REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 2004

NATIONAL TREASURY

[W.P. 1 —’04]

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INTRODUCTION

The Taxation Laws Amendment Bill, 2004, introduces amendments to the Transfer Duty Act, 1949, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, the Value-Added Tax Act, 1991, the Tax on Retirement Funds Act, 1996, the Revenue Laws Amendment Act, 1999, the Second Revenue Laws Amendment Act, 2001, the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, and the Revenue Laws Amendment Act, 2003.

70	Customs and Excise Act, 1964		Continuation of certain amendments of Schedules Nos. 1 to 6	23
71	Mineral and Petroleum Provisions		Insertion of transitional lease provisions	23
72	Short title and commencement			24

CLAUSE 1

Transfer duty: Amendment of section 2 of the Transfer Duty Act, 1949

Transfer duty is levied in terms of section 2 of the Transfer Duty Act on the acquisition of fixed property in South Africa. Currently, the rates for property acquired by natural persons are—

- 0% on the first R140 000 of the value of the property;
- 5% on the value between R140 001 up to R320 000; and
- 8% on the value above 320 000.

To further encourage the acquisition of property and to grant effective tax relief for low-income earners, the Minister of Finance has proposed that the exempt (zero-rated) threshold for transfer duty be increased to R150 000. The new graduated rate structure will be as follows:

- 0% on the first R150 000 of the value of the property;
- 5% on values between R150 001 up to R320 000; and
- 8% on values above R320 000.

The new rate structure will apply in respect of acquisitions of property on or after 1 March 2004.

CLAUSE 2

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

Mineral rights, including rights issued pursuant to the Mineral and Petroleum Resources Development Act, 2002, generally fall within the Transfer Duty Act. In 2003, amendments were made so that the conversion of “old order rights” to “new order rights” as required by the Mineral and Petroleum Resources Development Act, 2002 would be exempt from the Transfer Duty. The purpose of this change was to ensure that this legislatively required conversion did not unintentionally trigger any additional Governmental charges. The whole or partial renewal of mineral rights (or permits) are similarly exempt from Transfer Duty.

It has since come to Government’s attention that the mere receipt of new rights or permits pursuant the Mineral and Petroleum Resources Development Act, 2002 inadvertently remains with the ambit of the Transfer Duty Act. The net effect is that new entrants to the mining dispensation will be burdened with the Transfer Duty; whereas current operators who maintain their position via conversion or renewal will not. This uneven level of the burden would effectively undermine one of the policies of the Mineral and Petroleum Resources Development Act, 2002, which is to encourage new entrants into the market. The imposition of Transfer Duty would also ultimately amount to a double charge because payment for the use of mining rights will ultimately be required through royalty for the ongoing extraction of mineral resources (whereas the Transfer Duty would otherwise apply to the present value of those mineral resources). The proposed amendments therefore remedy this situation by exempting the mere receipt of new rights or permits (as well as any renewal of a reconnaissance permit and the granting of a reconnaissance permission which also inadvertently fell outside of the exemption).

One class of mining right transactions remains firmly within the Transfer Duty net. These transactions involve the acquisition of rights between private parties as will be permitted under section 11 of the Mineral and Petroleum Resources Development Act, 2002. This treatment is on par with the current impact of the Transfer Duty, which similarly applies to acquisitions between private parties with respect to rights in effect before the Mineral and Petroleum Resources Development Act, 2002, came into operation.

CLAUSE 3

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

The definition of "prescribed rate" determines the rate of interest payable on outstanding taxes and refunds of overpayments of tax. This definition was amended on 1 April 2003 to link it to the rate determined in terms of section 80 of the Public Finance Management Act, 1999. Previously the interest rate was determined by the Minister of Finance from time to time and in publishing any such new rate, sufficient time was allowed to provide for the implementation thereof.

When the PFMA rate changes, very little time is allowed between the notice of the change and its implementation date and certain processing issues arise. SARS generally prints income tax assessments six weeks before their due date to ensure that taxpayers receive them in good time. Interest on outstanding or overpaid provisional tax is calculated up to the due date at the relevant interest rate. If the interest rate changes after the assessment is printed but before the due date, the interest reflected on the assessment is no longer correct and needs to be adjusted. It is, therefore, proposed that the changes to the interest rates in the tax Acts only take effect on the first day of the second month following the date on which the PFMA rate changes.

CLAUSE 4

Income Tax: Amendment of section 3 of the Income Tax Act, 1962

Subclause (a): This amendment is of a textual nature and corrects a cross-reference.

