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REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 2008

PRELIMINARY DRAFT 21 FEBRUARY 2008

EXPLANATORY MEMORANDUM ON THE TAXATION LAWS AMENDMENT BILL, 2008

INTRODUCTION

The Taxation Laws Amendment Bill, 2008, introduces amendments to the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Value-Added Tax Act, 1991, the Collective Investment Schemes Control Act, 2002, the Revenue Laws Amendment Act, 2006, the Diamond Export Levy Act, 2007, the Securities Transfer Tax Act, 2007 and the Revenue Laws Amendment Act, 2007.

EXPLANATION OF MAIN AMENDMENTS

RETIREMENT FUND REFORM

New and amended definitions of different types of retirement funds

It was announced in the 2007 Budget that certain regulatory definitions contained in the Income Tax Act would be moved to the Pension Funds Act. This will result in a streamlining of the registration and regulation process. As a first step towards this single registration process, the Income Tax Act definitions are updated to streamline the requirements for approval relating to the different types of retirement funds operating in the market today.

Current legislation

In terms of the Pension Funds Act, retirement funds have to register with the Financial Services Board as a pension fund organisation (also referred to in the Pension Funds Act as a pension fund). A registered fund then has to apply to SARS to be approved as one of three types of retirement funds, i.e. a

pension fund, a provident fund or a retirement annuity fund (as defined in the Income Tax Act). The tax treatment of contribution to the fund, growth within the fund and payments from the fund is determined based on this approval by SARS.

Problem statement

The dual registration process is administratively onerous, both to administrators of funds and to SARS, because funds have to comply with two sets of qualifying and regulatory criteria.

Before the definitions of the different types of retirement funds (as defined in the Income Tax Act) can be moved across to the Pension Funds Act, the definitions have to be reviewed to ensure that:

- The interpretation of terminology used in existing Income Tax Act definitions will be retained when these definitions are incorporated in the Pension Funds Act;
- Duplication of existing provisions in the Pension Funds Act are deleted; and
- Recent amendments to the Pension Funds Act are incorporated in the Income Tax Act definitions.

Amendments facilitating the above need to be incorporated in the Income Tax Act. These amended definitions can then be transferred to the Pension Funds Act with very little or no amendments required.

Proposed amendments

(a) Amendment to the definition of **"pension fund"** (section 1)

(i) Partnerships

The current definition, only allows for a partner of a partnership to join the pension fund if he was previously an employee of the partnership. A person

who joins the partnership without having been an employee, may not join the pension fund. The proposed amendments will allow all partners to join the partnership's pension fund irrespective of whether or not they were previously employed by the partnership.

Some anti-avoidance wording has been deleted because the targeted mischief is no longer possible in terms of the Pension Funds Act.

(ii) Retirement benefits: annuities and lump sum

Members of a pension fund may only take a maximum of one-third of their interest in the fund (i.e. the value calculated in terms of the fund rules to be attributed to that fund member upon retirement) in the form of a lump sum. The remainder has to be taken in the form of an annuity. The term annuity is generally well understood but to put it beyond doubt that a "living annuity" is to be regarded as an annuity in terms of the Income Tax Act, the proposed amendment confirms that a "living annuity" qualifies as an annuity. (See def. of "living annuity")

(iii) Lump sums to dependants of a deceased fund member

Dependants of a deceased fund member may elect to receive the full benefit in the form of a lump sum but this election may not be made after six months after the death of that member. In many instances, trustees of a pension fund do not find all the dependants within six months of the death of the member and the dependants are therefore precluded from electing to receive a lump sum. It is proposed to delete this restriction.

(b) Amendment to the definition of **"retirement annuity fund"** (section 1)

(i) Retirement benefits: annuities and lump sum

Members of a retirement annuity fund may only take a maximum of one-third of their interest in the fund (i.e. the value calculated in terms of the fund rules to be attributed to that fund member upon retirement) in the form of a lump

sum. The remainder has to be taken in the form of an annuity. The term annuity is generally well understood but to put it beyond doubt that a "living annuity" qualifies as an annuity in terms of the Income Tax Act, the proposed amendment effectively confirms that a "living annuity" qualifies as an annuity. (See def. of "living annuity")

(ii) Payments to dependants of a deceased member

Current provisions only allow for annuities payable to a member's dependants upon his death. A problem arise where he has no dependants. The Act does not allow for a lump sum to be paid into his estate. This results in the money being "trapped" in the fund and his heir not receiving any benefit. The proposed amendment allows for a lump sum to be paid into his estate in the absence of dependants.

(iii) Withdrawals where a member emigrates

Members of a retirement annuity fund may not withdraw their fund prior to retirement except where the value is very small. An exception to this rule is proposed to allow members who emigrate from South Africa to withdraw their funds prior to retirement, provided they are willing to pay the full tax on that benefit.

(c) Proposed new definition of **"preservation fund"** (section 1)

Preservation funds are currently recognised in terms of either the definition of "pension fund" or "provident fund" in the Income Tax Act. As a result, the membership eligibility, transfer, withdrawal and other related requirements are closely linked to the approval requirements of occupational pension and provident funds. In the context of retirement-savings preservation some of these requirements are creating difficulties for persons who wish to preserve their savings for retirement. Two new definitions to separately recognise preservation funds are proposed, that will allow more flexibility and choice to

persons who wish to preserve their retirement savings within a tax-free retirement vehicle.

A member of a pension or provident fund whose employment is terminated and who wishes to preserve his or her retirement savings within a tax-free retirement vehicle, faces a number of difficulties. The first problem relates to the limited choice of preservation funds and the second problem relates to the transferability between preservation funds. Once transferred, the savings are in many cases effectively "trapped" in the preservation fund.

The proposed new definitions effectively untie a preservation fund from the employer-employee relationship that is a requirement for the approval of an occupational pension or provident fund. The proposed definition will allow an employee to choose her own pension or provident preservation fund upon termination of employment. Transfers between the same type of preservation funds will also be possible and no person will be "trapped" in any preservation fund.

The definition further allows for membership and transfer of benefits of a divorcee who previously had a limited choice of retirement vehicles in which to house his or her divorce settlement payable from the former spouse's pension or provident fund.

In terms of the proposal preservation funds can also be established to house "unclaimed benefits" (e.g. where no benefit has been paid to a member or his dependants within 24 months of the benefit becoming due).

