A third batch of legislation for inclusion in the **Revenue Laws Amendment Bill, 2005**, is hereby released for public comment.

It would be appreciated if comments on the draft legislation could be furnished by **Wednesday, 7 September 2005**. 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 must be submitted to either:

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DRAFT REVENUE LAWS AMENDMENT BILL

BATCH THREE

Amendment of section 9 of Act 40 of 1949

1. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by the addition to subsection (1) of the following paragraph:

"(*m*) The transfer of a property from a superannuation fund created and operated mainly for employees of the Governments of the territories which formerly formed part of the Republic and other similar funds into the Government Employees' Pension Fund"; and

To exempt from transfer duty the transfer of properties owned by Government superannuation funds of the former TBVC states or other similar funds to the Government Employees' Pension Fund.

Amendment of section 20 of Act 40 of 1949

2. (1) Section 20 of the Transfer Duty Act, 1949, is hereby amended by the substitution of section 20:

"**Refunds**

20. (1) If any amount of duty, additional duty or interest paid to the Commissioner by any person in terms of this Act is in excess of the amount of duty, additional duty or interest, as the case may be, that should properly have been charged under this Act, that amount shall be refundable to the person who paid that amount: Provided that if the Commissioner is satisfied that that payment was made in accordance with the practice generally prevailing at the said date, no refund shall be made.

(2) Any amount of duty which is refundable to any purchaser in terms of section 2(1) in respect of any dutiable transaction shall, to the extent that that amount has not been set off against unpaid duty in terms of subsection (4) of this section, be refunded to the purchaser by the Commissioner: Provided that—

(i) the Commissioner shall not make a refund under this subsection unless the claim for the refund is received by the Commissioner within five years after the end of the said dutiable period; or

(ii) where the amount that would be so refunded to the vendor is determined to be R50 or less, the amount so determined shall not be refunded.

(3) If the Commissioner refuses to make or authorise a refund in terms of this section, written notice of that refusal must be given.

(4) Where any refund contemplated in subsection (1) is due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under this Act or any other law administered by the Commissioner within the period prescribed for payment of the amount, the Commissioner may set off against the amount which the person has failed to pay, any amount which has become refundable to the person under this section.”.

The proposed amendment is to further align the provisions for refunds of the Transfer Duty Act with that of other revenue Acts and to ensure conformity with the other Acts administered by the Commissioner.

Amendment of section 1 of Act 58 of 1962

3. Section 1 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the definition of “average exchange rate” of the following definition:

“**‘average exchange rate’** in relation to a year of assessment means**[—**

(*a*)] the average determined by using the closing spot rates at the end of daily, weekly or monthly intervals during that year of assessment**[; or**

(*b*) the weighted average determined by using the closing spot rates at the end of daily, weekly or monthly intervals during that year of assessment during which income is received or accrued or

expenditure is incurred, which average must be based on—

(i) the net amount of receipts and accruals (excluding those of a capital nature) and deductible expenditure during each such period; and

(ii) the net amount of capital gains or capital losses determined in respect of any disposal of assets during that period,]

which must be consistently applied within that year of assessment;";

In the Budget Review it was announced that the spot rate will again be allowed for the translation of foreign currency. This will enable businesses to use the exchange rates applied for financial reporting purposes for tax purposes. It is proposed that the definition of average exchange rate be simplified and that it be available for use at the election of individuals and non-trading trusts to translate their foreign income and expenditure.

(b) by the substitution in the definition of "dividend" for paragraph *(a)* of the following paragraph:

"(*a*) in relation to a company that is being wound up, **[or]** liquidated**[,]** or deregistered or the corporate existence of which is finally terminated, any profits distributed, whether in cash or otherwise, **[other than those of a capital nature earned before or during the winding-up or liquidation from the disposal of any asset before 1 October 2001 (any such profits distributed by the liquidator of the company being deemed for the purposes of this definition to have been distributed by the company): Provided that the amount of any capital profits so distributed which are attributable to the disposal of any asset on or after 1 October 2001, but which was acquired by that company before that date shall, for the purposes of this definition be limited to the amount of profit determined as if that asset had been acquired on 1 October 2001 for a cost equal to the market value of that asset as contemplated in paragraph 29 of the Eighth Schedule]** in the course or in

anticipation of the winding up, liquidation or deregistration of that company or in anticipation or the course of the final termination of the corporate existence of that company;".

Paragraph (a) of the definition of dividend provides for an exclusion of profits of a capital nature earned before 1 October 2001 which are distributed by a company that is being wound up, liquidated or the corporate existence of which is finally terminated. A similar exclusion is already contained in the STC provisions. It is proposed that the exclusion be removed from the definition of dividend and that the concept of deregistration be incorporated in that definition.

(c) by the substitution for the definition of "group of companies" of the following definition:

"**'group of companies'** means two or more companies in which one company (hereinafter referred to as the **"controlling group company"**) directly or indirectly holds shares in at least one other company (hereinafter referred to as the **"controlled group company"**), to the extent that—

(*a*) at least **[75]** 70 per cent of the equity shares and voting rights of each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and

(*b*) the controlling group company directly holds **[75]** at least 70 per cent **[or more]** of the equity shares and voting rights in at least one controlled group company**[;]**:

Provided that in determining whether a company is a member of a group of companies for purposes of Part III of Chapter 2, sections 56(1)*(r)*, 64B and 64C and paragraph 12(5) of the Eighth Schedule, no regard must be had to—

(i) any company that would not be subject to secondary tax on companies should that company—

(aa) declare a dividend from profits other than a dividend received by it; and

(bb) does not elect that the exemption provided for in section 64B(5)*(f)* must apply in respect of that dividend declared; and

(ii) to any share or voting right held by any company contemplated in paragraph (i);”.

As announced in the 2005 Budget Review, the threshold to qualify as a group of companies is reduced from 75 per cent to 70 per cent to accommodate more intra-group tax-free transfers of assets. The concept of “group of companies” is restricted in the case of corporate restructuring transactions, intra-group donations, STC and debt cancellation in order to exclude transactions which can result in the permanent reduction of the tax base.

(d) by the insertion after the definition of “specified period” of the following definition:

“‘spot rate’ means the appropriate quoted exchange rate at a specific time for the delivery of currency;”.

The introduction of a definition of “spot rate” is consequential upon the rules allowing the use of the spot rate to translate amounts in foreign currency to Rand.

Amendment of section 6 of Act 58 of 1962

4. (1) Section 6 of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after subsection (2) of the following subsection:

“(3) There shall be deducted from the normal tax payable by any public benefit organization approved by the Commissioner in terms of section 30(3) by way of a rebate, an amount of R10 800.”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) Where the period assessed is less than 12 months, the amount to be allowed by way of a rebate under subsection (2) or (3) shall be such amount as bears to the full amount of such rebate, the same ratio as the period assessed bears to 12 months unless, where such period terminates at the death of the taxpayer or commences at the death of the spouse of the taxpayer, the Commissioner in the special circumstances of the case otherwise directs.”.

(2) Subsection (1) shall come into operation on 1 April 2006 and shall apply in respect of any year of assessment commencing on or after that date.

Currently the income tax system provides exemption for PBOs engaged in various forms of non-profit activities. Provision was made for certain trading activities carried out on a cost recovery basis or on an occasional basis using voluntary labour as well as a small threshold for other trading activities. However, a difficulty encountered by many PBOs was that if they exceeded this threshold their tax exempt status was terminated altogether. This "all-or-nothing" approach is impractical as PBOs need to be self-sustaining in order to survive. Accordingly, it was announced in this year's Budget that a system of partial taxation would be implemented, meaning that PBOs who do conduct business activities which fall outside the permissible trading rules may continue to do so without losing their exemption for non-profit activities. It will, however, pay income tax on the income from those business activities falling outside the allowable trading rules.

Provision is made for a rebate of R10 800 for all PBOs to be deducted from any tax payable on trading or business income. This is equal to the rebate granted to individuals 65 years and older and equates roughly to a R36 000 taxable income threshold applying the corporate rate of 29 per cent. It means that PBOs with trading activities will need to be registered and file returns annually rather than having to possibly register/de-register from year to year. It also means that PBOs who earn small amounts of income from trading activities will not be subject to income tax.

Amendment of section 9 of Act 58 of 1962

5. Section 9 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the proviso of the following proviso:

"Provided that for the purpose of this subsection, an interest in immovable property held by a person includes any equity shares in a company or ownership or the right to ownership of any other entity **[where]** or a vested right in any assets of any trust, if—

(*aa*) 80 per cent or more of the market value **[of the net assets of that company or other entity, determined on the market value basis,]** of those equity shares, ownership or right to ownership or vested right, as the case may be, at the time of disposal thereof, is attributable directly or indirectly to immovable property **[(other than immovable property]** held by that company, **[or]** entity or trust otherwise than as trading stock**[)]**; and

(*bb*) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person) directly or indirectly, holds at least 20 per cent **[in]** of the equity share capital of that company or ownership or right to ownership of that other entity.".

Section 9(2) determines the source of capital gains or capital losses. In the case of immovable property or any interest or right of whatever nature in immovable property, the capital gain or loss is deemed to be from a source in the Republic if the property is situated in the Republic. For purposes of this section, an interest in immovable property includes certain interests in companies or other entities that hold property if at least 80 per cent of the net assets of the company or other entity is attributable to immovable property and where the person holds at least 20 per cent of the equity share capital of the company or other entity.

Certain practical issues have arisen with the application of this provision, especially where foreign companies hold their interests in South African immovable property indirectly through other entities. The present wording also does not deal with trusts as it only refers to equity shares in a company or other entity. It is, therefore, proposed that this provision be amended to provide that an interest in immovable property includes any equity shares in a company, ownership or right to ownership in any other entity or the vested interest in a trust if—

(a) 80 per cent or more of the market value of the interest at the time of disposal is attributable to immovable property; and

(b) the person holds at least 20 per cent of the equity share capital or ownership. The 20 per cent requirement does, however, not apply in respect of the vested interest in a trust.

A similar provision relating to an interest in immovable property is contained in paragraph 2 of the Eight Schedule and this provisions is also amended accordingly.

Amendment of section 9D of Act 58 of 1962

6. Section 9D of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the definition of "controlled foreign company" of the following definition:

"'controlled foreign company' means any foreign company where more than 50 per cent of the total **[participation rights]** equity share capital or voting rights in that foreign company are held by one or more residents whether directly or indirectly: Provided that a person who holds less than five per cent of the **[participation rights]** equity share capital and voting rights of a foreign company which is either a listed company or a scheme or arrangement contemplated in paragraph (*e*)(ii) of the

definition of ‘company’ in section 1, shall be deemed not to be a resident in determining whether residents directly or indirectly hold more than 50 per cent of the **[participation rights]** total equity share capital or voting rights in—

(*a*) that foreign company; or

(*b*) any other foreign company in which that person indirectly holds any participation rights as a result of the interest in that listed company or scheme or arrangement,

unless more than 50 per cent of the **[participation rights]** total equity share capital or voting rights of that foreign company or other foreign company are held by persons who are connected persons in relation to each other;”;

Currently a foreign company qualifies as a controlled foreign company where more than 50 per cent of the participation rights (rights to capital and profits) in the company are held by South African residents. As announced in the Budget voting rights should also be taken into account in determining whether a foreign company is controlled by residents. In order to simplify the test to determine CFC status it is proposed to replace the test based on participation rights with a dual test based on a holding of equity share capital as well as voting rights. If residents hold more than 50 per cent of the equity share capital or voting rights of a foreign company, the company will be a CFC.

(b) by the substitution in subsection (1) for the definition of “participation rights” of the following definition:

“**‘participation rights’** in relation to a controlled foreign company means—

(a) the right to participate directly or indirectly in the share capital, share premium, current or accumulated profits or reserves of that **[foreign]** company, whether or not of a capital nature; or

(b) in the case where there is no right as contemplated in paragraph *(a)*, the right to exercise any voting rights in that company.”;

In some instances it is currently not possible to determine the participation rights in a foreign company, e.g. certain mutual companies, which complicates the application of the CFC regime to those companies. It is proposed that where there is no right to participate directly or indirectly in the share capital, share premium, current or accumulated profits or reserves of a CFC, the participation rights used to impute an

amount of net income of the CFC should be based on the voting rights in that company which can be exercised by residents.

(c) by the insertion after subsection (1) of the following subsection:

"(1A) For purposes of determining the extent of the voting rights of a resident for purposes of this section, any voting rights in a foreign company, which can be exercised directly by any other controlled foreign company in which that resident (together with any connected person in relation to that resident) can directly or indirectly exercise more than 50 per cent of the voting rights, are deemed to be exercisable directly by that resident;";

In the determination of indirect interests of residents in foreign companies the effective interest is calculated. A resident holding 80 per cent of the equity shares in a foreign company which in turn holds 80 per cent of the equity shares in another foreign company will have the effect that the indirect interest of the resident in the second foreign company is 64 per cent (80% x 80%).

At present indirect voting rights are calculated on the same basis as above. However, a shareholder who is able to exercise more than 50 per cent of the voting rights has effective control over the relevant company. It is, therefore, proposed that where indirect voting rights are determined the test should be performed in a different manner. Where a resident can, for example, exercise 75 per cent of the voting rights in a foreign company which in turn can exercise 75 per cent of the voting rights in another foreign company, the indirect interest of the resident in the second foreign company is 75 per cent.

(d) by the substitution in subsection (2) for the words in the proviso following subparagraph (ii) of paragraph (A) of the following words:

"in aggregate holds less than 10 per cent of the **[participation rights]** total equity share capital and voting rights in that controlled foreign company; or";

(e) by the deletion in subsection (2A) of paragraph *(h)*;

(f) by the substitution for subsection (6) of the following subsection:

"(6) The net income of a controlled foreign company, shall be determined in the currency used by that controlled foreign company for purposes of financial reporting and shall, for purposes of determining the amount to be included in the income of any resident during any year of assessment under the provisions of this section, be translated to the currency of the Republic by applying the average exchange rate for that year of

assessment**[, as contemplated in section 25D]**: Provided that—

(*a*) in respect of the disposal of any asset contemplated in paragraph 43(4) of the Eighth Schedule which is not attributable to a permanent establishment of that controlled foreign company, any capital gain or capital loss of that controlled foreign company **[shall]** must, when applying paragraph 43(4) of the Eighth Schedule, be determined in the currency of the Republic and that capital gain or capital loss shall be translated to the currency used by that controlled foreign company for purposes of financial reporting by applying that average exchange rate; **[and]**

(*b*) in respect of the disposal of any foreign equity instrument which constitutes trading stock and which is not attributable to a permanent establishment of that controlled foreign company, the **[any]** amount to be taken into account in determining the net income of that controlled foreign company **[in respect of the disposal of any foreign equity instrument shall, when applying section 9G,]** must be determined in the currency of the Republic and that amount shall be translated to the currency so used by that controlled foreign company by applying that average exchange rate; and

(c) for the purposes of section 24I, **"local currency"** in relation to an exchange item of a controlled foreign company which is not attributable to a permanent establishment of that company, means the currency of the Republic and any exchange difference determined must be translated to the currency so used by that controlled foreign company by applying that average exchange rate.";

From a tax policy perspective—
- *foreign equity instruments;*
- *assets where the gains/losses are deemed to be from a South African source; and*
- *exchange items,*

of a CFC, which are ***not*** *attributable to a permanent establishment of the CFC should be taxed on the same basis as if a resident held the items directly. If this was not be the case it would encourage residents to transfer those assets to a CFC to avoid being taxed on the exchange differences determined in relation to Rand. This amendment clarifies the application of this principle to those assets. All exchange gains and losses from the date of acquisition until disposal thereof must be taken into account for tax purposes.*

(g) by the substitution for the words in subsection (9) preceding paragraph *(a)* of the following words:

"(9) **[The provisions of subsection (2) shall not apply to the extent that]** In determining the net income of the controlled foreign company in terms of subsection (2A), there must not be taken into account any amount which—";

This amendment clarifies that the amounts contemplated in section 9D(9) must be excluded in the determination of the net income of a CFC. Subsection (9) therefore operates as an exemption provision.

(h) by the substitution in subsection (9) for the words in paragraph *(b)* preceding the proviso of the following words:

"(*b*) is attributable to any business establishment (including the disposal of any assets forming part of that business establishment) of that controlled foreign company in any country other than the Republic:";

(i) by the substitution in subsection (9) for subitem (A) of item *(bb)* of subparagraph (ii) of paragraph *(b)* of the following subitem:

"(A) those goods or tangible intermediary inputs thereof purchased from connected persons (in relation to such controlled foreign company) who are residents amount to an insignificant portion of the total goods or tangible intermediary inputs of those goods";

(j) by the substitution in subsection (9) for the words in subparagraph (iii) of paragraph *(b)* preceding item *(aa)* of the following words:

"any amounts in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, or

any capital gain determined in respect of the disposal or deemed disposal of any asset from which any such amounts are or could be earned, or any foreign currency gain determined in respect of any foreign equity instrument or any foreign currency gain determined in terms of section 24I (other than foreign currency gains which arise in the normal course of business of that controlled foreign company which is not a foreign financial instrument holding company), except—";

It is proposed that foreign currency gains which are attributable to a business establishment of a CFC and which arise in the normal course of business of that CFC (which is not a foreign financial instrument holding company) should not be treated as passive investment income. This has the effect that those gains will be exempt from income tax.

(k) by the addition in subsection (9) to subparagraph (iii) of paragraph *(b)* of the following item:

"(*cc*) where those amounts arise from the disposal or deemed disposal of any intangible asset as defined in paragraph 16(2) of the Eighth Schedule (other than an intangible asset created, devised or developed in the Republic) if that intangible asset was held by that controlled foreign company for a period of at least 18 months prior to that disposal as an integral part of any business conducted by that controlled foreign company and was so disposed of as part of the disposal of that business as a going concern;";

Currently gains and losses on the disposal of all intangible assets are taxed under the CFC regime even though the asset may be attributable to a business establishment of the CFC. It is proposed that certain intangible assets purchased, devised and developed outside South Africa should qualify for the business establishment exemption. Foreign intangible assets targeted for the relief are those assets which were held by that controlled foreign company for a period of at least 18 months prior to disposal as an integral part of any business conducted by that controlled foreign company and was so disposed of as part of the disposal of that business as a going concern. The reason for excluding South African developed intangible assets from this relief measure is that a group of companies which developed South African intangible assets and received the benefit of tax deductible development costs could otherwise transfer the assets offshore and obtain a tax free amount on disposal thereof.

(l) by the insertion in subsection (9) after paragraph *(b)* of the following paragraph:

"*(c)* is attributable to any policyholder that is not a resident or a controlled foreign company in relation to a resident and where that controlled foreign company is licensed to carry on any long term insurance business in its country of residence";

As announced in the Budget certain CFCs of South African insurance companies earn profits which will eventually be paid to policyholders who do not fall within the South African tax net at all. In order not to tax these profits under the CFC regime, an exemption is introduced for the net income of the CFC which is attributable to non-resident policyholders of the CFC. An additional requirement is that the CFC should be licensed to carry on long term insurance business in its country of residence.

(m) by the substitution in subsection (9) for paragraphs *(f*A*)* and *(f*B*)* of the following paragraphs:

"*(f*A*)* is attributable to any interest, royalties, rental or income of a similar nature, which is paid or payable or deemed to be paid or payable to that company by any other controlled foreign company in relation to the resident (including any similar amount adjusted in terms of section 31), or any exchange difference determined in terms of section 24I in respect of any exchange item to which that **[controlled foreign]** company and **[that]** any other controlled foreign company in relation to the resident are parties**[, where that controlled foreign company and that other foreign company form part of the same group of companies]**;

(*f*B) is attributable to **[any capital gain of that company, which is determined in respect of]** the disposal of any asset, as defined in the Eighth Schedule, (other than any financial instrument or intangible asset as defined in paragraph 16 of the Eighth Schedule), where that asset was attributable to any business establishment of **[that controlled foreign company or]** any other controlled foreign company**[, where that controlled foreign company and that other foreign company form part**

of the same group of companies] in relation to the resident; or";

The conditions for the exemptions in paragraphs (fA) and (fB) have been relaxed by only requiring the two foreign companies to be CFCs in relation to the same resident instead of the current requirement that the two CFCs form part of the same group of companies.