Subclause (b): In terms of the definitions of "pension fund", "provident fund" and "retirement annuity fund", the Commissioner must approve certain funds before they are regarded as such a fund for purposes of the Income Tax Act, 1962. There is currently a duplication of the approval process, as these funds also need to be registered with, and comply with certain requirements set by the Financial Services Board. It was, therefore, announced in the Budget Review this year that the function of approving these funds for income tax purposes may be delegated by the Commissioner to the executive officer of the Financial Services Board to enable a one-stop approval and subsequent rule amendment system. This amendment gives effect to this proposal.

CLAUSE 5

Fixing of rates of normal tax

Income Tax: Rates of normal tax

Rates of normal tax payable by all persons are enacted by *clause 5* 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 2005 and are provided for in paragraph 1 of Schedule 1. More specifically, 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.

The rates for paragraph 1*(a)* persons consist of a progressive rate structure ranging between 18 per cent on the lowest portion of taxable income (amounts up to R74 000) and 40 per cent which is reached on the portion of taxable income above R270 000. The rates for paragraph 1*(b)* persons are fixed at a single rate of 40 per cent on all taxable income.

Companies

The rates for companies apply in respect of years of assessment, i.e. the financial year of the company concerned, ending during the 12-month period from 1 April 2004 to 31 March 2005, and are provided for in paragraphs 2*(a)* to *(h)* inclusive, of Schedule 1.

Those rates are as follows:

(a) Taxable income derived otherwise than—
  (i) by a small business corporation or an employment company;
  (ii) from gold mining;
  (iii) from long-term insurance business;
  (iv) by a non-resident through a branch or agency in the Republic; or
  (v) by a qualifying company enjoying tax holiday status:

  30 cents per R1, but in the case of a company which mines for gold and which is exempt from secondary tax on companies in terms of an option exercised by it, 38 cents per R1 of its non-gold mining taxable income (paragraph 2*(a)* of Schedule 1).

(b) Taxable income derived by a company which qualifies as a small business corporation as defined in section 12E: 15 cents per R1 up to R150 000, and 30 cents per R1 of taxable income exceeding R150 000 (paragraph 2*(b)* of Schedule 1).

(c) Taxable income derived by an employment company as defined in section 12E: 35 cents per R1 of taxable income (paragraph 2*(c)* of Schedule 1).

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

(i) where such company is not exempt from secondary tax on companies:

$$y = 37 - \frac{185}{x}\text{; or}$$

(ii) where such company is exempt from secondary tax on companies:

$$y = 46 - \frac{230}{x},$$

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

(e) Taxable income in the form of "recoupments" of capital expenditure accruing to companies which are or have been gold mining companies: the average rate of tax, determined as provided, or 30 cents per R1, whichever is the higher (paragraph 2*(e)* of Schedule 1).

(f) Taxable income derived from long-term insurance business: 30 cents per R1 in respect of the insurer's individual policyholder fund, company policyholder fund and corporate fund (paragraph 2*(f)* of Schedule 1).

(g) Taxable income (excluding from gold mining, long-term insurance business, or a qualifying project enjoying tax holiday status, or derived by a small business corporation or an employment company) derived by a non-resident which carries on trade through a branch or an agency within the Republic: 35 cents per R1 (paragraph 2*(g)* of Schedule 1).

Example 1:

Facts. Company is incorporated in South Africa but maintains its place of effective management in Foreign Country. Company generates R100 000 of taxable income through a retail sales branch located in South Africa. No treaty for the avoidance of double taxation exists between South Africa and Foreign Country.
Result. Even though Company maintains its effective place of management outside South Africa, the 35 per cent rate described in paragraph 2*(g)* does not apply to the R100 000 of taxable income because Company is a South African resident for income tax purposes by virtue of its South African incorporation.

Example 2

Facts. The facts are the same as Example 1, except that South Africa and Foreign Country have entered into a treaty for the avoidance of double taxation. The treaty determines the residence of a company based on the location of that company's place of effective management.
Result. Company does not qualify as a South Africa resident for income tax purposes because the treaty views Company as a resident of Foreign

Country. The 35 per cent rate described in paragraph 2(g) applies to the R100 000 of taxable income because Company is a non-resident for income tax purposes and that income is derived through a South African branch.

(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 paragraph (2) of Schedule 1, income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold, and any other income which results directly from mining for gold.

CLAUSE 6

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

This clause increases the primary rebate from R5 400 to R5 800 and the secondary rebate for persons 65 years and older from R3 100 to R3 200. These changes mean that the tax threshold for individuals under age 65 is increased to R32 222 and for individuals at least 65 years of age is increased to R50 000.

CLAUSE 7

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

This amendment corrects certain cross-references in section 9E to the provisions contained in section 64C(2) and (4). Section 64C was amended last year and as section 9E was repealed at the time, no consequential amendments were effected to section 9E. The repeal of section 9E, however, only takes effect in respect of dividends declared during any year of assessment commencing on or after 1 June 2004. The references to the deemed dividend provisions in section 64C, therefore, need to be amended in respect of the period before 1 June 2004.