A distinction is made between "pension preservation funds" and "provident preservation funds". The main differences between these two funds are the following:

- Pension preservation funds may only receive amounts transferred from pension funds and provident preservation funds may only receive amounts transferred from provident funds; and

- Pension preservation funds contain the same retirement compulsory annuity provision that a pension does.

Transfers to these funds will be tax-free (paragraph 6 of the 2nd Schedule) and growth within these funds will also be tax-free (paragraph 10(1)(d)(i)). Payments from these funds will be subject to tax calculated on the same basis as similar payments from pension, provident and retirement annuity funds.

(d) Proposed new definition of **"living annuity"** (section 1)

Members of pension funds, pension preservation funds and retirement annuity funds are compelled to take a minimum of two-thirds of their fund value upon retirement in the form of an annuity. The term annuity is generally well understood but to put it beyond doubt that a "living annuity" is regarded as an annuity in terms of the Income Tax Act, the proposed amendment defines the term "living annuity". References to the term "annuity" or "annuities" now specifically include living annuities. Certain aspects of living annuities in the retirement context are defined in SARS Retirement Fund Note 1/96. The Long-Term Insurance Act also captures certain aspects of a living annuity in the definition of a "linked policy". These defining characteristics have been incorporated in the proposed new definition of "living annuity".

In order to further provide protection to fund members, only certain properly regulated providers may provide living annuities.

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Appendix I

Part I: Rates of normal tax and rebates

Part II: Income Tax monetary thresholds subject to periodic legislative change

Appendix II

Amendment of Schedule No. 1 to the Customs and Excise Act, 1964

Appendix III

Value-added tax monetary thresholds

CLAUSE BY CLAUSE EXPLANATION

CLAUSE 1

Income Tax: Fixing of rates of normal tax and amendment of certain amounts for purposes of the Income Tax Act, 1962

RATES:

Table I: Current rates for individuals and special trusts:

Taxable Income	**Rate of Tax**
Not exceeding R112 500	18 per cent of the taxable income
Exceeding R112 500 but not exceeding R180 000	R20 250 plus 25 per cent of the amount by which the taxable income exceeds R112 500
Exceeding R180 000 but not exceeding R250 000	R37 125 plus 30 per cent of the amount by which the taxable income exceeds R180 000
Exceeding R250 000 but not exceeding R350 000	R58 125 plus 35 per cent of the amount by which the taxable income exceeds R250 000
Exceeding R350 000 but not exceeding R450 000	R93 125 plus 38 per cent of the amount by which the taxable income exceeds R350 000
Exceeds R450 000	R131 125 plus 40 per cent of the amount by which the taxable income exceeds R450 000

Table II: Proposed rates for individuals and special trusts:

Taxable Income	**Rate of Tax**
Not exceeding R122 000	18 per cent of the taxable income
Exceeding R122 000 but not exceeding R195 000	R21 960 plus 25 per cent of the amount by which the taxable income exceeds R122 000

Exceeding R195 000 but not exceeding R270 000	R40 210 plus 30 per cent of the amount by which the taxable income exceeds R195 000
Exceeding R270 000 but not exceeding R380 000	R62 710 plus 35 per cent of the amount by which the taxable income exceeds R270 000
Exceeding R380 000 but not exceeding R490 000	R101 210 plus 38 per cent of the amount by which the taxable income exceeds R380 000
Exceeds R490 000	R143 010 plus 40 per cent of the amount by which the taxable income exceeds R490 000

Table III: Current rate for trusts (no change proposed):

Taxable Income	**Rate of Tax**
All taxable income	40 per cent of the taxable income

Table IV: Current rate for companies:

Taxable Income	**Rate of Tax**
All taxable income	29 per cent of the taxable income

Table V: Proposed rate for companies:

Taxable Income	**Rate of Tax**
All taxable income	28 per cent of the taxable income

Table VI: Current rate for small business corporations:

Taxable Income	**Rate of Tax**
Not exceeding R43 000	0 per cent of taxable income
Exceeding R43 000 but not exceeding R300 000	10 per cent of the amount by which the taxable income exceeds R43 000
Exceeding R300 000	R25 700 plus 29 per cent of the amount by which the taxable income exceeds R300 000

Table VII: Proposed rate for small business corporations:

Taxable Income	**Rate of Tax**
Not exceeding R46 000	0 per cent of taxable income
Exceeding R46 000 but not exceeding R300 000	10 per cent of the amount by which the taxable income exceeds R46 000
Exceeding R300 000	R25 400 plus 28 per cent of the amount by which the taxable income exceeds R300 000

Table VIII: Current rate for gold mining companies:

Taxable Income	**Rate of Tax**
On gold mining taxable income	See formula in paragraph 4(*c*) of Appendix I
On non gold mining taxable income	29 per cent of the taxable income
On non gold mining taxable income if exempt from STC	37 per cent of the taxable income
On recovery of capital expenditure	Greater of average rate or 29 per cent of the taxable income

Table IX: Proposed rate for gold mining companies:

Taxable Income	**Rate of Tax**
On gold mining taxable income	See formula in paragraph 4(*c*) of Appendix I
On non gold mining taxable income	28 per cent of the taxable income
On non gold mining taxable income if exempt from STC	35 per cent of the taxable income
On recovery of capital expenditure	Greater of average rate or 28 per cent of the taxable income

Table X: Current rate for employment companies (no change proposed):

Taxable Income	**Rate of Tax**
All taxable income	33 per cent of taxable income

Table XI: Current rate for long-term insurance companies:

Taxable Income	Rate of Tax
Taxable income of individual policyholder fund	30 per cent of taxable income
Taxable income of company policyholder fund	29 per cent of taxable income
Taxable income of corporate policyholder fund	29 per cent of taxable income

Table XII: Proposed rate for long-term insurance companies

Taxable Income	Rate of Tax
Taxable income of individual policyholder fund	30 per cent of taxable income
Taxable income of company policyholder fund	28 per cent of taxable income
Taxable income of corporate policyholder fund	28 per cent of taxable income

Table XIII: Current rate for tax holiday companies (no change proposed)

Taxable Income	Rate of Tax
All taxable income	0 per cent of taxable income

Table XIV: Current rate for non resident companies:

Taxable Income	Rate of Tax
All taxable income from South African source	34 per cent of taxable income

Table XV: Proposed rate for non resident companies:

Taxable Income	Rate of Tax
All taxable income from South African source	33 per cent of taxable income

Table XVI: Current rate for taxable amount of lump sum benefit derived upon retirement or death (no change proposed):

