

Mining Rehabilitation

*This **draft legislation** is released for public information. The amendments contained in this draft are merely proposals which are **subject to change and final approval by the Minister of Finance**. Early comments on this draft will be considered for possible inclusion in a revised draft Bill.*

It is the intention to release the revised draft Bill in the first seven days of October, prior to the commencement of the informal Parliamentary process.

There will be an opportunity to comment on the revised draft Bill, either directly to the National Treasury and SARS or during the public hearings in the Parliamentary Committees in mid-October 2003.

Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.

Comments may be submitted to either:

*Ms. Michelle Franks
E-mail: michelle.franks@treasury.gov.za
Fax No.: (012) 323-2917*

or

*Ms. Christell Brodrick
E-mail: cbrodrick@sars.gov.za
Fax No.: (012) 422-5192*

Amendment of section 10 of Act 58 of 1962

. Section 10 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (cH) of the following paragraph:

“(cH) the receipts and accruals of any company, society or other association of persons or any trust, whether or not registered under any law (other than a co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981)), if—

(i) the sole object of **[such] that** company, society, association or trust in terms of—

(aa) the constitution of the company, society or association;

(bb) the instrument establishing the trust, which has been approved by the Commissioner, is to receive, hold and apply moneys contributed by any taxpayer contemplated in section 11(hA) to [such] that company, society, association or trust in accordance with that section [11(hA)] in order to discharge, at the time that operations of a mine or part of a mine are discontinued, any of the following or like obligations imposed upon any person in terms of any law which regulates mining operations (other than costs which are required in terms of any law to be incurred on an ongoing basis during the life of a mine), namely—

[(aa)] (A) the rehabilitation of disturbances of the surface of land and the prevention and combating of pollution of the air, land, sea or other water where such disturbances and pollution are due to mining, prospecting, quarrying or similar operations;

[(bb)] (B) the protection of the surface of land and water sources and the making safe of undermined ground and of dangerous excavations, tailings, waste dumps and structures, of whatsoever nature, made in the course of mining, prospecting, quarrying or similar operations; and

[(cc)] (C) the demolition or removal of any building, structure or other thing erected or constructed in connection with mining, prospecting, quarrying or similar operations, the removal of any debris or other objects and the restoration, as far as is practicable, of the surface to its natural state;

(ii) **[such] that** company, society or association is under its constitution, or **[such] that** trust is under the instrument establishing **[such] that** trust, not permitted to distribute any of its profits or gains to any person and is required to

utilize its funds solely for the object for which it has been established: Provided that such company, society, association or trust shall be permitted to invest its funds, **[in institutions approved by the Commissioner]** until such time as those funds are required—

(aa) with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

(bb) in any—

(i) shares of a company contemplated in paragraph (a) of the definition of 'listed company' in section 1 (other than shares in the taxpayer company or connected person contemplated in subparagraph (i)); or

(ii) other class of investment, as approved by the Executive Officer of the Financial Service Board; or

(cc) in any other investments which were made by that company, society, association or trust before **(date to be determined)**

[until such time as such funds are required];

(iii) in terms of the constitution of such company, society or association or the instrument establishing such trust it will upon its winding-up or liquidation be obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other company, society, association or trust with a similar object to that of the said company, society, association or trust; and

(iv) the Commissioner has approved such company, society, association or trust on such conditions as **[he] the Commissioner** may deem necessary to ensure that the activities of such company, society, association or trust are wholly directed to the furtherance of its sole object:

Provided that—

- (a) where the Commissioner is—
- (i) satisfied that such company, society, association or trust has during any year of assessment in any material respect; or
 - (ii) during any year of assessment satisfied that such company, society, association or trust has on a continuous or repetitive basis,
- failed to comply with the provisions of this section, or the constitution or instrument under which it is established to the extent that it relates to the provisions of this section, the Commissioner shall after due notice withdraw approval of that company, society, association or trust with effect from the commencement of that year of assessment, unless corrective steps are taken by that company, society, association or trust within a period stated by the Commissioner in that notice;
- (b) where the Commissioner has withdrawn approval of a company, society, association or trust as contemplated in paragraph (a), that company, society, association or trust must, within three months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any other company, society, association or trust which is—
- (i) approved in terms of this section; and
 - (ii) not a connected person in relation to such company, society, association or trust;
- (c) where a company, society, association or trust during any year of assessment fails to transfer, or to take reasonable steps to transfer, any assets as contemplated in subparagraph (iii) or paragraph (a) of this proviso, the accumulated net revenue which has not been so transferred shall for the purposes of this Act be deemed to be an amount of taxable income which accrued to that

company, society, association or trust during that year of assessment.”.

Amendment of section 11 of Act 58 of 1962

. Section 11 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (hA) of the following paragraph:

“(hA) so much of any amount **[paid]** (other than an amount in respect of which any deduction or allowance has been or will be granted under any other provision of this Act) paid in cash by a taxpayer engaged in mining, prospecting, quarrying or similar operations to a company, society, association of persons or trust referred to in section 10(1)(cH) to be used **[by such company, society, association or trust]** for the purposes contemplated in **[such that section[: **Provided that such amount shall be** as does not exceed an amount determined **[and such payment shall be made]** in accordance with [—**

- (i) **the constitution of such company, society or association of persons; or**
- (ii) **the instrument establishing such trust, as has been approved by the Commissioner in terms of section 10(1)(cH)] the formula:**

(A – B)

C,

in which formula in respect of each mine—

‘A’ represents the amount determined by a suitably qualified person of the estimated costs to be incurred at the time that operations of the mine or part of the mine are discontinued in order to discharge the obligations imposed in terms of any law which regulates mining operations;

‘B’ means the market value of the assets held by the company, society, association or trust in respect of that

mine on the date of the determination of the estimated costs in symbol 'A'; and
'C' represents the estimated remaining life of that mine in number of years:

Provided that so much of the amount so paid in cash by that taxpayer as exceeds the deduction allowable in terms of this paragraph shall, for the purposes of this paragraph, be deemed to be an amount paid by the taxpayer in cash to that company, society, association or trust in the immediately succeeding year of assessment to be used for the purpose contemplated in section 10(1)(cH);”.