CLAUSE 8

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

The interest and dividend exemption is currently R10 000 for taxpayers under 65 years of age and R15 000 for taxpayers aged 65 years and older. The Minister of Finance proposed in his Budget Review this year that the interest and dividend income exemption be raised with effect from 1 March 2004 to R11 000 for taxpayers under the age of 65 and to R16 000 for taxpayers age 65 and over. This amendment gives effect to this proposal. Up to R1 000 of this exemption may be applied to interest and dividends from foreign sources and the balance applies in respect of domestic interest.

CLAUSE 9

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

Subclause (a): Section 11*(o)* was amended in December 2003 to provide for the deduction on revenue account of any loss incurred as a result of the alienation, loss or destruction of any asset which qualified for a capital allowance or deduction and where the expected useful life of that asset for tax purposes did not exceed ten years. Although section 11*(o)* applies in respect of any plant, machinery, implements, utensils or articles, the reference to “plant” was omitted from some of the provisions relating to the determination of the cost of the asset. This amendment addresses this omission.

Subclause (b): Section 11*(u)* currently makes provision for a deduction of entertainment expenditure and club subscriptions incurred by individuals, if the Commissioner is satisfied that it was incurred on entertainment directly in connection with the taxpayer’s trade. The maximum allowed in terms of this provision is limited to the lesser of—

- R2 500; or
- R300 plus 5 per cent of the taxable income as exceeds R6 000.

Section 11*(u)* was amended in 2002 to provide that that it does not apply in respect of employees, unless the employee is an agent or representative whose remuneration is normally derived mainly in the form of commissions.

Section 11*(a)* already allows entertainment expenditure as a deduction if it is incurred in the production of income. It was announced in the Budget Review this year that this deduction for additional entertainment expenses will be withdrawn and this amendment gives effect to this proposal.

CLAUSE 10

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

This amendment brings the Afrikaans text of the Act in line with the English text.

CLAUSE 11

Income Tax: Amendment of section 12B of the Income Tax Act, 1962

Under current law only farming operations remain eligible for the 50:30:20 depreciation regime under section 12B of the Income Tax Act. The feed stock used for the production of bio-fuels (bio-diesel and bio-ethanol) stems from small scale or commercial agricultural farming operations which qualify for the allowance under section 12B(1)*(f)*.

However, once agricultural produce leaves the farm, either as part of the overall integrated operations of the bio-fuel producer or if purchased from the farmer, the preferential tax depreciation write-off regime of 50:30:20 no longer applies, as it no longer forms part of farming operations.

To encourage investment in bio-fuel related processing, as an important way to protect the environment, Government highlighted a preferential tax depreciation write-off regime of 50:30:20 for bio-fuel producers. This requires that the whole production chain, i.e. from feed stock to the refining thereof into bio-fuel, should qualify for the preferential tax regime. Since agricultural farming of the bio-fuel feed stock already qualifies under the current section 12B(1)*(f)*, a new paragraph is inserted for investment in bio-fuel related processing after the feed stock leaves the farm.

CLAUSE 12

Income Tax: Amendment of section 13quat of the Income Tax Act, 1962

Section 13*quat* of the Income Tax Act, 1962, provides for certain deductions in respect of the erection or improvement of buildings in urban development zones. An urban development zone is defined to mean an area which is demarcated by a municipality and the particulars of which were published by the Minister in the *Gazette*. Currently, the provisions of section 13*quat* require that this area must be demarcated by the relevant municipal council through formal resolution no later than 30 June 2004 or such later date as the Minister may approve on good cause show. As various municipalities have not yet been in a position to demarcate these areas, it is proposed that the deadline be removed. There would be a natural incentive for local government to expedite the demarcation of the urban renewal areas, as investors will put pressure on local government to finalise this matter so that they can access this attractive tax allowance.

CLAUSE 13

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

Currently the Income Tax Act, 1962, prohibits a deduction in respect of penalties or interest incurred due to the late payment of certain taxes and levies. The reason for this prohibition is that the burden of penalties and interest resulting from non-compliance with legislation should not be partially subsidised by the fiscus through a deduction for tax purposes. It is proposed that a reference to the Unemployment Insurance Contributions Act, 2002, be added to ensure that penalties and interest imposed in terms of that Act are also not allowed as a deduction.

