel levy on imported goods.

CLAUSE 62

Customs and Excise: Amendment of section 76 of the Customs and Excise Act, 1964

Subsection 49(9) provides for procedures governing the clearance of imported goods which are claimed to qualify for a preferential rate of duty specified in Part 1 of Schedule No. 1, but for which the importer is unable to produce the required proof of origin. No specific provision exists, however, for a refund of duty where duty on imported goods has been paid at the general rate of duty in Part 1 of Schedule No. 1 and proof is produced that the goods concerned qualify for a preferential rate of duty in the said Part of the said Schedule. The proposed amendment is intended to authorise such refunds and is deemed to have come into operation on 1 January 2000, the date Part 1 of Schedule No. 1 was substituted to provide for general rates and preferential rates of duty.

CLAUSE 63

Customs and Excise: Amendment of section 105 of the Customs and Excise Act, 1964

In terms of section 105 of the Customs and Excise Act, 1964, the Minister of Finance may by notice in the *Gazette* amend the definition so as to vary the rate of interest specified therein. It is proposed that the definition be amended to only refer to such rate determined from time to time by the Minister.

CLAUSE 64

Customs and Excise: Amendment of Schedule No. 1 of Act 91 of 1964

This clause provides for the amendment of Schedule No. 1 to the Customs and Excise Act, 1964, and the date of commencement thereof. Such amendments are reflected in Schedule 2 to this Bill. It arises from the taxation proposals which were

tabled by the Minister of Finance during his Budget Speech and contains the amendments to the rates of duty in respect of alcoholic and tobacco products.

CLAUSE 65

Customs and Excise: Continuation of certain amendments of Schedules Nos. 1 to 6 of Act 91 of 1964

This clause provides for the continuation of the amendments to the Schedules to the Act effected by the Minister during the 1999 calendar year and an amendment made this year.

CLAUSE 66

Customs and Excise: Amendment of the long title of Act 91 of 1964

The amendment is consequential upon the provision for the air passenger tax in section 47B. The Act also provides for the prohibition of and control over the use of certain goods and a reference thereto is accordingly inserted in the long title.

CLAUSE 67

Stamp Duties: Amendment of section 4 of the Stamp Duties Act, 1968

Subclause (1)(a): See notes on WITHDRAWAL OF TAX EXEMPTION OF ESKOM.

Subclauses (1)(b), (c) and (d): See notes on PUBLIC BENEFIT ORGANISATIONS.

CLAUSE 68

Stamp Duty: Amendment of section 5 of the Stamp Duties Act, 1968

Section 5 of the Stamp Duties Act, 1968, was amended in 1998 to provide that the maximum amount of adhesive stamps allowed per instrument should be limited to R400-00. In cases where the duty is in excess of R400-00, the amount must be denoted by way of—

- a franking machine impression;
- a receipt issued by a revenue office (which at that stage included the Magistrates' Offices); or
- a special receipt as contemplated in section 23.

The purpose of the 1998 amendment was to reduce the number of revenue stamps held in stock at the various offices. Certain problems have, however, been experienced in relation to the amendment as from the beginning of 1999, Magistrates' Offices have discontinued the services which they previously rendered on behalf of SARS. Furthermore, the Post Offices sell revenue stamps on behalf of SARS and to accommodate the rural areas, it was arranged with the Post Offices to hold larger quantities of revenue stamps at their branches. The Post Offices' current

systems do however, not allow for the issuing of receipts for stamp duty for amounts exceeding R400-00.

Deeds Offices also experience a problem with the abovementioned amendment as mortgage bonds may not be removed from a Deeds Office once approved by the Registrar. As not all attorneys who are required to stamp the bonds at the Deeds Offices have franking machines, this has also presented some difficulties in having the bonds stamped.

It is, therefore, proposed that section 5 be amended to delete the reference to a maximum of R400-00 for purpose of affixing stamps.

CLAUSE 69

Stamp Duties: Amendment of section 27 of the Stamp Duties Act, 1968

See notes on ADJUSTMENT OF FINES.