Taxable Income	**Rate of Tax**
Taxable income not exceeding R300 000	18 per cent of the taxable income
Taxable income exceeding R300 000 but not exceeding R600 000	R54 000 plus 27 per cent of the taxable income
Taxable income exceeding R600 000	R135 000 plus 36 per cent of the taxable income

Table XVII: Calculation of tax free portion of lump sum benefit (no change proposed):

Description	**Reference to the Income Tax Act, 1962**	**Amount**
Tax free portion of lump sum benefit	Paragraph (*b*) of the definition of **"formula B"** in paragraph 1 of the Second Schedule	R300 000

Table XVIII: Current rebates:

Description	**Amount**
Primary rebate	R7 740
Secondary rebate	R4 680

Table XIX: Proposed rebates:

Description	**Amount**
Primary rebate	R8 280
Secondary rebate	R5 040

INCOME TAX MONETARY THRESHOLDS SUBJECT TO PERIODIC LEGISLATIVE CHANGE:

Table XX: General savings thresholds

Description *(The contents of this column are solely for convenience and are of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Broad-based employee share schemes: Employees can receive tax-exempt shares if the shares are part of a broad-based employee share plan. Companies can also deduct shares issued under the plan.		
Maximum exemption for shares received by employees	The definition of **"qualifying equity share"** in section 8B(3)	R9 000
Maximum deduction for shares issued by the employer	The proviso to section 11(*l*A)	R3 000
Exemption for interest and certain dividends:		
Exemption for domestic interest and otherwise taxable domestic collective scheme dividends in respect of persons younger than 65 years	Section 10(1)(*i*)(xv)(*bb*)(B)	R19 000
Exemption for passive portfolio savings in respect of persons 65 years or older	Section 10(1)(*i*)(xv)(*bb*)(A)	R27 500
Maximum application of the above exemption for foreign interest and otherwise taxable dividends	Section 10(1)(*i*)(xv)(*aa*)	R3 200
Annual donations tax exemption:		
Exemption for donations made by entities	Section 56(2)(*a*) and the proviso thereto	R10 000
Exemption for donations made by individuals	Section 56(2)(*b*)	R100 000
Capital gains exclusions:		
Annual exclusion for individuals and special trusts	Paragraph 5(1) of Eighth Schedule	R16 000
Exclusion for the disposal of a primary residence	Paragraph 45(1) of Eighth Schedule	R1, 5 million
Maximum market value of all assets allowed within the small business definition on disposal when person over 55	Definition of **"small business"** in paragraph 57(1) of Eighth Schedule	R5 million
Exclusion amount on disposal of small business when person over 55	Paragraph 57(3) of Eighth Schedule	R750 000
Exclusion on death	Paragraph 5(2) of Eighth Schedule	R120 000

Table XXI: Retirement savings thresholds

Description *(The contents of this column are solely for convenience and are of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Deductible retirement fund contributions: Pension fund and retirement annuity fund members may deduct their contributions subject to certain percentage or monetary ceilings (the latter of which are provided below).		
Pension fund monetary ceiling for contributions	The proviso to section 11(*k*)(i)	R1 750
Pension fund monetary ceiling for arrear contributions	Paragraph (*aa*) of the proviso to section 11(*k*)(ii)	R1 800
Retirement annuity fund monetary ceiling for contributions (if also a member of a pension fund)	Section 11(*n*)(*aa*)(B)	R3 500
Retirement annuity fund monetary ceiling for contributions (if not a member of a pension fund)	Section 11(*n*)(*aa*)(C)	R1 750
Retirement annuity fund monetary ceiling for arrear contributions	Section 11(*n*)(*bb*)	R1 800
Permissible lump sum withdrawals upon retirement: Pension fund and retirement annuity fund members may withdraw lump sums upon retirement.		
Pension fund monetary amount for permissible lump sum withdrawals	Paragraph (ii)(*dd*) of the proviso to paragraph (*c*) of the definition of **"pension fund"** in section 1	R50 000
Retirement annuity fund monetary amount for permissible lump sum withdrawals	Paragraph (*b*)(ii) of the proviso to the definition of **"retirement annuity fund"** in section 1	R50 000

Table XXII: Deductible business expenses for individuals

Description *(The contents of this column are solely for convenience and are of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Car allowance: Individuals receive an annual vehicle allowance to defray business travel expenses, including deemed depreciation on the vehicle.		
Ceiling on vehicle cost	Section 8(1)(*b*)(iiiA)(*bb*)(A)	R400 000
Ceiling on debt relating to vehicle cost	Section 8(1)(*b*)(iiiA)(*bb*)(B)	R400 000

Table XXIII: Employment-related fringe benefits

Description *(The contents of this column are solely for convenience and are of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Exempt scholarships and bursaries: Employers can provide exempt scholarships and bursaries to employees and their relatives, subject to annual monetary ceilings.		
Annual ceiling for employees	Paragraph (ii)(*aa*) of the proviso to section 10(1)(*q*)	R100 000
Annual ceiling for employee relatives	Paragraph (ii)(*bb*) of the proviso to section 10(1)(*q*)	R10 000
Exempt termination benefits: Employees of age 55 or older receive exemption for payments related to employment termination subject to a monetary ceiling.	Section 10(1)*(x)*	R30 000
Medical scheme contributions: Medical scheme contributions are tax deductible if the individual pays (and tax-free if the employer pays) subject to monthly ceilings.		
Monthly ceiling for schemes with one beneficiary	Section 18(2)(*c*)(i)(*aa*) and paragraph 12A(1)(*a*) of Seventh Schedule	R570
Monthly ceiling for schemes with two beneficiaries	Section 18(2)(*c*)(i)(*bb*) and paragraph 12A(1)(*b*) of Seventh Schedule	R1 140
Additional monthly ceiling for each additional beneficiary	Section 18(2)(*c*)(i)(*cc*) and paragraph 12A(1)(*c*) of Seventh Schedule	R345