CLAUSE 14

Income Tax: Amendment of section 24G of the Income Tax Act, 1962

In 2003, legislation was enacted to convert the South African Roads Agency ("the Agency") from a taxable to a tax-free entity retroactively with effect from 1998. This change created an unintended consequence for the Agency's toll-road concessionaires, as no deductions are allowed for lease premiums and leasehold improvements where the lessor is an exempt entity. The exemption for the Agency, therefore, effectively prevented the concessionaires from receiving otherwise allowable deductions. The proposed amendments, therefore, restore these deductions. The proposed amendments also update the toll-road deduction provisions of section 24G. Section 24G assumes that toll-road concessionaires enter into arrangements with the State when, in fact, these arrangements are now entered into with the Agency. The scope of section 24G is further expanded to encompass an allowance for the acquisition payment of toll road rights, which can now be found in certain of these concessionaire arrangements.

CLAUSE 15

Income Tax: Amendment of section 24K of the Income Tax Act, 1962

Section 24K deals with *inter alia* the timing of the incurral and accrual of amounts in respect of interest rate agreements. In terms of this section, taxpayers must calculate their income and expenses arising from interest rate agreements on a day-to-day basis, which conforms to generally accepted accounting practice (GAAP) and which is consistently applied for all financial reporting purposes. With the adoption of Accounting Standard AC133, parties subject to mark-to-market accounting no longer use day-to-day calculations. It is accordingly proposed that the reference to GAAP be deleted. This amendment will come into operation on the same effective date as Accounting Standard AC 133 (i.e., for years of assessment commencing as of 1 July 2002).

CLAUSE 16

Income Tax: Amendment of section 29A of the Income Tax Act, 1962

Section 29A of the Income Tax Act, 1962, prescribes the four fund approach for long-term insurers. One of these funds, the untaxed policyholder fund, relates *inter alia* to policies of which the owners are persons who are exempt from tax. It is not the intention to include in the category of exempt persons those persons who receive only certain forms of income which are exempt, e.g. dividends. It is, therefore, proposed that the wording in section 29A be clarified to expressly refer to persons who are totally exempt from tax regardless of the type of income actually received by or accrued to that person.

CLAUSE 17

Income Tax: Amendment of section 45 of the Income Tax Act, 1962

This amendment brings the Afrikaans text of the Act in line with the English text.

CLAUSE 18

Income Tax: Amendment of section 66 of the Income Tax Act, 1962

This amendment is consequential upon the increase of the interest exemption in section 10.

CLAUSE 19

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

Currently, there is a duplication of the provisions in the Income Tax Act, 1962, which provide for the form in which records must be retained by taxpayers. Section 75(2) is, therefore, deleted as the form of records is already prescribed in section 73A.

CLAUSE 20

Income Tax: Amendment of section 88G of the Income Tax Act, 1962

This amendment is of a textual nature.

CLAUSE 21

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

Subclause (a): In determining the amount of employees' tax to be deducted from the remuneration of an employee, an employer may take account of certain amounts which will be deducted by the employee at the end of the year of assessment to determine his or her taxable income. These deductions currently include pension fund contributions, retirement annuity fund contributions and, in the case of persons aged 65 and over, medical scheme contributions.

Premiums payable by taxpayers in respect of an insurance policy to the extent it covers that taxpayer against loss of income as a result of illness, injury, disability or unemployment, may be deducted by an employee in determining his or her ultimate liability for tax, if they comply with sections 11*(a)* and 23*(m)*. It is, therefore, proposed that the Fourth Schedule be amended to provide that an employer has the option of taking these premiums into account in determining the employees' tax liability of an employee. Practical facilitation of this form of insurance is consistent with Government's intention to encourage private arrangements that will prevent parties from becoming unnecessarily reliant on Government resources upon the event of reasonably foreseeable contingencies.

Subclause (b): Although labour brokers are as a rule liable for employees' tax, they may apply to the Commissioner for an exemption certificate. In certain instances, however, the Commissioner may not issue such an exemption certificate. One such instance is where more than 80% of the gross income of that labour broker is derived from one client, as this generally implies that the person is effectively an employee of the client and earning a salary.

A similar provision is contained in the definition of "personal service company" or "personal service trust", i.e. an entity with more than 80% of its income from services rendered consisting of amounts received directly or indirectly from one client. This definition, however, provides for an exception for an entity which employs more than three full-time employees in its business and who are not connected persons in relation to the entity. This level of independent employment is objective evidence that the company is not merely a shell that is being used to disguise employment.

It is proposed that the provisions relating to labour brokers be relaxed by bringing them into line with the provisions regulating personal service companies and trusts in this regard.

CLAUSE 22

Income Tax: Amendment of Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962

This amendment is consequential upon the amendment of paragraph 2 to provide that an employer may reduce an employee's remuneration by any premiums paid in respect of certain policies for purposes of determining that employee's liability for employees' tax.

CLAUSE 23

Income Tax: Amendment of paragraph 16 of the Fourth Schedule to the Income Tax Act, 1962

This amendment is of a textual nature and is consequential upon the amendment of paragraph 16 in 2003.

CLAUSE 24

Income Tax: Amendment of paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962

This amendment deletes an obsolete reference to section 35.