CLAUSE 70

Stamp Duties: Amendment of section 28A of the Stamp Duties Act, 1968

See notes on ADJUSTMENT OF FINES.

CLAUSE 71

Stamp Duties: Amendment of section 31C of the Stamp Duties Act, 1968

See notes on AMENDMENT OF INQUIRY PROVISIONS.

CLAUSE 72

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

These amendments are consequential upon the repeal of the Insurance Act, 1943 (Act No. 27 of 1943), as well as the fact that the relevant provisions have become obsolete.

CLAUSE 73

Amendment of Item 18 of Schedule 1 to Act 77 of 1968

These amendments are consequential upon the repeal of the Insurance Act, 1943 (Act No. 27 of 1943) and the promulgation of the Long-term Insurance Act, 1998 (Act No. 52 of 1998).

CLAUSE 74

Stamp Duties: Amendment of Item 20 of Schedule 1 to the Stamp Duties Act, 1968

These amendments are consequential upon the repeal of the Insurance Act, 1943 (Act No. 27 of 1943) and the promulgation of the Long-term Insurance Act, 1998 (Act No. 52 of 1998).

CLAUSE 75

Eskom Act: Insertion of section 24 in the Eskom Act, 1987

See notes on WITHDRAWAL OF EXEMPTION OF ESKOM.

CLAUSE 76

Value-Added Tax: Amendment of section 1 of the Value-Added Tax Act, 1991

In terms of section 17(2)*(c)* no input tax deduction may be made in respect of the acquisition of a motor car, except where the motor car is acquired by a vendor for purposes of making a taxable supply of that motor car, as in the case of a dealer in motor cars. The reason for this is that a large number of motor cars are acquired for private purposes but registered in the names of vendors who would otherwise have been in a position to deduct input tax in respect thereof and thereby obtain an unfair advantage.

In recent years double cab light delivery vehicles have become increasingly popular as private family motor cars. The definition of "motor car" for that reason includes double cab vehicles on the grounds that the area of the cab exceeds the area available as loading space. Input tax is accordingly denied in terms of section 17(2)*(c)*.

Some motor vehicle manufacturers have started making adjustments to certain models by increasing the loading space. If this should lead to these models falling outside the ambit of the definition of "motor car" input tax will become deductible, which may lead to the distortion of consumer preferences as far as this type of vehicle is concerned.

It is accordingly proposed that the definition of "motor car" be amended to specifically include double cab light delivery vehicles. For the sake of clarity minibuses and station wagons are also included in the definition.

CLAUSE 77

Value-Added Tax: Amendment to section 11 of the Value-Added Tax, 1991

Value-added tax in South Africa is a destination based tax which imposes tax on the consumption of goods and services in South Africa. The supply of goods which are exported is therefore subject to the zero rate of VAT (or the VAT paid is refunded). Services supplied to a recipient who will consume those services outside the Republic are also subject to the zero rate.

The international community has, in recent years, started to make use of training facilities available in the Republic. Employees of employers who are not residents of the Republic and who are not registered as vendors, are sent to the Republic to undergo vocational training, after which they return to their own countries where they are employed. Although the training takes place in the Republic, the services are evidently only consumed once the employees apply their newly acquired skills at their place of employment outside the Republic.

It is accordingly proposed that a new paragraph *(r)* be introduced to section 11(2) to provide for the zero-rating of training services supplied in these circumstances, where those training services do not constitute educational services which are exempt from VAT in terms of section 12*(h)* of the Act.

CLAUSE 78

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

Subclause (a): As the Act currently provides, vendors falling within Categories A and B have to furnish returns every second month while vendors falling within Categories C and D have to furnish returns every month and every six months respectively.

Certain vendors such as the management companies of groups of companies or property owning trusts only supply management or administrative services to the other companies in the group or are only engaged in the letting of fixed property or the renting of movable goods to connected persons. It is common practice for these vendors to charge a fee and issue a tax invoice in respect of these supplies only once a year.