(n) by the substitution for subsections (12) and (13) of the following subsections:

"(12) A resident who, together with any connected person in relation to that resident, holds at least 10 per cent but not 20 per cent or more **[than 25 per cent]** of the **[participation rights]** total equity share capital and voting rights of a controlled foreign company may elect that all the provisions of subsection (9) shall not apply in respect of the net income determined for a relevant foreign tax year of any controlled foreign company in which that resident holds any participation rights.

(13) Any resident who, together with any connected person in relation to that resident, holds at least 10 per cent but not 20 per cent or more **[than 25 per cent]** of the **[participation rights]** total equity share capital and voting rights of a foreign company may elect that the foreign company be deemed to be a controlled foreign company in relation to that resident in respect of any foreign tax year of that foreign company".

This amendment is consequential upon the adjustment of the participation exemption threshold to 20 per cent or more of the total equity share capital as well as the incorporation of the voting rights test in determining whether a foreign company qualifies as a CFC.

Amendment of section 9G of Act 58 of 1962

7. Section 9G of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) The amount to be included in the gross income of a person in respect of the disposal by that person of any foreign

equity instrument acquired before 1 January 2006 and which constitutes trading stock, shall be the amount received or accrued in any currency other than currency of the Republic in respect of that disposal translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign equity instrument is disposed of.”.

As a foreign equity instrument which constitutes trading stock will be taxed by applying the spot rate to the acquisition and disposal of the instrument under section 25D it is no longer necessary to determine the taxable income in respect of foreign equity instruments under a separate section. As a transitional measure all foreign equity instruments acquired before 1 January 2006 will still be dealt with under section 9G.

Amendment of section 10 of Act 58 of 1962

8. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(c*N*)* of the following paragraph:

“*(c*N*)* the receipts and accruals of any public benefit organisation **[which has been]** approved by the Commissioner in terms of section 30(3), to the extent that the receipts and accruals are derived—

(i) otherwise than from carrying on any business undertaking or trading activity; or

(ii) from any business undertaking or trading activity of that public benefit organization with the sole purpose of funding the sole objective of the public benefit organisation and—

(aa) the undertaking or activity is—

(A) integral and directly related to the sole objective of that public benefit organisation;

(B) carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost and does not

result in unfair competition in relation to taxable entities;

(bb) is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or

(cc) is approved by the Minister by notice in the *Gazette*, having regard to—

(A) the scope and benevolent nature of the undertaking or activity;

(B) the direct connection and interrelationship of the undertaking or activity with the sole purpose of the public benefit organisation;

(C) the profitability of the undertaking or activity; and

(D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity;".

Currently the income tax system provides exemption for PBOs engaged in various forms of non-profit activities. A small threshold for trading activities was provided for. However, a difficulty encountered by many PBOs was that if they exceeded this threshold their tax exempt status was terminated altogether. This "all-or-nothing" approach is impractical as PBOs need to be self-sustaining in order to survive. Accordingly, it was announced in this year's Budget that a system of partial taxation would be implemented, meaning that PBOs who do conduct business activities may continue to do so without losing their exemption for non-profit activities. It will, however, pay income tax on the income from those business activities falling outside the allowable trading rule.

This provision essential lays the platform for PBOs to be taxed on trading activities by exempting receipts and accruals from non-trading activities such as interest income as well as either income that is integral and directly related to the PBOs sole objective, or is of an occasional nature and undertaken with assistance on a voluntary basis without compensation or where the activity has been approved by the Minister of Finance by way of notice in the Gazette.

(b) by the substitution in subsection (1) for the words in item *(dd)* of subparagraph (ii) of paragraph *(k)* preceding the proviso of the following words:

“*(dd)* where that person (in the case of a company, **[together with]** directly or indirectly through any other company in the same group of companies as that person) holds **[more than 25]** at least 20 per cent of the total equity share capital and voting rights in the company declaring the dividend:”;

A participation exemption is granted for foreign dividends from foreign companies as well as for the disposal of certain shares in foreign companies where a more than 25 per cent interest is held in the equity shares of the foreign company. It is proposed that the interest to qualify for the participation interest be reduced to an interest in the equity share capital of at least 20 per cent and that a test be added which will require voting rights of at least 20 per cent to be held in the company declaring the foreign dividend.

(c) by the substitution in subsection (1) for paragraph (A) of the proviso to item *(dd)* of subparagraph (ii) of paragraph *(k)* of the following paragraph:

“(A) in determining the total equity share capital of a company, there shall not be taken into account any share which would have constituted **[an affected]** a hybrid equity instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; and”**.**

This amendment is of a textual nature and is consequential upon the amendment of section 8E which replaced the reference to affected instruments with the term hybrid equity instruments.

(d) by the deletion in subsection (1) of paragraph *(z*C*)*;

This clause deletes an obsolete provision.

(e) by the substitution in subsection (1) for paragraph *(z*G*)* of the following paragraph:

“*(z*G*)* any amount **[which on or after 15 May 1989 was]** received by or accrued to a **[film owner (as defined in section 24F)]** person by way of a subsidy payable by the State under any scheme designed to promote the production of films (as defined in **[the said]** section 24F);”; and

The Department of Trade and Industry (“DTI”) introduced the South African Film and Television Production Rebate Scheme (“rebate scheme”) to incentivise local film production. Current law relating to tax-free State

grants are too restrictive (i.e., the recipient of the grant must be the "owner" of the film) and have therefore effectively become obsolete. A more flexible system that encourages local film production in general is appropriate, i.e. where the recipient is a producer of the film as is the case with the DTI rebate scheme. These rebates are, therefore, exempted.

(f) by the substitution in subsection (1) for subparagraph (ii) of paragraph *(zI)* of the following subparagraph:

"(ii) that person is required in terms of that Public Private Partnership to expend an amount at least equal to that amount in respect of any improvements on land or to buildings owned by any sphere of government or over which any sphere of government holds a servitude;".

Section 10(1)(zI) of the Income Tax Act, 1962, exempts from tax any Government grant to a Private Public Partnership (PPP) if the grant is used to improve land or buildings owned by Government. This tax treatment is in line with the treatment of other Government incentives which are exempt from tax in terms of section 10(1)(zA) to (zH). The reason for the exemption is that the improvements to land revert to the Government on termination of the concession. A number of the concessions operate on land which the Government does not own but over which it holds a servitude. On termination of the concession, any improvements effected on the land, over which a servitude is held, are for the benefit of the Government. For this reason it is proposed that the grants used to fund these improvements also be exempt.

(2) Subsection (1)*(a)* shall come into operation on 1 April 2006 and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of section 10A of Act 58 of 1962

9. (1) Section 10A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (11) of the following subsection:

"(11) Any cash consideration given by the purchaser under the annuity contract shall be converted to the currency of the Republic **[by applying the average exchange rate for the year of assessment during which the consideration is actually paid]** in accordance with the provisions of section 25D.".

(2) Subsection (1) shall come into operation on … and shall apply in respect of years of assessment commencing on or after that date.

This amendment is consequential upon the amendment to section 25D.

Amendment of section 11 of Act 58 of 1962

10. Section 11 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in paragraph *(e)* for the words preceding the proviso of the following words:

"*(e)* save as provided in paragraph 12(2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B, 12C or 12E) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and used by **[the taxpayer]** him or her for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment:";

As was announced in the Budget Review, an amendment is proposed to the provisions which deal with depreciation of assets to place beyond doubt that depreciation may only be claimed for tax purposes by taxpayers who own these assets or acquired these assets as a purchaser in terms of an instalment credit agreement. This amendment gives effect to this proposal.

(b) by the insertion in paragraph *(e)* of the following paragraph in the proviso after paragraph (i) of the following paragraph:

"(iA) no allowance may be made in respect of any machinery, plant, implement, utensil or article the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit

agreement' as defined in section of the Value-Added Tax Act, 1991;".

As was announced in the Budget Review, an amendment is proposed to the provisions which deal with depreciation of assets to place beyond doubt that depreciation may only be claimed for tax purposes by taxpayers who own these assets or acquired these assets as a purchaser in terms of an instalment credit agreement. This amendment gives effect to this proposal.

Amendment of section 12B of Act 58 of 1962

11. Section 12B of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the heading of the following heading:

"**Deduction in respect of certain machinery, plant, implements, utensils and articles used in farming or production of renewable energy**";

(b) by the deletion in subsection (1) of paragraphs *(a)*, *(b)*, *(c)*, *(d)* and *(e)*;

(c) by the substitution in subsection (1) for paragraphs *(f)* and *(g)* of the following paragraphs:

"*(f)* machinery, implement, utensil or article (other than livestock) which is **[on or after 1 July 1988]** owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and brought into use for the first time by **[any]** that taxpayer and used by him or her in the carrying on of his farming operations, except any motor vehicle the sole or primary function of which is the conveyance of persons or any caravan or any aircraft (other than an aircraft used solely or mainly for the purpose of crop-spraying) or any office furniture or equipment; or

(g) machinery, plant, implement, utensil or article owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added

Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use for the first time by the taxpayer for the purpose of his or her trade to be used for the production of bio-diesel or bio-ethanol,";

(d) by the substitution for subsection (3) of the following subsection:

"(3) For the purposes of this section the cost to a taxpayer of any asset acquired by that taxpayer shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he or she had acquired the asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8(4)*(e)*, whether in the current or any previous year of assessment.";

(e) by the deletion in subsection (4) of paragraph *(e)*;

(f) by the addition to subsection (4) of the following paragraph:

"*(f)* any asset the ownership of is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section of the Value-Added Tax Act, 1991;";

(g) by the substitution in subsection (4A) of paragraph *(c)* of the following paragraph:

"*(c)* a deduction under this section, section 12(1) or section 27(2)*(d)* was previously granted to **[such]** that connected person, whether in the current or any previous year of assessment,";

(h) by the substitution for subsection (6) of the following subsection:

"(6) Where a lessor of any asset under a lease contemplated in **[paragraph *(a)* of]** subsection (4)*(a)* has within the period contemplated in subparagraph (ii) of that paragraph, reckoned from the commencement of the period for which the asset is let under **[such]**

that lease, disposed of the whole or a portion of **[his]** that lessor's interest in the lease or of his or her right to receive rent under the lease, there **[shall]** must be included in **[his]** that lessor's income for the year of assessment during which the disposal is made a sum equal to the aggregate of any deductions allowed to **[him]** that lessor under this section, section 12(1) or section 27(2)*(d)*, less such amount as the Commissioner may allow in respect of the expired portion of the lease or any portion of **[such]** that interest or right which has not been disposed of by the lessor.".

As was announced in the Budget Review, an amendment is proposed to the provisions which deal with depreciation of assets to place beyond doubt that depreciation may only be claimed for tax purposes by taxpayers who own these assets. This amendment gives effect to this proposal.

Amendment of section 12C of Act 58 of 1962

12. Section 12C of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the heading of the following heading:

"**Deduction in respect of [certain machinery, plant, implements, utensils and articles] aircraft, ships or assets used by manufacturers or hotelkeepers or used for storage and packing of agricultural products**";

(b) by the substitution in subsection (1) for paragraphs *(a)* to *(g)* of the following paragraphs:

"*(a)* machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (*b*) or section 12E) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use for the first time by the taxpayer for the purposes of his trade (other than mining or farming) and is used by him directly in a process of manufacture carried on by him or any other process carried on by

him which in the opinion of the Commissioner is of a similar nature; or

(*b*) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (*a*)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is let by **[any]** the taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee's trade (other than mining or farming) and is used by the lessee directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Commissioner is of a similar nature; or

(*c*) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (*a*)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use for the first time by any agricultural co-operative incorporated or deemed to be incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), and is used by it directly for storing or packing pastoral, agricultural or other farm products of its members (including any person who is a member of another agricultural co-operative which is itself a member of such agricultural co-operative) or for subjecting such products to a primary process as defined in section 27(9); or

(*d*) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (*e*)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an

'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use for the first time by **[any]** the taxpayer for the purposes of his trade as hotelkeeper and is used by him in a hotel, except any vehicle or equipment for offices or managers' or servants' rooms; or

(e) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (*d*)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is let by **[any]** the taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee's trade as hotelkeeper and used by him in a hotel, except any vehicle or equipment for offices or managers' or servants' rooms; or

(*f*) aircraft owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use **[on or after 1 April 1995]** for the first time by the taxpayer for the purposes of his or her trade (other than an aircraft in respect of which an allowance has been granted to the taxpayer under section 12B or 14*bis*)*;* or

(*g*) ship owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use **[on or after I April 1995]** for the first time by the taxpayer for the purposes of his or her trade (other than a ship in respect of which an allowance has been granted to the taxpayer in terms of section 14(1)(*a*) or (*b*)),";

(c) by the substitution in subsection (1) of the words following paragraph *(g)* but preceding the proviso of the following words:

"a deduction equal to 20 per cent of the cost **[of such]** to that taxpayer to acquire that machinery, plant, implement, utensil, article, ship or aircraft (hereinafter referred to as **[an]** the asset) shall, subject to the provisions of subsection (4), be allowed in the year of assessment during which the asset is so brought into use and in each of the four succeeding years of assessment:";

(d) by the deletion in subsection (1) of paragraph *(b)* of the proviso;

(e) by the substitution in subsection (1) for the words in paragraph *(c)* of the proviso following subparagraph (ii) of the following words:

"the deduction under this subsection shall be increased to 40 per cent of the cost to that taxpayer of **[such]** that machinery or plant in respect of the year of assessment during which the plant or machinery was or is so brought into use for the first time and shall be 20 per cent in each of the three subsequent years of assessment.";

(f) by the substitution for subsection (2) of the following subsection:

"(2) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer to acquire that asset or the cost which a person would, if he had acquired **[the said]** that asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of **[the said]** that asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, **[such]** that cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8(4)*(e)*, whether in the current or any previous year of assessment.";

(g) by the addition to subsection (3) of the following paragraph:

"*(d)* any asset the ownership of is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section of the Value-Added Tax Act, 1991";

(h) by the substitution in subsection (4) for paragraph *(c)* of the following paragraph:

"*(c)* a deduction under this section, section 12(1), section 12B, section 14(1)*(a)* or *(b)* or section 14*bis* or section 27(2)*(d)* was previously granted to such connected person, whether in the current or any previous year of assessment,".

As was announced in the Budget Review, an amendment is proposed to the provisions which deal with depreciation of assets to place beyond doubt that depreciation may only be claimed for tax purposes by taxpayers who own these assets. This amendment gives effect to this proposal.

Amendment of section 12E of Act 58 of 1962

13. Section 12E of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"(1) Where any plant or machinery (hereinafter referred to as an asset) **[of]** owned by a taxpayer which qualifies as a small business corporation or acquired by such a taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991),—";

(b) by the substitution in for subsection (2) of the following subsection:

"(2) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer to acquire that asset or the cost which a person would, if he had acquired the said asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the

installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8 (4) (*e*), whether in the current or any previous year of assessment.".

As was announced in the Budget Review, an amendment is proposed to the provisions which deal with depreciation of assets to place beyond doubt that depreciation may only be claimed for tax purposes by taxpayers who own these assets. This amendment gives effect to this proposal.

Amendment of section 13*quat* of Act 58 of 1962

14. Section 13*quat* of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following paragraph:

"(2) There shall be allowed to be deducted from the income of the taxpayer an allowance determined in terms of subsection (3), in respect of the cost of the erection, extension, addition or improvement of any commercial or residential building within an urban development zone <u>owned by the taxpayer and</u> to be used solely for purposes of that taxpayer's trade—";

As was announced in the Budget Review, an amendment is proposed to the provisions which deal with depreciation of assets to place beyond doubt that depreciation may only be claimed for tax purposes by taxpayers who own these assets. This amendment gives effect to this proposal.

Amendment of section 24I of Act 58 of 1962

15. Section 24I of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph *(a)* of the definition of "ruling exchange rate" of the following subparagraphs:

"(i) transaction date, the spot rate on such date**[, or in the case where a related or matching forward exchange contract has been entered into to hedge such loan, advance or debt and the forward rate has been used to record for accounting purposes such loan, advance or debt in accordance with generally accepted accounting practice, the forward rate in terms of such forward exchange contract]**;

(ii) the date it is translated, the spot rate on such date**[, or in the case where a related or matching forward exchange contract has been entered into to hedge such loan, advance or debt and the forward rate has been used to translate for accounting purposes such loan, advance or debt in accordance with generally accepted accounting practice, the forward rate in terms of such forward exchange contract]**; or";

(b) by the substitution in subsection (1) for subparagraph (ii) of paragraph *(b)* of the definition of "ruling exchange rate" of the following subparagraph:

"(ii) the date it is translated, the market-related forward rate available for the remaining period of such forward exchange contract**[, or in the case where the forward rate in terms of such forward exchange contract has been used to translate a loan, advance or debt as contemplated in paragraph (*a*) (ii), the forward rate in terms of such contract, or in respect of a forward exchange contract which is an affected contract, the forward rate in terms of such forward exchange contract]**;";

The amendments to the definition of "ruling exchange rate" are required as Generally Accepted Accounting Practice no longer permits companies to use the forward exchange contract rate to convert exchange items and now requires that they be translated at spot and that the forward exchange contract be marked to market at year end.

(c) by the substitution in subsection (7A) for the words in paragraph *(a)* preceding subparagraph (i) of the following words:

"*(a)* Subject to subsection 10, where any exchange difference is to be included in or deducted from the income of any company in terms of subsection (3), there shall, in lieu of such deduction or inclusion, be included in or deducted, as the case may be, from the income of such company during any year of assessment an amount equal to 10 per cent of the deferred amount of such exchange difference arising from a loan or advance obtained or granted before 1 January 2006 owing by such company to any other company or a loan or advance owing by any other company to such company (such a loan or advance referred to as a qualifying exchange item for the purposes of this subsection), if—";

Section 24I(7A) spreads exchange gains and losses on loans and advanced of a capital nature between companies which are connected persons over a period of time on a reducing balance basis. As a result of the introduction of further relief measures in 2003, exchange differences between group companies are not taxed on an unrealised basis, but only on realisation. These relief measures are further expanded in this Bill and effectively encompass the relief measures which spread the exchange gains and losses. It is, therefore, proposed that the section 24I(7A) spreading principle not be applied to loans obtained and advances granted from 1 January 2006. Loans and advances which are currently subject to the spreading principle will continue to be dealt with under the current provisions, unless the provisions of section 24I(10) apply.

(d) by the substitution in subsection (10) for paragraph *(a)* of the following paragraph:

"*(a)* any resident in terms of this section in respect of any exchange difference determined on the translation of an exchange item to which that resident and any foreign company are parties, and where that resident holds at least 20 per cent of the equity shares and voting rights in that foreign company **[is a controlled foreign company in relation either to that resident or to any other company, which is a resident, and which forms part of the same group of companies as that resident]**; **[or]**";

(e) by the insertion in subsection (10) of the following paragraph after subsection *(b)*:

"*(c)* any controlled foreign company in terms of this section in respect of any exchange difference determined on the translation of an exchange item to which that controlled foreign company and any foreign company are parties, and where that controlled foreign company holds at least 20 per cent of the equity chares and voting rights in that foreign company:".

Currently exchange items between group companies are taxed only when the exchange items are realised. This is in contrast with the rule applying to other exchange items which are taxed on an unrealised market valuation basis.

It is proposed that the relief measure be extended to exchange items between parties, where one party is a resident and the other party is a non-resident company in which the resident holds at least 20 per cent of the equity shares and voting rights. The relief measure is also extended to exchange items between a CFC and any other foreign company in which the CFC holds at least 20 per cent of the equity shares and voting rights.

Substitution of section 25D of Act 58 of 1962

16. (1) The following section hereby substitutes section 25D of the Income Tax Act, 1962:

"**Determination of taxable income in foreign currency**

25D. (1) Subject to subsection (2) and (3), any amount derived by a person during any year of assessment from amounts received by or accrued to, or in respect of expenditure or losses incurred by, that person in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the spot rate on the date on which that amount was so received, accrued or incurred.

(2) Any amounts received by or accrued to, or in respect of expenditure incurred by, a person in any currency other than the currency of the Republic which are attributable to a permanent establishment of that person outside the Republic must be determined in the currency used by that permanent establishment for purposes of financial reporting (other than the currency of any country in the

common monetary area) and be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.