CLAUSE 25

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

If an entity which is exempt from tax under section 10(1)*(c*A*)* of the Income Tax Act, 1962, at any time becomes a taxable entity, the valuation date for purposes of the determination of any capital gains tax of that entity is the date on which it became taxable. This ensures that any capital gains which accumulated before the date that it became taxable remain exempt.

It is proposed that this principle be extended to all exempt persons who at any time become taxable and this amendment gives effect to this proposal. Hence, section 10(1)(d) entities and public benefit organisations shifting to taxable status would fall within the ambit of this rule.

CLAUSE 26

Income Tax: Amendment of paragraph 39 of the Eighth Schedule to the Income Tax Act, 1962

This amendment is of a textual nature.

CLAUSE 27

Income Tax: Amendment of paragraph 65 of the Eighth Schedule to the Income Tax Act, 1962

These amendments are of a textual nature and delete superfluous wording. They also address certain unintended consequences as paragraph 65 currently only covers the disposal of depreciable assets which was not the intention.

CLAUSE 28

Income Tax: Amendment of paragraph 67C of the Eighth Schedule to the Income Tax Act, 1962

Paragraph 67C provides that where mineral and other mining related rights or permits regulated by the Mineral and Petroleum Resources Development Act, 2002, are continued, converted or renewed in terms of that Act, the new and the old rights will be considered to be one and the same asset for the purposes of Income Tax Act (i.e., will not qualify as a capital gains tax event and will result in the rollover of base cost). The proposed amendment corrects the inadvertent omission of reconnaissance permits from this rule.

CLAUSE 29

Income Tax: Amendment of paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962

The proposed amendment of paragraph 75 clarifies the rules governing the date of disposal as well as the market value of an asset distributed by a company to a shareholder.

CLAUSE 30

Income Tax: Amendment of paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962

This amendment is of a textual nature and is consequential upon the deletion of paragraph 75(2) in 2003.

CLAUSE 31

Income Tax: Amendment of paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962

The proposed amendment of paragraph 78 clarifies the rules governing the date of acquisition by a shareholder of capitalisation shares issued by a company.

CLAUSE 32

Customs and Excise: Amendment of Chapter VA of the Customs and Excise Act, 1964

The provisions relating to environmental levies were inserted in the Customs and Excise Act, 1964, in 2003 and will come into operation on a date determined by the President by proclamation in the *Gazette*. These provisions were inserted as a new Chapter VA of the Act. However, the section numbers in that Chapter do not follow on the sections preceding the Chapter. It is, therefore, proposed that these sections be renumbered from section 54A onwards.

CLAUSE 33

Customs and Excise: Amendment of section 77A of the Customs and Excise Act, 1964

This amendment is of a textual nature.

CLAUSE 34

Customs and Excise: Amendment of section 77P of the Customs and Excise Act, 1964

This amendment is of a textual nature.

CLAUSE 35

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

Section 105*(b)* of the Customs and Excise Act, 1964, determines the rate of interest chargeable on outstanding duties. This section was amended on 1 April 2003 to link it to the rate determined in terms of section 80 of the Public Finance Management Act, 1999. Previously the interest rate was determined by the Minister of Finance from time to time and in publishing any new rate, some time was allowed to provide for the implementation thereof. When the PFMA rate changes, very little time is allowed between the notice of the change and its implementation date and certain process issues, specifically from a systems change perspective, may arise. It is, therefore, proposed that the changes to the interest rates in the tax Acts only take effect on the first day of the second month following the date on which the PFMA rate changes.

CLAUSE 36

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

This clause provides for the amendment of Schedule No. 1 to the Customs and Excise Act, 1964. These amendments are reflected in Schedule 2 to this Bill. These amendments give effect to the taxation proposals which were tabled by the Minister of Finance during his Budget Speech this year and contain the rates of duty in respect of alcoholic and tobacco products.

CLAUSE 37

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

This amendment is consequential upon the repeal of section 21 and item 13 of Schedule 1 to the Act.

CLAUSE 38

Stamp Duties: Amendment of section 7 of the Stamp Duties Act, 1968

These amendments are consequential upon the removal of stamp duties on negotiable certificates of deposit and bonds.

CLAUSE 39

Stamp Duties: Repeal of section 21 of the Stamp Duties Act, 1968

As was announced by the Minister of Finance in his Budget Review this year, stamp duties on negotiable certificates of deposit are to be repealed with effect from 1 April 2004. This amendment gives effect to this proposal.

CLAUSE 40

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

This amendment deletes an obsolete provision.

CLAUSE 41

Stamp Duties: Repeal of item 7 of Schedule 1 to the Stamp Duties Act, 1968

As was announced by the Minister of Finance in his Budget Review this year, the stamp duty on mortgage bonds will be repealed with effect from 1 March 2004. This amendment gives effect to this proposal.

