NATIONAL
TREASURY

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

REVENUE LAWS AMENDMENT BILL, 2006

[W.P.2 – '06]

DRAFT

CONTENTS

Clause 10	Section 8C
Clause 11	Section 9
Clause 12	Section 9D
Clause 13	Section 10
Clause 14	Section 11
Clause 15	Section 11B
Clause 16	Section 11D
Clause 17	Section 12E
Clause 18	Section 15
Clause 19	Section 18A
Clause 20	Section 23
Clause 21	Section 23B
Clause 22	Section 24J
Clause 23	Section 26B
Clause 24	Section 29
Clause 25	Section 29A
Clause 26	Section 30
Clause 27	Section 30A
Clause 28	Section 36
Clause 29	Section 37A
Clause 30	Section 41
Clause 31	Section 42
Clause 32	Section 43
Clause 33	Section 47
Clause 34	Section 64B
Clause 35	Section 76A
Clause 36	Section 79
Clause 37	Part IIA Chapter III
Clause 38	Part IIB Chapter III
Clause 39	Section 88
Clause 40	Section 102
Clause 41	Section 103

Second Schedule to the Income Tax Act, 1962

Clause 42	Paragraph 5
Clause 43	Paragraph 6

Fourth Schedule to the Income Tax Act, 1962

Clause 44	Paragraph 1
Clause 45	Paragraph 2
Clause 46	Paragraph 11

Eighth Schedule to the Income Tax Act, 1962

Clause 47	Paragraph 20

Clause 48	Paragraph 24
Clause 49	Paragraph 29
Clause 50	Paragraph 30
Clause 51	Paragraph 31
Clause 52	Paragraph 40
Clause 53	Paragraph 43
Clause 54	Paragraph 62
Clause 55	Paragraph 63A
Clause 56	Paragraph 64
Clause 57	Paragraph 64A
Clause 58	Paragraph 65B
Clause 59	Paragraph 67
Clause 60	Paragraph 80
Clause 61	Paragraph 92

Ninth Schedule to the Income Tax Act, 1962

Clause 62	Part I
Clause 63	Part II – Paragraph 4
Clause 64	Part II – Paragraph 5

Tenth Schedule to the Income Tax Act, 1962

Clause 65	10TH Schedule

Customs and Excise Act, 1964

Clause 66	Section 1
Clause 67	Section 3B
Clause 68	Section 4
Clause 69	Section 6
Clause 70	Section 7
Clause 71	Section 8
Clause 72	Section 11
Clause 73	Section 11A
Clause 74	Section 18
Clause 75	Section 21
Clause 76	Section 21A
Clause 77	Section 31
Clause 78	Section 37B
Clause 79	Section 38
Clause 80	Section 41
Clause 81	Section 44
Clause 82	Section 55
Clause 83	Section 56
Clause 84	Section 56A
Clause 85	Section 57
Clause 86	Section 64H
Clause 87	Section 64IJ

Clause 88	Section 64K
Clause 89	Section 64L
Clause 90	Section 64M
Clause 91	Section 64N
Clause 92	Section 75
Clause 93	Section 76A
Clause 94	Section 80
Clause 95	Section 96
Clause 96	Section 96A
Clause 97	Section 97
Clause 98	Section 101A
Clause 99	Section 105
Clause 100	Section 107
Clause 101	Section 114
Clause 102	Section 120

Stamp Duties Act, 1968

Clause 103	Section 4

Finance and Financial Adjustments Act, 1977

Clause 104	Section 9

Value-Added Tax Act, 1991

Clause 105	Section 1
Clause 106	Section 2
Clause 107	Section 6
Clause 108	Section 8
Clause 109	Section 10
Clause 110	Section 11
Clause 111	Section 12
Clause 112	Section 15
Clause 113	Section 16
Clause 114	Section 17
Clause 115	Section 18
Clause 116	Section 20
Clause 117	Section 22
Clause 118	Section 31
Clause 119	Section 41
Clause 120	Section 41A
Clause 121	Section 41B
Clause 122	Section 44

Uncertified Securities Tax Act, 1998

Clause 123	Section 5A
Clause 124	Section 7

Clause 125	Section 12

Revenue Laws Amendments Act, 2001

Clause 126	Section 42

Unemployment Insurance Act, 2001

Clause 127	Section 3
Clause 128	Section 14

Revenue Laws Amendment Act, 2003

Clause 129	Section 145

Second Revenue Laws Amendment Act, 2004

Clause 130	Section 42

Taxation Laws Amendment Act, 2005

Clause 131	Section 26

Taxation Laws Second Amendment Act, 2005

Clause 132	Section 12

Revenue Laws Second Amendment Act, 2005

Clause 133	Section 22

Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

Clause 134	Index
Clause 135	Section 11
Clause 136	Section 23
Clause 137	Section 30
Clause 138	Section 54
Clause 139	Section 61
Clause 140	Schedule 1

Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

Clause 141	Section 1
Clause 142	Section 6

Short title

Clause 143

DRAFT

EXPLANATORY MEMORANDUM ON THE REVENUE LAWS AMENDMENT BILL, 2006

INTRODUCTION

The Revenue Laws Amendment Bill, 2006, introduces amendments to the Transfer Duty Act, 1949, the Estate Duty Act, 1955, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, the Finance and Financial Adjustments Act, 1977, the Value-Added Tax Act, 1991, the Uncertificated Securities Tax Act, 1998, the Revenue Laws Amendment Act, 2001, the Unemployment Insurance Act, 2001, the Revenue Laws Amendment Act, 2003, the Second Revenue Laws Amendment Act, 2004, the Taxation Laws Amendment Act, 2005, the Taxation Laws Second Amendment Act, 2005, the Revenue Laws Second Amendment Act, 2005, the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006,

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INCENTIVES FOR SCIENTIFIC AND TECHNOLOGICAL RESEARCH & DEVELOPMENT ("R&D")

Current law

Section 11B of the Income Tax Act allows a 100 per cent deduction for operating R&D expenditure undertaken directly by the taxpayer (or by way of payment to any other person undertaken on behalf of the taxpayer). Expenditure incurred for the purpose of registering, extending or renewing any invention, patent, design, copyright or other intangible property is also fully deductible (even if that expenditure is otherwise of a capital nature).

In terms of capital expenditure, a depreciation allowance exists for the cost of any building, machinery or plant, utensils and articles used for the purpose of R&D. This allowance contains a depreciation schedule of 40 per cent cost in the 1st year that the asset is brought to use, followed by 20 per cent depreciation for each of the following 3 years.

Reasons for change

Innovation, research and technological development are key factors for improved productivity (leading to new or improved products, processes or services). This enhanced productivity in turn leads to increased economic growth and international competitiveness. However, R&D is costly, involving high levels of technical risk. Given the high entry costs (and the indirect positive externalities for countries as whole), Governments sometimes provide extra support for local

R&D via direct subsidies as well as through tax incentives (i.e. which operate as indirect subsidies). While South Africa offers a variety of direct subsidies for R&D, the South African tax regime for R&D does not provide substantial incentives. South Africa accordingly needs an improved set of R&D tax incentives to ensure that local R&D is not at a global competitive disadvantage.

Proposal

A. Basic regime

The new regime for R&D contains two sets of incentives. Firstly, operating expenses will now be deductible at a 150 per cent level (section 11D(1)(a)). Secondly, the depreciation allowance for capital R&D will shift from the current 40:20:20:20 schedule to a new 50:30:20 schedule (section 11D(2)). Registration expenses incurred in obtaining or renewing intellectual property (e.g. patents and designs) will remain fully deductible as before. (Note: The R&D incentives described herein are elective; taxpayers can choose to rely on other tax rules if desired (section 11D(6)).

In order for R&D expenditure to fall within this enhanced regime, the R&D activities must be undertaken within South Africa (section 11D(1)(a)). In addition, the R&D must be performed for purposes of—

(i) The discovery of novel, practical and non-obvious information of a scientific or technological nature; or

(ii) The creation of any invention, patent, copyright or other similar property of a scientific or technological nature.

In other words, the R&D must be directed toward advancing scientific or technological knowledge (as opposed to routine learning associated with ongoing processes). Other forms of knowledge enhancement do not trigger incentives. For further clarity other forms of knowledge falling outside the incentive have been specified and relate to: (a) the prospecting for minerals or exploration for oil and gas, (b) the management or enhancement of internal business processes, (c) trade mark creation, (d) social science and humanities, and (e) market research, sales or marketing promotion (section 11D(4)).

B. Part R&D Expenditure

In the case of expenditure partly for R&D purposes and partly for other purposes, or in the case of partial use of an asset for such purposes, the deduction of 150% of expenditure and/or the depreciation allowance, as the case may be, will be allowed to the extent that such expenditure or asset is used for R&D purposes. Buildings (or parts thereof) will not be viewed as committed to R&D unless regularly used for R&D purposes and specifically equipped for R&D use (section 11D(3)).

Example 1:
Facts.

Cost of the building is R1 000

Result.

R&D Building Use	50%	30%	20%
100% R&D use	R500 deduction	R300 deduction	R200 deduction
25% R&D use	R125 deduction	R75 deduction	R50 deduction

Example 2:
Facts.

Total expenditure (other than expenditure in respect of a capital asset) is R1 000

R&D Expenditure	50%	30%	20%
	R750 deduction	R450 deduction	R300 deduction

C. No doubling of the 150 per cent deduction

Special rules are required to prevent the artificial doubling of the 150 per cent deduction in terms of the same activity. If a taxpayer hires another business to perform R&D on the taxpayer's behalf, only the party that is ultimately vested with control over that information obtains the benefit of the 150 per cent deduction (section 11D(5)).

Example 2:

Facts
Company hires Independent Contracting Business to conduct qualifying R&D activities on Company's behalf. Company pays R 1000 for the activity with Company receiving control over that R&D.

Result
Only Company is eligible for the 150% deduction on the R1 000 expenditure. Independent Contracting Business is not eligible for the 150% deduction because Independent Contracting Business lacks the requisite control over the information.

D. Government grants

The 150 per cent deduction does not fully apply to R&D projects funded by Government grants. If a Government grant is received by the taxpayer to fund the R&D expenditure incurred, the 150% is allowed only to the extent that the expenditure exceeds twice the amount of the Government grant (section 11D(7)). The net result is that the 150 per cent deduction does not apply in the case of 50/50 matching grants.

Example 3:

Facts.
Taxpayer receives a government grant of R600. Taxpayer spends the R600 grant and an additional R1 400 for qualifying R&D activities.

Result.

Taxpayer is eligible for the 150% deduction only for R800 of the R&D expenditure. The other R1 200 falls outside the 150% regime (R600 x 2 = R1 200).

E. Reporting requirements

Taxpayers claiming the 150 per cent R&D deduction or the 50:30:30 R&D depreciation schedule must submit information about the R&D project to the Minister of Science and Technology (section 11D(8)). The Minister of Science and Technology will annually report to Parliament the number and type of R&D activities that qualified for the R&D incentives (section 11D(9)). The goal of this information reporting requirement is to measure the success of the R&D incentives proposed.

F. Effective Dates

The new R&D regime under section 11D will come into effect in respect of expenditure incurred on or after 2 November 2006. The old R&D regime under section 11B will terminate at the same time, except that R&D buildings acquired before the effective date will continue utilising the 40:20:20:20 depreciation schedule (Section 11B(6)).

INCENTIVES FOR EMPLOYEE SCHOLARSHIPS AND BURSARIES

Current Law

Bona fide scholarships and bursaries granted to an employee to study at a recognised educational or research institution are exempt from income tax in the employee's hands (section 10(1)*(q)*). Taxation arises only if the Commissioner views the grant as a payment in lieu of salary (i.e., salary sacrifice). If an employer grants a *bona fide* scholarship or bursary to an employee's relative, section 10(1)*(q)* provides limited relief to relatives of low income employees.

Current law also contains an anti-avoidance charge designed to dissuade employers from providing scholarships or bursaries as a form of salary sacrifice. Section 23*(j)* accordingly makes these salary sacrifice payments non-deductible for employers.

Reasons for change

Salary sacrifice as a component of the exemption creates unnecessary difficulties in application. While justifiable as a matter of legal theory, this distinction makes little economic sense in light of the skills shortage within South Africa.

Proposal

To simplify matters, the proposed amendment provides that all *bona fide* scholarships and bursaries for employees will be tax-exempt regardless of whether or not elements of a salary sacrifice are present. Similarly, the denial of employer deductions for scholarship and bursary payments acting as a salary sacrifice will be removed (i.e. section 23(j) will be deleted).

Instead, *bona fide* scholarships and bursaries to an employee or relative will be tax-exempt as long as the employee or relative agrees to repay the employer if the employee fails to fulfil his or her scholarship or bursary obligation. This repayment clause provides an incentive for employees to take their scholarship or bursary commitments seriously. However, the employee need not repay the employer if the failure directly results from death, ill-health, or injury (see also section 12H(5)*(b)* allowing comparable relief in terms of incomplete learnerships).

Effective Dates

This proposal is deemed to come into operation on 1 January 2007 in respect of any *bona fide* scholarship or bursary granted on or after that date.

RELIEF FOR SMALL PERSONAL SERVICE ENTITIES

Current Law

The personal service company and personal service trust definitions were introduced into tax legislation with effect from 1 April 2000 (hereinafter referred to as personal service entities (or "PSEs"). These definitions and related amendments seek to discourage employees from disguising their employer/employee relationships by offering their services through a company or trust. Entities falling within these definitions trigger:

(i) an obligation on the payer to withhold employees tax at a rate of 34 per cent on all payments to the payee PSE; and

(ii) a denial of tax deductions for the PSE, except for salaries.