(3) A natural person or a trust which does not carry on any trade may, notwithstanding subsection (1), elect that any amounts received by or accrued to, or in respect of expenditure incurred that person or trust in any currency other than the currency of the Republic, be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.”.

(2) Subsection (1) shall come into operation on date of tabling of this Bill and apply in respect of years of assessment commencing on or after that date.

In the Budget Review it was announced that the spot rate will again be allowed for the translation of foreign currency. This will enable businesses to use the exchange rates applied for financial reporting purposes for tax purposes. It is proposed that the definition of average exchange rate be simplified and that it be available for use at the election of individuals and non-trading trusts to translate their foreign income and expenditure. The other category of taxpayers who will continue to be able to use the average rate is taxpayers with foreign permanent establishments. In that case the taxable income must be determined in the currency used by that permanent establishment for purposes of financial reporting and the result must be translated to Rand using the average rate.

Amendment of section 30 of Act 58 of 1962

17. (1) Section 30 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (3) for item *(aa)* of subparagraph (ii) of paragraph *(b)* of the following item:

“*(aa)* with **[a]** an institution contemplated in paragraph *(a)*(iii) or *(b)*(i) of the definition of ‘financial institution’ **[as defined]** in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);”;

Section 30 of the Income Tax Act, 1962, allows a public benefit organisation to invest surplus funds with inter alia a financial institution as defined in section 1 of the Financial Services Board Act, 1990. This definition is, however, very wide and includes not only institutions such as pension funds, friendly societies and other participation schemes, but also persons managing those investments, registered insurers, agents, brokers and persons who deal with trust property. These persons may not necessarily be registered, licensed or otherwise authorised to deal therein

otherwise than in terms of the Companies Act, Close Corporations Act or Trust Property Control Act. It is proposed that section 30 be amended to only allow PBO's to invest their surplus funds with collective investment schemes and banks or mutual banks which deal with trust property as a regular feature of their business.

(b) by the deletion in subsection (3) of subparagraph (iv) of paragraph *(b)*; and

Currently the income tax system provides exemption for PBOs engaged in various forms of non-profit activities. Provision was made for certain trading activities carried out on a cost recovery basis or on an occasional basis using voluntary labour as well as a small threshold for other trading activities. However, a difficulty encountered by many PBOs was that if they exceeded this threshold their tax exempt status was terminated altogether. This "all-or-nothing" approach is impractical as PBOs need to be self-sustaining in order to survive. Accordingly, it was announced in this year's Budget that a system of partial taxation would be implemented, meaning that PBOs who do conduct business activities which fall outside the permissible trading rules may continue to do so without losing their exemption for non-profit activities. It will, however, pay income tax on the income from those business activities falling outside the allowable trading rules.

*Section 30 has been amended and the trading limits have now been inserted under Section 10(1)(c*N*) as an exemption provision, hence the need for its deletion in Section 30.*

(c) by the substitution in the proviso to subsection (3) of the words "seven years" for the words "five years"; and

(d) by the deletion in subsection (3) of the proviso.

A transition arrangement is required to cover the period between the repeal of the old "all or nothing" system and the new partial exemption system. This is achieved by extending the period for which a PBO may continue to hold certain business undertakings or trading activities without losing its tax exempt status.

(2) Subsection (1)*(b)* and *(d)* shall come into operation on 1 April 2006 and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of section 41 of Act 58 of 1962

18. Section 41 of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion in subsection (1) after the definition of "asset" of the following definition:

"'**associated group of companies**' means two or more companies in which one company (hereinafter referred to as the

'influencing company') directly or indirectly holds shares in at least one other company (hereinafter referred to as the **'influenced company'**), to the extent that—

(i) at least 20 per cent of the equity shares and voting rights of each influenced company are directly held by the influencing company, one or more influenced companies or any combination thereof as assets of a capital nature; and

(ii) the influencing company directly holds at least 20 per cent of the equity shares and voting rights in at least one influenced company as assets of a capital nature;";

Definitions of "associated group of companies", "influenced company" and "influenced company" are introduced for purposes of applying the rules relating to domestic financial instrument holding company and foreign financial instrument holding companies. The lower threshold of 20 per cent of the equity shares and voting rights is applied to effectively take the underlying assets of influenced companies into account to determine DFIHC and FFIHC status of a group of companies. The wider concept of a group is based on the percentage used for international financial reporting where significant influence is presumed.

(b) by the substitution in subsection (1) for the definition of "disposal" of the following definition:

"'**disposal'** means a disposal as defined in paragraph 1 of the Eighth Schedule and any deemed disposal in terms of this Part;";

(c) by the substitution in subsection (1) for the definition of "domestic financial instrument holding company" of the following definition:

"'**domestic financial instrument holding company'** means any company which is a resident, where more than **[half of the market value or two-thirds of the actual cost]** the prescribed proportion of all the assets of that company, together with the assets of all **[controlled group]** influenced companies in relation to that company, consist of financial instruments, other than—

(*a*) any financial instrument that constitutes a debt due to that company or to any **[controlled group]** influenced company in relation to that company in respect of goods

sold or services rendered by that company or **[controlled group]** influenced company, as the case may be, where—

(i) the amount of that debt is or was included in the income of that company or **[controlled group]** influenced company, as the case may be (or in the case of a foreign **[controlled group]** influenced company, would have been so included were that foreign company a resident); and

(ii) that debt is an integral part of a business conducted as a going concern by that company or **[controlled group]** influenced company, as the case may be;

(*b*) any financial instrument held by that company or by any **[controlled group]** influenced company in relation to that company, where that company or **[controlled group]** influenced company, as the case may be, is—

(i) a bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990);

(ii) an authorised user regulated in terms of the Securities Services Act, 2004;

(iii) an insurer regulated in terms of the Long Term Insurance Act, 1998 (Act No. 52 of 1998);

(iv) an insurer regulated in terms of the Short Term Insurance Act, 1998 (Act No. 53 of 1998); or

(v) . . . . . .

(vi) a collective investment scheme regulated in terms of the Unit Trusts Control Act, 1981), or its successor the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002); or

(*c*) any financial instrument held by any **[controlled group]** influenced company in relation to that company if that **[controlled group]** influenced company is a foreign company as contemplated in paragraph (*b*) of the

definition of “foreign financial instrument holding company”:

Provided that in determining whether more than more than **[half of the market value or two-thirds of the actual cost]** the prescribed proportion of the assets of the company and **[controlled group]** influenced companies consist of financial instruments, the following assets must be wholly disregarded—

(i) any share of an **[controlled group]** influenced company in relation to that company; **[and]**

(ii) any financial instrument which constitutes a loan, advance or debt entered into between—

(aa) that company and any **[controlled group]** influenced company in relation to that company; or

(bb) **[controlled group]** influenced companies in relation to that company; and

(iii) any financial instrument the market value of which is equal to its base cost;”;

It is proposed that the tests to determine domestic financial instrument holding company status be relaxed by effectively consolidating companies in which at least 20 per cent of the equity shares and voting rights are held. A further concession is introduced by disregarding any financial instrument the market value of which is equal to its base cost. This would exclude most debts, loans and bank accounts from the calculation.

(d) by the substitution in subsection (1) for the definition of “foreign financial instrument holding company” of the following definition:

“**‘foreign financial instrument holding company’** means any foreign company as defined in section 9D, where more than **[half of the market value or two-thirds of the actual cost]** the prescribed proportion of all the assets of that company, together with the assets of all **[controlled group]** influenced companies in relation to that foreign company, consist of financial instruments, other than—

(*a*) any financial instrument that constitutes a debt due to that foreign company, or to any **[controlled group]** influenced company in relation to that foreign company, in

respect of goods sold or services rendered by that foreign company or **[controlled group]** influenced company, as the case may be, where—

(i) the amount of that debt is or was included in the income of that foreign company or **[controlled group]** influenced company, as the case may be (or would have been so included were that foreign company or **[controlled group]** influenced company a resident); and

(ii) that debt is an integral part of a business conducted as a going concern by that foreign company or **[controlled group]** influenced company, as the case may be;

(*b*) any financial instrument arising from the principal trading activities of that foreign company or of any **[controlled group]** influenced company in relation to that foreign company which is a bank or financier, insurer, dealer or broker **[with a licence or registration that allows that foreign company or controlled group company to operate in the same manner as a company]** that mainly conducts business **[with clients who are residents]** in the **[same]** country of residence **[**as**]** of that company and that **[foreign]** company **[or controlled group company in relation to that foreign company either]**—

(i) regularly accepts deposits or premiums or makes loans, issues letters of credit, provides guarantees or effects similar transactions for the account of clients **[from the general public]** who are not connected persons in relation to that company; **[or]** and

(ii) derives more than 50 per cent of its income or gains from principal trading activities with respect to **[persons who are not connected persons in**

relation to that foreign company] those clients; or

(*c*) any financial instrument held by any **[controlled group]** influenced company in relation to that foreign company if that **[controlled group]** influenced company is a **[controlled group]** influenced company as contemplated in paragraph (*b*) of the definition of 'domestic financial instrument holding company':

Provided that in determining whether more than more than **[half of the market value or two-thirds of the actual cost]** the prescribed proportion of the assets of the company and all **[controlled group]** influenced companies consist of financial instruments,—

(i) the following assets must be wholly disregarded—

[(i)]*(aa)* any share in any other company in the same associated group of companies;

[ii]*(bb)* any financial instrument which constitutes a loan, advance or debt entered into between—

[*(aa)*](A) that company and any **[controlled group]** influenced company in relation to that company; or

[*(bb)*](B) **[controlled group]** influenced companies in relation to that company; and

(cc) any financial instrument the market value of which is equal to its base cost;

(ii) paragraph *(b)* will not apply to a foreign company that is potentially eligible for one or more tax preferences in its country of residence if—

(aa) that company is prohibited from operating in its country of residence; or

(bb) any tax preference requires ownership of that company to be held by persons outside that country of residence.";

It is proposed that the tests to determine foreign financial instrument holding company status be relaxed by effectively consolidating companies in which at least 20 per cent of the equity shares and voting rights are held. A further concession is introduced by disregarding any financial instrument the market value of which is equal to its base cost. This would exclude most debts, loans and bank accounts from the calculation.

Currently financial instruments arising from the principal trading activities of banks, insurers, dealers and brokers with a licence or registration that allows that foreign company or controlled group company to operate in the same manner as a company that mainly conducts business with clients who are residents in the same country of residence as that company are not taken into account in applying the FFIHC test.

This test created anomalies and unintended consequences and it is, therefore, proposed that the test be changed to exclude financial instruments arising from the principal trading activities of a bank, financier, insurer, dealer and broker that mainly conducts business in the country of residence of that company and

- *regularly accepts deposits or premiums or makes loans, issues letters of credit, provides guarantees or effects similar transactions for the account of clients who are not connected persons in relation to that company; and*
- *derives more than 50 per cent of its income or gains from principal trading activities with respect to those clients.*

Furthermore, in order to exclude companies operating in countries which ring-fence certain tax preferences it is proposed that the above exclusion should not apply to a company that is potentially eligible for one or more tax preferences in its country of residence if—

- *that company is prohibited from operating in its country of residence; or*
- *any tax preference requires ownership of that company to be held by persons outside that country of residence.*

(e) by the insertion in subsection (1) after the definition of "market value" of the following definition:

"'**prescribed proportion'** means—

(a) where shares in the equity share capital of a company are to be disposed of between members of the same group of companies, as determined without regard to the proviso to the definition of group of companies in section 1, half of the book value, as determined for purposes of a company's financial statements, of all assets or two-thirds of the actual cost of all assets; or

(b) in any other case, half of the market value or two-thirds of the actual cost of all assets;";

A definition of "prescribed proportion" is introduced in order to allow a simplified determination of the portion of financial instruments in relation to all assets. The simplified determination entails the use of the book value (as determined for

purposes of a company's financial statements) of the assets instead of the requirement to perform a burdensome market valuation of assets on the date of the relevant transaction. The simplified test will only apply where no company was excluded from the group of companies as a result of the application of the proviso to the definition of group of companies in section 1 of the Act.

(f) by the substitution in subsection (1) for paragraph *(b)* of the definition of "qualifying interest" of the following paragraph:

"(*b*) in any other case, constitute **[more than 25]** at least 20 per cent of the equity shares and voting rights of that company**[;]**.";

As announced in the Budget the threshold percentage to qualify for certain tax neutral corporate restructuring transactions will be reduced. This amendment is also consequential upon the introduction of a 20 per cent of equity share and voting right test for purposes of the participation exemption and the definition of associated group of companies.

(g) by the deletion of subsections (3) and (6); and

The reporting requirements regarding the acquisition or disposal of assets as well as any election in respect of the corporate restructuring transactions are already covered by the general reporting requirements contained in section 65 and the reporting requirements for purposes of the corporate restructuring rules are deleted as being superfluous.

(h) by the addition of the following subsection:

"(7) An amount contemplated in paragraph *(j)* of the definition of gross income in section 1 must for purposes of this Part be deemed to be an amount that must be recovered or recouped.".

In the case of the disposal of mining assets the Income Tax Act does not provide for a recoupment of allowances previously claimed but includes the full amount of proceeds in gross income. This would be the case even where the proceeds on disposal exceed the historical cost of the asset. In order to allow these mining assets to benefit from the tax deferral rules for corporate restructuring transactions it is proposed that the full amount of the proceeds on disposal of mining assets be deemed to constitute a recovery or recoupment.

Amendment of section 42 of Act 58 of 1962

19. Section 42 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words in paragraph *(a)* preceding subparagraph (i) of the following words:

"(*a*) in terms of which a person **[(other than a trust which is not a special trust)]** disposes of an asset, the market value of which is equal to or exceeds—";

(b) by the substitution in subsection (1) for the words in paragraph *(a)* following subparagraph (ii) of the following words:

"to a company which is a resident, in exchange for an equity share or shares of that company and that person**[,]**—

(aa) at the close of the day on which that asset is disposed of, holds a qualifying interest in that company; or

(bb) is a natural person who will be engaged on a full-time basis in the business of that company of rendering any service that was rendered by that person on a full-time basis for a period of at least 18 months prior to that disposal;";

An amendment is proposed in order to enable professional partnerships to utilise the company formation transaction rollover provisions. The relief for company formations will only be available to natural persons who will be engaged on a full-time basis in the business of that company of rendering any service that was rendered by that person on a full-time basis for a period of at least 18 months prior to the disposal of the assets to the company.

(c) by the substitution in subsection (6) for the words preceding paragraph *(a)* of the following words:

"(6) Where a person disposed of any asset in terms of a company formation transaction and that person ceases to hold a qualifying interest in that company, as contemplated in paragraph (*b*) of the definition of "qualifying interest", within a period of 18 months after the date of the disposal of that asset (whether or not by way of the disposal of any shares in that company), or ceases within that period to be engaged on a full-time basis in the business of the company of rendering the service contemplated in subsection (1)*(a)*(ii)*(bb)*, that person must for purposes of subsection (5), section 22 or the Eighth Schedule be deemed to have—";

This amendment is consequential upon the extension of the company formation transaction to incorporated partnerships. The unrealised gains on entering into the

company formation transaction by a person who qualified on the basis of the service requirement will be triggered where the person ceases within 18 moths of the formation transaction to be engaged on a full-time basis in the business of the company of rendering the service.

(d) by the substitution in subsection (8) for the words in paragraph *(a)* preceding subparagraph (i) of the following words:

"*(a)* any asset which secures any debt **[(other than a debt contemplated in paragraph 20(3)*(c)* of the Eighth Schedule)]** to a company in terms of a company formation transaction and that debt was incurred by that person—";

(e) by the substitution in subsection (8) for paragraph *(b)* of the following paragraph:

"*(b)* any business undertaking as a going concern to a company in terms of a company formation transaction and that disposal includes any amount of any debt that is attributable to, and arose in the normal course of that business undertaking **[(other than any debt that has been taken into account as contemplated in paragraph 20(3)(*c*) of the Eighth Schedule in determining the base cost of any asset so disposed of as part of that business undertaking)]**,"; and

(f) by the deletion of subsection (10).

It is proposed that the provision preventing consecutive corporate transactions within an 18 month period be deleted, thereby allowing relief for consecutive corporate transactions.

Amendment of section 43 of Act 58 of 1962

20. Section 43 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words in paragraph *(a)* preceding subparagraph (i) of the following words:

"(*a*) in terms of which a person **[(other than a trust which is not a special trust)]** disposes of an equity share, the market value of which is equal to or exceeds—"; and

(b) by the deletion of subsection (8).

It is proposed that the provision preventing consecutive corporate transactions within an 18 month period be deleted, thereby allowing relief for consecutive corporate transactions.

Amendment of section 44 of Act 58 of 1962

21. Section 44 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (4) for paragraph *(b)* of the following paragraph:

"(*b*) the assumption by that resultant company of a debt of that amalgamated company that was incurred by that amalgamated company—

(i) more than 18 months before that disposal; or

(ii) within a period of 18 months before that disposal, to the extent that the debt—

(aa) constitutes the refinancing of any debt incurred as contemplated in subparagraph (i); or

(bb) is attributable to and arose in the normal course of a business undertaking disposed of, as a going concern, to that resultant company as part of that amalgamation transaction.";

This amendment limits the amalgamation transaction relief to situations where assets of an amalgamated company are disposed of in exchange for the assumption of debt of that amalgamated company where the debt

- *was incurred more than 18 months before the disposal of the asset;*
- *the aforementioned debt was refinanced within 18 months prior to the disposal; or*
- *is attributable to and arose in the normal course of a business undertaking disposed of, as a going concern, to that resultant company as part of that amalgamation transaction.*

The reason for the limitation is to address situations where the amalgamated company incurs debt shortly before the amalgamation transaction in order to benefit from the rollover provisions for its assets.

(b) by the substitution for subsection (10) of the following subsection:

"(10) For purposes of section 64B—

(a) so much of the amount of any other consideration to which a person becomes entitled as contemplated in subsection (7)(*b*)

as does not exceed the amalgamated company's profits **[and reserves]** which are available for distribution as contemplated in section 64C(4)(*c*) must**[, for purposes of section 64B,]** be deemed to be a dividend declared and distributed out of profits of that amalgamated company to that person and to have accrued as a dividend to that person on the date on which that person became entitled thereto; and

(b) that amalgamated company and the resultant company shall be deemed to be one and the same person with respect to any remaining profits of that amalgamated company.";

(c) by the addition of the following subsection:

"(14) The provisions of this section do not apply in respect of any disposal where that disposal constitutes a liquidation distribution as contemplated in section 47(1)*(a)* (without having regard to whether or not an election has been made that the provisions of section 47 apply).".

This amendment provides that the amalgamation transaction provisions cannot be accessed where the transaction constitutes a liquidation distribution.

Amendment of section 45 of Act 58 of 1962

22. Section 45 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (4) for subparagraphs (i) and (ii) of paragraph *(b)* of the following subparagraphs:

"(i) except as provided for in subparagraph (ii), be deemed to have disposed of that asset on the day immediately before the date on which that transferee company ceased to form part of that group of companies for an amount equal to the market value of the asset as at **[that]** the date of acquisition of that asset by that transferee company as contemplated in paragraph *(a)* and as having immediately reacquired that asset for an amount equal to the market value of that asset as at that date; and

Currently a deemed disposal of an asset is triggered at market value at the date a transferee and a transferor ceases to form part of the same group of companies. This creates the result that unrealised gains or losses are taxed in the hands of the transferee company although the transferee remains owner of the relevant asset. It is proposed that only the gain or loss which was rolled over to the transferee, determined with reference to the market value of the asset when the transferee acquired it, be triggered.