CLAUSE 42

Stamp Duties: Repeal of item 13 of Schedule 1 to the Stamp Duties Act, 1968

As was announced by the Minister of Finance in his Budget Review this year, stamp duties on negotiable certificates of deposit will be repealed with effect from 1 April 2004. This amendment gives effect to this proposal.

CLAUSE 43

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

Subclause (a): The definition of "prescribed rate" in section 1 of the Act determines the rate of interest payable on outstanding duties. This definition was amended on 1 April 2003 to link it to the rate determined in terms of section 80 of the Public Finance Management Act, 1999. Previously the interest rate was determined by the Minister of Finance from time to time and in publishing any new rate, some time was allowed to provide for the implementation thereof. When the PFMA rate changes, very little time is allowed between the notice of the change and its implementation date and certain process issues, specifically from a systems change perspective, may arise. It is, therefore, proposed that the changes to the interest rates in the tax Acts only take effect on the first day of the second month following the date on which the PFMA rate changes.

Subclause (b) and *(e):* It is proposed that the definition of "registration number" be deleted and be replaced by the definition of "VAT registration number" in section 1. The previous wording did not specify that the VAT registration number was required and various other registration numbers, such as the company registration number are sometimes incorrectly used on invoices and documents where a registration number is required.

Subclause (c) and (d): As stated in *Clause 2*, tax changes were made in 2003 to ensure that the new mineral resource dispensation created by the Mineral and Petroleum Resources Development Act, 2002, did not unintentionally trigger any additional Governmental charges. These changes included amendments to the VAT Act. Firstly, these amendments zero-rated the supply (i.e., the conversion or renewal) by a mineral right holder of an "old order right" to a "new order right"; and secondly, these amendments denied input tax for second-hand goods in terms of paragraph (ii) of the definition of "input tax" to the mineral right holder who is a vendor on the issue or renewal of any "new order right".

However, it has since come to Government's attention that the second amendment has the unintended consequence of denying the input tax deduction to a vendor who purchases the new order rights from a private non-vendor. It is now accordingly proposed that mineral and prospecting rights supplied by a private non-vendor to a vendor should not fall within the mineral resources exclusion for "second-hand goods." The net effect is that a vendor purchasing a mineral right from a private non-vendor can again claim a second-hand input tax deduction (limited to the Transfer Duty the vendor paid). The provisions relating to mining, retention and reconnaissance permits and reconnaissance permissions were also aligned with the 2003 amendments.

CLAUSE 44

Value-Added Tax: Amendment of section 2 of the Value-Added Tax Act, 1991

In terms of section 2(1)*(l)* the activities of a fund established under the Provincial ordinances for promoting horse racing were exempt from VAT. These funds no longer exist and it is proposed that the section be deleted as it has become obsolete.

CLAUSE 45

Value-Added Tax: Amendment of section 6 of the Value-Added Tax Act, 1991

The proposed amendment is consequential upon the proposed introduction of the definition of "VAT registration number."

CLAUSE 46

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

Section 11(1)*(m)* of the Value-Added Tax Act, 1991, was inserted in the Act in 2001 and has not come into operation yet. This provision was, furthermore, amended in 2003 to replace the reference to Industrial Development Zones with a reference to a customs controlled area. This paragraph requires a minor textual amendment which is effected by this Bill and will come into operation on the date that the 2003 amendment comes into operation.

CLAUSE 47

Value-Added Tax: Amendment of section 20 of the Value-Added Tax Act, 1991

The proposed amendment is consequential upon the proposed introduction of the definition of "VAT registration number" and comes into operation on the date of promulgation of the Act except in the case of the amendment in terms of subclause *(b)* which deals with particulars of the recipient of a supply and which comes into operation on 1 March 2005.

CLAUSE 48

Value-Added Tax: Amendment of section 21 of the Value-Added Tax Act, 1991

The proposed amendment is consequential upon the proposed introduction of the definition of "VAT registration number". The amendments introduced by subclauses *(a)* and *(c)* come into operation on the promulgation of the Act and the amendments introduced by subclauses *(b)* and *(d)* come into operation on 1 March 2005.

CLAUSE 49

Value-Added Tax: Amendment of section 29 of the Value-Added Tax Act, 1991

The proposed amendment is consequential upon the proposed introduction of the definition of "VAT registration number".

CLAUSE 50

Value-Added Tax: Amendment of section 39 of the Value-Added Tax Act, 1991

Subclause (a): There has been confusion as to which penalty and interest regime should be used when Customs and Excise collects tax on the late payment of VAT on excise duties. It is proposed that this be clarified by reintroducing section 39(5) which has the same wording as was used in this section, except for the deletion of the reference to section 7(3)*(c)*, before its deletion in 2001. This amendment will come into operation on 1 August 2004 and shall apply in respect of amounts of tax which remain outstanding on or after that date.