Awards for bravery and long service: The deemed values of bravery and long service awards are reduced by the monetary amount indicated.	Paragraphs *(a)* and (*b*) of the further proviso to paragraph 5(2) of Seventh Schedule	R5 000
Employee accommodation: Employee accommodation is taxed by means of a formula if the employer owns the accommodation, but no tax is payable if the employee earns less than the amount indicated.	Paragraph 9(3)(*a*)(ii) of Seventh Schedule	R46 000
Accommodation for expatriate employees: The value of accommodation provided to expatriate employees is taxable to the extent that it exceeds the amount indicated.	Paragraph 9(7B)(ii)(B) of Seventh Schedule	R25 000
Exemption for *de minimis* employee loans: Employee loans below the amount indicated are not deemed to have any value as a fringe benefit.	Paragraph 11(4)(*a*) of Seventh Schedule	R3 000
Employer deductions for employee housing: Expenses incurred for providing employee housing is limited to the ceiling indicated (per dwelling).	Paragraph (ii) of the proviso to section 11(*t*)	R15 000
Additional employer deductions for learnerships: Employers receive additional deductions for learnerships depending on the circumstances.		
Monetary ceiling of additional deduction for the employer when entering into a learnership agreement with an existing employee	Section 12H(2)(*a*)(i)(*bb*)	R20 000
Monetary ceiling of additional deduction for the employer when entering into a learnership agreement with a new employee	Section 12H(2)(*a*)(ii)(*bb*)	R30 000
Monetary ceiling of additional deduction for the employer in the case of completing a learnership agreement (all employees)	Section 12H(2)(*b*)(ii)	R30 000

Monetary ceiling of additional deduction for the employer when entering into a learnership agreement with an existing disabled employee	Section 12H(2A)(*a*)(i)(*bb*)	R40 000
Monetary ceiling of additional deduction for the employer when entering into a learnership agreement with a new disabled employee	Section 12H(2A)(*a*)(ii)(*bb*)	R50 000
Monetary ceiling of additional deduction for the employer in the case of completing learnership agreements with disabled employees	Section 12H(2A)(*b*)(ii)	R50 000

Table XXIV: Depreciation

Description *(The contents of this column are solely for convenience and are of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Small-scale intellectual property: Intellectual property with a cost below the amount indicated is immediately deductible.	Paragraph (*aa*) of the proviso to section 11(*g*C)	R5 000
Urban Development Zone incentive: Developers undertaking projects in excess of the amount indicated must provide special notice to the Commissioner.	Section 13*quat*(10A)	R5 million

Table XXV: Miscellaneous

Description *(The contents of this column are solely for convenience and are of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Public benefit organisations:		
PBO trading income is exempt up to the greater of 5 per cent of total receipts and accruals or the amount indicated.	Section 10(1)(*c*N)(ii)(*dd*)(ii)	R100 000
Donations to transfrontier parks are deductible if the donation is equal to or exceeds the amount indicated.		R1 million

PBOs providing housing are exempt if beneficiaries are households with a montly income of the stated amount or less.	Paragraph 3*(a)* of Part I of Ninth Schedule and paragraph 5*(a)* of Part II of Ninth Schedule	R7 000
Recreational clubs: Club trading income is exempt up to the greater of 5 per cent of total receipts and accruals or the amount indicated.	Section 10(1)(*c*O)(iv)(*bb*)	R50 000
Farmer deductions for employee housing: Ceiling for expenses incurred by farmers to provide employee housing (per employee)	Paragraph 12(5) of First Schedule	R15 000
Prepaid expenses: Limit of prepaid expenses that will not be deferred until delivery of goods, services or benefits	Paragraph (*bb*) of the proviso to section 23H(1)	R80 000
Small business corporations: Corporations qualify for tax incentives if gross income does not exceed the amount indicated.	Section 12E(4)(*a*)(i)	R14 million
Housing associations: Housing association investment income is exempt up to the amount indicated.	Section 10(1)(*e*)	R50 000

Table XXVI: Administration

Description *(The contents of this column are solely for convenience and are of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Investment income exemption from provisional tax: If a natural person solely generates income from interest, dividends and real estate rentals, the income amount indicated will be exempt from provisional tax.		
In the case of natural persons younger than 65 years	Paragraph 18(1)(*c*)(ii) of Fourth Schedule	R20 000
In the case of natural persons 65 years and older	Paragraph 18(1)(*d*)(i) of Fourth Schedule	R80 000
S.I.T.E. threshold: Tax on employment income is subject to the S.I.T.E (Standard Income Tax on Employees) system up to the amount indicated.	Items *(a)* and *(b)* of paragraph 11B(2) and items (*a*), (*b*)(ii) and (iii) of paragraph 11B(3) of Fourth Schedule	R60 000

Automatic appeal to the High Court: The full bench of the High Court will have automatic jurisdiction to appeals if the disputed amount exceeds the amount indicated.	Section 83(4B)(*a*)	R50 million

CLAUSE 2

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

Subclause (1)(a): The proposed amendment deletes the definition of 'building society' as obsolete.

Subclause (1)(b): The proposed amendment caters for changes in respect of the laws relating to children.

Subclause (1)(c): The proposed amendment deletes the definition of 'date of deep level production' as obsolete.

Subclause (1)(d): The proposed amendment effects a textual change.

Subcaluse (1)(e): Paragraph *(c)* of the definition of "dividend" was deleted by section 5(1)(*f*) of the Revenue Laws Amendment Act, 35 of 2007. Some commentators have since suggested that the effect may have been to place a buy-back of shares outside the definition of "dividend", even if that buy-back involved a reduction in the acquiring company's profits. Their argument is that since the buy-back of shares involves a quid pro quo being the shares acquired, the company has not made a "distribution".

Paragraph *(c)* was deleted with a view to simplifying the definition and there was never any intention to effect a change in policy. This can be seen from the fact that paragraph (iii) of the first proviso still refers to an acquisition of shares in terms of section 85 of the Companies Act, and so too does section 70(3A). To put the matter beyond doubt paragraph *(c)* is proposed to be reinstated with the wording appropriately adjusted to eliminate the previous reference to the nominal value of shares. In addition, the paragraph is

proposed to be simplified in line with policy to simplify the definition as a whole. It is proposed that the amendment be deemed to have come into effect on 1 October 2007.

Subclause (1)(f): The proposed amendment deletes paragraph (*c*A) of the definition of dividend. The proposed paragraph (*c*)(iii) replaces paragraph (*c*A) of the definition in that (c)(iii) now provides for a reduction of profits resulting from a company acquiring its own shares by means of a distribution. This subparagraph applies when a holding company receives its own shares by way of a distribution from its subsidiary and in addition clarifies that it is the reduction as a result of the cancellation of the shares that is being targeted, and not the incoming dividend which is added to profits.