As these vendors do not make any other taxable supplies, it follows that all but one of their VAT returns furnished in a year are "nil"-returns. Certain costs still have to be incurred by the Commissioner in issuing and processing these returns. Experience also indicates that these returns are often furnished late, which causes additional costs to be incurred in follow-up actions.

In order to save time and costs for both vendors and the Commissioner it is proposed that section 27(1) of the Act be amended to provide for a new Category E. Vendors falling into this category will have tax periods of 12 months which will normally end on the last day of their year of assessment for income tax purposes. Vendors who meet the requirements for being placed in this category, which are dealt with in *subclause (e)*, may, however, apply in writing for their tax periods to end on the last day of any other month.

Subclause (b): The proposed amendment to paragraph *(a)* of subsection (2) is consequential upon the amendment dealt with in *subclause (a)*. Vendors who do not fall within Categories C or D or the new Category E, all three of which are dependant upon certain circumstances being met, shall automatically fall within Category A or B.

Subclause (c): The proposed amendment to the proviso to subsection (3) is consequential upon the amendment dealt with in *subclause (a)*.

Subclause (d): The proposed amendment to the proviso to subsection (4) is consequential upon the amendment dealt with in *subclause (a)*.

Subclause (e): The proposed subsection (4A) sets out the requirements which a vendor must meet in order to be placed in Category E. All of the following requirements must be complied with.

(a) The vendor must be a company or a trust fund. As companies and trust funds must account for VAT on the invoice basis, the possibility of postponing the liability to account for VAT by postponing the payment of the consideration for the supply is eliminated.

(b) The vendor's enterprise must consist solely of one or more of the activities of letting of fixed property or the renting of movable goods to, or the management or administration of companies which are connected persons in relation to the vendor. Where supplies are made to persons who are not connected persons or where, for instance, goods are supplied under an agreement of sale, the vendor does not meet the requirements for being placed in Category E.

(c) The recipients of the supplies must be registered as vendors and must be entitled to a full deduction of the tax in respect of these supplies. This requirement is aimed at preventing any advantage to the group of companies by postponing the liability to account for output tax.

(d) It must be agreed between the vendor and the recipients of the supplies that tax invoices will only be issued once a year and that the consideration for these supplies will also only become payable once a year, at the end of the vendor's year of assessment. This requirement is aimed at preventing, as far as possible, a mismatching of input tax and output tax.

(e) The vendor must apply in writing to the Commissioner to be placed in Category E.

The Commissioner may at any time change the vendor's category to a different category if the vendor so requires, when the Commissioner is satisfied that the vendor's circumstances have changed to such an extent that he no longer meets the requirements of Category E or when the vendor's falling into Category E results in any loss, including a loss of interest, to the State.

Subclause (f): The tax periods of all vendors, whether they fall into Category A, B, C, D or the proposed Category E, normally end on the last day of a month. Paragraph (ii) of the proviso to subsection (6), however, allows a vendor to end his tax periods on any day within 10 days before or after the last day of the month on which his tax period would normally have ended.

This proviso creates a mechanism which is used by some vendors to postpone their liability to account for VAT by manipulating their tax periods to either exclude large supplies made during the last few days of a month, or to include large supplies received during the first few days of the following month. This causes a mismatching of input tax and output tax with a resultant loss to the State.

The proposed amendment to paragraph (ii) of the proviso to subsection (6) still allows a tax period to end within 10 days before or after the last day of the relevant month, but requires that it ends on a fixed day, approved by the Commissioner. This means that a vendor can, for example, choose to end his tax periods on the 27th day

of the month (a fixed date) but that he may also choose to end his tax period on the last Friday before the end of the month (a fixed day, but not a fixed date).

A vendor will no longer be allowed to end each tax period on a different day, but will only be allowed to change the fixed day with the prior approval of the Commissioner.

CLAUSE 79

Value-Added Tax: Amendment to section 28 of the Value-Added Tax Act, 1991

Section 28(1) requires of a vendor to furnish a return within the period ending on the twenty-fifth day of the first month commencing after the end of the tax period, or where the tax period ends on a day within ten days after the end of the month, on the twenty-fifth day of the month during which the tax period ended.