Reasons for change

Government was approached by various industry representatives about the cash-flow hardships of the PSE regime imposed on small businesses. The main concern is the overly broad anti-avoidance aspects of the PSE regime that fail to distinguish between avoidance mechanisms versus common legitimate business practices.

Proposal

A. Narrowing the scope of the PSE regime

Three amendments are proposed to limit the scope of these PSE definitions. The goal is to eliminate the automatic triggers for PSE treatment if the tax avoidance impact of those triggers can only be evaluated in light of the overall facts and circumstances.

Firstly, if a client controls or supervises how and when the work is performed, the entity providing the service automatically qualifies as a PSE under current law. In reality, however, many clients control or supervise work performed by the entity on a limited basis for quality control purposes or to avoid major disruptions of the client's business. This control or supervision does not necessarily constitute an employer/employee relationship. The proposed amendment accordingly limits the PSE regime to situations where the client controls or supervises how the work is performed but only if that work must be performed at the client's premises (paragraph 1(b) of the definitions of "Personal Service Company" and "Personal Service Trust" within the Fourth Schedule). The main area of avoidance involves employees reporting to work at the employer's premises (and under their full supervision) while artificially claiming independent status.

Secondly, if a client makes regular payments to an entity providing a service, current law requires that the entity automatically qualify as a PSE. In reality, regular payments are a frequent feature of legitimate ongoing business relationships, not necessarily an automatic feature of an employer/employee relationship. It is accordingly proposed that this requirement be deleted (paragraph 1(c) of the definitions of "Personal Service Company" and "Personal Service Trust" within the Fourth Schedule).

The last issue involves the PSE safe harbour (i.e. the escape hatch from the PSE definition despite the existence of other factors). Under current law, an entity escapes PSE status regardless of any other facts and circumstances if that entity has four or more unconnected employees who are engaged in rendering services to clients. Following a review by National Treasury a more appropriate number of employees is three or more. The proposed amendment accordingly reduces the minimum employee safe harbour from four employees to three (words following paragraph 1(d) of the definitions of "Personal Service Company" and "Personal Service Trust" within the Fourth Schedule).

B. Relaxation of client withholding

Under current law, clients bear the onus of proving that payments to an entity do not qualify as a payment to a PSE. Failure to treat an entity as a PSE (i.e. failure to withhold 34 per cent of the payment) when PSE treatment is actually required triggers a potential liability for clients (in addition to the entity). Many clients accordingly lean in favour of performing Fourth Schedule withholding when making payments to small entities to avoid tax risk.

In order to alleviate this tendency of over-withholding for risk adverse clients, the onus of proof on the client is relaxed. A client can now rely on an annual affidavit or solemn declaration issued by the small entity that it is not a PSE as long as the client makes this reliance in good faith(paragraph 2(1A) of the Fourth Schedule). The client will then be absolved from the failure to withhold (even if it later comes to light that the small entity was (in fact) a PSE).

C. Taxation of net profits

The current rules generally prohibit PSE deductions for business costs incurred, much like an actual employee which similarly eligible for only a limited number of deductions (see section 23(m)). The only item of expense currently deductible is salaries for employees on a PSE payroll. This limitation unfairly prevents PSEs from deducting actual business costs incurred. The proposed changes accordingly allows deductions for operating expenses in respect of business premises, such as repairs and insurance in respect of assets, as well as related salary payments, such as pension fund and medical scheme contributions (section 23(k)).

With the admission of new allowable deductions (as outlined in the paragraph above), imposition of a flat 34 per cent level of withholding can now far exceed the actual net liability owed. This flat 34 per cent level of withholding may impose severe cash-flow constraints on small businesses (even if refundable at a later date). The new amendment provides relief for this over-withholding by allowing the Commissioner to issue a directive for a lower rate that more closely matches the final tax liability (paragraph 11 of the Fourth Schedule).

RELIEF FOR SMALL BUSINESS CO-OPERATIVES

Current Law

Co-operatives are taxed at the corporate tax rate of 29% but are allowed special deductions on certain forms of income distributed to their members. However, co-operatives are not eligible for small businesses tax incentives provided in section 12E (as they do not technically qualify as “small business corporations” in terms of that definition).

Reasons for change

Small co-operatives bear a heavier tax burden than their company and close corporation counterparts due to the lack of availability of small business relief. This result is an undesirable situation for small entrepreneurs as to their preferred mode of business. It was also mentioned in the 2006 Budget Review that the tax dispensation relating to co-operatives will be adjusted in light of the new Co-operatives Act of 2005.

Proposal

The proposed changes are limited solely to the small business rules of section 12E. This lack of overall change is largely due to the fact that the Co-operatives Act of 2005 is not yet operative, and the fact that the National Treasury is still gathering information and entering into discussions on the business operation of co-operatives. Moreover, even when the Co-operatives Act of 2005 comes into effect, it will only apply after a three-year transition period.

A. Small business relief

It is proposed that the definition of “small business corporation” be changed by the specific inclusion of co-operatives (section 12(4)(a)). With this inclusion, co-operatives will fully enjoy the small business tax benefits provided in section 12E.

B. Membership in consumer co-operatives and friendly societies

Section 12E disqualifies small corporations from incentives otherwise granted therein if a shareholder (or member) of such small business corporation is also a shareholder (or member) of another corporation. This disqualification (used to avoid business income splitting) is subject to certain exceptions. These exceptions relate to holdings in non-business entities, such as a body corporate established to provide housing for its members in a townhouse complex.

Along these lines, two other forms of non-business shareholdings or membership will now be permitted without triggering disqualification of small business relief for other share or membership holdings (despite the technical holding of shares of membership interests). Firstly, natural persons will be allowed to act as members of non-business co-operatives without nullifying small business relief for otherwise qualifying small business corporations (section 12E(4)(a)(ii)(*dd*)). These non-business co-operatives include consumer buy-aids, social cooperatives (such as child nursery facilities) and funeral societies. Secondly, natural persons will be allowed to act as members of friendly societies (section 12E(4)(a)(ii)(*ee*)).

Effective Date

The effective date of these amendments would be the date of the promulgation of the Revenue Laws Amendment Bill 2006.

INCENTIVES FOR OIL AND GAS EXPLORATION AND PRODUCTION

Current Law

South Africa's present investment regime for oil and gas exploration and production was established in terms of prospecting lease OP26 (granted in 1965). The OP26 agreement contains fiscal stabilization clauses that freeze the Income Tax as of 1977. The net result is that oil and gas companies have a choice in terms of each area of the tax acts – choose the 1977 regime or the current regime (whichever the oil and gas company views as more favourable). This fiscal stabilisation regime acts as an incentive to invest in "high risk" exploration activities that require substantial upfront capital investment.

Reasons for change

While South Africa is rich in many hard minerals, South Africa has not shared the same success in oil and gas reserves. Exploration over the past thirty years has revealed only small deposits offshore in the South and in the West (all of which are small in comparison to both global and regional standards). However, a few companies remain interested in the region, especially given recent high oil prices.

At issue is the pending termination of the OP 26 regime, which is expected to expire as of 30 June 2007. Uncertainty around the renewal of the fiscal provisions contained in OP 26 led to certain companies postponing any further investment until this uncertainty is resolved. Given the high risks and historically low rewards, few active companies in the area would remain interested if the key features of the OP 26 regime are not renewed.

Proposals

Government intends to formalise key aspects of OP 26 into explicit law, thereby creating transparency and certainty for oil and gas exploration/production. The new regime will be easier for SARS enforcement and taxpayer compliance because both sides will have improved access to the rules of the game. Core aspects of the regime will be renewed; lesser aspects will fall away.

A. New tenth schedule override

The proposed amendments create a new Tenth Schedule. This Tenth Schedule creates a special override for oil and gas companies. Oil and gas exploration and production will essentially be subject to the provisions of the Income Tax Act, subject to the provisions of the Tenth Schedule (all of which have overriding effect)(section 26B).

B. List of tenth schedule provisions

1. Coverage (paragraph 1)

The Tenth Schedule incentives apply only to oil and gas companies. In order to qualify for oil and gas company treatment, the company at issue must satisfy a two prong test. First, the company must either hold an oil and gas right listed within the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) or engage in exploration or production with respect to those rights. The companies can either be domestic or foreign residents. Second, the oil and gas company cannot be engaged in any other form of trade (but can hold investments). For instance, foreign oil and gas operations would push a company outside the eligibility requirements of the regime because those foreign operations would constitute impermissible oil and gas company trade.

The Tenth Schedule is mainly directed toward oil and gas income. Oil and gas income means any receipts or accruals derived in respect of an oil and gas right listed within the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002). These receipts and accruals can be derived from the sale of oil and gas commodities as well as the leasing or disposal of oil and gas rights.

2. Income tax rates (paragraph 2)

This paragraph represents the prime fiscal stability feature. The rate of tax on South African oil and gas companies will not exceed the general 29% company rate, notwithstanding changes to other parts of the Income Tax Act. The rate for South African branches of foreign companies may not exceed 32,8%.

3. Dividend tax rates (paragraph 3)

As a general rule, distributions of oil and gas profits of an oil and gas company cannot be subject to a rate in excess of 5 per cent if those profits are subject to tax (paragraph 3(1)). Hence, the current Secondary Tax on Companies is limited to 5 per cent. This general rule is subject to two deviations.

First, any oil and gas company will receive the benefit of a zero per cent maximum rate if that oil and gas company's sole oil and gas rights stem from previously existing OP 26 rights (paragraph 3(2)). Any holding of new order rights not stemming from this conversion prevents outright application of this zero per cent ceiling. This rule essentially rewards current participants who are arguably taking the highest risks (as opposed to later entrants who may emerge after more significant deposits are found).

Secondly, both the 0 and 5 per cent ceilings will be completely non-applicable if that company is engaged in refining (i.e. is vertically integrated)(paragraph 3(3)). The goal is to assist entrants attempting to uncover new oil and gas finds – a high risk endeavour (not to assist processes such as refining that will undoubtedly occur).

4. Foreign currency gains or losses (paragraph 4)

Generally, currency gains and losses are subject to tax and determined with reference to the Rand. However, companies under the OP 26 regime are not subject to taxation of currency gains and losses. If the general rule for currency were to be employed, most oil and gas companies would be subject to currency gain and loss taxation on the bulk of their earnings (oil sales and purchases of equipment).

In order to maintain this relief, oil and gas companies can determine their currency gains or losses solely with reference to the currency used by that company for financial reporting purposes (paragraph 4(1)). Hence, dollar based oil and gas companies can rely on the dollar as their base currency for tax purposes.

Notwithstanding the above, all taxable income must eventually be reported in Rands for tax purposes in order to make payment in Rands. This translation into

Rands must occur at closing spot rate on the last day of that company's assessment year (paragraph 4(2)).

Example:

Facts
Oil and Gas Company, a company with a December 31 financial year-end, uses the U.S. dollar as its currency for financial reporting. Oil and Gas Company sells oil for 100 million U.S. dollars, makes purchases of 116 million U.S. dollars. In terms of working capital, Oil and Gas Company generates 20 million in U.S. dollars and 5 million in U.K. pounds.

Result
The U.S. dollar acts as Oil and Gas Company's base currency for tax purposes. Currency gains or losses do not result from any U.S. dollar earnings. However in respect of the U.K. pounds, currency gains or losses are based on the difference between exchange rates between dollars and pounds. At year financial year end, all taxable income must be converted in Rands (at the closing spot rate) in order to determine the South African tax payable.

5. Oil and gas deductions (paragraph 5)

Oil and gas has three sets of special rules for oil and gas exploration and production expenditures (as opposed to other forms of expenditures, such as expenditures for refining). The first set deals with operating expenses (OPEX). The second set deals with capital expenditures (CAPEX). The third set deals with ring-fencing.

5.1 OPEX (Paragraph 5(1))

All oil and gas operating expenditures are fully deductible to the extent those expenditures are for oil and gas exploration or production. These fully deductible expenditures include expenditures arising during pre-exploration or pre-production periods (as well as pre-exploration or pre-production finance charges).

5.2 CAPEX (Paragraph 5(1) and (2))

Oil and gas capital expenditures are fully deductible like operating expenditure, but are also eligible for a percentage uplift. Oil and gas exploration capital expenditure generate an additional 100 per cent deduction (for a total of 200 per cent upon incurral). Oil and gas production capital expenditure generate an additional 50 per cent deduction (for a total of 150 per cent upon incurral). The uplift acts as an incentive to invest in high-risk, high cost capital expenditure that probably represents long-term sunken capital.

The above rules for capital expenditure are subject to one notable exception. Costs of acquiring oil and gas rights cannot be deducted at all (i.e. must merely be added to base cost for CGT purposes) unless that acquisition is covered by the participation treatment rules of paragraph 7(3)).

5.3 Ring-fencing (Paragraph 5(3) and 5(4))

As a general rule, all oil and gas exploration and production losses are ring-fenced against all oil and gas exploration and production income. No restrictions are imposed that would ring-fence the losses of a particular well against the income from the same well (i.e. there is no "per oil well" ring-fencing). In addition, the new regime allows 10% of the excess losses to be used as an offset against other forms of income (e.g. investment income). The purpose of this rule is to provide relief for ordinary working capital.