Subclause (1)(g): If company S holds shares in company H, and company H in turn holds shares in company S, and H then cancels the shares held by S, the profits of company S are reduced. The proposed amendment treats the amount of the reduction as a dividend.

Subclause (1)(h) and (i): The proposed amendments simplify and clarify paragraph (iii) and (iiiA) of the first proviso to the definition of “dividend”.

Subclause (1)(j): The proposed amendment deletes the definition of ‘entertainment expenditure’ as obsolete.

Subclause (1)(k), (l) and (m): See notes on retirement fund reform.

Subclause (1)(n): The proposed amendment deletes the definition of ‘married woman’ as obsolete.

Subclause (1)(o): The proposed amendment deletes the definition of ‘mutual building society’ as obsolete.

Subclause (1)(p): See notes on retirement fund reform.

Subclause (1)(q): The proposed amendment deletes the definition of 'other deep level gold mine as obsolete.

Subclause (1)(r) to (zE): See notes on retirement fund reform.

Subclause (1)(zF): The proposed amendment clarifies that the definition of 'tax' includes an administrative levy under the Income Tax Act, 1962.

Subclause (1)(zG): See notes on retirement fund reform.

CLAUSE 3

Income Tax: Amendment of section 5 of the Income Tax Act, 1962

The proposed amendment deletes obsolete and superflous provisions.

CLAUSE 4

Income Tax: Amendment of section 7 of the Income Tax Act, 1962

Section 7(3) and (4) of the Income Tax Act deal with parent-minor child dispositions. These provisions deem any income derived by a minor child back to the parent if the income results from a donation settlement or other disposition by the parent, whether directly or indirectly. It is proposed that the ambit of section 7(3) and (4) be widened to include a stepchild of a parent.

CLAUSE 5

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

The proposed amendments correct cross references and remove obsolete provisions.

CLAUSE 6

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

The proposed amendments provide for consistent use of language in respect of subsections (2) and (4).

CLAUSE 7

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

Subclause (1)(a): Currently, a share will be a qualifying share unless it is—

1. a share in a share block company;
2. a share in a company which at any time during the 3 year period preceding the disposal was not a resident, other than a non resident listed on the JSE;
3. a hybrid equity instrument as defined in section 8E.

The problem is that 1 and 2 imply that the share will be disqualified only if it is a share block share or an 8E share at the time of disposal. The proposed amendment provides that the share is disqualified if it is a share block share or 8E share at any time during the three year period preceding the disposal.

Subclause (1)(b): Subsection (2) provides that the proceeds from the disposal of a qualifying share will be of a capital nature. The problem is that a 'qualifying share' is by definition a share that has been disposed of. The proposed amendment removes this anomaly.

Subclause (1)(c): Currently, a share will not be a qualifying share if the share was issued by a company that holds mainly immovable property. The exception is that this does not apply if the property is held indirectly by a person that is not connected to the taxpayer. The proposed amendment extends the exception to property held directly or indirectly by the connected person.

A further current exception is if the property held for a period of more than three years before the disposal of the share. The proposed amendment provides that the share must be held for a continuous period of more than three years immediately prior to the disposal.

In addition, the proposed amendment clarifies that a share will not be a qualifying share in the company that issued the share entered into a bare dominium transaction in respect of property acquired by the company in the period of three years.

CLAUSE 8

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

Subclause (1)(a): The proposed amendment provides that debt forgiveness between controlled foreign companies that form part of a group of companies as defined in section 1 will not result in a recoupment or taxable capital gain.

Subclause (1)(b) and (c): The proposed amendments effect textual changes.

CLAUSE 9

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

Subclause (1)(a): The proposed amendment deletes the obsolete exemption for non-profit agricultural distribution companies in subsection (1)*(c*M*)*.

Subclause (1)(b): See notes on retirement fund reform.

Subclause (1)(c): In terms of current law, the levies paid to certain bodies (such as a body corporate of a sectional title development) for the management of the collective interests of their members are exempt. The proposed amendment provides that investment income will likewise be exempt up to a limit of R50 000.

Subclause (1)(d): Currently foreign dividends are exempt if the company declaring the dividend is a foreign company with a dual listing in South Africa and an off-shore listing, and if more than 10 per cent of the shares are held by South African residents. The proposed amendment extends the exemption by deleting the requirement of 10 per cent holding by such residents.

Subclause (1)(e) and (f): Foreign dividends are exempt if, inter alia, the South African recipient holds at least 20 per cent of the equity shares and voting rights in the foreign company declaring the dividend. The problem is that dividends from foreign co-operatives are not exempt as these co-operatives do not have equity shares. Foreign dividends from co-operatives are proposed to be exempt if the recipient holds 20 per cent of the members interest and voting rights therein.

Subclause (1)(g): The proposed amendment deletes an obsolete provision which exempted certain fringe benefits arising as a result of loans given to employees to enable the employees to participate in share incentive schemes.

CLAUSE 10

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

Subclause (1)(a): Sections 12DA (deductions in respect of rolling stock) and 37B (deductions in respect of environmental expenditure) were inserted by the Revenue Laws Amendment Act, 2007 (Act No. 35 of 2007). Since these provisions now take precedence over section 11*(e)* it is proposed that they be excluded from the ambit of that provision.

Subclause (1)(b) and (c): See notes on retirement fund reform.

Subclause (1)(d): The proposed amendment deletes a non existent cross reference.

CLAUSE 11

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

Subclause (1)(a), (b) and (c): The proposed amendments delete paragraph *(d)* of subsection (2), as the requirements of this paragraph are incorporated into subsection (2) by cross reference to subsection (1), and are thus obsolete.

Subclause (1)(d): Generally, where an R and D company receives funding from another person its deduction for qualifying R and D expenditure is limited to 100 per cent and the funder can deduct 150 per cent of the funding. The proposed amendment provides that the R and D company should remain entitled to the 150 per cent deduction to the extent the funder does not qualify to deduct the funding in terms of any provision of the Income Tax Act (e.g. an exempt or foreign funder).

CLAUSE 12

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

The proposed amendment provides for the depreciation of water pipelines over a period of 20 years, if the pipelines are used to transport water used by power stations that generate electricity.

CLAUSE 13

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

A small business corporation must deduct the cost of certain assets over a period of 3 years. The assets which qualify for this accelerated depreciation are assets in respect of which a deduction would otherwise be allowed in terms of section 11(*e*). The proposed amendment allows the small business corporation to opt for this accelerated depreciation or for the deduction allowable in terms of the said sections.