Subclause (b): This proposed amendment is consequential upon the introduction of section 39(4) in the Value-Added Tax Act, 1991 during 2003 and is deemed to have come into operation on 1 April 2004.

CLAUSE 51

Value-Added Tax: Amendment of section 54 of the Value-Added Tax Act, 1991

The proposed amendment is consequential upon the proposed introduction of the definition of "VAT registration number."

CLAUSE 52

Value-Added Tax: Amendment of item 407.00 of Schedule 1 to the Value-Added Tax Act, 1991

The item allows for a simplified method of determining customs duty for goods of returning residents which is imposed at a flat rate of 20 per cent on the value of the goods not exceeding a limit prescribed by the Minister of Finance. If this method is chosen no VAT is payable on the importation of the goods. The limit was R10 000 and the Minister has increased it to R12 000. The proposed amendment brings the value of the goods in the notes in line with the value of the goods under item no: 407.02/00.00/02.00. This increase has already been published in the Government *Gazette* No: 24274 dated 17 January 2003.

CLAUSE 53

Value-Added Tax: Amendment of item 409.00 of Schedule 1 to the Value-Added Tax Act, 1991

The rebate provision in item 407.07 is subject to import control and this necessitates the issue of a specific permit or certificate either by, or on recommendation of, the International Trade Administration Commission (previously known as the Board on Tariffs and Trade).

The International Trade Administration Act was implemented on 1 June 2003, whereby the International Trade Administration Commission is responsible for the consideration of applications for rebate and drawback permits and certificates and the issuing of such permits and certificates.

The relevant provisions to Schedule 1 to the Value-Added Tax Act, 1991, are amended to enable the International Trade Administration Commission to carry out the responsibilities previously assigned to the Director-General: Trade and Industry.

CLAUSE 54

Value-Added Tax: Amendment of item 412.00 of Schedule 1 to the Value-Added Tax Act, 1991

The rebate provisions in items 412.11, 412.12 and 412.27 are subject to import control and this necessitates the issue of a specific permit or certificate either by, or on recommendation of, the International Trade Administration Commission (previously known as the Board on Tariffs and Trade).

The International Trade Administration Act was implemented on 1 June 2003, whereby the International Trade Administration Commission is responsible for the consideration of applications for rebate and drawback permits and certificates and the issuing of such permits and certificates.

The relevant provisions to Schedule 1 to the Value-Added Tax Act, 1991, are amended to enable International Trade Administration Commission to carry out the responsibilities previously assigned to the Director-General: Trade and Industry.

CLAUSE 55

Value-Added Tax: Amendment of item 490.00 of Schedule 1 to the Value-Added Tax Act, 1991

The rebate provisions in items 490.40 and 490.90 are subject to import control and this necessitates the issue of a specific permit or certificate either by, or on recommendation of, the International Trade Administration Commission (previously known as the Board on Tariffs and Trade).

The International Trade Administration Act was implemented on 1 June 2003, whereby the International Trade Administration Commission is responsible for the consideration of applications for rebate and drawback permits and certificates and the issuing of such permits and certificates.

The relevant provisions to Schedule 1 to the Value-Added Tax Act, 1991, are amended to enable International Trade Administration Commission to carry out the responsibilities previously assigned to the Board of Trade and Industry.

CLAUSE 56

Value-Added Tax: Amendment of Schedule 2 to the Value-Added Tax Act, 1991

The proposed amendment is consequential upon the proposed introduction of the definition of “VAT registration number” and shall come into operation on 1 March 2005.

CLAUSE 57

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

In determining the income of a retirement fund for purposes of calculating the tax on retirement funds, certain foreign dividends which are not exempt from tax are taken into account. Previously the taxable portion of foreign dividends was determined in terms of section 9E of the Income Tax Act, 1962. As section 9E has now been repealed, the formula to determine the income must be amended to include only foreign dividends which are not exempt in terms of section 10(1)*(k)*(ii) of the Income Tax Act, 1962.

CLAUSE 58

Retirement Funds Tax: Insertion of section 13A in the Tax on Retirement Funds Act, 1996

Currently, there is no provision in the Tax on Retirement Funds Act, 1996, which provides for the payment of interest on refunds of tax overpaid. It is proposed that a provision be inserted in the Act to provide for interest and this amendment gives effect to this proposal.