Example:

Facts

Oil and Gas Company generates 192 million U.S. dollars in oil production receipts plus another 25 million in U.S. dollars from interest on working capital. Oil and Gas Company incurs 80 million U.S. dollars in oil operating expenditures as well as 60 million U.S. dollars for oil capital expenditures (i.e. for a new oil rig).

Result

Oil and Gas Company has total oil losses of 200 million U.S. dollar (80 million plus 120 million (i.e. 60 million times 2)). This 200 million amount completely offsets the 192 million amount, leaving an 8 million excess. Of this 8 million excess, 800 000 can be used to offset the 25 million in U.S. dollar working capital income. At the end of the day, Oil and Gas Company is taxed on 24.2 million of interest income (25 million – 800 000) and has 7.2 million of excess oil and gas loss (8 million – 800 000).

6. Thin capitalisation (paragraph 6)

Generally, the income tax system has rules against thin capitalisation. Thin capitalisation prevents taxpayers from deducting interest in respect of excessive amounts of debt existing in relation to equity. The tenth schedule provides a set of thin capitalisation rules that provide a safe harbour against the thin capitalisation rules found elsewhere in the Income Tax (i.e. section 31(3)).

The thin capitalisation safe harbour involves two basic steps. First, the oil and gas company determines whether it owes interest-bearing loans, advances or debts to foreign connected persons. Second, those loans, advances or debts are measured against the total equity of that company. If those loans, advances or debts do not exceed three times the value of the equity, the oil and gas company is free from any thin capitalisation rules found elsewhere.

The 3-to-1 measurement is calculated on the last day of an oil and gas company's assessment year. For purposes of the 3-to-1 calculation, only interest bearing loans are taken into account, and only equity that participates in dividends from operating profits and winding up/liquidation proceeds is taken into account. Equity is measured based on the higher of the equity value at the close of the company's assessment year or based on total accumulated consideration paid for equity shares still outstanding.

Note: The Commissioner may disregard excessive levels of debt if that excess occurs only for temporary periods.

Example:

Facts
Company X, a South African oil and gas company with a December 31 financial year-end, is wholly owned by Foreign Company. Company X owes 6 billion to various independent banks as well as 3 billion to Foreign Company. All loans are interest bearing. Company X's total assets are worth 10,5 billion. Company X has received 1 billion to date for the issue of its equity shares outstanding. All calculations are performed in U.S. dollars at financial year-end.

Result
Company X has 3 billion of foreign connected person loans. Company X has a total equity value of 1.5 million (total assets of 10,5 billion minus 9 billion of total loans). Company X will not be disallowed from deducting any interest (or finance charges) in relation to its loans owed to Foreign Company because the 3-to-1 ratio has not been violated. In this example, the 3 billion of Foreign Company debts exceed the 3-to-1 ratio in terms of total equity outstanding at the end of the year (i.e. which is equal to 1.5 million). Moreover, the 3 billion amount does not exceed the accumulated contributions of 1 billion for equity still outstanding.

7. Disposal of oil and gas rights (paragraph 7)

7.1 Additional options (paragraph 7(1))

Special rules apply to disposals of any oil and gas rights between oil and gas companies. In addition to the basic rules provided elsewhere in the Income Tax Act, the Tenth Schedule contains two options. Both companies can jointly elect to have either rollover treatment or participation treatment. These elections apply only to oil and gas rights that have a market value in excess of tax cost (i.e. base cost in the case of a capital gains asset or cost price in the case of trading stock).

Loss assets (i.e. those with a tax cost in excess of market value) simply trigger losses upon disposal as allowed elsewhere in the Income Tax Act.

7.2 Rollover treatment (paragraph 7(3))

If both parties elect rollover treatment, the selling oil and gas company is deemed to have disposed of an oil and gas right for an amount equal to the tax cost of the right disposed regardless of whether that right is capital asset or trading stock. The net effect is to eliminate all capital or ordinary gain upon disposal for the seller. The purchasing oil and gas company is similarly deemed to have acquired the oil and gas right for the same tax cost (i.e. the tax cost rolls over from the seller to the buyer). This regime essentially follows the same paradigm as Part III of Chapter II of the Income Tax Act (company restructuring rules). The rollover regime essentially allows the seller to avoid gain with the purchaser bearing the price of acquiring the seller's reduced tax cost (in lieu of a market value tax cost).

7.3 Participation treatment (paragraph 7(3))

If both parties elect participation treatment, the selling oil and gas company treats all gains on the disposal of an oil and gas right as ordinary revenue regardless of whether that right is capital or trading stock. Meanwhile, the purchasing oil and gas company obtains an immediate deduction equal to the deemed ordinary revenue gain included by the selling company. The participation regime essentially allows the seller to transfer ordinary losses to the purchaser.

Example:

Facts

Company X, an oil and gas company, holds multiple oil and gas rights within South Africa including a Block A offshore right. Company X acquired the off-shore right for 30 million U.S. dollars and that right is worth 100 million U.S. dollars as of 15 July 2008. Company X has 400 million U.S. dollars in excess oil and gas losses. Company X has agreed to sell the Block A offshore right for 100 million U.S. dollars in cash to Company Y, another oil and gas company. Assume Company X held the oil and gas right as a capital asset before the sale.

Result

Both Company X and Company Y have three choices:

(i) If no election is made, basic capital gains tax principles apply. Under this scenario, Company X has 70 million U.S. dollars of capital gain (100 million – 30 million). Company Y meanwhile obtains a 100 million U.S. dollar base cost in the oil and gas right acquired.

(ii) If a rollover election is made, the sale does not trigger any capital gains tax for Company X. Company Y obtains a 30 million U.S. dollar base cost in oil and gas right acquired.

(iii) If a participation election is made, Company X has ordinary revenue equal to 70 million U.S. dollars (which will be offset by the 400 million U.S. dollars of excess losses). Company Y obtains a 70 million U.S. dollar immediate deduction and obtains a 30 million U.S. dollar amount as the tax cost in the oil and gas right acquired.

8. Fiscal stability (paragraph 8)

A fiscal stability clause is viewed as important to facilitate future oil and gas investment (given the high costs of initial sunken capital, combined with high risk and delayed potential profit). The revised regime will accordingly provide fiscal stability on a company-by-company basis. In order to effectuate this regime, the Minister of Finance will be given the power, after consultation with the Department of Minerals and Energy, to enter in a fiscal stability agreements with each oil and gas company receiving a "new order" oil and gas right.
This fiscal stability agreement will remain in place over the full life of a "new order" right. In addition, fiscal stability will remain if exploration rights are renewed or are converted into a production right. However, oil and gas companies may unilaterally rescind these agreements if so desired (i.e. subsequent tax law becomes even more taxpayer favourable than the regime currently proposed).

Example:

Facts
Company X, an oil and gas company, enters the region in 2007 for the purpose of oil exploration and production. Company X obtains an oil and gas right in 2007. Company X renews the exploration right in 2012 and eventually converted to a production right in 2014. In 2044, Company Y renews the production right.

Result
The Minister has the power to enter into a fiscal stability agreement with Company X. If the agreement arises in 2007, the 2007 version of the tenth schedule remains in effect from 2007 through 2014 (the full period of the initial exploration right, the period of exploration renewal and the period of the initial production right). The Minister may choose to enter into a new agreement on 2044 with the terms set by the tax law on that date. This new agreement will last throughout the right until 2074 (but no later even if that production right is renewed).

Effective date

The new oil and gas regime will become operational on the 2 November 2006 tabling date.

MINING ENVIRONMENTAL REHABILITATION FUNDS

Current law

In terms of the Mineral and Petroleum Resources Development Act of 2002 (MPRDA), mining companies must make financial provision for the environmental rehabilitation of mining areas upon closure. The methods used for financial provision include reserve set asides within in a rehabilitation company, society, association or trust (i.e. a rehabilitation fund). Contributions to these funds are deductible, and the growth in these funds is tax-free. The tax system provides these benefits as an incentive for environmental preservation.

Reasons for change

While Government is comfortable with the objectives of the rehabilitation fund mechanism, this mechanism has given rise to practical administrative problems, including:

(i) A lack co-ordination between the Department of Minerals and Energy (DME) and South African Revenue Services (SARS) in terms of approvals and regulatory provisions;

(ii) Unnecessary complexities in terms of the deduction contribution formula;

(iii) Concerns about compliance in terms of fund document amendments; and

(iv) Various uncertainties and complexities involving contraventions by rehabilitation funds.

Proposal

The Amendments unify the deduction contribution rules of section 11(*hA*) and the exemption rules of section 10(1)(cH). The proposed changes address the above-mentioned concerns and ensure that all contributions, distributions and withdrawals cater solely for mining rehabilitation upon closure.

A. Tax benefits

The new unified regime contains the same tax benefits as the prior mining rehabilitation regime. Contributions are deductible (section 37A) and fund growth is tax-exempt (section 10(1)(cB)). One benefit of the new regime is the removal of the formula limit. Section 37A allows for all contributions to the rehabilitation fund to be tax deductible.

B. Eligible contributing parties

The new regime allows for a wider group of persons eligible for deductible contributions (section 37A(1)(d)). Under the new regime, this group falls into three categories:

(i) Holders of new and old order mineral rights as classified under the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

(ii) Persons engaged in prospecting, exploration, mining or production in terms of new and old order mineral rights as classified under the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); and

(iii) Any other person, after approval by the Commissioner, unless that other person is making the contribution as part of scheme to shift the contributing deduction from another person in favour of the person seeking approval.

Example 1:

Facts
Company X owns 70 per cent of the shares of Company Y (with the other 30 per cent held by an independent trust formed on behalf of various individuals). Company Y is a special purpose vehicle that merely holds a new order mineral right. Company X engages in all mining activities with respect to that right.

Result
Both Company X and Company Y may make deductible contributions with respect to the new order right. Company Y holds the right, and Company X is engaged in mining with respect to that right.

Example 2:

Facts
Company Z has entered into a long-term agreement for the purchase of coal generated from a new order right held by Company X. Company Z converts all the coal to energy on a regular basis. As part of the long-term agreement, Company Z agrees to regularly contribute to the mining rehabilitation fund established for the new order mining right.

Result Company Z can make deductible contributions to the mining rehabilitation fund after approval from the Commissioner. No reason exists for the Commissioner to deny this approval solely based on these facts.

C. Eligible mining rehabilitation funds

Mining rehabilitation funds are eligible for incentives only upon certain conditions, as provide below. These conditions are essentially the same as prior law with a few technical adjustments and clarifications (note: funds have been limited to trusts or company legal forms because only these forms currently exist in practice).

(i) The funds must have the sole object of mining environmental rehabilitation in terms of rights governed by the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) on premature or final closure, decommissioning, and to deal with post closure latent environmental impacts (section 37A(1)(a)).

(ii) The funds can only hold permitted assets (section 37A(1)(a)). These permitted assets are mainly limited to various forms of domestic financial instruments (including shares) subject to domestic regulation (section 37A(2)). The only significant deviation is for other investments held before 18 November 2003 (i.e. before the effective date of the initial requirement)(section 37A(2)(d)). The goal is to limit the investment portfolio assets that are relatively liquid and easy to value (for the benefit of regulatory oversight).

(iii) The funds cannot make impermissible distributions (section 37A(1)(c)). In other words, funds cannot withdraw benefits for causes other than mining closure rehabilitation. Moreover, excess reserves available on completion of rehabilitation will not revert to taxpayers. Excess reserves must be transferred to another fund established by the taxpayer for mining rehabilitation activities (or to a general trust account prescribed by the Minister of Minerals and Energy and subject to approval by the Commissioner)(section 37A(4)).

D. Penalties

The new mining rehabilitation regime wholly revises the penalty system for contraventions in order to simplify administration. This new regime contains three penalties:

(i) If the company or trust holds impermissible investments (investments outside the list prescribed in the section), the entity is taxed on the market value of those impermissible assets as if that market value was fully received as income.

(ii) If the company or trust makes impermissible withdrawals (e.g. used for other profit making activities not related to rehabilitation or closure), these withdrawals will be taxed on their market value.

(iii) The Commissioner may also, as he deems necessary, impose income tax penalties equivalent to twice the market value of all property held if a trust or company is in violation of *any* provisions (including the holding of impermissible investments of the making of impermissible withdrawals).

E. Effective dates

The new regime will have an effective date for years of assessment commencing on or after 2 November 2006. In terms of deductible contributions, the formula approach of section 11(*h*A) will be limited solely to years of assessment commencing before 2 November 2006. All deductions previously deferred for being in excess of the amount allowed by the formula will continue to be deferred as long as the pre-effective date regime still applies. If any excess remains it will become immediately deductible upon the close of the first year of the new regime (because the excess will now longer be limited by the formula).

RETIREMENT FUND WITHDRAWALS

Current law

A. Amounts payable by Retirement Annuity Funds

In terms of current law, Retirement Annuity Funds may not pay any amount to a paid-up member prior to that member reaching the age of 55. The reason for this prohibition is to ensure that the money is preserved until retirement.

B. Taxation of withdrawal and retirement benefits

A member of a pension or provident fund will become entitled to a withdrawal benefit if that employee ceases to be employed. Upon employment cessation, a member can make an election to have the benefit transferred to another retirement fund or to withdraw the benefit. A transfer to another retirement fund will not be subject to tax but a withdrawal will result in the benefit effectively being taxed at the member’s highest average rate of tax for the year in which the benefit accrues (or the previous year).

A member of a pension, provident of retirement annuity fund who retires from the fund becomes entitled to a retirement benefit. This benefit is payable in the form of an annuity, a lump sum of a combination. Annuities are taxed when paid to the individual (e.g. monthly) and lump sums are taxed upon retirement.