CLAUSE 14

Income Tax: Amendment of section 14 of the Income Tax Act, 1962

The proposed amendment deletes obsolete provisions.

CLAUSE 15

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

Subclause (1)(a): The proposed amendment effects a formatting correction.

Subclause (1)(b): The proposed amendment updates references.

CLAUSE 16

Income Tax: Amendment of section 22 of the Income Tax Act, 1962

The proposed amendment adds a cross reference.

CLAUSE 17

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

Section 23A ring-fences rental losses claimed by lessors of movable assets including plant and machinery. The section applies when the loss is caused by specified capital allowances and the "affected asset" is let otherwise than under an operating lease.

Subclause (1)(a): At present the definition of "rental income" refers to rent derived from the letting of "movable property or any machinery or plant". The definition has proved open to interpretation in various ways because it does not state explicitly that the rental income is restricted to income from the letting of affected assets. To provide clarity it is proposed that the term "movable asset or any machinery or plant" be replaced with a reference to "any affected asset".

Paragraph *(b)* of the definition of "affected asset" was amended by section 33 of the Revenue Laws Amendment Act 35 of 2007 to include a reference to sections 12DA (deduction in respect of rolling stock) and 37B(2)*(a)* (deduction in respect of environmental expenditure). At the same time the definition of "rental income" should have been amended to refer to these provisions, but this was inadvertently not done. It is proposed that this omission be rectified.

Subclause (1)(b): It is proposed that section 23A(2) be amended to include a reference to sections 12DA and 37B(2)*(a)*. As explained in subclause *(a)*,

these references were inadvertently omitted when section 23A was amended by the Revenue Laws Amendment Act 35 of 2007.

CLAUSE 18

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

Subclause (1): Section 23D of the Income Tax Act is proposed to be amended to limit the allowances a taxpayer may claim in respect of a depreciable asset if the taxpayer leases the asset to a lessee who held the asset within a period of two years prior to commencement of the lease. This rule is extended to circumstances where the asset was held during the two year period by a connected person to the lessee.

CLAUSE 19

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

The proposed amendment provides that the deduction of pre trade expenditure in terms of section 11A is subject to section 23H, with the result that the expenditure can be deducted only upon delivery of the goods or services in respect of which the expenditure was incurred.

CLAUSE 20

Insertion of section 23K into the Income Tax Act, 1962

See Media Statement on Taxation Laws Amendment Bills, 2008: Company Restructuring Measures dated 21 February 2008.

CLAUSE 21

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

The proposed amendments remove obsolete provisions.

CLAUSE 22

Income Tax: Amendment of section 30 of the Income Tax Act, 1962

The proposed amendments delete the proviso to subsection (3)*(b)*(i) as obsolete and remove the word 'similar' in subsection (3)*(b)*(iii)*(aa)*, thereby allowing disposal to any PBO.

CLAUSE 23

Income Tax: Amendment of section 41 of the Income Tax Act, 1962

Subclause (1)(a): The proposed amendment effects a textual correction.

Subclause (1)(b), (c) and (d): The proposed amendments amend the definition of "group of companies" so as to allow foreign companies that are effectively managed in SA to qualify under the group of companies definition if the company is registered as an external company.

Subclause (1)(e): The definition of 'qualifying interest' in section 41 is applicable only in the context of sections 42 and 44, with modifications required in respect of each of those sections. Thus the definition is proposed to be moved to those sections and modified as required. The proposed amendment facilitates this by deleting the definition in section 41.

CLAUSE 24

Income Tax: Amendment of section 42 of the Income Tax Act, 1962

Subclause (1)(a): The proposed amendment effects a textual correction.

Subclause (1)(b): Section 42 currently allows for a tax-free rollover in the case of an asset transferred in terms of an asset-for-share transaction if, inter alia, the transferor will be engaged on a full-time basis in the business of the transferee company of rendering a service. The proposed amendment provides that the transferor may be engaged in the business of a controlled group company, in relation to the transferor, of rendering a service.

Subclause (1)(c): The proposed amendment effects textual changes to the definition of equity share.

Subclause (1)(d): The current definition of 'qualifying interest' in section 42 refers to the same definition in section 41, which is proposed to be deleted. The proposed amendment thus deletes the reference and incorporates the relevant provisions of the proposed to be deleted definition directly into the definition in section 42. In addition, the proposed amendment provides that a qualifying interest includes a participatory interest in a portfolio of a South African collective investment scheme in securities or in a company that will become such a collective investment scheme within 12 months of the transaction.

Subclause (1)(e): The proposed amendment corrects a textual error.

Subclause (1)(f): For purposes of an asset-for-share transaction, a taxpayer will hold a qualifying interest in a company if, inter alia—

1. The taxpayer holds 20 per cent of the shares in the company as a result of the transaction;
2. the company forms part of the same group of companies as the taxpayer and the taxpayer holds at least one share in the company as a result of the transaction; or
3. the taxpayer renders services to the company.

The proposed amendment provides that the rollovers allowed in terms of an asset-for-share transaction will be unwound only if the person held a qualifying interest referred to in 1 and 2 and then ceases to hold that interest or to render the services within a period of 18 months after the transaction.

CLAUSE 25

Income Tax: Amendment of section 44 of the Income Tax Act, 1962

Subclause (1)(a): The current definition of 'qualifying interest' in section 44 refers to the same definition in section 41, which is proposed to be deleted.

The proposed amendment thus deletes the reference and incorporates the relevant provisions of the proposed to be deleted definition directly into the definition in section 44. In addition, the proposed amendment provides that a qualifying interest includes a participatory interest in a portfolio of a South African collective investment scheme or in a company that will become such a collective investment scheme within 12 months of the transaction.

Subclause (1)(b): The proposed amendment provides that a tax free transfer of assets will not be allowed in terms of an amalgamation transaction if the transferor company is transferring the assets to a collective investment scheme. By implication, transfers from a South African collective investment scheme in securities to another South African collective investment scheme in securities will be eligible for the relief if the other requirements for an amalgamation transaction are fulfilled.

CLAUSE 26

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

See Media Statement on Taxation Laws Amendment Bills, 2008: Company Restructuring Measures dated 21 February 2008.

CLAUSE 27

Income Tax: Amendment of section 46 of the Income Tax Act, 1962

The proposed amendment deletes a definition that was unnecessarily inserted in 2007.