(ii) for purposes of determining a deduction or allowance to which that transferee company may be entitled as contemplated in the definition of "allowance asset" in section 41, be deemed as having immediately reacquired that asset for an amount equal to the lower of the market value of that asset as at that date or the base cost of that asset immediately prior to that disposal;";

(b) by the addition to subsection (4) of the following paragraph:

"*(c)* Where the transferor company or transferee company contemplated in paragraph *(b)* is liquidated, wound up or deregistered at a time when a company (hereinafter referred to as the 'holding company') holds at least 70 per cent of the equity shares of that liquidating company, the holding company and the liquidating company must be deemed to be one and the same company for purposes of paragraph *(b)*.";

A relief measure which applies when a transferor and a transferee company which previously entered into an intra-group transaction ceases to form part of the same group of companies is reintroduced with retrospective effect from 26 October 2004. The relief applies when either the transferor or the transferee is liquidated, wound up or deregistered. The holding company of the transferee or transferor company and the transferee or transferor company are deemed to be one and the same company, which has the result that the link between the transferor and the transferee is not broken on liquidation, winding up or deregistration. The intra-group rollover benefits will, therefore, not be forfeited on liquidation, winding up or deregistration as required in the amendment.

(c) by the substitution in subsection (6) for subparagraph (iv) of paragraph *(a)* of the following subparagraph:

"(iv) that financial instrument constitutes an equity share in a controlled group company in relation to that transferor company and that controlled group company is not a domestic financial instrument holding company or foreign financial instrument holding company immediately prior to that disposal: **[Provided**

that for purposes of determining whether that controlled group company is a domestic financial instrument holding company or a foreign financial instrument holding company, no regard shall be had to any financial instrument the market value of which is equal to its base cost]; or".

(2) Subsection (1)*(b)* shall be deemed to have come into operation on…*(Retroactive in respect of 75 per cent shareholding to 26 October 2004. New 70 per cent requirement in respect of group of companies from promulgation.)*

Amendment of section 46 of Act 58 of 1962

23. Section 46 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"(1) For purposes of this section, **'unbundling transaction'** means any transaction in terms of which all the equity shares of a company which is a resident (hereinafter referred to as the "unbundled company") that are held by a company (hereinafter referred to as the "unbundling company") which, if listed, is a resident, are **[disposed of]** distributed by that unbundling company to the shareholder or shareholders of that unbundling company in accordance with the effective interest of that shareholder or those shareholders, as the case may be, in the shares of that unbundling company, but only to the extent to which those shares are so **[disposed of]** distributed—";

(b) by the substitution in subsection (1) for the words in paragraph (i) of the proviso preceding subparagraph *(aa)* of the following words:

"(i) where that unbundled company is a listed company immediately before that **[disposal]** distribution—";

(c) by the substitution in subsection (1) for paragraph (ii) of the proviso of the following paragraph:

“(ii) where that unbundled company is an unlisted company immediately before that **[disposal]** distribution, more than 50 per cent of the equity shares of that unbundled company.”;

(d) by the substitution for subsection (2) of the following subsection:

“(2) Where an unbundling company **[disposes of]** distributes shares to a shareholder in terms of an unbundling transaction, that unbundling company must disregard that disposal for purposes of determining its taxable income or assessed loss.”;

(e) by the substitution in subsection (3) for item *(aa)* of subparagraph (ii) of paragraph *(a)* of the following item:

“(*aa*) constitute pre-valuation date assets as contemplated in paragraph 1 of the Eighth Schedule, the **[valuation date value]** base cost of those shares as contemplated in paragraph 25 of the Eighth Schedule; or”;

(f) by the substitution in subsection (3) for the words in paragraph *(b)* preceding subparagraph (i) of the following words:

“(*b*) that shareholder must determine the portion of the cost contemplated in paragraph (*a*) that must be attributed to those shares, by determining an amount which bears to that cost the same ratio that the market value of those shares, as at the end of the day after the date of that **[disposal]** distribution, bears to the sum of the market values, as at the end of that day, of the previously held shares and of those shares, which portion of the cost must, where the shareholder held the previously held shares as—”;

(g) by the substitution in subsection (4) for the words preceding paragraph *(a)* of the following words:

“(4) Where those shares are **[disposed of]** distributed by an unbundling company to a shareholder in terms of an unbundling transaction and that shareholder held the previously held shares in that unbundling company as a result of the exercise, by that shareholder, of a right contemplated in section 8A, a portion of any gain made by that shareholder in the

exercise of that right to acquire those previously held shares must be included in the income of that shareholder—";

(h) by the substitution for subsections (5), (6) and (7) of the following subsections:

"(5) Where shares are **[disposed of]** distributed by an unbundling company to a shareholder in terms of an unbundling transaction—

(*a*) the **[disposal]** distribution by that unbundling company of the shares must be deemed not to be a dividend with respect to that unbundling company for the purposes of section 64B (3); and

(*b*) any shares acquired by a company in terms of that **[transaction]** distribution must be deemed not to be a dividend which accrued to that company for the purposes of section 64B (3).

(6) Any shares **[disposed of]** distributed by an unbundling company in terms of an unbundling transaction, must be deemed to have been disposed of first from the share premium account of that unbundling company.

The current reference in section 46 to shares disposed of could create the impression that a disposal of shares for consideration would be covered. However, the rationale for the unbundling provisions was that the shares in the unbundled company should be distributed by way of a dividend to the shareholders of the unbundling company. The references to disposal are changed to distribution. The intra-group transactions already make provision for the transfer of assets between group companies for consideration.

(7) The provisions of this section do not apply—

(*a*) where the unbundling company or the unbundled company is a domestic financial instrument holding company immediately **[prior to]** after that disposal; or

(*b*) in respect of any **[transaction]** distribution of shares in terms of an unbundling transaction to a shareholder who is not subject to secondary tax on companies and who acquires more than five per cent of those shares.".

This proposal is aimed at excluding unbundling transaction from rollover relief if those transactions have the effect of a permanent reduction in the tax base.

Amendment of section 47 of Act 58 of 1962

24. Section 47 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"(ii) on the date of that disposal holds at least **[75]** 70 per cent of the equity shares and voting rights of that liquidating company; and".

(b) by the insertion after subsection (3) of the following subsection:

"(3A) The provisions of subsection (3) will apply to a disposal of an asset by a liquidating company to its holding company in terms of a liquidation distribution only to the extent that such asset is so disposed of in exchange for—

(*a*) equity shares held by that holding company in that liquidating company; or

(*b*) the assumption by that holding company of a debt of that liquidating company that was incurred by that liquidating company—

(i) more than 18 months before that disposal; or

(ii) within a period of 18 months before that disposal, to the extent that the debt—

(aa) constitutes the refinancing of any debt incurred as contemplated in subparagraph (i); or

(bb) is attributable to and arose in the normal course of a business undertaking disposed of, as a going concern, to that holding company as part of that liquidation distribution.".

This proposal aligns the rules with respect to liquidation distributions with amalgamation transactions.

Amendment of section 64B of Act 58 of 1962

25. Section 64B of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the definition of "declared" of the following definition:

"**'declared',** in relation to any dividend (including a dividend *in specie*), means the approval of the payment or distribution thereof by the directors of the company or by some other person under authority conferred by the memorandum and articles of association of the company or, in the case of the liquidation of a company, by the liquidator thereof;";

The definition of "declared" in section 64B(1) regulates the timing of declarations. The amendment clarifies that the declaration of a dividend in the case of the liquidation of a company means the approval of the payment or distribution by the liquidator of the company.

(b) by the addition to subsection (1) of the following definition:

"**'profits'** includes any amount deemed in terms of the definition of 'dividend' in section 1 to be a profit available for distribution;";

This amendment aligns the concept of profits for STC purposes with profits available for distribution in the definition of "dividend".

(c) by the substitution in subsection (3) for the words preceding the proviso of the following words:

"(3) Subject to subsection (3A), the net amount of any dividend referred to in subsection (2) **[shall be]** is the amount by which **[such]** the dividend declared by a company exceeds the sum of any dividends (other than any dividends contemplated in subsection (5)*(c)*) which have accrued to that company during the dividend cycle in relation to **[such]** that firstmentioned dividend:";

(d) by the substitution in subsection (3A) for paragraph *(a)* of the following paragraph:

"*(a)* any dividend contemplated in subsection (5)(*b*) **[, (*c*)]** or (*f*);";

(e) by the substitution in subsection (5) for the words in paragraph *(c)* preceding subparagraph (i) of the following words:

"*(c)* so much of any dividend **[distributed]** declared in the course or in anticipation of the liquidation or winding up or deregistration of a company, as contemplated in paragraph *(a)* of the definition of "dividend" in section 1, as is shown by the company to be a—";

(f) by the addition in subsection (5) to subparagraph (i) of paragraph *(f)* of the following proviso:

"Provided that this exemption shall not apply to the extent to which that dividend—

(aa) is derived, directly or indirectly, from any profit that arose in any company forming part of that group of companies during a period when that company and that shareholder did not form part of that group of companies; or

(bb) consists of any shares in that shareholder;";

Dividends declared to a shareholder which forms part of the same group of companies as the company declaring the dividends are exempt at the election of the company. One of the conditions of the exemption is that the dividend must be derived by a company during the period it formed part of the same group of companies as the shareholder company to which the dividend is declared. It is proposed that this requirement be relaxed by requiring that the profits should have arisen in any company forming part of the group of companies during the required period and not only by the company declaring the dividend.

Furthermore it is proposed that the intra-group dividend exemption should not apply where the company declares a dividend to its shareholder, where the dividend consists of shares in the shareholder. The limitation would address the situation where the section 64B(5)(f) exemption may have the effect of not delaying an STC liability but creating a permanent exclusion from the STC base. An example of this situation is where a subsidiary company bought shares in its holding company (STC free) and subsequently distributed the shares to the holding company as a dividend (again STC free).

(g) by the deletion in subsection (5) of subparagraphs (ii) and (iii) of paragraph *(f)*;

(h) by the substitution in subsection (5) for paragraphs *(a)* and *(b)* of the proviso to paragraph *(f)* of the following paragraphs:

"*(a)* to have been in existence from the date on which the controlling group company in relation to that shareholder was formed; and

(b) to have been the controlling group company in relation to the company declaring the dividend from the date on which that company declaring the dividend formed part of the same group of companies as the controlling group company in relation to the shareholder;";

(i) by the deletion in subsection (5) of paragraph *(k)*.

This amendment deletes obsolete wording which related to transitional measures with the introduction of CGT.

Amendment of section 64C of Act 58 of 1962

26. Section 64C of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2) for paragraph *(e)* of the following paragraph:

"*(e)* that amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder or a connected person in relation to such a shareholder, the consideration of which is adjusted or any amount of interest, finance charge or other consideration is disallowed as a deduction in accordance with the provisions of section 31";

An amendment is proposed which treats amounts disallowed as a deduction in applying thin capitalisation provisions in section 31(3) as a deemed dividend as is the case for transfer pricing adjustments. The rationale is that the excessive interest paid is effectively a distribution of profits which should be subject to STC.

(b) by the substitution in subsection (4) for paragraph *(b*A*)* of the following paragraph:

"*(b*A*)* **[where the amount constitutes cash or an asset which is transferred by the company in terms of a disposal or acquisition of an asset for consideration which reflects an arm's length price]** to the extent of any consideration received by that company in exchange for—

(i) the cash or asset distributed, transferred or otherwise disposed of; or

(ii) any other benefit granted in terms of subsection (2);";

This amendment clarifies the principle that where insufficient consideration is paid for an asset or other benefit transferred or granted by a company to its shareholders, the portion of the value of the cash, asset or other benefit transferred for no consideration is deemed to be a dividend for STC purposes.

(c) by the substitution in subsection (4) for paragraph *(k)* of the following paragraph:

"*(k)* to any amount contemplated in subsection (2) (*a*), (*b*), (*c*), (*d*), or (*g*) distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available for the benefit of any shareholder **[which is a resident]** or any connected person which is a resident in relation to that shareholder **[which is a resident]**—

(i) if that shareholder is a company that is a member of the same group of companies as the company which is deemed to have declared that dividend; and

(ii) to the extent that the amount does not exceed the company's profits **[and reserves]** available for distribution that arose during the period that the shareholder was a member of the same group of companies as the company which is deemed to have declared that dividend: Provided that any profits **[and reserves]** taken into account for purposes of this paragraph may not be taken into account in applying this paragraph in respect of any future amounts distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available;".

Substitution of section 65 of Act 58 of 1962

27. The following section hereby substitutes section 65 of the Income Tax Act, 1962:

"**Returns <u>and payment</u> to be in form and submitted at place prescribed by Commissioner**

65. All forms of returns and other forms required for the administration of this Act <u>and all payments required to be made in terms of this Act</u> shall be in such form and be submitted <u>in such manner and</u> at such place as may be prescribed by the Commissioner **[from time to time]**.".

As was announced in the Budget Review this year, in an attempt to streamline return processing compulsory e-filing for certain returns for large taxpayers will be introduced. This amendment gives effect to this proposal and enables the Commissioner to prescribe that returns must be submitted electronically and that the payment of the tax relating to the return must also be paid through the e-filing system of SARS.

Amendment of section 72A of Act 58 of 1962

28. Section 72A of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"(1) Every resident who on the last day of the foreign tax year of a controlled foreign company or immediately before a foreign company ceases to be a controlled foreign company directly or indirectly, together with any connected person in relation to that resident, holds at least 10 per cent of the participation rights in any controlled foreign company (otherwise than indirectly through a company which is a resident), must submit to the Commissioner together with the return contemplated in section 66 in respect of that year of

assessment, a return containing such information as may be prescribed by the Commissioner.

(b) by the deletion in subsection (1) of paragraphs *(a)* to *(f)*;

The reporting requirement in respect of CFCs is simplified by deleting references to the specific information to be submitted and requiring a return containing the information as may be prescribed by the Commissioner.

(c) by the substitution for subsection (2) of the following subsection:

"(2) A resident must **[together with the return contemplated in subsection (1), submit]** have available for submission to the Commissioner when so requested, a copy of the financial statements of the controlled foreign company **[(prepared in accordance with generally accepted accounting practice)]** for the relevant foreign tax year, as defined in section 9D, of that controlled foreign company **[in respect of which there is an inclusion in the income of that resident in terms of section 9D]**.";

In order to reduce the compliance burden on residents who have interests in numerous CFCs it will no longer be required that the financial statements of all CFCs be submitted with the IT10 return. However, the financial statements of CFCs must be available for submission to the Commissioner when so requested.

(d) by the deletion in subsection (3) of paragraph *(a)*.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962

29. Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the addition of the word "and" at the end of the definition of "representative employer";

(b) by the insertion after the definition of "representative employer" of the following definition:

""tax threshold" in relation to a natural person means the maximum amount of taxable income of that person in respect of a year of assessment which would result in no tax payable when the rates of tax

contemplated in section 5 of this Act for that year of assessment is applied to the taxable income of that person.”;

The insertion of the definition of “tax threshold” is consequential upon the introduction of the exemption for natural persons earning non-business taxable income below the tax threshold.

(c) by the substitution in the definition of “provisional taxpayer” for item *(a)* of the following item:

“*(a)* any person (other than a company **[or a person referred to in sub-paragraph (1) of paragraph 18]**) who derives by way of income any amount which does not constitute—

(i) remuneration in terms of the definition of that expression in this paragraph; or

(ii) an allowance or advance contemplated in section 8(1);”;

(d) by the deletion in the definition of “provisional taxpayer” of items *(b)* and *(b*A*)*.

The amendment provides that the mere receipt of an allowance or advance (e.g. a subsistence or motor vehicle allowance) by an employee will not cause the employee to be a provisional taxpayer.

As the remuneration of directors of private companies became subject to PAYE from 2002, there is no reason to treat such directors as provisional taxpayers. It is proposed that the specific inclusion of directors as provisional taxpayers be withdrawn.

Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962

30. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subparagraph (1) of item *(a)*; and

(b) by the insertion in subparagraph (1) after item *(b)* of the following item:

“*(c)* any natural person who on the last day of that year will be below the age of 65 years and who does not derive any income from the carrying on of any business if—

(i) the taxable income of that person for the relevant year of assessment will not exceed the tax threshold; or

(ii) the taxable income of that person for the relevant year of assessment which is derived from interest, dividends and rental from the letting of fixed property will not exceed R10 000.".

It is proposed that provision be made for natural persons to be exempt from the payment of provisional tax if they do not derive any business income and their taxable income for the tax year will be below the tax threshold. It is furthermore proposed that the exemption only applies to individuals below the age of 65 years as older persons already enjoy the benefit of an exemption linked to a taxable income of R80 000 which is higher than the tax threshold. The current de minimis exemption is amended by specifically not allowing the exemption where the individual derives any income from the carrying on of a business. The test to qualify for exemption is simplified by determining whether taxable income in the form of interest, dividends and rental from the letting of fixed property will be R10 000 or less during the year of assessment.

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962

31. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for item *(a)* of the following item:

"(*a*) Every provisional taxpayer (other than a company or a person contemplated in paragraph 18) shall, during every period within which provisional tax is or may be payable by him as provided in this Part, or any extension of such period granted in terms of paragraph 25 (2), submit to the Commissioner, in such form as the Commissioner may prescribe, an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment in respect of which provisional tax is or may be payable by him.";

(b) by the substitution in subparagraph (1) for subitem (i) item *(d)* of the following subitem:

"(i) as respects an estimate submitted by a provisional taxpayer (other than a company) under item (*a*), the taxpayers' taxable income, as assessed by the Commissioner, for the latest preceding year of assessment in relation to such estimate, less—

(aa) the amount of any taxable capital gain included therein in terms of section 26A; and

(bb) the taxable portion of any lump sum contemplated in section 7A(4A) and paragraph *(d)* of the definition of 'gross income'; or".

Persons who are exempt from the payment of provisional tax are no longer required to submit provisional tax returns. This will reduce the compliance burden on that category of individuals.

The taxable income of a provisional taxpayer for a previous year (basic amount) is used to determine the provisional tax obligation of the taxpayer during a tax year. Irregular amounts of taxable income in the form of capital gains derived during a previous year are excluded from the calculation of the basic amount. It is proposed that other forms of irregular income in the form of lump sum payments for the termination of employment or office also be excluded.

Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962

32. Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (4) for the words in item *(a)* preceding the proviso of the following words:

"*(a)* as respects each such month, be an amount equal to **[1,8]** 2,5 per cent of the determined value of such motor vehicle:";

(b) by the substitution in subparagraph (4) for paragraph (i) of the proviso to item *(a)* of the following paragraph:

"(i) where more than one motor vehicle is made available by an employer to a particular employee at the same time and the provisions of subparagraph (6) are not applicable in the case of such vehicles, the said value shall be an amount equal to **[1,8]** 2,5 per cent of the determined value of the motor vehicle having the highest determined value and 4 per cent of the determined value of every other such motor vehicle; and";

Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, deals with the taxation of the value of a fringe benefit that arises when an employer grants an employee the right to the private use of a motor vehicle that belongs to the employer. Paragraph 7(4)(a) specifically quantifies the value of the fringe benefit that must be included in the employee's taxable income and is based on a fixed percentage of the

determined value (normally the purchase price) of the vehicle. If only one vehicle is made available to the employee, the percentage is fixed at 1.8% per month of the purchase price. If more than one vehicle is made available, the percentage is fixed at 4% in respect of any such other vehicle. It was announced in the Budget Review this year that the percentage in respect of the first or a single vehicle be increased from 1.8% to 2.5% to align the fringe benefit values with the revised fixed cost tables introduced earlier this year.

(c) by the substitution in subparagraph (4) for the second proviso to item *(a)* preceding subitem (i) of the following proviso:

"Provided further that where the employee does not receive an allowance or advance contemplated in section 8(1)*(b)* in respect of that vehicle and that employee—

(i) bears the cost of all fuel used for the purposes of the private use of the vehicle (including travelling between the employee's place of residence and his place of employment), the value of private use for each **[such]** month **[as determined in accordance with the foregoing provisions of this subparagraph]** shall be **[reduced by an amount of R120]** determined by deducting 0.22 from the amount of the percentage to be applied to the determined value of that motor vehicle; or

(ii) bears the full cost of maintaining the vehicle (including the cost of repairs, servicing, lubrication and tyres), the value of private use for each month **[as determined in accordance with the foregoing provisions of this subparagraph]** shall be **[reduced by an amount of R85]** determined by deducting 0.18 from the amount of the percentage to be applied to the determined value of that motor vehicle; and".

To avoid the unfair taxation where an employee actually bears a portion of the costs for the private use of the employer's vehicle, the Income Tax Act currently contains a provision that allows the taxable benefit to be reduced as follows:

(a) by R120 per month where the employee bears the cost of all fuel for the purposes of private use of the vehicle; or

(b) by R85 per month where the employee bears the full cost of maintaining the vehicle, which includes cost of repairs, servicing, lubrication and tyres.