Reasons for change

A. Amounts payable by Retirement Annuity Funds

A problem arises once a member becomes a paid-up member (i.e. the member cease to make contributions to the fund). If the member has a low fund value upon becoming a paid-up member, ongoing industry costs may exceed growth. The effect of the low fund value and high costs will result in a negative growth in the individual paid-up member's fund interest and may result in no value being preserved until retirement.

Example:

Mr A is a member of a retirement annuity fund. At the age of 45, he is retrenched and can no longer afford to make monthly contributions to his retirement annuity fund. He informs his broker that he will no longer contribute to this fund. At this date, his member's interest in the fund is R4,000. He cannot withdraw this amount from the fund due to the restrictions in the Income Tax Act. The gross annual growth on his member's interest is 8 per cent, but the costs amount to R750 per annum. Ten years later he becomes entitled to a benefit from the fund but his fund value is now 0.

B. Taxation of withdrawal and retirement benefits

Members withdrawing of retiring from a retirement fund after the effective date of the Pension Fund Amendment Act (PFAA)(7 December 2001) are now guaranteed a minimum benefit. However, members who withdrew or retired before the effective date enjoyed no comparable protection. In order to provide former members with some additional benefit, the PFAA also provides that any fund surplus be apportioned in line with the PFAA. Former members may therefore join in this surplus apportionment.

Should benefits be paid to former members who previously withdrew from the fund, these benefits will be fully taxable as the former members cannot make an election to have the benefit transferred to another retirement fund. Benefits payable to former members who previously retired from the fund will be taxed as a withdrawal benefit and not as a retirement benefit.

Proposal

A. Amounts payable by Retirement Annuity Funds

The proposed amendment effectively allows the fund value of a paid up member to be paid out if the fund value is less than an amount to be determined by the Minister. This amount will be adjusted from time to time in consultation with the Financial Services Board to ensure that a paid-up member is not prohibited from accessing money that will eventually be consumed by industry costs. (Section 1 of the Income Tax Act: Definition of “retirement annuity fund” – paragraphs (b)(x) and (b)(xii)).

B. Taxation of withdrawal and retirement benefits

In terms of the proposed amendment, benefits accruing after withdrawal (or retirement) from the fund will subject to the same elections that was available to them upon the earlier withdrawal (or retirement). This effectively provides former members with the option to preserve additional benefits payable by retirement funds. This election will result in the postponement of the tax liability. (Paragraphs 5 and 6 of the Fourth Schedule to the Income Tax Act). (Sections 41 and 42 of the RLAB).

REFINEMENT OF PUBLIC BENEFIT ORGANISATION (PBO) TAXATION

Since the complete revision of the tax system for PBOs in 2001, Government has continued to adjust the tax system in order to further assist PBOs. While most of the big issues have been resolved, the 2006 proposed amendments address some anomalies.

1. Tax Rates for PBO Trading Activities

Current law

PBO trading activities are presently subject to tax based on the legal form of the PBO. If a PBO is registered as a company, its trading activities will be subject to tax at a rate of 29 per cent whilst a PBO registered as a trust will be subject to tax at a rate of 40 per cent.

Reasons for change

The taxation of trading activities of PBOs at different rates causes an undue tax burden for PBOs operating as trusts (i.e. being subject to the 40 per cent rate). Many PBOs are established as trusts to save administration costs or as a matter of convenience. There is no reason to discriminate in terms of rates on the basis purely of a PBOs legal form, especially when all PBOs otherwise operate under the same general tax principles (unlike "for-profit" companies and trusts, which operate completely differently for tax purposes).

Proposed law

It is proposed that all PBO trading activities should be subject to a flat 34 per cent rate. The 34 per cent rate is aligned with the branch profits rate of foreign companies (a combined income tax and Secondary Tax on Companies). The 34 per cent rate also puts PBO trading activities on par with operations conducted by PBO subsidiaries (all of which would be subject to both a combined income tax and Secondary Tax on Companies).

2. Refining the PBO Activity List

Current law

A. Housing PBOs

In 2003, Government expanded the scope of exempt housing PBO activities. Firstly, the PBO limitation on housing assistance to poor and needy recipients was liberalized so that exempt housing PBO activities could additionally include assistance for the benefit of low-income earners (i.e. households with income up to R3 500 (as is consistent with the Housing Code)). Secondly, housing PBO activities became eligible to receive tax-deductible donations. Thirdly, current legislation not only covers direct procurement but other forms of housing assistance, such as subsidized housing loans (but this last group of PBOs only receives exemption; not eligibility for tax deductible donations).

B. Conservation, environment and animal welfare PBOs

Under present law, only a limited number of PBO activities are eligible to receive tax deductible donations. This limitation is due to the concern that deductible donations could lead to tax avoidance and/or undue erosion of the tax base. Conservation, environment and animal welfare generally fall outside tax deductible status. On the other hand, PBOs carrying on the establishment and management of transfrontier conservation areas can receive tax deductible donations up to 31 March 2010.

Reasons for change

A. Housing PBOs

Despite the liberalization in 2003, the scope of PBO housing activities is still too limited. Many legitimate organisations remain outside PBO relief.

B. Conservation, environmental and animal welfare PBOs

Government has also received ongoing requests to extend the list of PBOs eligible for tax deductible deductions so as to include conservation, environment and animal welfare. Such an extension was announced in the 2006 Budget and affected by notice in the *Gazette* on 26 April 2006. It is now proposed that the extension be included in the Income Tax Act as provided for by section 18A of the Act.

Proposed law

A. Housing PBOs

Firstly, it is proposed that the current PBO housing ceiling be increased to cover beneficiaries earning beyond R3500 per month. The proposed level of increase will not be stated in the legislation but instead left to the Ministerial discretion, taking into account existing Housing Policy established by the Department of Housing (paragraph 3(a) of Part I of the Ninth Schedule; paragraph 5(a) of Part II of the ninth schedule). Secondly, PBOs that issue guarantees in respect of low income housing loans will now be eligible for tax exemption under similar conditions as PBOs engaged in low income housing loans (as determined in the regulations issued by the Minister)(paragraph 3(f) of Part I of the Ninth Schedule).

B. Conservation, environmental and animal welfare PBOs

It is proposed that the list of activities eligible for tax deductible donations in Part II of the Ninth Schedule be extended to all activities listed under the heading “Conservation, Environment and Animal Welfare” within Part I of the Ninth Schedule (paragraph 4 of Part II of the Ninth Schedule).

4. Foreign Established Charities

Current law

Most foreign charities established abroad fail to enjoy South African PBO status. This failure does not stem from the core nature of the activity but rather to more technical aspects of South African tax legislation.

Reasons for change

Many foreign charities established in developed countries seek to provide assistance around the world. These foreign charities typically receive most of their funding in their home country with a portion of funds possibly allocated to the Southern African region. As a policy matter, foreign charitable donor support should be encouraged, but technical tax issues may act as a barrier, especially if that foreign support attracts South African income tax.

South African tax law requires South African exempt PBOs to transfer all of their assets to another South African PBO (or to a South African sphere of government or to an exempt South African parastatal) upon dissolution. This requirement makes little sense for foreign charities. Donors and fiduciaries of a foreign charity cannot be expected to transfer their global assets to South African PBOs upon dissolution merely to satisfy the South African PBO requirements.

Proposed law

It is proposed that foreign established charities operating within South Africa should be exempt from South African tax on slightly different terms. Specific PBO exemption is now made for foreign charities operating as an agency or branch within South Africa (section 30(1)(a)(ii)). However, foreign PBOs of this nature must prove that they have PBO exempt status in their home country as a precondition for South African PBO exemption (section 30(1)(a)(ii)).

The key technical waiver relates to the dissolution requirement for exempt PBO status. Foreign established charities are no longer required to transfer their global assets to another South African PBO (or to a South African sphere of government or to an exempt South African parastatal) upon dissolution. Under the proposal, only the South African locally-situated assets of the foreign charity need satisfy the dissolution requirement (foreign-situated assets can be transferred anywhere upon dissolution)(section 30(3)(b)(iv)).

Foreign established PBOs can receive full income tax exemption. However, in no case will a foreign PBO be eligible to attract donations that are deductible in South African tax terms (section 18A(1)).

4. Relaxing the Rules for Permissible PBO Investments

Current law

PBOs are presently limited to a strict set of passive investments. Some of these investments require approval by the Financial Services Board and the Director of Non-Profit Organisations. If a PBO contravenes the investment rules stipulated in the Income Tax Act, tax exempt status can be withdrawn. The permissible investments rules were designed to ensure that PBOs do not engage in a risky set of passive investments or begin to conduct passive investment on a scale that constitutes trading activities.

Reasons for change

The current system of limiting investments for PBOs inhibits PBOs from receiving good returns on investments (which can then be applied for the public benefit). The tax system is not the appropriate place to assess financial risk, and the concerns against trading are already covered by other aspects of the PBO tax system.

Proposed law

It is proposed that the current PBO limitations in terms of passive investments be dropped with PBOs generally being allowed to invest as desired. This freedom, however, is subject to two exceptions. Firstly, PBOs will not be allowed to hold instruments issued or held by foreign persons (thereby preventing the misuse of the controlled foreign company rules of section 9D). Secondly, PBOs are prohibited from distributing profits either directly or indirectly (section 30(3)(b)(ii)). It should also be noted that the capital gains exemption for the sale of PBO capital assets has been further clarified to account for the new system of partial taxation for PBOs conducting sizable trading activities (paragraph 63A of the eighth schedule).

5. Administration

Current law

A. Dual registration

In terms of current law, PBOs must register with Director of Non-profit Organisations (NPO) as a precondition for exempt status. PBOs may be exempt from this dual registration requirement only if both the Director of NPO and the Commissioner so approve.

B. Miscellaneous administration

(1) Some PBOs may become provisional taxpayers with the advent of partially taxable status since 2005 (for sizeable trading activities).

(2) PBOs found in violation of the tax requirements may have their tax privileges withdrawn. In addition, these violating PBOs may find themselves subject to tax for all accumulated net revenue to the extent that revenue is not distributed from the PBO.

Reasons for change

A. Dual registration

The current dual registration process causes an undue compliance burden for PBOs. The NPO Act's registration requirements are voluntary and not mandatory, and many PBOs are of the view that NPO registration offers no benefits besides tax.

B. Miscellaneous administration

(1) The impact of partial PBO taxation on provisional payments was not considered when partial taxation was imposed. Application of provisional payments in this context has accordingly given rise to unintended compliance and administrative difficulties.

(2) Taxation of (undistributed) accumulated net revenue for certain violating PBOs may be unrealistic as an administrative matter. Many PBOs simply do not have the records (possibly dating back many years) that track historically accumulated profits.

Proposed law

A. Dual registration

It is proposed that the dual registration requirement be removed. SARS will now grant exemption to PBOs without NPO registration as a precondition. However, the Commissioner may (upon a request by the NPO) withdraw approval if an offence is committed under the NPO Act (section 30(3C)).

B. Miscellaneous administration

(1) PBOs will be specifically exempted from the provisional payment system given the compliance and administrative difficulties of imposing this system in the context of partially taxable PBOs (paragraph (a) of the definition of “provisional taxpayer” of the Fourth Schedule). However, this exemption will last only for a three-year transitional period (or a later date set by the Commissioner). A similar 3-year transitional exemption period will exist for recreational clubs (which will become partially taxable for the first time pursuant to the amendments herein).

(2) The potential taxation of accumulated net revenues for contravening PBOs will be dropped. Taxation will instead apply based on the market value of assets held by the PBO (thereby avoiding the need to review historic records)(section 30(7)).

PARTIAL TAXATION OF RECREATIONAL CLUBS

Current Law

Clubs currently receive complete exemption from Income Tax (section 10(1)(d)(iv)(aa)). This exemption is subject to few restrictions. Furthermore any gain or loss upon the disposal of any asset used to produce this exempt income is disregarded for Capital Gains Tax purposes (paragraph 64 of the Eighth Schedule).

Reasons for change

Clubs appear to be claiming exemption irrespective of whether their amenities are used by the general public or by their members. Furthermore, some clubs appear to be conducting a growing level of trading activities to raise funds in addition to membership contributions.

Concerns have been raised that the complete exemption enjoyed by recreational clubs is iniquitous. Recreational clubs are treated more leniently than Public Benefit Organisations (PBOs). Previously, the income tax system provided complete exemption for PBOs, even if those activities included a small level of trading. Since 1 April 2006, a system of partial taxation was implemented. As are result, sizeable trading activities no longer put at risk PBO exempt status. However, the quid-pro-quo of this change left certain trading activities of PBOs subject to partial taxation. This partial taxation led to the review of the income tax status of clubs, which currently can claim complete exemption – even for sizeable trading activities.

Proposal

In view of the above, recreational clubs will become subject to system of partial taxation. Clubs will be subject to exemption only to the extent their activities are based on the “mutuality principle.” Under the mutuality principle, various taxpayers can join together for the sharing of expenses without that sharing triggering additional tax. In the case of recreational clubs, there is a sharing of “recreational” expenses (e.g. expenses for sports and other capital facilities).

It appears that recreational clubs follow a sharing of expenses approach as their core business model (where they generally break-even annually). The common objective of clubs excludes pecuniary gain. The proposed amendments narrow the exemption solely for these cost sharing situations. Income from non-members is generally subject to tax (i.e. leaving the members as group largely in the same situation as if they had earned this non-member income directly).