If a return is not furnished by the twenty-fifth day referred to, the vendor is liable to pay a penalty.

When the twenty-fifth day of a month falls on a Saturday, Sunday or public holiday it is often not possible to determine whether the return was furnished within the prescribed period. It is therefore proposed that the proviso to section 28(1) be amended to resolve this issue and to make it clear that when the twenty-fifth day does not fall on a business day, the return must be furnished on the last business day before the twenty-fifth day of that month.

CLAUSE 80

Value-Added Tax: Amendment to section 31 of the Value-Added Tax Act, 1991

Section 31(3) authorises the Commissioner to estimate the amount upon which a vendor has to pay tax and to issue an assessment on that basis. Such estimated assessments are usually issued in those cases where circumstances indicate that the amount of tax accounted for by the vendor is less than the amount which he should have accounted for, but where his actual liability cannot be determined accurately, usually because of a lack of accounting records, tax invoices, *et cetera*.

Although it is standing practice when issuing an estimated assessment to duly consider all arguments which a vendor may put forward, vendors more often than not lodge objections and appeals against estimated assessments. Dealing with these objections and appeals is extremely time-consuming and costly, while many of these cases can be resolved by agreement between the Commissioner and the vendor.

It is accordingly proposed that section 31 of the Act be amended by the insertion of a new subsection (5A) to authorise the Commissioner to agree with a person in writing as to the amount upon which tax shall be payable. To the extent that an assessment is issued upon an amount agreed to in this manner, the assessment shall not be subject to objection and appeal. It follows that if agreement was reached on the amounts of taxable supplies made and received and therefore on the amount of tax payable, that amount may not be objected to. Should the Commissioner, however, levy additional tax in terms of section 60 of the Act, to which the vendor did not agree, he may still object to the additional tax levied.

Section 78(2) of the Income Tax Act, 1962, contains similar provisions.

CLAUSE 81

Value-Added Tax: Amendment to section 43 of the Value-Added Tax Act, 1991

In terms of section 43(1)*(a)* of the Act the Commissioner may require that a vendor furnish security for VAT payable where that vendor has been convicted of an offence under the said Act or has repeatedly failed to comply with the requirements of the said Act.

The Commissioner administers various Acts and by its very nature a person who is registered as a vendor under this Act will probably be registered as a taxpayer under the Income Tax Act and may from time to time be involved in transactions falling under some of the other acts.

In order to further improve the Commissioner's efficiency in collecting tax, it is proposed that paragraph *(a)* of section 43(1) be amended to authorise the Commissioner to require a vendor to furnish security for VAT payable where that vendor has been convicted of an offence under any Act administered by the Commissioner or has repeatedly failed to comply with the requirements of any act administered by the Commissioner.

CLAUSE 82

Value-Added Tax: Amendment to section 57C of the Value-Added Tax Act, 1991

See notes on AMENDMENT OF INQUIRY PROVISIONS.

CLAUSE 83

Special exemption in respect of goods or services supplied by the International Telecommunication Union

The International Telecommunication Union ("ITU"), an agency of the United Nations, has been invited to hold its "Africa Telecom 2001" exhibition of telecommunication equipment in South Africa. An international precedent exists obliging host countries to provide relief from tax to the ITU. This clause provides that the supply of any goods or services by the ITU in connection with "Africa Telecom 2001" will be exempt from value-added tax. The ITU will thus not have to register as a vendor for value-added tax purposes. Relief for value-added tax incurred by the ITU will be granted in terms of section 68 of the Value-Added Tax Act, 1991, which deals with tax relief to diplomatic missions.

CLAUSE 84

Special provisions in relation to unbundling transactions: Amendment of section 60 of the Income Tax Act, 1993

This clause deletes a reference to an obsolete provision.

CLAUSE 85

Tax on Retirement Funds: Amendment of section 1 of the Tax on Retirement Funds, 1996

These amendments are consequential upon the repeal of the Insurance Act, 1943 (Act No. 27 of 1943) and the promulgation of the Long-term Insurance Act, 1998 (Act No. 52 of 1998).