It is, however, proposed that the monetary values of these costs be deleted and that the percentage of the value of the vehicle which is taxed as a fringe benefit rather be adjusted.

Furthermore, there is the possibility of a double deduction of fuel and maintenance costs where an employee also receives a travel allowance in respect of the same vehicle that gives rise to the fringe benefit. This double deduction could arise where an employee reduces the taxable portion of the travel allowance by claiming fuel and maintenance costs and also use the same costs to reduce the taxable benefit of the private use of the employer's vehicle. It is, therefore, proposed that this proviso be amended to prevent the double deduction.

Amendment of paragraph 2 of Eighth Schedule to Act 58 of 1962

33. Paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

"(2) For purposes of subparagraph (1)*(b)*(i), an interest in immovable property situated in the Republic includes **[a direct or indirect interest of at least 20 per cent held by a person (alone or together with any connected person in relation to that person) in the equity share capital of a company or in any other entity, where 80 per cent or more of the value of the net assets of that company or other entity, determined on the market value basis, is, at the time of disposal of shares in that company or interest in that other entity, attributable directly or indirectly to immovable property situated in the Republic, other than immovable property held by that company or other entity as trading stock]** any equity shares held by a person in a company or ownership or the right to ownership of a person in any other entity or a vested right of a person in any assets of any trust, if—

(aa) 80 per cent or more of the market value of those equity shares, ownership or right to ownership or vested right, as the case may be, at the time of disposal thereof is attributable directly or indirectly to immovable property held by that company, entity or trust otherwise than as trading stock; and

(*bb*) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person), directly or indirectly, holds at least 20 per cent of the

equity share capital of that company or ownership or right to ownership of that other entity.”.

Paragraph 2 provides that the capital gains tax provisions apply in respect of all assets of residents and assets of non-residents that are situated in the Republic or attributable to a permanent establishment in the Republic. Assets situated in the Republic include immovable property and any interest or right of whatever nature in immovable property. An interest in immovable property includes certain interests in companies or other entities that hold property if at least 80 per cent of the net assets of the company or other entity is attributable to immovable property and where the person holds at least 20 per cent of the equity share capital of the company or other entity.

Certain practical issues have arisen with the application of this provision, especially where foreign companies hold their interests in South African immovable property indirectly through other intermediary companies or through a beneficial interest in a trust. It is therefore proposed that this provision be amended to provide that an interest in immovable property includes any equity shares in a company or ownership or right to ownership in any other entity or a vested interest in a trust if 80 per cent or more of the market value of the interest at the time of disposal is attributable to immovable property and where the person holds at least 20 per cent of the equity share capital or ownership. The 20 per cent requirement does, however, not apply in respect of the vested interest in a trust.

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962

34. Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subparagraph (5) of the word “or” at the end of subitem *(aa)* of item *(a)* and the addition of the word “or” at the end of subitem *(bb)*;

(b) by the addition in subparagraph (5) of the following subitem in item *(a)*:

“*(cc)* that person is a company and that reduction or discharge (other than a reduction or discharge of a debt excluded in terms of subitem *(bb)*(A) or (B)) was made in the course or in anticipation of the liquidation, winding up or deregistration of that company to the extent that the amount of that reduction or discharge did not exceed the amount of the creditor’s base cost of the debt at the time of that reduction or discharge.”;

(c) by the addition to subparagraph (5) of the following items:

“*(c)* The exclusion contemplated in item *(a)(cc)* does not apply where that company—

(i) has not within six months of that reduction or discharge taken such steps as contemplated in section 41(4) to liquidate, wind up or deregister;

(ii) has at any stage withdrawn any step taken to liquidate, wind up or deregister; or

(iii) does anything to invalidate any such step so taken with the result that the company is or will not be liquidated, wound up or deregistered.

(d) Any tax which becomes payable as a result of the application of item *(c)* in respect of a company, must be recovered from that company and the creditor contemplated in this subparagraph who shall be jointly and severally liable for that tax.”.

The purpose of paragraph 12(5) of the Eighth Schedule to the Income Tax Act is to ensure that where a debt is reduced or discharged by a creditor for a consideration which is less than the amount by which the face value of the debt has been reduced or discharged, the debtor is taxed on the amount by which that reduction exceeds the consideration. Concern has been expressed that this provision has unintended consequences in that dormant companies cannot deregister or liquidate because they could be subject to CGT if the creditors reduce or discharge the debts of the dormant companies. It is, therefore, proposed that relief be provided where the debtor is a company and the reduction or the discharge of the debt was made in the course of or in anticipation of the liquidation, winding up or deregistration of that company and the amount of the reduction does not exceed the creditor's base cost of the debt at the time of the reduction or discharge.

If, however, the debtor company has not within six months of the reduction or discharge taken the steps necessary to liquidate, wind-up or deregister the company or has withdrawn the steps or does anything to invalidate the liquidation, winding-up or deregistration, the exclusion of the capital gain will fall away and the capital gain will be subject to tax. Any tax which becomes payable as a result of the withdrawal of the exclusion must be recovered from that debtor company or the creditor who will be jointly and severally liable to the tax.

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962

35. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph:

“(1) Subject to subparagraph (4), where a person during any year of assessment disposes of an asset for proceeds in a

currency other than currency of the Republic after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal in that currency and that capital gain or capital loss must be translated in accordance with the provisions of section 25D **[(2)]**.";

(b) by the substitution in subparagraph (2) for the words preceding item *(a)* of the following words:

"(2) Where a person disposes of an asset, (other than an asset contemplated in subparagraph (4)), for proceeds which are either received or accrued or denominated for purposes of financial reporting of a permanent establishment of that person in any currency (hereinafter referred to as the 'currency of disposal') after having incurred expenditure in respect of that asset which is either actually incurred or so denominated **[for purposes of financial reporting]** in another currency (hereinafter referred to as the 'currency of expenditure'), that person must for purposes of determining the capital gain or capital loss on the disposal of that asset—";.

(c) by the substitution in subparagraph (2) for subitem (ii) of item *(c)* of the following subitem:

"(ii) translate the amount of the capital gain or capital loss determined in foreign currency to the local currency at the average exchange rate for the year of assessment during which the asset was disposed of, and must translate the amount of the capital gain or capital loss in accordance with the provisions of section 25D.";

(d) by the substitution in subparagraph (4) for subitems (i) and (ii) of item *(b)* of the following subitems:

"(i) the proceeds into the currency of the Republic **[at the average exchange rate for that year of assessment]** in accordance with the provisions of section 25D; and

(ii) the expenditure incurred in respect of that foreign equity instrument or that asset, as the case may be, into the currency

of the Republic in accordance with section 25D at the spot rate or the average exchange rate, as the case may be, for the year of assessment during which that expenditure was incurred:";

(e) by the substitution in subparagraph (6) for item *(a)* of the following item:

"*(a)* contemplated in subparagraph (2)*(b)* and (4), must be translated to the local currency **[of the Republic at the ruling exchange]** by applying the spot rate on valuation date; or".

(2) Subsection (1) shall come into operation on the date of tabling of this Bill and shall apply in respect of any assets acquired during any year of assessment commencing on or after that date.

The amendments to paragraph 43 are consequential upon the reintroduction of the spot rate to translate foreign currency to the currency of the Republic.

Substitution of paragraph 64 of Eighth Schedule to Act 58 of 1962

36. The following paragraph hereby substitutes paragraph 64 of the Eighth Schedule to the Income Tax Act, 1962:

"**Asset used to produce exempt income**

64. A person must disregard any capital gain or capital loss in respect of the disposal of an asset, to the extent to—

(a) which it is used **[solely]** to produce amounts which are exempt from tax; or

(b) which it is not used to produce any amounts but, if the activity carried on in or with it had produced any amounts, those amounts would have been exempt from tax,

in terms of section 10 other than receipts and accruals contemplated in paragraphs *(i)*(xv), *(k)* and *(m)* of subsection (1) thereof.".

Following on from the introduction of the partial taxation of PBOs it is proposed that where an asset is disposed of by a person, such as a PBO, that would have been exempt from income tax if it had produced an income from that asset, then that asset is also excluded from CGT.

Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962

37. Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (2) for subitem (i) of item *(a)* of the following subitem:

"(i) held **[more than 25]** at least 20 per cent of the equity share capital and voting rights in that foreign company; and";

(b) by the substitution in subparagraph (2) for item *(b)* of the following item:

"*(b)* in the case where that person is a resident, that interest—

(i) is disposed of to a person who is not a resident for consideration equal to its market value;

(ii) is distributed to a resident or to a person who is a controlled foreign company in relation to a resident; or

(iii) is disposed of in the circumstances contemplated in paragraph 12(2)*(a)*.".

This proposal is aimed at—

- *limiting the participation exemption in instances where the disposal is effected to non-residents for consideration of less than market value; and*
- *expanding the participation exemption to CFCs as well as to deemed disposals where a resident becomes a non-resident.*

Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962

38. Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item *(a)* of the following words:

"(1) Subject to subparagraph (2), where a capital distribution of cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share, that shareholder must where the date of distribution of that capital distribution occurs—".

This proposal is aimed at clarifying the interacting between the rules governing unbundling transactions and the rules governing distributions of asset by companies.

Amendment of section 1 of Act 77 of 1968

39. (1) Section 1 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion of the definition of **"die"**;

(b) by the substitution for the definition of **"duly stamped"** of the following definition:

"**'duly stamped'** in relation to any instrument requiring to be stamped under this Act, means that such instrument has been stamped as required by this Act for the proper amount of duty and the amount of any interest, penalty or additional duty incurred under sections 9, 9A and 9B **[and, where adhesive stamps have been used, that such stamps have been defaced as required by this Act]**;"; and

(c) by the deletion in the definition of **"stamp"** of subparagraphs (i) and (ii) of paragraph *(a)*;

(2) Subsections (1)*(a)*, (*b*) and *(c)* shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

The proposed amendment is consequential upon the introduction of electronic stamping. Adhesive revenue stamps and impressed stamps (franking machines) will be phased out and these provisions will become obsolete. The proposed amendment will come into operation on a date fixed by the President by proclamation in the Gazette.

Amendment of section 5 of Act 77 of 1968

40. (1) Section 5 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding the proviso of the following subsection:

"(1) The payment of any duty, interest, penalty or additional duty incurred under sections 9, 9A or 9B shall, **[save as is otherwise specially provided in this Act,]** be denoted by means

of **[adhesive revenue stamps]** a stamp for the amount of that duty, interest, penalty or additional duty**[, and those stamps must be affixed to the instrument chargeable with the duty, interest, penalty or additional duty and be defaced as prescribed by this Act]**:”;

(b) by the deletion in subsection (1) of paragraph (i) of the proviso;

(c) by the substitution in subsection (1) for paragraph (ii) of the proviso of the following paragraph:

“(ii) **[the Commissioner may in his discretion, in lieu of the requirement that adhesive stamps be affixed to any such instrument, authorize]** upon the issue of a special receipt for the duty, interest, penalty or additional duty paid in respect of **[such]** an instrument**[,]** and **[upon]** the issue of **[such]** that receipt, the person by whom or under whose supervision **[the said]** that receipt is issued, **[shall]** must endorse upon the instrument concerned a certificate of the due payment of **[the said]** that duty, interest, penalty or additional duty;”;

(d) by the substitution in subsection (1) for paragraph (iii) of the following paragraph:

“(iii) **[where]** the Commissioner **[is satisfied that any person or class of persons cannot conveniently denote the duty in respect of any instrument in respect of which stamp duty is payable by means of stamps affixed to such instrument, he]** may, subject to **[such]** those conditions as he or she may impose and subject to the exercise of such control as he or she considers necessary, agree that payment of **[such]** that duty, interest, penalty or additional duty may be acknowledged by means of the issue of a special receipt, and **[any such]** that an instrument which bears on its face the words ‘duty paid’, shall for the purposes of this Act be deemed to be duly stamped.”; and

(e) by the deletion in subsection (1) of paragraph (v) of the proviso.

(2)*(a)* Subsections (1)*(a)*, (*b*) and (*e*) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(b) Subsection (1)*(c)* shall—

(i) to the extent that it inserts a reference to interest, penalty or additional duty, come into operation on the date of promulgation; and come into operation on the date of promulgation of this Act.

(ii) to the extent that it amends the rest of paragraph (ii), come into operation on a date fixed by the President by proclamation in the *Gazette.*

(c) Subsection (1)*(d)* shall—

(i) to the extent that it inserts a reference to interest, penalty or additional duty, come into operation on the date of promulgation; and

(ii) to the extent that it amends the rest of paragraph (iii), come into operation on a date fixed by the President by proclamation in the *Gazette.*

The proposed amendments are consequential upon the introduction of electronic stamping. Adhesive revenue stamps and impressed stamps (franking machines) will be phased out and these provisions will become obsolete. The proposed amendment will come into operation on a date fixed by the President by proclamation in the Gazette.

Paragraphs (c) and (d): The proposed amendments are also consequential following the amendment of section 9 and the insertion of sections 9A and 9B, in the Revenue Laws Amendment Act No. 32 of 2004.

Amendment of section 7 of Act 77 of 1968

41. (1) Section 7 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion in subsection (1) of paragraph *(g)*; and

(b) by the deletion in subsection (1) of paragraph (*j*).

(2) Subsection (1)*(a)* comes into operation on 1 January 2006 and applies in respect of all marketable securities issued on or after that date.

As a result of the repeal of stamp duty on the issue of marketable securities with effect from 1 January 2006, subsection (1)(g) has become obsolete. The proposed deletion of subsection (1)(j) is consequential upon the repeal of stamp duty on instalment credit agreements.

Amendment of section 10 of Act 77 of 1968

42. (1) Section 10 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette.*

The proposed amendment is consequential upon the introduction of electronic stamping. Adhesive revenue stamps will be phased out and defacing of stamps will become obsolete. The proposed amendment will come into operation on a date fixed by the President by proclamation in the Gazette.

Amendment of section 22 of Act 77 of 1968

43. Section 22 of the Stamp Duties Act, 1968, is hereby amended by the deletion of subsection (4).

The proposed amendment is consequential upon the deletion of the graduated scale (R0,25, R0,40, R0,55 and R0,70 depending on the period of the lease) and the substitution thereof with a flat rate of 0.5% last year, irrespective of the period of a renewal lease agreement.

Amendment of section 23 of Act 77 of 1968

44. Section 23 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion of subsection (1B);

(b) by the deletion in subsection (2) of paragraph (*c*);

(c) by the addition in subsection (4) of the following subparagraph to paragraph *(b)*:

"(ix) where exemption from duty is claimed under paragraph *(a)* of the Exemptions to Item 15(3) of Schedule 1, there is annexed to such instrument a declaration signed by the transferee stating that the aggregate duty payable by the transferee for the purposes of Item 15(3) of Schedule 1, does not exceed an amount of R100 during the six month period calculated from the date of execution of the instrument of transfer.";

(d) by the deletion of subsection (10);

(e) by the substitution for subsection (11) of the following subsection:

"(11) The duty payable under Item 15(4) of Schedule 1 shall be denoted on a copy of any application to court, take-over offer or resolution, as the case may be, required in respect of any **[scheme referred to in subsection (10)]** cancellation or redemption of company shares, and the company of which the shares in question are cancelled or redeemed shall endorse on that copy the market value of those shares and the amount payable in respect of the redemption of those shares, including any premium so payable**[, as determined in accordance with subsection (10)]** and, in the case of any take-over offer, the date of the final acceptance of that offer and must retain that copy, which must at all reasonable times during a period of five years after the relevant date referred to in subsection (13), be open for inspection by any person acting under the authority of the Commissioner.";

(f) by the deletion of subsection (12);

(g) by the substitution in subsection (12A) for the words preceding paragraph *(a)* of the following words:

"(12A) For the purposes of section 7*(h*A*)* and of **[subsections (10),]** subsection (11) **[and (12)]** of this section and Item 15(4) of Schedule 1—";

(h) by the substitution in subsection (12A) for paragraph *(d)* of the following paragraph:

"*(d)* where shares, stock or debentures are cancelled in part as aforesaid, the consideration to be determined **[under subsection (10)]** in respect of such part-cancellation shall be deemed to be the full market value of such shares and the amount payable in respect of the redemption of those shares, including any premium so payable, stock or debentures as determined in accordance with that subsection, less such amount as the Commissioner may determine as the value of such shares, stock or debentures immediately after such part-cancellation."; and

(i) by the deletion in subsection (15) of paragraph (*c*).

(2)*(a)* Subsection (1)*(a)* to *(h)* shall come into operation on 1 January 2006 and applies in respect of all marketable securities issued on or after that date.

(b) Subsection (1)*(i)* shall come into operation on a date fixed by the President by proclamation in the *Gazette.*

The proposed amendments are consequential upon the deletion of stamp duty on the issue of marketable securities with effect from 1 January 2006, and are intended to clarify the taxation of company share buy-backs, as well as to provide anti-avoidance legislation. The proposed amendment will come into operation on 1 January 2006.

Amendment of section 26 of Act 77 of 1968

45. (1) Section 26 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for paragraph (*a*) of the following paragraph:

"(*a*) in relation to the stamping of any instrument **[or the defacement of any stamp on any instrument]**, without lawful excuse uses, enters or attests any date other than the true date; or".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

As a result of the implementation of electronic stamping, the offences relating to stamping or defacement of stamps (section 26), offences relating to dies and stamps (section 27), presumption in case of possession or sale of forged stamps (section 28), and offences in respect of adhesive stamps (section 28A) have become obsolete. The proposed amendment will come into operation on a date fixed by the President by proclamation in the Gazette.

Amendment of section 27 of Act 77 of 1968

46. (1) Section 27 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

As a result of the implementation of electronic stamping, the offences relating to stamping or defacement of stamps (section 26), offences relating to dies and stamps (section 27), presumption in case of possession or sale of forged stamps (section 28), and offences in respect of adhesive stamps (section 28A) have become obsolete. The proposed amendment will come into operation on a date fixed by the President by proclamation in the Gazette.

Amendment of section 28 of Act 77 of 1968

47. (1) Section 28 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

As a result of the implementation of electronic stamping, the offences relating to stamping or defacement of stamps (section 26), offences relating to dies and stamps (section 27), presumption in case of possession or sale of forged stamps (section 28), and offences in respect of adhesive stamps (section 28A) have become obsolete. The proposed amendment will come into operation on a date fixed by the President by proclamation in the Gazette.

Amendment of section 28A of Act 77 of 1968

48. (1) Section 28A of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

As a result of the implementation of electronic stamping, the offences relating to stamping or defacement of stamps (section 26), offences relating to dies and stamps (section 27), presumption in case of possession or sale of forged stamps (section 28), and offences in respect of adhesive stamps (section 28A) have become obsolete. The proposed amendment will come into operation on a date fixed by the President by proclamation in the Gazette.

Amendment of Item 14 of Act 77 of 1968

49. (1) Item 14 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in paragraph (2) for the words under *Amount of Duty* of the following words:

"An amount of duty calculated in accordance with **[section 22(4)]** Item 14(1) of this Act.";

The proposed amendment is consequential upon the deletion of the graduated scale (R0,25, R0,40, R0,55 and R0,70 depending on the period of the lease) and the substitution thereof with a flat rate of 0.5% last year, irrespective of the period of a renewal lease agreement.

(b) by the substitution for the *Exemptions from the duty under paragraph (1)* of the following paragraphs:

"*(a)* For the purposes of this Item, no duty shall be payable in the event that the duty calculated on a lease or agreement of lease does not in aggregate exceed R200 over the period of the lease: Provided that this exemption shall not apply where the total consideration payable in respect of a lease or agreement of lease is not quantifiable at the time of execution of that lease.

(b) For the purposes of this Item, where the total consideration payable in respect of a lease or agreement of lease is not quantifiable at the time of execution of that lease, no duty shall be payable in the event that the duty calculated on a lease or agreement of lease on the amount of consideration that has become quantifiable—

(i) during any 'year of assessment' as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), of any lessor who is a 'taxpayer' as defined in that Act; or

(ii) in the 12 months ending on the last day of February each year in the case of any other lessor,

if that amount does not in aggregate exceed R200 over such year of assessment, or 12 month period, whichever is applicable."; and

The proposed amendment is consequential upon the introduction of electronic stamping and the phasing out of adhesive revenue stamps and impressed stamps (franking machines). No stamp duty will be payable where the aggregate duty payable on an agreement of lease is R200 or less during a financial year of the lessor. This proposal will give relief on the administrative burden on lessors and to persons who cannot make use of electronic stamping.