CLAUSE 59

Customs and Excise: Amendment of section 56 of the Revenue Laws Amendment Act, 1999

Section 54A was inserted in the Customs and Excise Act, 1964, in 1999, with effect from a date to be determined by the President by proclamation in the *Gazette*. This section has, however, not come into operation yet. The provisions relating to environmental levies were inserted in the Act in December 2003 and came into operation on 1 June 2004. These provisions are contained in Chapter VA of the Act. The section numbers of this Chapter do, however, not follow on the sections preceding this Chapter. It is, therefore, proposed that these sections be renumbered from section 54A onwards and that the current section 54A, which is not yet in operation, be moved to section 116A of the Act.

CLAUSE 60

Customs and Excise: Amendment of section 115 of the Second Revenue Laws Amendment Act, 2001

This amendment deletes a provision which is currently duplicated in the Act.

CLAUSE 61

Exchange Control Amnesty: Amendment of section 20 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003

The last date for filing the 2002/03 tax return in terms of the amnesty provisions was generally linked to the last date to which extension could be granted by SARS for those returns, i.e. 29 February 2004. This deadline was extended to 31 March 2004, but specifically did not include amnesty applicants as section 20 of the amnesty provisions fixes their tax return filing date to not later than 29 February 2004. Because some applicants misunderstood the extension to apply to all taxpayers (including amnesty applicants) they did not file their 2002/2003 tax returns before the deadline fixed in the amnesty legislation, i.e. 29 February 2004. To give effect to the purpose of the amnesty, it is proposed that section 20 be amended so that amnesty applicants submitting their tax returns by 31 March 2004 will remain within the ambit of the amnesty.

CLAUSE 62

Commencement Date: Amendment of section 26 of the Revenue Laws Amendment Act, 2003

This amendment clarifies the commencement date of an amendment to section 10 of the Income Tax Act, 1962, which was introduced in 2003.

CLAUSE 63

Commencement Date: Amendment of section 28 of the Revenue Laws Amendment Act, 2003

This amendment clarifies the commencement date of an amendment to section 11A of the Income Tax Act, 1962, which was introduced in 2003.

CLAUSE 64

Commencement Date: Amendment of section 38 of the Revenue Laws Amendment Act, 2003

This amendment clarifies the commencement date of an amendment to section 23 of the Income Tax Act, 1962, which was introduced in 2003.

CLAUSE 65

Income Tax: Amendment of section 53 of the Revenue Laws Amendment Act, 2003

This amendment brings the Afrikaans text of the Act in line with the English text.

CLAUSE 66

Commencement Date: Amendment of section 166 of the Revenue Laws Amendment Act, 2003

This amendment clarifies the commencement date of an amendment to section 8 of the Value-Added Tax Act, 1991, which was introduced in 2003.

CLAUSE 67

Commencement Date: Amendment of section 172 of the Revenue Laws Amendment Act, 2003

This amendment clarifies the commencement date of an amendment to section 16 of the Value-Added Tax Act, 1991, which was introduced in 2003.

CLAUSE 68

Uncertificated Securities Tax: Amendment of section 192 of the Revenue Laws Amendment Act, 2003

This amendment is of a textual nature and corrects a cross-reference.

CLAUSE 69

Commencement Date: Amendment of section 208 of the Revenue Laws Amendment Act, 2003

This amendment clarifies the commencement date of an amendment to section 4 of the Unemployment Insurance Contributions Act, 2002, which was introduced in 2003.

CLAUSE 70

Customs and Excise: Continuation of certain amendments of Schedules Nos. 1 to 6 and 10 to Act 91 of 1964

This clause provides for the continuation of the amendments to the Schedules to the Customs and Excise Act, 1964, which were effected by the Minister of Finance during the 2003 calendar year.

CLAUSE 71

Transitional Mineral and Petroleum Provisions

In the 2004 Budget Review, the Minister announced a delay in the proposed mineral and petroleum royalty until five years after the introduction of the Mineral and Petroleum Resources Development Act, 2002 (i.e. 5 years after 1 May 2004). This delay, however, creates an anomaly for existing mineral rights held by the State. The State is currently collecting lease payments as prescribed through regulation by the Minister of the Department of Minerals and Energy (with concurrence from the

Minister of Finance), and these lease payments will cease once mining/oil operators convert their ““old order”” rights into ““new order”” rights in accordance with the Mineral and Petroleum Resources Development Act, Act No. 28 of 2002 (the “MPRDA”). Hence, the conversion process will unintentionally place these operators in a preferential position vis-à-vis the State. The net result creates a 5-year gap in State revenues until the proposed mineral and petroleum royalty provisions take effect.

As also indicated in the 2004 Budget Review, it is accordingly proposed that the State retain its leasing rights with respect to converted new order rights to the extent of the same State owned area as the previously converted rights. These lease payments will be set under the same practices, formulas and procedures that applied before conversion. The same penalties and interest charges will similarly apply as before conversion. This continuation of the current lease dispensation will last until the proposed mineral and petroleum provisions take effect.

CLAUSE 72

Short title and commencement

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