CLAUSE 86

Tax on Retirement Funds: Amendment of section 3 of the Tax on Retirement Funds, 1996

Section 3 of the Tax on Retirement Funds Act, 1996, is amended to include foreign dividends in the determination of the income of any untaxed policyholder fund or any retirement fund.

CLAUSE 87

Uncertificated Securities Tax: Amendment of section 6 of the Uncertificated Securities Tax Act, 1998

These amendments are consequential upon the repeal of the Insurance Act, 1943 (Act No. 27 of 1943) and the promulgation of the Long-term Insurance Act, 1998 (Act No. 52 of 1998).

CLAUSE 88

Uncertificated Securities Tax: Amendment of section 16 of the Uncertificated Securities Tax Act, 1998

See notes on AMENDMENT OF INQUIRY PROVISIONS.

CLAUSE 89

Demutualisation Levy: Insertion of section 7A in Demutualisation Levy Act, 1998

This provision makes provision for the exemption from income tax of the receipts and accruals of the Umsobomvu Fund.

CLAUSE 90

Eskom Amendment Act: Amendment of section 3 of the Eskom Amendment Act, 1998

See notes on WITHDRAWAL OF TAX EXEMPTION OF ESKOM.

CLAUSE 91

Skills Development Levy: Amendment of section 4 of Act 9 of 1999

See notes to PUBLIC BENEFIT ORGANISATIONS.

CLAUSE 92

Skills Development Levy: Amendment of section 5 of Act 9 of 1999

This amendment is consequential upon the amendment of section 4 of the Act by section 112 of the Revenue Laws Amendment Act, 1998 (Act No. 53 of 1998).

CLAUSE 93

Skills Development Levy: Amendment of section 13 of Act 9 of 1999

Section 13 of the Skills Development Levies Act, 1999, currently provides that the provisions of the Income Tax Act, 1962, relating to representative taxpayers as contained in the Fourth Schedule to the Income Tax Act apply for purposes of the Skills Development Levies Act, 1999. It is proposed that this section be amended to refer to the provisions relating to representative taxpayers as contained in the Income Tax Act, 1962, as a whole.

CLAUSE 94

Short title and commencement.

This clause provides the short title and commencement date of the Bill.

The following bodies were consulted on the draft legislation:

ACCOUNTING FORUM
AFRIKAANSE HANDELSINSTITUUT (AHI)
AIRLINES ASSOCIATION OF SOUTHERN AFRICA (AASA)
ASSOCIATION FOR THE ADVANCEMENT OF BLACK ACCOUNTANTS OF SOUTH AFRICA (ABASA)
ASSOCIATION OF LAW SOCIETIES (ALS)
ASSOCIATION OF UNIT TRUSTS (AUTSA)
BANKING COUNCIL
BAPTIST UNION
COMMERCIAL AND FINANCIAL ACCOUNTANTS (CFA)
COMMUNITY CHEST
COSATU
DEPARTMENT OF FINANCE
DEPARTMENT OF WELFARE
DIAKONIA COUNCIL OF CHURCHES
ESKOM
FINANCIAL AND FISCAL COMMISSION (FFC)

INSTITUTE OF RETIREMENT FUNDS (IRF)
JOHANNESBURG STOCK EXCHANGE (JSE)
LIFE OFFICES ASSOCIATION (LOA)
NATIONAL AFRICAN FEDERATED CHAMBER OF COMMERCE AND INDUSTRY (NAFCOC)
NATIONAL BUSINESS INITIATIVE
NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL (NEDLAC)
NON-PROFIT PARTNERSHIP
SOUTH AFRICAN CATHOLIC BISHOP'S CONFERENCE
SOUTH AFRICAN CHAMBER OF BUSINESS (SACOB)
SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS (SAICA)
SOUTH AFRICAN RUGBY AND FOOTBALL UNION (SARFU)
TAX ADVISORY COMMITTEE (TAC)
USAID
VAT TECHNICAL COMMITTEE