(c) by the insertion under paragraph *(b)* in *Exemptions from the duty under paragraph (1)* of the following words:

"Provided the duty payable under this Item, calculated on the aggregate amount of rent and any other consideration payable under any a lease or agreement of lease shall not exceed 10 per cent of the value of the property in relation to that lease or agreement of lease, which value shall be determined in accordance with the provisions of sections 5, 6, 7 and 8 of the Transfer Duty Act, 1949 (Act. 40 of 1949).".

A further proposed amendment introduces a limit on the amount of stamp duty that will be payable in terms of a long-term lease. The limit is determined as 10 per cent of the value of the property in relation to the lease. The reason for the 10 per cent limit is that 10 per cent is the highest rate applicable for transfer duty purposes. The stamp duty payable will, therefore, not be more than the maximum transfer duty obligation, were the property itself to be disposed of and be subject to transfer duty.

(2) Subsections (1)*(b)* and *(c)* shall apply in respect of a lease or agreement of lease where that lease or agreement of lease is executed in the year of assessment, as defined in section 1 of the Income Tax Act 1962 (Act No 58 of 1962), of any lessor who is a taxpayer, as defined in section 1 of the Income Tax Act, 1962, commencing on or after the proclamation of the Act in the *Gazette*, or in the case of any other lessor, on or after 1 March 2006.

The proposed amendments apply to a lease or agreement of lease where that lease or agreement of lease is executed in any year of assessment, as defined in section 1 of the Income Tax Act 1962 (Act No 58 of 1962), of any lessor who is a taxpayer, as defined in section 1 of the Income Tax Act, 1962, starting on or after the proclamation of the Act in the Gazette, or in the case of any other lessor, on or after 1 March 2006.

Amendment of Item 15 of Act 77 of 1968

50. (1) Item 15 of the Stamp Duties Act, 1962, is hereby amended—

(a) by the deletion of paragraphs (1) and (2);

(b) by the deletion of *Exemptions from the duty under paragraph (1) or (2)*;

The proposed amendments are consequential upon the repeal of stamp duties on the issue of shares.

(c) by the insertion in the *Exemptions from the duty under paragraph (3)* of the following paragraph before paragraph *(b)*:

"*(a)* Any registration of transfer of any marketable securities where the aggregate duty which would, but for the provisions of this subitem, be payable by the transferee under this Item during any six month period equals an amount of R100 or less.";

(d) by the substitution in the *Exemptions from the duty under paragraph (3)* for the words in paragraph *(x)* following item *(cc)* of subparagraph (vii) of the following words:

"where the public officer contemplated in section 101 of the Income Tax Act, 1962 (Act No. 58 of 1962), of the relevant company has made a sworn affidavit or solemn declaration that the transfer of that marketable security complies with the provisions of this paragraph.".

Subclause (d): Item 15 provides for an exemption from stamp duties where the marketable securities are transferred in terms of the corporate restructuring rules contained in the Income Tax Act, 1962. In certain instances the public officer of the relevant company must make a sworn affidavit or solemn declaration that the transfer complies with certain requirements. A public officer is, however, referred to as certain Government officials. The intention is that the term "public officer" should bear its meaning as used for Income Tax purposes and it is therefore proposed that the provision be amended to specifically refer to the public officer for a company as contemplated in section 101 of the Income Tax Act, 1962.

(e) by the substitution for paragraph (4) of the following paragraph:

"(4) In respect of the cancellation or redemption of any **[company shares which any person is in terms of section 23(10) of this Act deemed to have disposed of]** marketable securities: for every R10 or part thereof of the **[value of the consideration referred to in the said section 23(10)]** greater of the market value of those marketable securities immediately prior to the cancellation or redemption and the amount payable in respect of the cancellation or redemption of those marketable securities, including any premium so	

payable: Provided that the market value must be determined as if those marketable securities had not been and were not about to be cancelled or redeemed.".	0 025

(f) by the insertion after paragraph (4) of the following:

"*Exemptions from the duty under paragraph (4)*:

(a) Any cancellation or redemption of any marketable security in respect of which the provisions of the Uncertificated Securities Tax Act, 1998, apply.

(b) Any cancellation or redemption of any marketable security by a company—

(i) in terms of an amalgamation transaction contemplated in section 44 of the Income Tax Act, 1962;

(ii) in terms of an unbundling transaction contemplated in section 46 of that Act;

(iii) in terms of a liquidation distribution contemplated in section 47 of that Act; or

(iv) in terms of any transaction which would have constituted a transaction or distribution contemplated—

(aa) in subparagraph (i) to (iii) regardless of whether or not an election has been made for the provisions of that section to apply; and

(bb) in subparagraph (i) regardless of the market value of the asset disposed of in exchange for that marketable security; or

(cc) in subparagraphs (i) to (iii) regardless of whether or not that person acquired that marketable security as a capital asset or as trading stock,

where the public officer of the relevant company has made a sworn affidavit or solemn declaration that the transfer of that

marketable security complies with the provisions of this paragraph.

(c) Where the securities are debentures, including debenture stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not, and which constitute instruments as contemplated in section 24J of the Income Tax Act, 1962.”; and

The proposed amendments are consequential upon the deletion of stamp duty on the issue of marketable securities with effect from 1 January 2006, and are intended to clarify the taxation of company share buy-backs, as well as to provide anti-avoidance legislation. The proposed amendment will come into operation on 1 January 2006.

(g) by the insertion in the *Exemptions from the duty under paragraph (5)* of the following paragraph after paragraph *(c)*:

“*(d)* The acquisition of any marketable security where the aggregate duty which would, but for the provisions of this subitem, be payable by the transferee under this Item during any six month period equals an amount of R100 or less.”.

The proposed amendments are consequential upon the deletion of stamp duty on the issue of marketable securities with effect from 1 January 2006, and are intended to clarify the taxation of company share buy-backs, as well as to introduce anti-avoidance legislation to address the disguised transfer of marketable securities involving the cancellation and issue of new securities. The proposed amendment will come into operation on 1 January 2006.

(2) Subsection (1)(*a), (b), (e)* and (*f*) shall come into operation on 1 January 2006, and shall apply to all marketable securities issued on or after that date.

Amendment to section 1 of Act 89 of 1991

51. Section 1 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the insertion after the definition of **“consideration in money”** of the following definition:

"**'controller'** has the meaning assigned thereto in section 1 of the Customs and Excise Act;".

The proposed amendment is to provide for a definition of "controller" to align the VAT Act with the provisions of the Customs and Excise Act, 1964.

(b) by the insertion in paragraph *(b)* of the definition of **"enterprise"** of the following subparagraph:

"(iv) the activities of a foreign donor funded project;";

(c) by the insertion after the definition of **"fixed property"** of the following definition:

"**'foreign donor funded project'** means a person that is appointed as a result of an international donor funding agreement established in terms of an international agreement to which the Government of the Republic is a party, to supply goods or services to a specified beneficiary;";

(d) by the insertion after the definition of **"invoice"** of the following definition:

"**'licensed customs and excise storage warehouse"** means a warehouse licensed by the Commissioner at any place appointed for that purpose under the provisions of the Customs and Excise Act, which has been approved by the Commissioner for the storage of goods as he may approve in respect of that warehouse;";

(e) by the substitution for the definition of **"person"** of the following definition:

"**'person'** includes any public authority, any local authority, any company, any body of persons (corporate or unincorporate), the estate of any deceased or insolvent person, **[and]** any trust fund and any foreign donor funded project;".

Subclauses (b), (c) and (e): In promulgating the aforementioned amendments, a project receiving funds under an international donor fund agreement to which the Government of the Republic is a party, will be regarded as a "foreign donor funded project" and a "person" as defined in section 1 of the Act. This person will now fall within the ambit of an "enterprise" as defined in section 1 of the Act and accordingly be entitled to register for VAT purposes albeit that it does not generate any income before registration.

Subclause (d): The proposed amendment is to provide for a definition of "licensed customs and excise storage warehouse" for the purposes of supplies of goods at the zero rate in terms of section 13(1) proviso (ii) of the VAT Act. The proposed amendment is to align the VAT Act with the provisions of the Customs and Excise Act, 1964 as entry into a licensed customs and excise storage warehouse is not regarded as an entry for home consumption.

Amendment of section 8 of Act 89 of 1991

52. (1) Section 8 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the insertion after subsection (5A) of the following subsection:

"<u>(5B) For the purposes of this Act a vendor, being a foreign donor funded project, shall be deemed to supply services to the international donor.</u>".;

The income received from the international donor will be deemed to be in respect of services supplied by the foreign donor funded project to the international donor. The effect will be that the service will be taxable at the zero rate in the hands of the project.

(b) by the insertion after subsection (23) of the following subsection:

"<u>(24) For the purposes of this Act, a vendor, being a customs controlled area enterprise, shall be deemed to supply goods in the course or furtherance of the vendor's enterprise where movable goods are temporarily removed from a place in a customs controlled area to a place outside the customs controlled area but within the Republic and those goods are not returned to the customs controlled area within 30 days of its removal, or within a period arranged in writing with the Controller.</u>"; and

The proposed amendment is to provide for a deemed supply of goods by a Customs Controlled Area (CCA) enterprise where movable goods are temporarily removed from the CCA to a place in the Republic and are not returned to the CCA within 30 days of its removal.

(c) by the insertion after subsection (24) of the following subsection:

"<u>(25) For the purposes of this Act, where any goods are supplied by a registered vendor to another registered vendor, those vendors must for the purposes of that supply or subsequent supplies of those</u>

goods be deemed to be one and the same person provided the provisions of section 42, 44, 45 and 47 of the Income Tax Act are complied with.".

The proposed amendment is to ensure that the transaction entered into between group companies as envisaged by the provisions of section 42, 44, 45 and 47 of the Income Tax Act has no VAT consequences for either vendor. The situation where a partially taxable business is transferred or where business assets that were used in a partially taxable business are transferred or declared as a dividend in specie, generally create an unintended VAT cost to the parties involved due to the possible application of sections 16(3)(h) and 18A of the VAT Act. No adjustment in terms of section 16(3)(h) is required by the supplying vendor and no section 18A output tax adjustment will be made by the purchasing vendor. When the purchasing vendor subsequently supplies the goods or business, the normal provisions of the VAT Act will apply. Alternatively, when the purchasing vendor applies the goods or business for wholly exempt purposes, the relevant provisions of section 18 will apply. Where the vendor subsequently does not comply with the aforementioned provisions of the Income Tax Act, the normal provisions of the VAT Act will apply to the original supply.

Amendment of section 10 of Act 89 of 1991

53. Section 10 to the Value-Added Tax Act, 1991, is hereby amended by the insertion of the following paragraph:

"(25) Where any goods are deemed by section 8(24) to be supplied to any person, the consideration in money shall be deemed to be the greater of the open market value or the replacement value of those goods.".

The proposed amendment is intended to provide a value for the deemed supply provided for in section 8(24) of the VAT Act.

Amendment of section 11 of Act 89 of 1991

54. Section 11 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(h)* of the following paragraph:

"*(h)* the goods consist of fuel levy goods **[as defined in section 1 of the Customs and Excise Act]** referred to in Fuel Item Levy

numbers 195.10.05, 195.10.06, 195.10.07 and 195.10.17 in Part 5 of Schedule No. 1 to the Customs and Excise Act; or";

(b) by the substitution in subsection (1) for paragraph *(h*A*)* of the following paragraph:

"*(h*A*)* the goods consist of petroleum oil and oils obtained from bituminous minerals, known as crude, referred to in Heading No. 27.09 in Chapter 27 of Part 1 of Schedule No. 1 to the Customs and Excise Act when supplied for the purpose of being refined for the production of fuel levy goods as defined in section 1 of the Customs and Excise Act **[and any by-product]**; or"; and

(c) by the substitution in subsection (1) for paragraph *(l)* of the following paragraph:

"*(l)* the goods consist of illuminating kerosene intended for use as fuel for illuminating or heating, referred to in Fuel Item Levy number 195.10.13 in Part 5 of Schedule No. 1 to the Customs and Excise Act and are not mixed or blended with another substance;".

Subclauses (a), (b) and (c): The proposed amendment is to provide specific Customs and Excise references to the relevant goods which may be supplied at the zero rate.

(d) by the deletion of paragraph *(o)* of subsection (1);

(e) by the insertion in subsection (1) after paragraph *(p)* of the following paragraph:

"*(q)* the goods—

(i) are supplied to a person who is not a resident of the Republic and not a vendor;

(ii) form part of a supply by the person referred to in paragraph (i) to a registered vendor; and

(iii) are used by the registered vendor wholly for the purposes of making taxable supplies.";

(f) by the substitution in subsection (2) for paragraph *(q)* of the following paragraph:

"**[the services are supplied by a vendor to the extent that the consideration for such services is from donor funds**

granted under any international agreement to which the Government of the Republic is a party] the services are deemed to be supplied in terms of section 8(5B);";

(g) by the deletion in subsection (2) of the word "or" after paragraph *(t)* and the addition of the word "or" after paragraph *(u)*; and

(h) by the addition to subsection (2) of the following paragraph:

"*(v)* the services relate to goods under warranty to the extent that the services are—

(i) provided under the warranty;

(ii) supplied for consideration that is given by a warrantor who is not a resident of the Republic, not a vendor and who is outside the Republic at the time the services are rendered; and

(iii) in respect of goods that were subject to tax upon importation (in terms of section 7(1)(*b*) of this Act).".

Subclauses (d) and (f): In promulgating the aforementioned amendments, a project receiving funds under an international donor fund agreement to which the Government of the Republic is a party, will be regarded as a "foreign donor funded project" and a "person" as defined in section 1 of the Act. This person will now fall within the ambit of an "enterprise" as defined in section 1 of the Act and accordingly be entitled to register for VAT purposes albeit that it does not generate any income before registration.

The income received from the international donor will be deemed to be in respect of services supplied by the foreign donor funded project to the international donor. The effect will be that the service will be taxable at the zero rate in the hands of the project.

All expenditure incurred on which VAT was paid by the international donor funded project will be claimed as input tax to the extent that such expenditure was paid out of funds received under an international donor fund agreement to which the Government of the Republic is a party.
*Subclause (e): The proposed amendment is to ensure that the VAT is not a cost to the RSA vendor (**the client**) where the client contracts with a foreign company (**Company A**), who is a not a resident of the Republic and not a vendor.*

Example

- *Company A is contracted to supply goods to the client.*
- *Company A in turn contracts with a RSA vendor (**the local supplier**) to supply certain goods which goods will be delivered to the client in the Republic.*

The goods are therefore not imported by Company A into the Republic but are supplied and delivered by the local supplier directly to the client in the Republic.

Current application:

- *Where Company A agrees to supply goods to the client by making use of the local supplier the benefits of the input tax credit are lost to Company A, because the local supplier will charge VAT at the standard rate on its supply to Company A and Company A cannot claim any input tax thereon.*
- *This lost credit becomes a cost to Company A, which Company A will pass on to the client.*

It is proposed that certain goods supplied to a foreign company but which goods are delivered to a registered vendor in the Republic be zero rated in order to allow for the claiming of input tax credit by the South African vendor.

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

Subclause (h): The current situation is that, where a non-resident entity (the warrantor) supplies goods, under a warranty to a consumer, the VAT charged by a local VAT registered vendor (the service provider), to the warrantor to supply the services under the warrantee agreement, will become a cost to the warrantor.
The proposed amendment is to zero rate the supply of the services under the warranty agreement by the service provider, thereby ensuring that the VAT does not become a cost to the warrantor.

Amendment of section 13 of Act 89 of 1991

55. Section 13 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the substitution in subsection (1) for paragraph (ii) of the proviso of the following paragraph:

"(ii) where any goods have been imported and entered for storage in a licensed Customs and Excise storage warehouse but have not been entered for home consumption, any supply of **[such]** those goods before they are entered for home consumption shall be zero-rated for the purposes of this Act;"; and

The proposed amendment is to zero rate the subsequent supply of goods that have been imported and entered for storage in a licensed customs and excise storage warehouse.

(b) by the substitution for subsection (6) of the following subsection:

"(6) Subject to the provisions of **[section 7(1)(*b*) and this section]** this Act, the provisions of the Customs and Excise Act relating to the importation, transit, coastwise carriage and clearance of goods and the payment and recovery of duty shall *mutatis mutandis* apply as

if enacted in this Act, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs and Excise Act.”.

The current provisions of section 13(6), relating to the importation of goods, draw the provisions of the entire Customs and Excise Act into the VAT Act. The result is that section 39(4) conflicts with section 13(6) as section 13(6) has the unintended effect of drawing in the penal provisions of the Customs and Excise Act. The proposed amendment is to ensure that only the provisions of the Customs and Excise Act relating to the importation, transit, coastwise carriage and clearance of goods and the payment and recovery of duty will apply to the VAT Act. The levying of penalties and interest will therefore be imposed in terms of section 39 of the VAT Act.

Amendment of section 16 of Act 89 of 1991

56. (1) Section 16 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the substitution in subsection (2) for the second proviso of the following proviso:

“Provided further that no deduction of input tax in relation to that supply or importation shall be made in respect of any tax period which ends more than five years after the end of the tax period during which the **[vendor for the first time became entitled to such deduction]** tax invoice for that supply should have been issued as contemplated in section 20(1).”;

(b) by the insertion in subsection (3) of the following proviso to paragraph *(d)*:

“Provided that where the prizes awarded constitute either goods or services, input tax must be limited to the tax incurred on the initial cost of acquiring those goods or services;”;

Section 16(3)(d) is intended to limit the input tax deduction on goods or services acquired for the purposes of being awarded as prizes for betting transactions to the actual cost incurred on the initial acquisition of such goods or services. This eliminates the possibility of vendors acquiring these goods or services and claiming input tax on their retail market value rather than their cost to the vendors.

Example: Casino acquires a motor car in an arms length transaction at 10% below the retail market value and supplies the motor car as a prize on the outcome of a betting transaction at the market value. Casino is entitled to input tax on the amount paid for the motor car limited to the market value less 10%.

(c) by the substitution in subsection (3) for the proviso to paragraph (*h*) of the following proviso:

"Provided that—

(i) where such goods consist of second-hand goods contemplated in the proviso to paragraph (*b*) of the definition of "input tax" in section 1, the amount determined in terms of this subsection shall not exceed the amount of transfer duty or stamp duty, as the case may be, which was or would have been payable, less any amount which has previously been deducted in terms of the provisions of subsection (3)(*a*)(ii) or (*b*)(i) of this section or section 18(4) or (5), in respect of such acquisition, original issue or registration of transfer, as the case may be;

(ii) this subsection does not apply where—

(aa) such goods or services were acquired before 1 April 2005, or an input tax deduction in respect of that acquisition was denied under proviso (*iv*) to section 18(4); and

(bb) the vendor is a public authority which registered prior to 1 April 2005, notwithstanding paragraph (*b*)(*i*) of "enterprise" in section 1, or a public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999); "; and

Subclause (c): Section 16(3)(h) normally allows a vendor to "claw-back" input tax to the extent that it was previously denied on any goods or services used partially for exempt or private purposes, when those same goods or services are subsequently supplied under a wholly taxable supply in terms of section 8(16)(a). The proposed amendment provides that the input tax credit under section 16(3)(h) will not be available on a subsequent supply of those goods or services where they were acquired prior to 1 April 2005 by a public authority or public entity listed in Schedule 3A or 3C to the Public Finance Management Act, 1999, or where an input tax credit was denied to that public authority or public entity under proviso (iv) to section 18(4). The denial of input tax under section 16(3)(h) applies whether the subsequent supply is by way of sale, donation, exchange or any other transaction. It will also apply where the public authority or public entity transfers the goods or services from a taxable division/trading account to an exempt division/trading account or a separate

entity under its control where an output tax adjustment on the supply is required in terms of section 18(1).