The proposed amendments fall into two parts. Section 10(1)(*cO*) defines the limits of the new system for partial taxation (separating exempt income from taxable income). Section 30A covers the conditions for exemption.

A. Exemption versus taxation (section 10(1)(cO))

All club income is now subject to Income Tax unless that income falls within section 10(1)(*cO*). Section 10(1)(*cO*) provides exemption for the following forms of recreational club receipts and accruals:

(i) Membership fees or subscriptions paid by its members:
(ii) Payments by members in respect of any social or recreational facilities, amenities or services provided directly to the members (e.g. golf course fees and bar facility fees paid by members for actual use);
(iii) Fundraising activities of that club if such activities are of an occasional nature and substantially undertaken with assistance on a voluntary basis without compensation (essentially comparable to the relief provided for PBOs);
(iv) Other sources (e.g. investment income and non-member income for club services and rentals) as long as this “other source” receipts and accruals do not in total exceed R20 000 (designed as a *de minimis* rule to keep smaller clubs off the register).

Similarly, expenditure incurred in producing the exempt income (viz. levies, membership fees or subscriptions) cannot be offset against club income falling outside the above categories. Capital gains on the disposal of recreational club property will be subject to rollover treatment (i.e. exemption from capital gains tax with rollover of base cost)(paragraph 65B of the Eighth Schedule). These rule essentially follow the same principles as paragraphs 65 and 66 of the Eight Schedule) with the key condition being that all recreational club property must (i) be of that kind that generates section 10(1)(*cO*) exempt income and (ii) the property proceeds must be reinvested in club property used to generate section 10(1)(*cO*) income.

B. Conditions for exemption (section 30A)

A recreational club eligible for partial exemption must be established solely to provide social and recreational amenities or facilities for its members (section 30A(1)). Club exemption is not automatic. Clubs must apply for Commissioner approval by providing copies of the club constitution or other establishment document (as well as subsequent submission of amendments)(section 30A(2)(a) and (b)). The Commissioner’s approval must be granted if based on the constitution (or other documents) provided if—

(i) The clubs is committed to carrying on its activities solely in a non-profit manner;
(ii) In respect of surplus funds, the club is prohibited from direct or indirect distribution thereof to any person during club operations or upon club dissolution (except as provided in (iii);
(iii) On club dissolution, the club is required to transfer its assets and funds solely to any other club eligible for section 30A exemption (or to entities listed upon dissolution of a domestic PBO);
(iv) The club does not to pay remuneration in excess of what is reasonable in the sector (nor bonus payments based on receipts and accruals), thereby preventing indirect profit distributions to employees;
(v) All members must be entitled to membership for at least a year (i.e. membership must be meaningful as opposed to an ordinary customer relationship);
(vi) Members cannot be allowed to sell their membership rights or any entitlements thereof (again to prevent indirect profit distributions); and
(vii) Clubs may not participate in schemes to facilitate tax avoidance.

C. Penalties

Clubs in violation of section 30A risk losing their exemption after reasonable notice. Failure to take steps could generate tax based on the market value of all property held by that club. The penalties contained herein essentially follow the same format as for violating PBOs.

D. Effective Dates

Clubs will be given a transitional period in order to apply for partial exemption (section 30A(4)), much like the transitional period provided to PBOs under section 30. A lengthy transition period is especially important for smaller clubs who may not have the wherewithal for speedy conversion. In terms of exact dates, clubs must apply for approval no later than 31 March 2011.

GOVERNMENT DEPARTMENTS, PUBLIC AND MUNICIPAL ENTITIES

Current law

The Income Tax Act contains various forms of exemption for different spheres of Government. National and provincial governments are fully exempt under section 10(1)(a). Certain institutions, boards and bodies subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999)("PFMA") are exempt from income tax under section 10(1)(*cA*), along with their wholly owned subsidiaries. Municipalities receive exemption as a "local authority" under section 10(1)(b), but municipal entities that are subject to the Municipal Finance Management Act, 2000 (Act No. 32 of 2000)("MFMA") are fully taxable.

Reasons for change

The Income Tax system fails to provide a coherent regime for Government entities. These changes mainly relate to the "local authority" definition contained in section 1 and the newly established REDS.

Proposal

A. Local councils, boards and committees

The various references to local councils, boards and committees are outdated. The definition of local authority will accordingly be scrapped in line with the new system for local government as prescribed by the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998). Henceforth, only "municipalities" (Categories A, B and C) will be exempt as opposed to "local authorities." Collateral changes in this regard have already been made in the Value-added Tax Act along with corresponding changes to the Transfer Duty Act.

B. Water boards

Some water boards are exempt by virtue of paragraph (b) of the "local authority" definition, some are exempt by virtue of section 10(1)(*cA*) while a small group of others may be fully subject to tax. The new regime simply creates a new exemption for all water service providers (listed under either the PFMA or MFMA) regardless of their legal form.

C. Regional services councils and the joint services board

The current exemption for regional services councils and the joint services board will be deleted as obsolete. Similar deletions will be made to the Transfer Duty Act.

D. Regional Electricity Distributors (the "REDs")

Government is in the process of restructuring electricity distribution. This function in the future will be consolidated into entities (known as the REDs) for more efficient coordination. The transfer of electricity distribution operations from municipalities to REDs triggers various tax issues. For instance, all activities conducted by municipalities are fully exempt from income tax; whereas, the REDs should (in all-likelihood) be subject to income tax because electricity distribution is a commercial business activity (as opposed to a regulatory activity). The shift from exempt to fully taxable status could, however, undo some of the benefits of the desired consolidation, especially if full taxation takes immediate effect. In order to transitionally alleviate this problem, the newly created REDs will be fully income tax exempt for all years of assessment commencing before 1

January 2014 (or a later date determined by the Minister if necessary)(section 10(1)(P)(viii).

Correlative adjustments will also be required for the Value-Added Tax Act.

Note: Eskom will not benefit from any of the proposed changes (i.e. the amendment will apply only to electricity distributors established after 1 January 2005. Eskom has long been fully taxable. Transfers of assets by Eskom to the REDs may require further legislative change at a later date.

E. Traditional councils

The tax status of traditional councils (as contemplated in the Communal Land Rights Act, 2004 (Act No. 11 of 2004) has never been entirely clear. Traditional councils may have been exempt by virtue of (i) the reference to councils in the "local authority" definition of section 1 of the Income Tax Act, (ii) as an institution, board or body under section 10(1)(*cA)*, or (iii) section 9 of the Finance and Financial Adjustments Act Consolidation Act, 1977 (Act No. 11 of 1977). All three sets of rules have accordingly been deleted or adjusted in this regard.

Because traditional councils should not be viewed as a Constitutional fourth arm of Government, income tax exemption for traditional councils will be eliminated in the long-term. This amendment bill retains the exemption but with a termination date to be set by the Minister. The termination date serves as notice to traditional councils that the income tax exemption will be eliminated while giving time for other legislative adjustments, if necessary.

F. Foreign governments

The proposed amendments clarify the tax treatment of foreign governments. The proposed amendment accordingly exempts the receipts and accruals of any sphere of any foreign government (i.e. national, provincial and local)(section 10(1)(*bA*)(i)). Other foreign government controlled bodies (e.g. foreign government-owned parastatals) are fully taxable, except possible for developmental agencies (see section 10(1)(*bA*)(ii)).

DOMESTIC AND FOREIGN GOVERNMENT GRANTS AND ASSISTANCE

Current law

A. Domestic

Whilst considerable activity has been made to clarify the VAT treatment of domestic government grants and assistance over the past few years, little comparable activity has occurred in respect of Income Tax. Most income tax exemptions for grants have been ad hoc with each form of exempt grant listed by name. Only in 2005 was a generic provision added with the decision for exemption left to the Minister (taking into account a variety of factors). Other issues at play involve collateral aspects of exemption to the extent exemption is available. These collateral aspects mainly relate to the depreciation and base cost of assets acquired out of exempt grant funds.

B. Foreign

South Africa is a recipient of Official Development Assistance (ODA). ODAs involve support from international donors in the form of grants, discounted financial assistance and possibly discounted financial assistance. International donors offering this support often seek to ensure that their support packages remain free from South African tax (mainly income tax and VAT) as a precondition for funding.

Reasons for change

A. Domestic

The tax relationship between the receipt of Government grants and the use of grant funds is not always clear. As a general rule, taxpayers should not be able to use tax-free grants to obtain subsequent tax benefits (i.e. “double-dip”). This “double-dipping” may arise if exempt grant funds are used to acquire assets or operating expenditure, and the taxpayer then claims depreciation or deductible operating expense (as the case may be). That said other instances may arise in which Government may actively calculate the grant with an otherwise impermissible “double-dip” in mind. Whilst some rules exist in this area, a comprehensive view seems lacking.

Another related issue involves Government payment for assets to destroy those assets. For instance, Government may acquire a sick animal solely to destroy that animal for health and safety reasons. As another example, Government is planning to acquire “unsafe” taxis in order to terminate their use on the road. In both cases, Government is paying for the removal of those items for the general public good (i.e. to remove negative public externalities). These payments are currently treated as taxable exchanges without possible tax relief.

B. Foreign

The tax relief provisions within ODA agreements and their relationship to domestic tax law are not entirely clear. ODA agreements bear the stamp of the executive authority by virtue of section 231(3) of the Constitution. Yet, they do not override Parliamentary enacted legislation (only an act of Parliament can alter another act of Parliament). Hence, SARS cannot comply with any exemption mandated by an ODA if that ODA is inconsistent with domestic tax law. The only remedy for a foreign party relying on an ODA agreement is to file a claim for a breach of that agreement (or to simply withdraw any further foreign donor support). Administrative problems also arise in terms of ODA agreements because of the uncertain role required of the Minister of Finance as well as communication of ODA relief to SARS. The net result is overall uncertainty that could deter future foreign support.

Proposal

A. Domestic

1. Anti-double-dipping rules

Government grants should not give rise double-dipping regardless of whether those grants are used to fund assets or expenditure. The proposed regime will disregard both subsequent expenditure and asset cost (for purposes of depreciation and for purposes of capital gains) if Government grants those exempt funds for purposes of acquiring the asset or funding that subsequent expenditure (section 23(n); paragraph 20(3)(b) of the Eighth Schedule).

The Minister, however, will have the power to override this anti-double dipping rule if desired (proviso to section 23(n); proviso to paragraph 20(3)(b) of the Eighth Schedule). Instances may exist where Government will fund projects with the knowledge that double-dipping may be employed, but will accordingly take this double-dipping into account when setting funding amounts. In order to override this anti-double dipping rule, the Minister of Finance must state an intention to do so by way of notice in the Gazette.

2. Government scrapping payments

This proposal seeks to put Government scrapping payments on par with Government grants despite the fact that the grantee is disposing of an asset in exchange. As a general rule, these disposals will trigger gains and losses. However, the Minister of Finance may exempt the payment by way of notice in the Gazette (e.g. in lieu of providing full market replacement value). If the Minister of Finance exempts the payment, the collateral consequences follow the same path as exempt Government grants (i.e. no double dipping unless the Minister of Finance specifically desires otherwise when determining funding)(paragraph 64A(b) of the eighth schedule). A comparable rule exists in the VAT Act that will zero rate similar payments for sick animals.

B. Foreign

ODA agreements potentially give rise to different consequences depending upon the nature of the agreement. In most cases, an ODA involves an outright grant of funds for the benefit of South African beneficiaries. The grant entails payment to foreign or local contractors with those contractors providing services/assets to assist South African beneficiaries (e.g. providing food, medical aid or housing).

Other less common forms of assistance may involve discounted loans or discounted technical services. In these latter cases, the foreign provider (i.e. foreign agency or multinational organization) may receive partial compensation (i.e. compensation at less than market value).

1. Grants

In the case of outright grants, the income tax issue at play is whether the contractor receiving foreign funds is exempt from tax on that receipt, even though that grant is for assisting South African beneficiaries (section 10(1)(y)). Exemption under these circumstances requires several conditions:

i. The grant must be within an umbrella ODA agreement under section 231(3);

ii. The grant must be pursuant to a project approved by the Minister of Finance after consultation with the Minister of Finance;

iii. The umbrella agreement must provide exemption as a precondition for funding; and

iv. The Minister of Finance must announce his intent to exempt the grant by way of notice in the Gazette.

The rules against double dipping fully apply in terms of these grants without any Ministerial waiver (section 20(3)(n); paragraph 20(3)(b) of the eighth schedule).

The project zero rates the funding received if it is approved by the Minister together with the Minister of Foreign Affairs. All taxable supplies made to the project will qualify as input tax in the event that the Minister has approved the zero rating in terms of section 11(2)*(q)*. Where the Minister has not approved the zero rating the provisions of section 17(2) will apply to deny an input tax deduction in respect of certain expenditure.

2. Discounted loans and technical assistance

As discussed above, less common forms of assistance involve the foreign provision of discounted loans or technical services. These forms of assistance trigger potential tax consequences for the foreign party to the ODA (i.e. a foreign developmental agency or multinational organization). Foreign agencies will be exempt in these circumstances on the single condition that the agency has been appointed by a foreign government to administer the ODA (section 10(1)(*bA*)(ii)). Multinational organisations will only be exempt to the extent a project satisfies the same four conditions existing for independent contractors receiving grant funds to provide assistance (section 10(1)(*bA*)(iii))(see above).