CLAUSE 28

Income Tax: Amendment of section 47 of the Income Tax Act, 1962

Subclause (1)(a): The proposed amendment provides that if a liquidating company makes a capital distribution to the holding company, the part disposal rules of paragraph 76 and 76A must be disregarded.

Subclause (1)(b): The period within which a liquidating company must take steps to liquidate, wind up or deregister after a liquidation distribution is proposed to be extended from six months to 18 months.

CLAUSE 29

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

Subclauses (1)(a): The proposed amendment provides that the exemption from STC of group dividends will not apply if the dividend is declared by a controlling group company to a controlled group company.

Subclause (1)(c), (d) and (e): The proposed amendment deletes obsolete provisions relating to long-term insurance companies with effect from 1 January 2010.

CLAUSE 30

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

In terms of section 64C, certain amounts distributed to a shareholder, or a connected person to the shareholder, are deemed to be a dividend and thus subject to STC. Currently, an exemption applies if the shareholder forms part of the same group of companies as the company deemed to declare the dividend and if the shareholder has taken the dividend into account when determining its profits. The proposed amendment provides that the exemption will apply—

- in the case of a distribution to the shareholder, if the shareholder and the company are part of the same group of companies;
- in the case of a distribution to the connected person, if the company, the shareholder and the connected person form part of the same group of companies; and
- in either case, the dividend has been taken into account as profit by the shareholder or connected person.

CLAUSE 31

Income Tax: Amendment of paragraph 1 of the Second Schedule to the Income Tax Act, 58 of 1962

See notes on retirement fund reform.

CLAUSE 32

Income Tax: Amendment of paragraph 2 of the Second Schedule to the Income Tax Act, 58 of 1962

See notes on retirement fund reform.

CLAUSE 33

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

See notes on retirement fund reform.

CLAUSE 34

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

See notes on retirement fund reform.

CLAUSE 35

Income Tax: Amendment of paragraph 3 of the Second Schedule to the Income Tax Act, 1962

See notes on retirement fund reform.

CLAUSE 36

Income Tax: Amendment of paragraph 4 of the Second Schedule to the Income Tax Act, 1962

See notes on retirement fund reform.

CLAUSE 37

Income Tax: Amendment of paragraph 6 of the Second Schedule to the Income Tax Act, 1962

See notes on retirement fund reform.

CLAUSE 38

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

Currently, if a SITE taxpayer earns remuneration for a part year, the tax payable is calculated as if he or she worked a full year. The proposed amendment provides that the taxpayer will be entitled to have his employee's tax calculated in respect of the actual remuneration paid to him.

CLAUSE 39

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

The proposed amendment provides that a retirement fund lump sum benefit is disregarded for purposes of estimating provisional tax payments.

CLAUSE 40

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

Subclause (1)(a): The proposed amendment corrects a cross reference.

Subclause (1)(b): Currently, accommodation by an employee to an employee away from the employee's usual place of residence is not treated as a taxable fringe benefit for the first 12 months from the date of arrival of the employee.

This does not apply if the employee was present in the Republic for a period exceeding 30 days during the preceding period of 12 months. The proposed amendment extends the 12 month period to 2 years but places a limit on the tax free portion of the fringe benefit. In terms of this limit the provision of the accommodation will be tax free only to the extent the value thereof does not exceed R25 000 per month. The proposed amendment also provides that the accommodation will not be a taxable benefit if the employee is present in the Republic for less than 90 days in the relevant year.

CLAUSE 41

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

The proposed amendments delete duplicated definitions.

CLAUSE 42

Income Tax: Amendment of paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962

Subclauses (1)(a),(b) and (c): See Media Statement on Taxation Laws Amendment Bills, 2008: Company Restructuring Measures dated 21 February 2008.

Subclauses (1)(d) and (e): Currently, where a creditor discharges a debt due by a debtor, the debtor will be treated as having proceeds equal to the amount of the discharge. This does not apply if the debtor and creditor are part of a group or the debtor is liquidating, unless the transaction is part of a scheme to avoid tax imposed by this paragraph. The proposed amendment extends the anti-avoidance to apply to transactions that are part of a scheme to avoid tax imposed by the Income Tax Act, 1962.

Subclause (1)(f): Currently, the abovementioned exception for a liquidating company applies if the liquidation is proceeded with the liquidation within 6 months of the discharge. This period is extended to 18 months or such further period as SARS may allow.

CLAUSE 43

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

The proposed amendment to paragraph 20(1)*(h)*(iii)*(aa)* is of a textual nature. Paragraph 20(1)*(h)*(iii)*(bb)* establishes the base cost of the shares held by one controlled foreign company (CFC) in another CFC. This is necessary in order to determine the capital gain or loss attributable to a resident under section 9D when the one CFC disposes of its shares in the other CFC. The problem with the present wording is best illustrated with a simple example.

Example

Facts. Resident Company holds 80 per cent of the shares in CFC1 and CFC1 holds 80 per cent of the shares in CFC2. All three companies have February year ends. CFC1 acquired the shares in CFC2 on 1 March 2006 at a cost of R1 000. During the year ending 28 February 2007 CFC2 earned net income of R100. Of this amount R64 (80% x 80% x R100) was attributed to Resident Company under section 9D. On 28 February 2007 CFC2 declared a dividend of R50 to its shareholders out of the net income of R100. CFC1's share of the dividend was 80% x R50 = R40.

On 1 March 2008 CFC1 sold all its shares in CFC2 for R1 100.

Result. As paragraph 20(1)*(h)*(iii)*(bb)* reads at present, it could be argued that CFC1 must determine the base cost of its shares in CFC2 as follows;

	R
Cost of shares	1 000
Amount included in net income of Resident Company	64
Less: Exempt dividend	(40)
Base cost of shares in CFC2	1 024

The capital gain attributable to Resident Company would then be R1100 – R1024 = R76 x 80% = R60,80.

However, it is clear that it is not the amount of R64 that must be added to the base cost of the CFC2 shares held by CFC1, but rather R100 x 80% = R80. This is because the capital gain in CFC1 will be multiplied by 80% when determining the amount to be attributed to Resident Company. Since the amount added to base cost forms part of the capital gain, there is a double reduction.