The amendment clarifies that where a public entity or public authority was denied an input tax credit under proviso (iv) to section 18(4), or if it acquired those goods or services prior to 1 April 2005, it is not permissible to claim an input tax credit on those same goods or services on or after 1 April 2005 under another section of the Act. The proposed amendment will come into operation on 1 April 2005.

(d) by the substitution in subsection (3) for the first proviso following paragraph *(l)* of the following proviso:

"Provided that where any vendor is entitled under the preceding provisions of this subsection to deduct any amount in respect of any tax period from the said sum, the vendor may deduct that amount from the amount of output tax attributable to a later tax period which ends no later than five years after the end of the tax period during which the **[vendor for the first time became entitled to such deduction]** tax invoice for that supply should have been issued as contemplated in section 20(1) and to the extent that it has not previously been deducted by the vendor under this subsection:".

(2) Subsection (1)*(c)* is deemed to have come into operation on 1 April 2005.

Subclauses (a) and (d): Input tax can only be claimed if a vendor is in possession of a tax invoice that complies with section 20. Section 20 requires that a tax invoice must be issued within 21 days of the supply being made. Where the recipient vendor has not claimed input tax, that vendor now has 5 years from the date when the tax invoice should have been issued as required in section 20 to claim the input tax as opposed to when the vendor for the first time came to possess the tax invoice.
Subclause (b): The proposed amendment is consequential upon the amendments to sections 17(2)(a) and 17(2)(c).

Amendment of section 17 of Act 89 of 1991

57. Section 17 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the deletion in subsection (2) of the word "or" at the end of subparagraph (vii) of paragraph *(a)* and the addition of the word "or" at the end of subparagraph (viii);

(b) by the insertion in subsection (2) of the following subparagraph to paragraph (*a*):

"(ix) that supply is a deemed supply as contemplated in section 8(13) or where entertainment is continuously or regularly supplied as a prize to clients or customers (other than to any employee or office holder of the vendor or any connected person in relation to that employee, office holder or vendor) in consequence of a taxable supply made in the course or furtherance of an enterprise;";

The proposed amendment is to allow a vendor to claim input tax on the VAT incurred in respect of the acquisition of entertainment (including food, beverages, accommodation, etc.) for the purposes of awarding the entertainment as a prize to the vendor's customers. Input tax will not be claimable on any entertainment acquired and awarded as a prize to any employee or office holder of the vendor or any connected person in relation to that vendor.

(c) by the substitution in subsection (2) for the proviso to paragraph *(c)* of the following proviso:

"Provided that—

(i) this paragraph shall not apply where **[such]** that motor car is acquired by the vendor exclusively for the purpose of making a taxable supply of **[such]** that motor car in the ordinary course of an enterprise which continuously or regularly supplies motor cars, whether **[such]** that supply is made by way of sale or under an instalment credit agreement or by way of rental agreement at an economic rental consideration;

(ii) **[Provided further that]** for the purposes of this paragraph a motor car acquired by such vendor for demonstration purposes or for temporary use prior to a taxable supply by such vendor shall be deemed to be acquired exclusively for the purpose of making a taxable supply; and

(iii) this paragraph shall not apply where that motor car is acquired by the vendor for the purposes of section 8(13) or where the motor car is continuously or regularly supplied as a prize to

clients or customers (other than to any employee or office holder of the vendor or any connected person in relation to that employee, office holder or vendor) in consequence of a taxable supply made in the course or furtherance of an enterprise; or”; and

The proposed amendment is introduced to allow a vendor to claim input tax on the VAT incurred in respect of the acquisition of a “motor car” as defined in section 1 of the Act, for the purposes of awarding the motor car as a prize to the vendor’s customers. Input tax will not be claimable on any motor car acquired and awarded as a prize to any employee or office holder of the vendor or any connected person in relation to that vendor.

(d) by the addition to subsection (2) of the following proviso:

“Provided that the provisions of this subsection do not apply to goods or services acquired to the extent that the consideration for those goods or services is from foreign donor funds.”.

In promulgating the aforementioned amendments, a project receiving funds under an international donor fund agreement to which the Government of the Republic is a party, will be regarded as a “foreign donor funded project” and a “person” as defined in section 1 of the Act. This person will now fall within the ambit of an “enterprise” as defined in section 1 of the Act and accordingly be entitled to register for VAT purposes albeit that it does not generate any income before registration.

The income received from the international donor will be deemed to be in respect of services supplied by the foreign donor funded project to the international donor. The effect will be that the service will be taxable at the zero rate in the hands of the project.

All expenditure incurred on which VAT was paid by the international donor funded project will be claimed as input tax to the extent that such expenditure was paid out of funds received under an international donor fund agreement to which the Government of the Republic is a party.

Amendment of section 18 of Act 89 of 1991

58. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (2) for the proviso of the following proviso:

“Provided that this subsection **[shall]** does not apply to—

(i) **[any]** capital goods or services which have an adjusted cost of less than R40 000 (excluding tax) or where such goods or services were deemed to be supplied to the vendor by subsection (4) if the amount which was represented by "B" in the formula contemplated in that subsection was less than R40 000 when such goods or services were deemed to be supplied to such vendor; or

(ii) capital goods or services acquired by a public authority or public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) if the goods or services were acquired prior to 1 April 2005, or if an input tax deduction in respect of thereof was denied under proviso (iv) to section 18(4);"; and

(b) by the substitution in subsection (5) for the first and second provisos of the following proviso:

"Provided that—

(i) this subsection **[shall]** does not apply to—

(aa) **[any]** capital goods or services which cost less than R40 000 (excluding tax) or where such goods or services were deemed to be supplied to the person by subsection (4) if the amount which was represented by "B" in the formula contemplated in that subsection was less than R40 000 when such goods or services were deemed to be supplied to such person**[:]**; or

(bb) capital goods or services acquired by a public authority or public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) prior to 1 April 2005, or if an input tax deduction in respect thereof was denied under proviso (iv) to section 18(4);

(ii) **[Provided further that]** where **[such]** the capital goods or services consist of second-hand goods contemplated in the proviso to paragraph (b) of the definition of "input tax" in section 1, the amount determined in terms of this subsection shall not exceed the amount of transfer duty or stamp duty, as the case

may be, which is or would have been payable, less any amount which has previously been deducted in terms of the provisions of section 16(3)*(a)*(ii) or *(b)*(i), or subsection (4) of this section, in respect of **[such]** that acquisition, original issue or registration of transfer, as the case may be.”; and

(c) by the substitution in subsection (10) for the words preceding the formula of the following words:

“(10) Where—

(a) goods or services have been supplied by a vendor at the zero rate in terms of sections 11(1)*(c)*, 11(1)*(m)* or 11(2)*(k)* to a registered vendor who is a customs controlled area enterprise; or

(b) goods have been imported into the Republic by a registered vendor who is a customs controlled area enterprise for use, consumption or supply in that area and those goods are exempt from tax in terms of section 13(3),

and—

(i) those goods or services were acquired for the purposes of entertainment in respect of which a deduction of input tax would have been denied in terms of section 17(2); or

(ii) those goods consist of a ‘motor vehicle’ as defined in section 1,

those goods or services shall be deemed to be supplied by him in the same tax period in which they were so acquired, in accordance with the formula:

(2) Subsections (1)*(a)* and *(b)* are deemed to have come into operation on 1 April 2005.

Subclauses (a) and (b): Sections 18(2) and 18(5) provide that a vendor is required to make an annual input tax or output tax adjustment in the case of capital goods or services used only partially for taxable supplies. The provisions are aimed at ensuring that where capital goods and services are used for mixed purposes, the input tax which may be claimed, must be in proportion to the extent to which those assets are applied for taxable use in the enterprise over the lifetime of the assets. The adjustments are required where the input tax apportionment percentage applied by the vendor during the year varies by more than 10% from the percentage applied in the previous year.

The proposed amendments provide that the adjustments under sections 18(2) and 18(5) will not apply in the case of a public authority (including public entities listed in Part A or C of Schedule 3 to the PFMA) where:

- *the capital goods or services were acquired prior to 1 April 2005; or*
- *the capital assets were acquired after 1 April 2005, but an input tax thereon was denied under proviso (iv) to section 18(4).*

Prior amendments to the Act required that public authorities and certain public entities would have to be deregistered for VAT with effect from 1 April 2005. Proviso (iv) to section 8(2) provided those entities with relief from the output tax which would otherwise have been paid on the assets retained upon deregistration. Furthermore, proviso (iv) to section 18(4) was inserted to deny input tax where a public authority or public entity is required (or chooses) to return those same assets to a taxable environment in the future. The reasoning behind this is that the entity would have previously enjoyed the benefit of an input tax credit on those assets (or the equivalent thereof, if the VAT cost was covered in the budget appropriation of that entity), and therefore a further input tax credit would not be allowed on those assets if they are subsequently applied for taxable use. This aspect is particularly complicated where the entity continues to be registered as a partially taxable public authority on or after 1 April 2005.

The effect of the proposed amendment is therefore to treat the capital goods and services used partially for taxable supplies after 1 April 2005 in such a way that the annual variation in the extent of taxable will not create an output tax or input tax adjustment event in respect of the assets mentioned above. An output tax liability will only arise when the asset is eventually sold, donated, exchanged (which also includes a transfer to an exempt division/trading account or a separate entity under the control that entity).

See also Clause 56 regarding the amendment to section 16(3)(h).

<u>Example:</u>

The exempt division of a partially taxable public authority transfers office equipment which it bought on 1 March 2005 to the head office division on 1 November 2005. The head office will use the assets to administer both the taxable and exempt divisions of the organisation. In this case, the head office will not be required to make any adjustments for those particular assets under sections 18(2) or 18(5) if the extent of taxable supplies of that entity varies by more than 10% from year 1 to year 2. This is because an input tax credit would be denied to the taxable division under proviso (iv) to section 18(4) in respect of the partial application of those assets for taxable use in the enterprise. However, if the asset is sold, or transferred back to the exempt division, output tax must be paid on that supply by the taxable division at the standard rate.

The same rules would apply, if the head office had bought the assets prior to 1 April 2005 if it had applied them partially for taxable and partially for exempt supplies.

The proposed amendments are deemed to have come into operation on 1 April 2005.

Subclause (c): An amendment is proposed to provide for an output tax adjustment to be made by a Customs Controlled Area (CCA) enterprise where a "motor vehicle" as

defined in section 1 of the VAT Act is acquired locally at the zero rate or which is exempt from VAT on importation into the CCA.

Amendment of section 22 of Act 89 of 1991

59. Section 22 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the substitution in subsection (3) for the proviso of the following proviso:

"Provided that—

(i) the period of 12 months shall, if any contract in writing in terms of which such supply was made provides for the payment of consideration or any portion thereof to take place after the expiry of the tax period within which such deduction was made, in respect of such consideration or portion be calculated as from the end of the month within which such consideration or portion was payable in terms of that contract; or

(ii) where the estate of a vendor is voluntarily or compulsorily sequestrated, the vendor is declared insolvent or has entered into a compromise or an arrangement in terms of section 311 of the Companies Act, 1973 (Act No. 61 of 1973) or any other similar arrangement with creditors within the 12 month period after the expiry of the tax period referred to in paragraph (*a*) within which such deduction was made, such vendor shall account for output tax in terms of this section equal to that portion of the consideration which has not been paid at the time of sequestration, declaration of insolvency or the date on which a compromise or an arrangement in terms of section 311 of the Companies Act, 1973 (Act No. 61 of 1973) or any other similar arrangement was entered into.".

The proposed amendment will ensure that a vendor accounts for output tax where input tax was previously claimed but not paid within 12 months from the date of the claim and the vendor has either voluntary or compulsory been sequestrated, declared insolvent or has entered into an arrangement in terms of section 311 of the Companies Act or any other arrangement with creditors. The output tax adjustment

must be made in the tax period in which the sequestration or aforementioned agreement was entered into.

Amendment to section 23 of Act 89 of 1991

60. Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (3) for paragraph (*a*) of the following paragraph:

"(*a*) that person is carrying on any enterprise as contemplated in paragraph (*b*)(ii), (iii) or (iv) or (*c*) of the definition of "enterprise" in section 1; or".

The proposed amendment also results in a foreign donor funded project being able to register voluntarily.

Amendment of section 28 of Act 89 of 1991

61. Section 28 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

"*(a)* furnish the Commissioner with a return **[(in such form as the Commissioner may prescribe)]** reflecting such information as may be required for the purpose of the calculation of tax in terms of section 16; and";

(b) by the addition in subsection (1) of the following paragraph to the proviso:

"(v) the Commissioner may prescribe the form and manner in which returns must be submitted and payments must be made by a vendor.".

As was announced in the Budget Review this year, compulsory e-filing for PAYE and VAT returns for large taxpayers is to be introduced. This amendment gives effect to this proposal and enables the Commissioner to prescribe that returns must be submitted electronically and that the payment of the tax relating to the return must also be paid through the e-filing system of SARS.

Amendment of section 31 of Act 89 of 1991

62. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (*a*) of the following paragraph:

"(*a*) any person fails to furnish any return as required by section 28, 29 or 30 or fails to furnish any declaration as required by section **[13(4) or]** 14; or".

The proposed amendment is consequential following the deletion, in the Revenue Laws Amendment Act No. 32 of 2004, of section 13(4).

Amendment of section 38 of Act 89 of 1991

63. (1) Section 38 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of section 7(3)(*d*) and section 13(5) and (6), the tax payable under this Act must be paid in full within the time allowed by **[section 13(4) or]** section 14 or section 28 or section 29, whichever is applicable.";

(b) by the substitution for subsection (2) of the following subsection:

"(2) Where the Commissioner is satisfied that due to circumstances beyond the control of the person liable for the payment of the tax the amount of tax due cannot be accurately calculated within the time allowed by **[section 13(4) or]** section 14 or section 28 or section 29, whichever is applicable, the Commissioner may in his <u>or her</u> discretion and subject to such conditions as he <u>or she</u> may impose, agree to accept a payment of a deposit by such person of an amount equal to the estimated liability of such person for such tax.".

The proposed amendment is consequential following the deletion, in the Revenue Laws Amendment Act No. 32 of 2004, of section 13(4).

Amendment of section 39 of Act 89 of 1991

64. Section 39 of the Value-Added Tax Act, 1991 is hereby amended by the deletion of subsection (3).

The proposed amendment is consequential following the deletion, in the Revenue Laws Amendment Act No. 32 of 2004, of section 13(4).

Amendment of section 41 of Act 89 of 1991

65. Section 41 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph (*d*) for subparagraph (ii) of the following paragraph:

"(ii) any amount of tax chargeable under this Act in respect of the importation of goods was not paid**[—**

(*A*) . . . . . .

(*B*) if payment of such amount was required to be made within the period allowed in terms of section 13(4), within that period]; or".

The proposed amendment is consequential following to the deletion, in the Revenue Laws Amendment Act No. 32 of 2004, of section 13(4).

Amendment of section 46 of Act 89 of 1991

66. Section 46 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after paragraph *(i)* of the following paragraph:

"*(j)* on a foreign donor funded project shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such foreign donor funded project;".

The proposed amendment makes provision for the person responsible for the accounting of the receipt and payment of moneys on behalf of the foreign donor funded project to be the representative vendor.

Amendment of section 58 of Act 89 of 1991

67. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (*d*) of the following paragraph:

"(*d*) fails to comply with the provisions of **[section 13(4) or]** section 14 or section 28(1) or (2), section 29 or section 30; or".

The proposed amendment is consequential following to the deletion, in the Revenue Laws Amendment Act No. 32 of 2004, of section 13(4).

Amendment of paragraph 1 of Schedule 1 to Act 89 of 1991

68. Paragraph 1 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the words preceding subparagraph (i) of the following words:

"**1.** Any of the following items imported into the Republic in respect of which the Controller **[of Customs and Excise]** has, in terms of the proviso to section 38(1)(a) of the Customs and Excise Act and which shall apply also to imports from or via Botswana, Lesotho, Namibia or Swaziland, granted permission that entry need not be made:";

(b) by the substitution for subparagraph (v) of the following paragraph:

"(v) goods of a value for customs duty purposes not exceeding R500.00, and on which no such duty is payable in terms of Schedule No. 1 to the said Act.".

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Substitution of paragraph 4 of Schedule 1 to Act 89 of 1991

69. The following paragraph hereby substitutes paragraph 4 of Schedule 1 to the Value-Added Tax Act, 1991:

"**4.** Goods temporarily exported from the Republic which are, at the time of export, registered as such with the Controller **[of Customs and Excise]**, in such form as the Commissioner may prescribe, and thereafter returned to the exporter, no change of ownership having taken place, and which can be identified on re-importation.".

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Substitution of paragraph 5 of Schedule 1 to Act 89 of 1991

70. The following paragraph hereby substitutes paragraph 5 of Schedule 1 to the Value-Added Tax Act, 1991:

"**5.** Goods permitted under conditions prescribed by the International Trade Administration Commission which are forwarded unsolicited and free of charge by a non-resident to—

(a) a public authority or a local authority; or

(b) any association not for gain, which satisfies the Commissioner that such goods will be used by that association exclusively—

(i) for educational, religious or welfare purposes; or

(ii) in the furtherance of that association's objectives directed to the provision of educational, medical or welfare services or medical or scientific research; or

(iii) for issue to or treatment of indigent persons.

Provided that the recipient of the goods responsible for the distribution has furnished an undertaking that—

(a) such goods are for the exclusive use by the organization or for free distribution;

(b) such goods will not be sold, leased, hired or otherwise disposed of for gain; and

(c) no consideration or other counter-performance may be accepted by any person in respect of such goods.".

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Substitution of paragraph 6 of Schedule 1 to Act 89 of 1991

71. The following paragraph hereby substitutes paragraph 6 of the Value-Added Tax Act, 1991:

"**6.** Goods which are shipped or conveyed to the Republic for **[transhipment]** trans-shipment or conveyance to any export country: Provided that the Controller **[of Customs and Excise]** ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01(c) of Chapter XIIA of the Rules under the Customs and Excise Act. If proof is not furnished to the Commissioner that the goods have been duly taken out of the Republic within a period of 30 days or within such further period as the Commissioner may in exceptional circumstances allow, this exemption shall be withdrawn and tax, penalty and interest must be paid.".

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Substitution of paragraph 7 of Schedule 1 to Act 89 of 1991

72. The following paragraph hereby substitutes Schedule 1 to the Value-Added Tax Act, 1991:

"**7.** Goods—

(a) consisting of such foodstuffs as are set forth in Part B of Schedule 2 to this Act, but subject to such conditions as may be prescribed in the said Part; or

(b) consisting of such goods as are referred to in section 11(1)(f), but provided that such goods are supplied to and imported by the South African Reserve Bank, the South African Mint

Company (Proprietary) Limited or any bank registered under the Banks Act, 1990 (Act No. 94 of 1990); or

(c) consisting of—

(i) such goods being the fuel levy goods referred to in fuel levy item no.—

(aa) 195.10.05 Petrol, unleaded, as defined in Additional Note 1(b) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act, put up as 93 octane;

(bb) 195.10.06: Petrol, unleaded, as defined in Additional Note 1(b) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act, excluding that put up as 93 octane;

(cc) 195.10.07 Petrol, leaded, as defined in Additional Note 1(c) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act; and

(dd) 195.10.17 Distillate fuel, as defined in Additional Note 1(g) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act,

in Part 5 of Schedule No. 1 to the Customs and Excise Act; or

(ii) such goods being goods consisting of petroleum oil and oils obtained from bituminous minerals, known as crude, referred to in tariff heading no. 27.09 in Part 1 of Schedule No. 1 to the Customs and Excise Act, when supplied and imported for the purpose of being refined for the production of fuel levy goods as defined in section 1 of the Customs and Excise Act; or

(iii) such goods being goods consisting of anti-knock preparations referred to in tariff heading no. 3811.11 in Part 1 of Schedule No. 1 to the Customs and Excise Act; or

(iv) such goods being goods consisting of illuminating kerosene as defined in Additional Note *1(f)* to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act, referred to in fuel levy item no. 195.10.13 in Part 5 of Schedule No. 1 to the Customs and Excise Act and which are not mixed or blended with another substance.”.