It should also be noted that foreign subjects (who are not South African tax residents) will similarly receive exemption on their salary and emoluments. This exemption applies to agency employees if the agency is exempt and to multinational organisation employees to the extent of an exempt ODA project (section 10(1)(c)(vi)).

CLAUSE 1

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

Subclause (a): The proposed amendment is pursuant to the Local Government Affairs Council Act (House of Assembly), 1989, being repealed by section 2 of the Local Government Affairs Council Act (House of Assembly), 1999 (Act No. 59 of 1999) and the Local Authorities Loans Fund Act, 1984, being repealed by section 2 of the Local Authorities Loans Fund Acts Repeal Act, 1984 (Act No. 98 of 1997) and the amendment or repeal of certain other legislation.

Subclause (b): The proposed amendment aligns the description of a water services provider with the Income Tax Act, 1962.

Subclause (c): The proposed amendment is of a textual nature by deleting the reference to the proviso to section 30(3) of the Income Tax Act, 1962, which section became obsolete.

CLAUSE 2

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

See notes in subclause (a) of Clause 1.

CLAUSE 3

Estate Duty: Amendment of section 12A and 12B of the Estate Duty Act, 1955

This proposed amendment aligns the Estate Duty Act with the agency provisions that already exist in other Acts administered by the Commissioner, and allows the Commissioner to declare as an agent of the person liable for estate duty under section 11 of the Estate Duty Act (i.e. “the taxpayer”), a person that holds monies on behalf of that taxpayer or that is indebted to that taxpayer, and to require the agent to pay any amount of duties and interest due by that taxpayer out of such monies.

CLAUSE 4

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

Subclause (a): The proposed amendment provides for the inclusion of a co-operative in the definition of “company”.

Subclause (b): The proposed amendment is consequential to the proposed amendment referred to in subclause (c) below.

Subclause (c): The proposed amendment inserts new criteria into the definition of “connected person” based on the “group of companies” definition.

Subclause (d): The proposed amendment inserts a definition of a co-operative.

Subclause (e): The proposed amendment firstly provides that there is no dividend in the case of a reduction or redemption of capital by a collective investment scheme. Secondly, the proposed amendment provides for the determination of the amount of a dividend where a subsidiary makes a distribution to its holding company of the shares of that holding company and profits available for distribution are reduced in that holding company.

Subclause (f): The proposed amendment inserts a definition of a government scrapping payment.

Subclause (g): The proposed amendment deletes an obsolete definition.

Subclause (h): The proposed amendment is consequential to the insertion of the Tenth Schedule to the Bill.

Subclause (i): The proposed amendment inserts the definition of “municipality” pursuant to the Local Government Affairs Council Act (House of Assembly), 1989, being repealed by section 2 of the Local Government Affairs Council Act

(House of Assembly), 1999 (Act No. 59 of 1999) and the Local Authorities Loans Fund Act, 1984, being repealed by section 2 of the Local Authorities Loans Fund Acts Repeal Act, 1984 (Act No. 98 of 1997) and the amendment or repeal of certain other legislation.

Subclause (j): The proposed amendment is consequential upon the proposed amendment to insert a definition of "municipality" but it is proposed that the reference to "local authority" is preserved for purposes of certain pension funds established in relation to local authorities, which survive the abolition of the local authority.

Subclause (k): The proposed amendment is consequential upon the proposed amendment to insert a definition of "municipality" but it is proposed that the reference to "local authority" is preserved for purposes of certain pension funds established in relation to local authorities, which survive the abolition of the local authority.

Subclause (l): The proposed amendment is consequential upon the proposed amendment to insert a definition of "municipality" but it is proposed that the reference to "local authority" is preserved for purposes of certain pension funds established in relation to municipal entities, which survive the abolition of the local authority.

Subclause (m): The proposed amendment provides for a definition in respect of the regional electricity distributors that are established or are to be established.

Subclause (n): The proposed amendment provides for a new definition of "Republic".

Subclause (o): The proposed amendment provides for an extension of the requirements that a Retirement Annuity Fund may fulfil before approval thereof will be granted.

Subclause (p): The proposed amendment is of a textual nature.

Subclause (q): The proposed amendment provides for an extension of the manner by which an interest in a Retirement Annuity may be surrendered for the purposes of SARS approval.

Subclause (r): The proposed amendment includes a member of a co-operative in the definition of a shareholder.

Subclause (s): The proposed amendment inserts a definition of a water services provider.

CLAUSE 5

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

The proposed amendment enables a taxpayer to lodge an objection and appeal against an assessment issued in terms of the new proposed section 80B.

CLAUSE 6

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

The proposed amendment provides that the Minister of Finance may delegate his or her powers and duties under the Income Tax Act.

CLAUSE 7

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

Subclause (a): The proposed amendment is consequential to the proposed amendment in paragraph (b) below.

Subclause (b): The proposed amendment is consequential to the proposed insertion of the 10th Schedule to the Act to regulate the taxation of mining for oil and gas.

CLAUSE 8

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

Subclause (a): The proposed amendment provides that the Commissioner may determine the subsistence allowance rather than the Minister, and the allowance may now be determined by reference to a region or country.

Subclause (b): Section 8(4)(k) deems a recoupment to take place when an asset is donated, distributed as a dividend or disposed of to a connected person for a consideration which does not reflect an arms length consideration or where the consideration is not an adequate consideration or where the consideration is not measurable in money. In such event, it deems the amount recovered or recouped to be equal to the market value of the asset.

It is proposed that section 8(4)(k) be amended in the following respects:
Firstly, it is proposed that the words “in the case of a company” be inserted in subparagraph (ii). This is a textual amendment required because of the reference in subparagraph (ii) to “that company”.

Secondly, the amendment proposes that section 8(4)(*k*) deems that the asset is disposed of at market value and therefore this section no longer triggers the recoupment or the amount of the recoupment. This aspect will now be regulated by section 8(4)(*a*).

CLAUSE 9

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

The proposed amendment corrects incorrect cross references in the definition of “broad based employee share plan”. It is proposed that the amendments be introduced with retrospective effect from 8 November 2005 when the original amendments were introduced.

CLAUSE 10

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

The proposed amendment provides for the valuation of the shares of private companies where share option schemes are introduced for employees.

CLAUSE 11

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

Subclause (a): The proposed amendments are consequential to the proposed deletion of the definition of “local authority” and the proposed insertion of the definition of “municipality”.

Subclause (b): The proposed amendment is consequential to the insertion of the Tenth Schedule.

Subclause (c): The proposed amendments are consequential to the proposed deletion of the definition of “local authority” and the proposed insertion of the definition of “municipality”.

CLAUSE 12

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

Subclause (a): The deletion of the definition of “business establishment” is consequential upon the insertion of the new definition of “foreign business establishment” in subsection 1.

Subclause (b): There has been some confusion about what the “country of residence” of the CFC is as used in section 9D. It was not clear what determines whether the CFC is resident in a particular country. Potential problems were envisaged in situations where more that one jurisdiction has a claim on the residence of the CFC and it is not clear as to which law determines such residence, be it South African or the law of one of those other countries. This proposed amendment clarifies the position to the effect that it is the country where the CFC has its place of effective management.

Currently subsection (9) contains aspects of the definition of business establishment in that it is the subsection that informs that a business establishment should be located outside the Republic. The deletion of the definition of “business establishment” and its substitution with “foreign business establishment” is intended to keep the definitional aspects in section 9D to subsection (1).

Currently paragraph (a) of the business establishment definition applies where a CFC has its own operational management and employees on site for the running of the business of the CFC. It disqualifies from the exemption CFCs in group of companies utilizing employees of another company in the group which might be incorporated for the purposes of providing the foreign group companies with managerial and operational services.

The proposed amendment allows group companies located in the same foreign country to use the same employees when determining whether a CFC has a foreign business establishment. The amendment, however, requires that the CFC itself be suitably equipped with, and have, proper facilities for its purposes.

The specific activities contained in paragraphs (b) to (e) of the definition of business establishment have been retained with the following proposed amendments:

Paragraph (b) The essence of this paragraph is that the CFC should be carrying on the exploration, extraction or prospecting operations. The requirement of the existence of a “right” added unnecessary and perhaps cumbersome conditions. As a result, it is proposed that it be deleted. A requirement that it should be in any place other than the Republic has been added.

Paragraph (c) A requirement that the site should be in any place other than the Republic has been added.

Paragraph (d) A requirement that the agricultural land should be in any place other than the Republic has been added.

Paragraph (e) Currently this paragraph applies only to vessels and aircraft and requires that the transportation should take place within a single country. The requirement is amended to cover also road transport and that all such transportation is undertaken solely outside the Republic and not necessarily within a single country. The business should be operated by that CFC.

As can be seen above, most of the basic requirements in the definition of “business establishment” have been retained.

Subclause (c): Reference to a section 24J instrument limits the definition of “foreign financial instrument holding company”.

Subclause (d): Currently a CFC is not allowed to deduct interest, rental, royalty or income of a similar nature paid to another CFC as these amounts are not included in the income of the recipient CFC. This amendment ensures that a CFC can deduct amounts paid as interest, rental, royalty or income of a similar nature paid to another CFC where such income is included in the income of that other CFC in terms of the amended section 9D(9)(fA).

Subclause (e): This amendment in consequential upon the new definition of a “foreign business establishment”.

Subclause (f): There has been uncertainty about what “delivery” means in section 9D. Confusion is said to have existed on whether it means physical or constructive delivery. This amendment clarifies that delivery in paragraph *(b)*(ii)*(bb)* is satisfied where physical delivery of the goods is made to the premises of the clients located within the country of residence of the CFC.

Subclause (g): This amendment is textual as there are more subitems added.

Subclause (h): There has been uncertainty about what “delivery” means in section 9D. Confusion is said to have existed on whether it means physical or constructive delivery. This amendment clarifies that delivery in paragraph *(b)*(ii)*(cc)* is satisfied where physical delivery of the goods is made to the premises of the clients located within the country of residence of the CFC.

Subclause (i): Currently where a CFC is subcontracted by a connected person who is a resident to render services for clients located outside the Republic, consideration for those services is included in the CFC’s income for South African tax purposes. In most cases such services could not be rendered in South Africa. The proposed addition of subitem (C) would avail such CFCs of the subsection (9)(b) exemption.

It has been suggested that where a South African resident pays any amount to a CFC and such payment is not allowed as a deduction in terms of any section of the Act, the equivalent of such amounts should subsequently not be included in the income of the CFC. The proposed addition of subitem (D) provides for an exclusion.

Subclause (j): This amendment in consequential upon the new definition of a "foreign business establishment".

Subclause (k): There have been concerns that the 18 month requirement achieves no purpose and unreasonably restricts the ambit of this subparagraph. The proposed amendment eliminates the restriction.

Subclause (l): Where it is to the benefit of the group of companies to have the interest, royalties, rental and other income of a similar nature received by a CFC from another CFC included in the CFC's income and deductible from that other CFC's income, such inclusion and deduction, as the case may be, should be allowed. The proposed amendment allows such inclusion and deduction.

Subclause (m): This amendment in consequential upon the new definition of a "foreign business establishment".

Subclause (n): There have been situations where the aggregate tax payable by a CFC in its country of residence in a foreign country and by the South African resident holding rights in the CFC exceeds the CFC's net income. This happened in circumstances where there is apparent erosion of the South African tax base even where South Africa does not tax the imputed net income of the CFC. The proposed amendment allows for a discretion to the Commissioner not to apply the diversionary rules in section 9(d)(9)*(b)*(ii), where the Commissioner is satisfied that the income of the CFC is subject to an amount of foreign tax which is at least two thirds of the normal SA tax had that income been imputed to a SA resident.

Certain businesses are in some instances managed and operated from central locations in contiguous countries but fall foul of the diversionary rules. In terms of the proposed amendment, where the CFC would have been subject to the section (9)(b)(ii) diversionary rules the Commissioner may grant an exemption from those rules.

The above proposed exemptions may only be allowed where they will not lead to an unacceptable erosion of the South African tax base.

CLAUSE 13

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

Subclause (a): The proposed amendment is consequential to the amendment in subclause (c) below.

Subclause (b): The proposed amendment is consequential to the proposed insertion of a definition of a municipality and the deletion of the definition of local authority.

Subclause (c): The proposed amendment provides for the exemption of the receipts and accruals of foreign governments, foreign government agencies and multinational organizations that provide foreign donor funding.

Subclause (d): The proposed amendment provides for the exemption of the salaries of foreign employees of foreign government agencies and certain multinational organizations.

Subclause (e): The proposed amendment provides that the receipts and accruals of the former "Black authorities", the regional electricity distributors and the water services providers are not exempt in terms of section 10(1)(*c*A).

Subclause (f): This proposed amendment provides that the receipts and accruals of a fund contemplated in section 37A are exempt.

Subclause (g): The proposed amendment is consequential to the proposed amendment in paragraph (e) above.

Subclause (h): The proposed amendments are consequential to the proposed deletion of the definition of "local authority" and the proposed insertion of the definition of "municipality".

Subclause (i): The proposed amendments are consequential to the proposed deletion of the definition of "local authority" and the proposed insertion of the definition of "municipality".

Subclause (j): The proposed amendments are consequential to the proposed deletion of the definition of "local authority" and the proposed insertion of the definition of "municipality".

Subclause (k): See notes on **PARTIAL TAXATION OF RECREATIONAL CLUBS**

Subclause (l): The proposed amendment is consequential to the proposed amendment in subclause (k) immediately above.