Under the proposed amendment the base cost of CFC1 in respect of its CFC2 shares should be determined as follows:

	R
Cost of shares	1 000
Amount included in net income of CFC1	80
Less: Exempt dividend	(40)
Base cost of shares in CFC2	1 040

The capital gain will be R1100 – R1040 = R60. Of this amount R60 x 80% = R48 will be attributed to Resident Company. The difference in the capital gains under the proposed and current law is as follows:

	R
Capital gain under present law	60,80
Capital gain as it should be	48,00
Difference	12,80

The difference of R12,80 can alternatively be proven as follows:

	R
Base cost that should be attributed to Resident Company (R80 x 80%)	64,00
Less: Present base cost attributed to Resident Company (R64 x 80%)	(51,20)
Difference	12,80

CLAUSE 44

Income Tax: Amendment of Paragraph 42 of the Eighth Schedule to the Income Tax Act, 1962

Current situation: If a person holds a financial instrument and disposes of it and, within a period of 45 days preceding or following the disposal, the person acquires an identical financial instrument, the person is deemed to have acquired the instrument on the date on which the share disposed of was acquired.

The proposed amendment deletes this rule.

CLAUSE 45

Income Tax: Amendment of Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962

Subclauses (1)(a): The proposed amendment corrects a grammatical error.

Subclause (1)(b): Currently, where a person holds 20 per cent of the shares in a foreign company, any gain or loss from the disposal of the shares is disregarded. The proposed amendment provides that the person must hold 20 per cent of the voting rights in the foreign company in addition to 20 per cent of the shares therein.

Subclauses (1)(c), (d), (e) and (f): See Media Statement on Taxation Laws Amendment Bills, 2008: Company Restructuring Measures dated 21 February 2008.

Subclause (1)(g): The proposed amendment adds a cross reference.

CLAUSE 46

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

The proposed amendment corrects a textual error.

CLAUSE 47

Income Tax: Amendment of paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962

The proposed amendment clarifies that with effect from 1 October 2001 the issue of capitalisation shares will not be a distribution as defined in this paragraph.

CLAUSE 48

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

The purpose of the proposed amendment is to ensure that capital distributions received or accrued on or after 1 October 2007 are treated as proceeds when a part-disposal occurs under paragraph 76A.

CLAUSE 49

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

Subclause (1)(a): The proposed amendment effects a textual correction.

Subclause (1)(b): Currently, a capital distribution by a company to a shareholder is deemed to be a part-disposal of the relevant share and consequently a capital gain or capital loss may arise on the disposal. The proposed amendment excludes the distribution of a share in terms of an unbundling transaction from this part disposal rule.

Subclause (1)(c): Paragraph 76A was introduced into the Eighth Schedule by the Revenue Laws Amendment Act of 2007. It introduced a new part-disposal approach to dealing with capital distributions with effect from 1 October 2007. Before this date capital distributions were only accounted for as proceeds when the shares were disposed of (a deferral approach). In order to deal with

capital distributions that had accumulated between 1 October 2001 and 30 September 2007 a special transitional measure was introduced. For shareholders not using the weighted-average method, a part-disposal will be triggered on 1 July 2011 (assuming that the shares have not been disposed of by that date). For shareholders using the weighted-average method, paragraph 76A(2) provides that if the weighted-average base cost of the shares is negative on 31 December 2010, the negative amount is deemed to be a capital gain on 1 July 2011, and the base cost on 31 December 2011 will be reset to nil.

It is proposed that the date of 31 December 2010 be changed to "at the end of 30 June 2011". In this way the dates will be brought in line with those applicable to persons not adopting weighted average. The reference to "at the end of" will also provide clarity as to exactly when the capital gain must be determined and the weighted-average base cost be reset to nil.

CLAUSE 50

Income Tax: Amendment of paragraph 80 of the Eighth Schedule to the Income Tax Act, 1962

At present paragraph 80(3)*(a)*(ii) appears to read as an alternative to paragraph 80(3)*(a)*(i). It is, however, intended to expand the scope of paragraph 30(3)*(a)*(i). The proposed amendment clarifies this intention.

CLAUSE 51

Income Tax: Amendment of paragraph 4 of Part I of the Ninth Schedule to the Income Tax Act, 1962

The proposed amendments are consequential to the repeal of the Further Education and Training Act, 1998, which has been replaced by the Further Education and Training Colleges Act, 2006. The latter Act repealed the definition of 'public further education and training institution' and replaced this with a definition of 'public college'. In addition, the proposed amendment expands the provision to refer to a 'private college' as so defined. The result is that further education and training provided by public and private colleges may

qualify as a public benefit activity for purposes of approval as a public benefit organisation and for purposes of receiving tax deductible donations.

CLAUSE 52

Income Tax: Amendment of paragraph 3 of Part II of the Ninth Schedule to the Income Tax Act, 1962

See clause 51.

CLAUSE 53

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

The proposed amendment effects a formatting correction to the text.

CLAUSE 54

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

CLAUSE 55

Customs and Excise: Continuation of amendments to the Customs and Excise Act, 1964

CLAUSE 56

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

The proposed amendment is textual in nature.

CLAUSE 57

Collective Investment Schemes: Amendment of section 99 of the Collective Investment Schemes Control Act, 2002

The proposed amendment corrects a textual error.

CLAUSE 58

Income Tax: Amendment of Schedule 1 to the Revenue Laws Amendment Act, 2006

The proposed amendments pertain to the special provisions for the 2010 FIFA World Cup South Africa.

CLAUSE 59

Diamond Export Levy: Amendment of section 11 of the Diamond Export Levy Act, 2007

The proposed amendment corrects a textual error.

CLAUSE 60

Diamond Export Levy: Amendment of section 14 of the Diamond Export Levy Act, 2007

The proposed amendment provides for the exemption of a producer after taking into account specified amounts of gross sales.

CLAUSE 61

Securities Transfer Tax: Amendment of section 8 of the Securities Transfer Tax Act, 2007

The proposed amendment effects a textual correction.

CLAUSE 62

Income Tax: Amendment of section 52 of the Revenue Laws Amendment Act, 2007

The proposed amendment effects textual changes to the effective dates provided for in section 52.

CLAUSE 63

Income Tax: Amendment of section 54 of the Revenue Laws Amendment Act, 2007

Section 43 was repealed during 2007 as the same roll over relief is provided by section 42. Therefore persons who qualified in terms of section 43 should likewise qualify for the roll over relief provided by section 42. However, section 42 requires the taxpayer to elect that section 42 applies (not required for section 43). The proposed amendment provides that a transaction that would have qualified under section 43 will now qualify under section 42 despite there being no election.

CLAUSE 64

Short title and commencement:

This clause provides for the name of the Act and its commencement date.