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Amendment of paragraph 8 of Schedule 1 to Act 89 of 1991

73. Paragraph 8 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the substitution for Note 1 and the words following Note 1 but preceding Item 406.00 of the following:

“**NOTES:**

1. The following exemptions, identified by subheadings, shall be subject to the Notes as contemplated in Schedule No. 1 to the Customs and Excise Act.

[2709.00 Petroleum oils and oils obtained from bituminous minerals, crude

2710.11.03 Petrol, unleaded

2710.11.05 Petrol, leaded

2710.11.30 Distillate fuel

3811.11 Anti-knock preparations based on lead compounds]

4907.00.30 Travellers’ cheques and bills of exchange, denominated in a foreign currency

4911.10.20 Publications and other advertising matter, relating to fairs, exhibitions and tourism in foreign countries”;

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Amendment of Item 406.00 of Schedule 1 to Act 89 of 1991

74. Item 406.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the heading to item no. 406.00 of the following heading:

"**406.00 GOODS IMPORTED FOR DIPLOMATIC AND OTHER FOREIGN REPRESENTATIVES:**";

(b) by the substitution for paragraphs 2, 3, 4, 5 and 6 of the Notes to item no. 406.00 of the following paragraphs:

"2. This exemption (excluding item no. 406.03) is allowed only if the Director-General: Foreign Affairs or an official acting under his or her authority has certified that a person requiring this exemption is listed in the register maintained by the Department of Foreign Affairs in accordance with the Diplomatic Immunities and Privileges Act, **[1989]** 2001.

3. For the purposes of item no. 406.03, 'an organisation or institution' means an organisation which the Director-General: Foreign Affairs or an official acting under his or her authority has certified as an organisation or institution with which the Republic has concluded a formal agreement, which provides, *inter alia*, for the granting of such exemption.

4. This exemption is not allowed to South African citizens or permanent residents of the Republic, unless the Government of the Republic has, by agreement with an organisation or institution contemplated in Note no. 3, undertaken to grant an exemption to a South African citizen who is a representative, member, agent or officer, but excluding a delegate, with or to such organisation or institution.

5. A motor vehicle exempted in terms of item**[s]** no.'s 406.02, 406.03, 406.05 or 406.07, may not be offered, advertised, lent, hired, leased, pledged, given away, exchanged, sold or otherwise disposed of within a period of two years from the date of importation: Provided that any one of the foregoing acts with this vehicle within a period of two years from the date of importation renders the importer of the vehicle liable to pay tax as determined by the Commissioner in consultation with the Director-General: Foreign Affairs.

6. For the purposes of item**[s]** no.'s 406.02, 406.03 and 406.05 'members of their families' means the spouse, any unmarried child under the age of 21 years, any unmarried child between the ages of 21 and 23 years who is undertaking full-time studies at an educational institution, and any unmarried child who is due to physical or mental disability incapable of self-support, and any other relative specially approved by the Minister of Foreign Affairs, who forms part of the household of any such member or person, as the case may be, or who joins any such household during visits to the Republic.";

(c) by the substitution in paragraph 7 of the Notes to item no. 406.00 for the words preceeding subparagraph *(a)* of the following words:

"7. For the purposes of Note no. 6 'spouse' means the partner of **[such]** that person—";

(d) by the substitution of item no. 406.00 for the following item:

"406.05/00.00/01.00 Goods for the official use by a consular mission and goods for the personal or official use by consular representatives accredited to a consular mission and foreign representatives (excluding those referred to in item**[s]** no.'s 406.02 and 406.03), and members of their families".

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Amendment of Item 407.00 of Schedule 1 to Act 89 of 1991

75. Item 407.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for paragraphs 1, 2 and 3(a) and (b) of the Notes to item no. 407.00 of the following paragraphs:

"1. The exemption in terms of item <u>no.</u> 407.01/00.00/01.02 is allowed only if the goods can be identified as being the same goods which were taken from the Republic.

2. The exemption in terms of item <u>no.</u> 407.02 is not allowed for firearms acquired abroad or at any duty-free shop and imported by residents of the Republic returning after an absence of less than 6 months.

3.*(a)* The exemption in terms of item <u>no.</u> 407.02 is allowed only once per person during a period of 30 days and is not allowed for goods imported by persons returning after an absence of less than 48 hours.

(b) The exemption in terms of item <u>no.</u> 407.02, with the exception of the exemption in respect of tobacco and alcoholic products, is allowed to children under 18 years of age, whether or not they are accompanied by their parents or guardians, provided the goods are for use by the children themselves.";

(b) by the substituition for paragraph 4 of the of the Notes to item no. 407.00 of the following paragraph:

"4. A member of the crew of a ship or aircraft (including the master or pilot) is, subject to the conditions laid down by the Commissioner—

[*(a)* only entitled to the exemptions in terms of item no.'s 407.02/22.00/01.00, 407.02/22.00/02.00, 407.02/24.02/01.00, 407.02/24.03/01.00 and 407.02/33.03/01.00 if such member returns to the Republic permanently; and]

(b) only entitled to the exemption in terms of item <u>no.</u> 407.02/00.00/01.00 provided the total value of the goods

declared under this item does not exceed R500 (or such other amount as the Minister may fix by notice in the *Gazette*); and

(c) only entitled to the exemption in terms of item no. 407.02/00.00/02.00 provided the total value of the goods declared under this item does not exceed R2 000 (or such other amount as the Minister may fix by notice in the *Gazette*).";

(c) by the substitution for paragraphs 4A, 4B, 4C, 5, 6, and 7 of the Notes to item no. 407.00 of the following paragraphs:

"4A. The exemption in item no. 407.02/00.00/02.00 is only applicable if the total value of the goods declared under item no. 407.00 (excluding goods provided for in item no. 407.01) does not exceed **[R12 000]** R15 000 (or such other amount as the Minister may fix by way of a notice in the *Gazette*).

4B. If the person concerned so desires and indicates accordingly before the goods are cleared, the goods in respect of which the exemption in item no. 407.02/00.00/02.00 is applicable, may be cleared at the rates of duty specified in Schedule No. 1 to the Customs and Excise Act and with payment of VAT at the standard rate.

4C. If a person contravenes any provision of this Act, the Customs and Excise Act or any other law relating to the importation of goods, the Commissioner may refuse to grant any exemption provided for in item no. 407.02.

5. For the purposes of item no. 407.04/87.00/01.00(i) the vehicle in question shall not be deemed to be personally owned and used personally by the importer unless such importer was, at all reasonable times, personally present at the place where the vehicle was used by him or her, and the importer shall be deemed to have used that vehicle from the date on which he or she took physical delivery of the vehicle until the date on which the vehicle was delivered by him or her shippers or other agent for the purpose of shipment or dispatch.

6. For the purposes of item no. 407.04, the importer shall, if he or she is absent for a continuous period of longer than 3 months from the place where the vehicle is usually used in the Republic, not be deemed to have imported the vehicle for his personal or own use, and tax as determined by the Commissioner is payable as from the date of such absence.
7. The exemption in terms of item no. 407.04 is allowed only once per family during a period of 3 years.";

(d) by the insertion of the following item no.'s after Note 7 to item no. 407.00:

"**407.01** **Personal effects, sporting and recreational equipment, new or used:**

407.02 **Goods imported as accompanied passengers' baggage either by non-residents or residents of the Republic and cleared at the place where such persons disembark or enter the Republic:**";

(e) by the insertion before item no. 407.02/22.00/01.00 of the following item:

"407.02/00.00/01.00 New or used goods, of a total value not exceeding R3 000 per person (or such other amount as the Minister may fix by notice in the *Gazette*)

407.02/00.00/02.00 Additional goods, new or used, of a total value not exceeding R12 000 per person (or such other amount as the Minister may fix by way of a notice in the *Gazette*), excluding goods of a class or kind specified in item no's. 407.02/22.00, 407.02/24.02, 407.02/24.03 and 407.02/33.03";

(f) by the substitution for item no. 407.02/24.02/01.00 of the following item:

"407.02/24.02/01.00 Cigarettes not exceeding **[400]** 200 and cigars not exceeding **[50]** 20 per person";

(g) by the deletion of item no's. 407.02/00.00/01.00 and 407.02/00.00/02.00;

(h) by the insertion of the following item no. before item no. 407.04/87.00/01.00:

"**<u>407.04</u>** **Motor vehicles imported by natural persons for own use on change of permanent residence to the Republic:**";

(i) by the insertion of the following item no. before item no. 407.06/00.00/01.00:

"**<u>407.06</u>** **Goods imported by natural persons for own use on change of residence to the Republic:**".

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Amendment of Item 409.00 of Schedule 1 to Act 89 of 1991

76. Item 409.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for paragraph 2 of the Notes to item no. 409.00 of the following paragraph:

"2. This exemption (excluding item <u>no.</u> 409.07) is allowed only if the goods can be identified as being the same goods which were exported.";

(b) by the substitution for the words preceeding subparagraph (a) in paragraph 3 of the Notes to item no. 409.00 of the following words:

"3. For the purposes of item <u>no.</u> 409.07—"; and

(c) by the substitution in item no. 409.07/00.00/01.00 for the words preceding paragraph (i) of the following words:

"409.07/00.00/01.00 Compensating products <u>(excluding goods liable to the duties specified in Part 2 of Schedule No. 1 of the Customs and Excise Act)</u> obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit

issued by the International Trade Administration Commission, provided—".

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Amendment of Item 412.00 of Schedule 1 to Act 89 of 1991

77. Item 412.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraphs 1 and 2 of the Notes to item no. 412.00 of the following paragraphs:

"1. For the purposes of item**[s]** no.'s 412.03 and 412.04, the bill of entry or other document prescribed in terms of the Customs and Excise Act must be supported by an inventory of the goods and documentary proof that the goods qualify for exemption under these items.

2. For the purposes of item**[s]** no.'s 412.26 and 412.27, such exemptions are subject to compliance with sections 39 and 40 of the Customs and Excise Act and which shall apply also to imports from or via Botswana, Lesotho, Namibia or Swaziland.".

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Amendment of Item 470.00 of Schedule 1 of Act 89 of 1991

78. Item 470.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for paragraphs 2*(a)* and *(b)* of the Notes to item no. 470.00 of the following paragraph:

"2. *(a)* The exemption in terms of item**[s]** no's 470.01 or 470.03 is allowed only for goods to be used for the processing or manufacture of goods for export and the processed or manufactured goods must be exported within 12 months from the date of importation thereof.";

(b) The exemption in terms of item no. 470.02 is allowed only for parts to be used and the goods submitted for repair, cleaning or reconditioning must be exported within 6 months from the date of importation thereof:";

(b) by the substitution for paragraph 3 of the Notes to item no. 470.00 of the following paragraph:

"3. This exemption is allowed only if the Controller **[of Customs and Excise]** ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01 (c) of Chapter XIIA of the Rules under the Customs and Excise Act.".

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Amendment of Item 480.00 of Schedule 1 to Act 89 of 1991

79. Item 480.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution of the words preceeding subparagraph (a) in paragraph 1 of the Notes to item no. 480.00:

"1. The exemption in terms of item no. 480.35 is allowed—";

(b) by the substitution for subparagraph (c) of paragraph 1 of the Notes to item no. 480.00 of the following subparagraph:

"*(c)* only if each sample is an article representative of a particular category of goods already produced or to be produced abroad, imported solely for the purpose of being shown or demonstrated free of charge to prospective customers."; and

(c) by the substitution for paragraphs 2, 3, and 4 of the Notes to item no. 480.00 of the following paragraphs:

"2. **[Goods]** All goods shall be re-exported—

(a) in the case of goods under an international carnet within the period of validity of such carnet; and

(b) in the case of other goods within 6 months from the date of importation, thereof or within such further period as the Commissioner may in exceptional circumstances, allow.

3. This exemption is allowed only if the Controller **[of Customs and Excise]** ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01 (c) of Chapter XIIA of the Rules under the Customs and Excise Act.

4. If proof is not furnished to the Commissioner that the goods have been duly re-exported within the time period prescribed in Note **[number]** no. 2, this exemption shall be withdrawn and tax, penalty and interest must be paid.".

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Amendment of Item 490.00 of Schedule 1 to Act 89 of 1991

80. Item 490.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for paragraphs 2 and 3 of the Notes to item no. 490.00 of the following paragraphs:

"2. This exemption is allowed only if the Controller **[of Customs and Excise]** ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01 (c) of Chapter XIIA of the Rules under the Customs and Excise Act.

3. If proof is not furnished to the Commissioner that the goods have been duly re-exported within the time period prescribed in Note **[number]** no. 1, this exemption shall be withdrawn and tax, penalty and interest must be paid."; and

(b) by the substitution for item no. 490.90/00.00/02.00 of the following item:

"490.90/00.00/02.00 Goods not specified in item**[s]** no.'s 470.00, 480.00 or 490.00, temporarily admitted for purposes approved by the Commissioner".

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of the importation of goods.

Substitution of the long title of Act 31 of 1998

81. The following long title hereby substitutes the long title of the Uncertificated Securities Tax Act, 1998:

"To provide for the levying of an uncertificated securities tax in respect of **[the issue of, and]** every change in beneficial ownership in**[,]** any securities which are transferable without a written instrument and are not evidenced by a certificate; and to provide for matters connected therewith.".

The proposed amendment to the heading to the Uncertificated Securities Tax Act is consequential upon the deletion of stamp duty on the issue of marketable securities with effect from 1 January 2006. The proposed amendment will come into operation on 1 January 2006.

Amendment of section 1 of Act 31 of 1998

82. (1) Section 1 of the Uncertificated Securities Tax Act, 1998, is hereby amended—

(a) by the insertion after the definition of "beneficial ownership" of the following definition:

"**'change in beneficial ownership'** in relation to a security includes the cancellation or redemption of that security but does not include any issue of that security;"; and

The proposed amendment is to clarify that a change in beneficial ownership takes place whenever securities are cancelled or redeemed, and whenever there is any acquisition of any of the rights or entitlements attaching to a security. The proposed amendment will apply to every change in beneficial ownership on or after 1 January 2006.

(b) by the deletion of the definition of "issuer".

The proposed amendment is consequential upon the deletion of uncertificated securities tax on the issue of securities with effect from 1 January 2006. The proposed amendment will come into operation on 1 January 2006.

(2) Subsections (1)*(a)* and *(b)* shall come into operation on 1 January 2006 and shall apply in respect of the issue of any security, and the cancellation or redemption of any security on or after that date.

Repeal of section 3 of Act 31 of 1998

83. (1) Section 3 of the Uncertificated Securities Tax Act, 1998, is hereby repealed.

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of the issue of any security on or after that date.

The proposed deletion of section 3 of the Uncertificated Securities Tax Act is consequential upon the deletion of uncertificated securities tax on the issue of marketable securities with effect from 1 January 2006. The proposed amendment will come into operation on 1 January 2006.

Amendment of section 5 of Act 31 of 1998

84. (1) Section 5 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution for the heading of the following heading:

"**[Other transactions]** **Change in beneficial ownership in securities effected by a participant**".

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of every change in beneficial ownership in any security on or after that date.

The proposed amendment is consequential upon the insertion of section 5A into the Uncertificated Securities Act, and will apply to every change in beneficial ownership on or after 1 January 2006.

Insertion of section 5A into Act 31 of 1998

85. (1) The following section is hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 5:

"**Other transactions**

5A.(1) The taxable amount in respect of every change of the beneficial ownership in securities shall be—

(a) the amount declared by the person who acquires beneficial ownership of those securities as the consideration paid for such securities; or

(b) if no amount referred to in paragraph *(a)* is declared, or if the amount so declared is less than the lowest price of the securities on the date of the relevant transaction or other manner of acquisition, the closing price of those securities on the date of the relevant transaction or other manner of acquisition:

Provided that this section shall not apply in respect of any change in beneficial ownership in securities in respect of which section 4 or 5 applies.

(2) The person who acquires the beneficial ownership of the securities shall be liable for the tax payable as contemplated in this section.".

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of every change in beneficial ownership in any security on or after that date.

The proposed amendment is to protect the uncertificated securities tax base against changes in beneficial ownership that takes place outside the ambit of sections 4 (brokers) and 5 (participants). This would, for example, be the case where a client of an offshore bank sells its South African securities to another client of the same offshore bank. In that case, although there is a change in beneficial ownership, the transaction falls outside the ambit of sections 4 and 5 of the Uncertificated Securities Tax Act as no South African broker or participant is involved. The proposed amendment will apply to every change in beneficial ownership on or after 1 January 2006.

Amendment of section 6 of Act 31 of 1998

86. (1) Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the deletion in subsection (1) of paragraph *(a)*.

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of the issue of any security on or after that date.

The proposed deletion of paragraph (1)(a) of section 6 of the Uncertificated Securities Act is consequential upon the deletion of uncertificated securities tax on the issue of marketable securities with effect from 1 January 2006.

Amendment of section 7 of Act 31 of 1998

87. (1) Section 7 of the Uncertificated Securities Tax Act, 1998, is hereby amended—

(a) by the deletion in subsection (1) of paragraph *(a)*;

(b) by the addition of the word "and" in subsection (1) after paragraph *(b); and*

(c) by the insertion in subsection (1) of the following paragraph after paragraph *(b)*:

"*(c)* referred to in section 5A is payable, by the person acquiring the beneficial ownership of the securities, to the Commissioner by the 14th day of every month in respect of changes in beneficial ownership in securities during the previous month, and that person shall by the same date submit a declaration, in the form and containing the information prescribed by the Commissioner, stating the amount of tax (if any) payable by that person.".

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of every change in beneficial ownership in any security on or after that date.

The proposed deletion of paragraph (1)(a) of section 7 of the Uncertificated Securities Act is consequential upon the deletion of uncertificated securities tax on the issue of marketable securities with effect from 1 January 2006. The proposed amendment will come into operation on 1 January 2006.

The proposed insertion of paragraph (c) into section 7(1) of the Uncertificated Securities Act is consequential upon the insertion of section 5A into the Uncertificated

Securities Act, and will apply to every change in beneficial ownership on or after 1 January 2006.

Amendment of section 13 of Act 31 of 1998

88. (1) Section 13 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the definition of "**administration of this Act**" of the following paragraph:

"*(a)* obtaining of full information in relation to **[the issue of, or]** every change in beneficial ownership in**[,]** any security;".

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of the issue of any security on or after that date.

The proposed amendment is consequential upon the deletion of uncertificated securities tax on the issue of securities with effect from 1 January 2006.

Substitution of section 14A of Act 31 of 1998

89. The following section hereby substitutes section 14A of the Uncertificated Securities Tax Act, 1998:

"**Records**

14A. Any **[issuer,]** member, **[or]** participant or person who acquires the beneficial ownership in securities, must keep such records of every **[issue of, or]** change in beneficial ownership **[in, any securities issued by the issuer or in respect of]** which **[a change in beneficial ownership]** has been effected by the member, or **[any transfer of securities]** by the participant, or by the person that has acquired the beneficial ownership in the securities, for a period of five years as may be required to enable the **[issuer,]** member, **[or]** participant**[,]**or the person that has acquired the beneficial ownership in the securities, as the case may be, to observe the requirements of this

Act and to enable the Commissioner to be satisfied that those requirements have been observed.”.

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of every change in beneficial ownership in any security on or after that date.

The proposed amendment is consequential upon the deletion of uncertificated securities tax on the issue of securities with effect from 1 January 2006, and upon the insertion of section 5A into the Uncertificated Securities Tax Act. The proposed amendment will come into operation on 1 January 2006.

Amendment of section 54 of Act 45 of 2003

90. Section 54 of the Revenue Laws Amendment Act, 2003, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1)*(a)*, *(b)*, *(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)* and *(i)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any unbundling transaction which takes effect on or after that date: Provided that where an unbundling transaction took effect after 6 November 2002 but before 22 December 2003, the unbundling company may elect that the provisions of section 46 of the Income Tax Act, 1962, prior to the amendments by this Act, should apply.”.

The definition of unbundling transactions was amended during 2003 with retrospective effect from 6 November 2002. In terms of the new definition an unbundling company had to distribute all the shares it holds in the unbundled company. The previous definition did allow for partial unbundling transactions. This proposal accommodates unbundling transactions which were effected in the period between 6 November 2002 and the date of promulgation of the retrospective amendment so as to allow an unbundling company to elect that the previous rules be applied to unbundling transactions which took effect within this period.