Subclause (m): Where a non resident acquires an interest bearing loan at a discount, the discount is deemed to be interest in terms of the provisions of section 24J of the Act. In terms of section 9(6) of the Act, the source of the interest as defined in section 24J is deemed to be South African (in certain circumstances). The effect is that section 10(1)(h) applies to interest in the common law sense and not to interest as defined in section 24J of the Act. One could therefore have the situation that the non resident is exempt on the "ordinary" interest in terms of section 10(1)(h) but not on the discount (deemed to be interest in terms of section 24J of the Act) on the same loan. The proposal is that section 10(1)(h) be amended to refer to interest as defined in section 24J.

Subclause (n): The proposed amendment is textual in nature and is consequential to the amendment of the definition of “Republic”.

Subclause (o): The proposed amendment is consequential to the proposed deletion of the definition of “local authority” and the proposed insertion of the definition of “municipality”.

Subclause (p): See notes on **INCENTIVES FOR EMPLOYEE SCHOLARSHIPS AND BURSARIES**

Subclause (q): The proposed amendment provides for the exemption of the traditional councils, regional electricity distributors and water services providers.

Subclause (r) to (u): See notes on **DOMESTIC AND FOREIGN GOVERNMENT GRANTS AND ASSISTANCE**

CLAUSE 14

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

Subclause *(a)*: It is proposed that the amendment in respect of the costs of registration of intellectual property will be effective for years of assessment commencing on or after 2 November 2006.

Subclause *(b)*: See notes on **MINING ENVIRONMENTAL REHABILITATION FUNDS**

CLAUSE 15

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

Subclause (a): The proposed amendment is consequential to the proposed amendment to move the deduction of expenditure for the registration of intellectual property and the extension of the registration to section 11(*g*B).

Subclause (b): The proposed amendment is consequential to the proposed insertion of section 11D.

CLAUSE 16

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

See notes on **INCENTIVES FOR SCIENTIFIC AND TECHNOLOGICAL RESEARCH & DEVELOPMENT**

CLAUSE 17

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

See notes on **RELIEF FOR SMALL BUSINESS CO-OPERATIVES**

CLAUSE 18

Income Tax: Amendment of section 15 of the Income Tax Act, 1962

See notes on **INCENTIVES FOR OIL AND GAS EXPLORATION AND PRODUCTION**

CLAUSE 19

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

See notes on **REFINEMENT OF PUBLIC BENEFIT ORGANISATION (PBO) ANOMALIES**

CLAUSE 20

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

Subclause (a): See notes on **INCENTIVES FOR EMPLOYEE SCHOLARSHIPS AND BURSARIES**

Subclause (b): The proposed amendment provides for an extension of the expenditure that a personal services entity will be allowed to deduct.

Subclause (c): The proposed amendment further regulates deductions in respect of assets that were acquired or expenditure funded by means of government grants.

CLAUSE 21

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

Subclause (a): The proposed amendment clarifies that deductions may only be taken into account once when determining taxable income.

Subclause (b): The proposed amendment clarifies that deductions shall not be allowed under section 11 (a) where some other deduction was allowed in respect of the same expense, even if the other deduction would otherwise be granted in a different year of assessment.

CLAUSE 22

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

Subclause (a): See subclause (c) below.

Subclause (b): See subclause (c) below.

Subclause (c): All amounts payable or receivable in terms of an instrument are taken into account in determining the yield to maturity rate to be applied to calculate the interest incurral or accrual in terms of section 24J. The net amount receivable or payable is equal to the interest accrued or incurred under an instrument. It is proposed that amounts taken into account to determine a yield to maturity rate or accrual amounts should not qualify for a deduction under section 11(a) or not be included in gross income. This proposed amendment gives effect to this proposal.

CLAUSE 23

Income Tax: Amendment of section 26B of the Income Tax Act, 1962

See notes on **INCENTIVES FOR OIL AND GAS EXPLORATION AND PRODUCTION**

CLAUSE 24

Income Tax: Repeal of Section 29 of the Income Tax Act, 1962

The section is deleted as obsolete.

CLAUSE 25

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

The proposed amendments delete obsolete provisions.

CLAUSE 26

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

See notes on **REFINEMENT OF PUBLIC BENEFIT ORGANISATION (PBO) ANOMALIES**

CLAUSE 27

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

See notes on **PARTIAL TAXATION OF RECREATIONAL CLUBS**

CLAUSE 28

Income Tax: Amendment of section 36 of the Income Tax Act, 1962

See notes on **INCENTIVES FOR OIL AND GAS EXPLORATION AND PRODUCTION**

CLAUSE 29

Income Tax: Amendment of section 37A of the Income Tax Act, 1962

See notes on **MINING ENVIRONMENTAL REHABILITATION FUNDS**

CLAUSE 30

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

Subclause (a): The proposed provides that a foreign company will not fall under the definition of "foreign financial instrument holding company" where the company conducts more business in its country of residence than in any other single country.

Subclause (b): The proposed amendment provides that a foreign financial instrument holding company includes an entity that receives commissions.

Subclause (c): The proposed amendment is textual in nature.

Subclause (d): The proposed amendment provides that the Commissioner, when deciding whether a CFC conducts more business in the country of residence than in any other single country, may disregard business in that other country if the business is attributable to a PE and subject to tax by that other country as income from a PE.

Subclause (e): The proposed amendment provides that certain instruments contemplated in section 24J(1) must be disregarded.

Subclause (f): The proposed amendment is consequential to the introduction of the new General Anti-Avoidance Rule.

CLAUSE 31

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

The proposed amendment regulates the sale of shares shortly after a company formation transaction where most of the assets disposed of in terms of the transaction are trading stock.

CLAUSE 32

Income Tax: Amendment of Section 43 of the Income Tax Act, 1962

The proposed amendment provides that share for share transactions for private companies and public companies are subject to the same time constraints.

CLAUSE 33

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

The proposed amendment deals with the situation where a holding company makes a loss on a disposal of shares, or where it makes a gain and that gain is wiped out by a capital loss or an assessed capital loss brought forward.

CLAUSE 34

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

Subclause (a): The proposed amendment is of a textual nature.

Subclause (b): The proposed amendment provides for the deletion of the obsolete part of the provision.

Subclause (c): The proposed amendment deletes an obsolete provision.

Subclause (d): The proposed amendment deletes an obsolete provision.

CLAUSE 35

Income Tax: Repeal of section 76A of the Income Tax Act, 1962

The proposed amendment is consequential to the amendment of the provisions of the Act relating to reportable arrangements.

CLAUSE 36

Income Tax: Amendment of section 79 of the Income Tax Act, 1962

Subclause (a): The proposed amendment corrects an oversight.

Subclause (b): The proposed amendment extends the grounds upon which the Commissioner may not raise an additional assessment as provided for in section 79 to also include a case where any previous assessment made on the taxpayer in relation to a specific amount was amended or reduced pursuant to a decision by the Tax Board, or the settlement, concession or resolution of a dispute in terms of the dispute resolution rules provided for in section 107(2) of the Income Tax Act.

CLAUSE 37

Income Tax: Insertion of Part IIA of Chapter III of the Income Tax Act, 1962

GENERAL ANTI-AVOIDANCE RULE – IMPERMISSIBLE TAX AVOIDANCE

For purposes of comment on the draft legislation readers are referred to the Discussion Paper on Tax Avoidance and Section 103 of the Income Tax Act, 1962, issued on 3 November 2005, Tax Avoidance and Section 103 of the Income Tax Act, 1962 – An Interim Response issued on 16 March 2006 and Tax Avoidance and Section 103 of the Income Tax Act, 1962 – Revised Proposals issued on 15 September 2006. These documents are available on the SARS website at http://www.sars.gov.za.

DRAFT

CLAUSE 38

Income Tax: Insertion of Part IIB of Chapter III of the Income Tax Act, 1962

REPORTABLE ARRANGEMENTS

Current Law

Section 76A of the Income Tax Act provides for the reporting of two classes of arrangement. The first relates to arrangements that result in a tax benefit and are subject to an agreement that provides for the variation of interest, fees etc. if the actual tax benefits from the arrangement differs from the anticipated tax benefit. The second relates to a special inclusion list, which currently deals with two types of hybrid debt and equity instruments. Section 76A is intended to give SARS early warning of arrangements that are potentially tax driven. SARS is then in a position to take appropriate action to counter abuse more quickly than would otherwise be the case.

Reasons for Change

The number and nature of the transactions disclosed to SARS since the promulgation of section 76A have proven disappointing. Taxpayers have raised a number of technical points to argue that they need not disclose the arrangements they have entered into. Whether or not these arguments have merit, the practical result is that the desired level of reporting is not being achieved.

The proposal of a new General Anti-Avoidance Rule (GAAR) also provides for the opportunity to link the reportable arrangements legislation to the factors that are indicative of a lack of commercial substance for GAAR purposes.

Proposal

Subject to the exclusion list discussed below, the proposed reportable arrangements legislation is generally triggered where an arrangement:

- provides for interest, finance costs, fees or other charges that are partly or wholly dependent on the assumptions relating to the tax treatment of that arrangement (otherwise than by reason of any change in any law administered by the Commissioner);
- has any of the characteristics of, or characteristics which are substantially similar to, the indicators of a lack of commercial substance in terms of the proposed GAAR;
- is or will be disclosed by any participant as a loan or financial liability for purposes of Generally Accepted Accounting Practice but not for income tax purposes;

- does not result in a reasonable expectation of a pre-tax profit for any participant; or
- results in a reasonable expectation of a pre-tax profit for any participant that is less than the value of those tax benefits to that participant on a present value basis

A special inclusion list is retained but the five year threshold for reporting hybrid equity and debt instruments is extended to ten years to ensure that restructuring these instruments to fall outside the legislation will be more commercially challenging.

The existing exclusion list of arrangements that are unlikely to be tax driven, such as “plain vanilla” loans and leases, is largely retained, as is the Minister’s authority to include or exclude arrangements for disclosure by way of regulation.

The responsibility for disclosing a reportable arrangement is principally placed on its promoter, as this is the person most likely to have full insight into its operation. In the absence of a promoter who is a resident, the responsibility falls on all participants, although this responsibility falls away if another participant confirms in writing that the required disclosure has been made. This ensures that disclosure is made in the most comprehensive manner while minimising the duplication of disclosure submissions.

The information to be disclosed is similar to that currently required, except that it is proposed that a list of the arrangement’s agreements be submitted instead of a complete set of agreements. This will reduce the compliance cost with respect to the initial disclosure of an arrangement. Once the required information has been disclosed SARS will issue a reportable arrangement number to each participant in an arrangement for administrative purposes only. Additional information, including agreements, may be requested if an arrangement is selected for further analysis.

Finally, an amendment is proposed to the penalty provision to ensure that it serves as a deterrent for non-disclosure of reportable arrangements. A penalty of R1 million is proposed, but may be reduced where:

- there are extenuating circumstances and the non-disclosure is remedied within a reasonable time; or
- it is disproportionate in relation to the assumed tax benefit of the arrangement.

The proposed maximum penalty of R1 million reflects the substantial amounts typically at stake in reportable arrangements, with minimum funding levels of R20 million being common.

CLAUSE 39

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

The proposed amendment clarifies that the “pay now argue later rule” applies despite any objection or appeal process. Where an assessment is altered after objection or appeal amounts paid in excess are refunded together with interest.

CLAUSE 40

Income Tax: Amendment of section 102 of the Income Tax Act, 1962

Subclause (a): The proposed amendment provides that refunds will be subject to the *de minimus* rules of section 102A.

Subclause (b): The proposed amendment is textual in nature.

Subclause (c): The proposed amendment subjects refunds to the *de minimis* rules.

Subclause (d): The proposed amendment provides that a taxpayer will not be paid a refund unless all returns have been submitted.

Subclause (e): The proposed amendment provides that amounts not refunded due to the *de minimis* rule are carried forward to the succeeding year.

CLAUSE 41

Income Tax: Amendment of section 103 of the Income Tax Act, 1962

See notes in **CLAUSE 38**.

CLAUSE 42

Income Tax: Amendment of paragraph 5 of the Second Schedule to the Income Tax Act, 1962

See notes on **RETIREMENT FUND WITHDRAWALS**

CLAUSE 43

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

See notes on **RETIREMENT FUND WITHDRAWALS**

CLAUSE 44

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

Subclause (a) through (f): See notes on **RELIEF FOR SMALL PERSONAL SERVICE ENTITIES**

Subclause (g): The proposed amendment excludes PBOs and Recreational Clubs from the definition of provisional taxpayer for a period of three years or such longer period as the Commissioner may allow.

Subclause (h): The proposed amendment clarifies that the tax threshold will be determined by including the rebates in section 6 of the Income Tax Act.

CLAUSE 45

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

See notes on **RELIEF FOR SMALL PERSONAL SERVICE ENTITIES**

CLAUSE 46

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

See notes on **RELIEF FOR SMALL PERSONAL SERVICE ENTITIES**

CLAUSE 47

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

Subclause (a): In terms of paragraph 40 a deceased person is treated as having disposed of his or her assets to his or her deceased estate for proceeds equal to the market value of those assets at the date of death of the deceased and the deceased estate is treated as having acquired those assets at that value. When the assets are distributed by the deceased estate to heirs and legatees the assets are treated as having been distributed to them at the base cost of the deceased estate and to have been acquired by them at that value. The effect is that the deceased is taxed on any capital gains made on the deemed disposal of the assets at market value to the deceased estate and the heirs and legatees inherit the assets at a base cost equal to the market value at date of death of the deceased plus any expenditure qualifying as part of the base cost during the process of liquidation. Paragraph 40 deals with the assets of the deceased estates of residents and the assets of mentioned in paragraph 2 (1)(b) in the case of non residents (i.e. immovable property and rights and interests in such property in the Republic and assets of a permanent establishment in the Republic).

Paragraph 40 does not deal with the situation where a resident inherits assets, other than the assets mentioned in paragraph 2 (1)(b), from a deceased estate of a non resident and in particular at what value the asset is acquired by the resident. It is proposed that the resident be treated as having acquired the asset for expenditure equal to the sum of the market value of the asset immediately before the death of the deceased and any qualifying expenditure contemplated in paragraph 20 incurred in respect of that asset during the liquidation of the deceased estate by the executor.

Subclause (b): Paragraph 20(1)(h) established inter alia the base cost of marketable securities and equity instruments acquired in the circumstances referred to in sections 8A and 8C. A proviso to paragraph 20(1)(h) was inserted by Act 31 of 2005. In the context of paragraph 20(1)(h)(i) the proviso prevented a person from claiming expenditure prior to the date on which the market value used in computing the section 8A or 8C gain or loss was determined. The proviso, however, did not deal with the situation referred to in paragraph 20(1)(h)(i) where the person disposes of the asset and the amount received or accrued is taken into account in section 8C to determine the gain or loss rather than the market value of the asset. It is proposed that the proviso be amended to address this oversight.

Subclause (c): The proposed amendment is of a textual nature.

Subclause (d): The proposed amendment further regulates the base cost in respect of assets that were acquired with government grants.

CLAUSE 48

Income Tax: Amendment of paragraph 24 of the Eighth Schedule to the Income Tax Act, 1962

The proposed amendment is as a result of the splitting of the definition of “valuation date” to cater for public benefit organisations and recreational clubs that ceased to be exempt persons after 1 October 2001.

CLAUSE 49

Income Tax: Amendment of paragraph 29 of Eighth Schedule to the Income Tax Act, 1962

Subclause (a): The proposed amendment is to delete an obsolete provision.

Subclause (b): The proposed amendment is as a result of the splitting of the definition of “valuation date” to cater for public benefit organisations and recreational clubs that ceased to be exempt persons after 1 October 2001.

Subclause (c): The proposed amendment is to allow the Commissioner to permit the use a market valuation obtained by a person within the period prescribed by the paragraph but which was not attached to the relevant income tax return.

Subclause (d): The proposed amendment is as a result of the splitting of the definition of “valuation date” to cater for public benefit organisations and recreational clubs that ceased to be exempt persons after 1 October 2001.

CLAUSE 50

Income Tax: Amendment of paragraph 30 of the Eighth Schedule to the Income Tax Act, 1962

The proposed amendment is of a textual nature.

CLAUSE 51

Income Tax: Amendment of paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962

The proposed amendment is as a result of the splitting of the definition of “valuation date” to cater for public benefit organisations and recreational clubs that ceased to be exempt persons after 1 October 2001.

CLAUSE 52

Income Tax: Amendment of paragraph 40 of the Eighth Schedule to the Income Tax Act, 1962

The proposed amendment corrects a cross-reference.

CLAUSE 53

Income Tax: Amendment of paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962

When a person acquires and disposes of some assets in the same foreign currency and the assets are attributable to a permanent establishment of the person which uses a different currency for financial reporting, it can be argued that the provisions of both paragraphs 43(1) and 43(2) are applicable to determine the capital gain or loss in disposal of the assets. In order to provide certainty it is proposed that paragraph 43(2) be amended to preclude its application where an asset qualifies for treatment under paragraph 43(1).

CLAUSE 54

Income Tax: Amendment of paragraph 62 of the Eighth Schedule to the Income Tax Act, 1962

The proposed amendments are to confirm that donations and bequests to approved public benefit organisations and approved recreational clubs which were previously disregarded in terms of subparagraphs *(b)* and *(c)* continue to be disregarded for CGT purposes.

CLAUSE 55

Income Tax: Insertion of paragraph 63A in the Eighth Schedule to the Income Tax Act, 1962

The proposed amendment provides that the capital gain or loss from the disposal of an asset not used for trade purposes by a PBO will be disregarded and provides a capital gain or loss must be disregarded where the asset was primarily used in carrying on any public benefit activity.

CLAUSE 56

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

See notes on **PARTIAL TAXATION OF RECREATIONAL CLUBS**

CLAUSE 57

Income Tax: Amendment of paragraph 64A of the Eighth Schedule to the Income Tax Act, 1962

The proposed amendments provide that where a person disposes of an asset to the government for destruction any capital gain or loss must be disregarded, if the Minister of Finance has by notice identified the relevant scheme for that destruction for purposes of exemption.

CLAUSE 58

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

See notes on **PARTIAL TAXATION OF RECREATIONAL CLUBS**

CLAUSE 59

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

In terms of paragraph 40 a deceased person is treated as having disposed his or her assets to his or her deceased estate for proceeds equal to the market value of those assets at the date of death of the deceased and the deceased estate is treated as having acquired those assets at that value. When the assets are distributed by the deceased estate to heirs and legatees the assets are treated as having been distributed to them at the base cost of the deceased estate and to have been acquired by the heirs and legatees at that value. The effect of this is that the deceased is taxed on any capital gains made on the deemed disposal of the assets at market value to the deceased estate and the heirs and legatees inherit the assets at a base cost equal to the sum of the market value on the date of death of the deceased, plus any expenditure qualifying as part of the base cost incurred during the process of liquidation.. One exception to the general application of paragraph 40 is a disposal of an asset by a deceased person to his or her surviving spouse upon death. In these circumstances paragraph 67 provides that any capital gain or capital loss made on that disposal is disregarded. The surviving spouse is treated as having acquired the asset on the same date, for the same expenditure and used the asset in the same manner as the deceased person. The effect is that any capital gain or capital loss made on the disposal of the asset is deferred until the asset is disposed of by the surviving spouse. Where the heirs or legatees decide to enter into a redistribution agreement of the assets and one of the parties to the agreement is the surviving spouse, paragraph 67 it is not clear how the provisions of paragraph 40 and paragraph 67 interact. It is proposed that this be clarified.

Subclause (a): The purpose of the proposed amendments to the different sub-items of paragraph 67(1)(b) of the Principal Act is as follows—
Sub-item (ii) – Paragraph 20 of the Principal Act deals with different kinds of expenditure in respect of an asset which includes, amongst other, expenditure for acquisition, valuation, disposal, establishing, maintaining and improving. Currently the sub-item only deals with acquisition expenditure and it is proposed that it be extended to all expenditure contemplated in paragraph 20. The sub-item also only provides for expenditure incurred by the deceased spouse to be brought into account by the surviving spouse and it is proposed that expenditure incurred by the executor of the estate of the deceased spouse also be brought to account by the surviving spouse.
Sub-item (iii) This sub-item also only applies to expenditure incurred by the deceased spouse and it is proposed that the sub-item also apply to expenditure incurred by the executor of the estate of the deceased spouse.

Sub-item (iv) The sub-item only deals with the use of the asset by the deceased spouse and it is proposed that the use of the asset by the executor of the deceased estate also be brought to account.

Subclause (b): As mentioned in the introduction, paragraph 67 did not expressly provide for the circumstances where the surviving spouse, heirs and legatees enter into a redistribution agreement. A further problem is that subparagraph (2) provides that the paragraph applies if the asset accrues to the surviving spouse upon the death of the deceased spouse. The asset does not, however, accrue on death of the deceased spouse but only after confirmation of the liquidation and distribution account.

It is proposed that that the disposal be treated by the deceased spouse as having occurred if ownership of the asset is acquired by the surviving spouse. The effect of this is that in the paragraph will only operate when it is clear what assets the surviving spouse has received, which will occur almost exclusively when there is confirmation of the liquidation and distribution account. In the case where there is a redistribution agreement the liquidation and distribution account will reflect the effect of the agreement.

CLAUSE 60

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

Paragraph 80 (2) of the Eighth Schedule applies where –

- a capital gain arises in a trust (for example, as a result of the sale of an asset to a third party) during a year of assessment, and
- the trustee vests that capital gain in a resident beneficiary during the same year of assessment.

In these circumstances the capital gain is disregarded in the trust and is taxed in the hands of the beneficiary.

Some commentators have expressed concern that the present wording does not permit

- the attribution of a portion of a capital gain in a single beneficiary, or
- the attribution of a capital gain in multiple beneficiaries.

It is proposed that paragraph 80 (2) be amended to put it beyond doubt that the portion of a capital gain can be attributed to a beneficiary or beneficiaries.

CLAUSE 61

Income Tax: Amendment of paragraph 92 of the Eighth Schedule to the Income Tax Act, 1962

The current wording requires the increase of the proceeds by losses that have no impact on the proceeds, such as paragraph 43 losses. The proposed amendments correct this oversight.

CLAUSE 62

Income Tax: Amendment of Part 1 of the Ninth Schedule to the Income Tax Act, 1962

See notes on ***REFINEMENT OF PUBLIC BENEFIT ORGANISATIONS (PBO) TAXATION***

CLAUSE 63 AND 64

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

See notes on ***REFINEMENT OF PUBLIC BENEFIT ORGANISATIONS (PBO) TAXATION***

CLAUSE 65

Income Tax: Insertion of the Tenth Schedule to the Income Tax Act, 1962

See notes on **INCENTIVES FOR OIL AND GAS EXPLORATION AND PRODUCTION**

CLAUSE 66

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

Clients currently use different bills of entry for the different customs and excise procedures. The SAD form is a single administrative document that may be used for different customs and excise procedures throughout the Southern African Customs Union (SACU). The format of the SAD form was agreed with the BLNS countries, who will also implement the form in their jurisdictions. SARS plans to implement the use of the SAD form nationally and as the Customs and Excise Act contains only references to bill of entry, the proposed amendment inserts a definition of "bill of entry" to include any SAD form.

The definitions of "break bulk goods", "bulk goods', "bulk goods terminal", "bulk goods terminal operator", "combination terminal', "combination terminal operator", 'container terminal operator", "road vehicle terminal ", "road vehicle terminal operator", 'transit shed" and "transit shed operator" are inserted as a result of the proposed amendment to license all port, terminal and similar operations (whether private or public).

Similarly the definitions of “container depot”, “container operator”, “container terminal”, “depot operator”, “master” and “pilot” are amended.

Section 1(2) defines a “container” as transport equipment having an internal volume of not less than one cubic metre and which are designed for the transport of goods by any means of carriage without requiring intermediate reloading. These containers are classified in tariff heading 86.09.

In practice there are many types of containers or packages in daily commercial use which are often mistakenly considered to be “containers” as defined in the Act.

The proposed amendment aims to introduce the added requirement of tariff classification within tariff heading 86.09 being “containers (including containers for the transport of fluids) specially designed and equipped for carriage by one or more modes of transport” in order to more clearly define “container” for the purpose of the Act.

The inclusion of sections 4 and 107 in the definition of container is consequential to the amendments to sections 4(8A) and 107 in terms of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act (Act 10 of 2006) which also inserted the word “container” into those sections.

The reference to section 44 originally omitted due to an oversight, is now included in the definition.

Subsection 4 is amended to include a definition for the expression “goods under customs control”, “goods subject to customs control” or “goods under control of the Commissioner” for the purpose of application of the provisions of the Customs and Excise Act. Section 4 (8A)(b)(ii) containing a similar definition is accordingly substituted.

The definition of “bill of entry” will come into operation on 1 October 2006 as this date was agreed with the other SACU members as the date of implementation and the rest will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 67

Customs and Excise: Insertion of section 3B of the Customs and Excise Act, 1964

Under section 75(14B) the Director-General: Agriculture is empowered to issue permits or certificates authorizing entry of certain goods under rebate, drawback or a refund of duty in respect of goods which may be entered in terms of any item of Schedule 3, 4, 5 or 6.

Since the said Director-General exercises these powers solely in terms of the Customs and Excise Act, provision is now made for the delegation of any duty imposed or any power conferred on the said Director-General in the Act as a result of a request received from the Department of Agriculture.

CLAUSE 68

Customs and Excise: Amendment of section 4 of the Customs and Excise Act, 1964

Subsection 4(3)(b) empowers the Commissioner or any officer to disclose any information relating to any person, firm or business acquired in the performance of his duties or by order of a competent court when required to do so as a witness in a court of law.

This provision is being abused by litigants who call customs officers as witnesses in proceedings not related to or for purposes of the Customs and Excise Act e.g. in divorce proceedings, to testify to the financial dealings of clients.

The proposed amendment deletes this provision and aligns the wording of the subsection with the Income Tax Act.

Subsection (8A)(a) empowers officers specifically with regard to section 107(2)(a), to stop or detain goods.

The proposed amendment now also empowers officers to examine any goods in order to ascertain whether the provisions of the Act or other law have been complied with.

Subsection (8A)(b)(ii) is substituted and the proposed amendment extends any reference to “examine” in subsection (8A)(b) to include the use of an X-ray scanner or other non-intrusive inspection methods. It also makes provision for examinations to take place in the absence of any person having control of such goods, creates offences in respect of such examinations and empowers the Commissioner to make rules regarding matters related to such examinations.

Subsection (13) provides that no person shall be entitled to any compensation for any loss or damage arising out of any *bona fide* action of an officer under section 4 of the Customs and Excise Act.

The proposed amendment now extends the application of the subsection to include any loss or damage arising out of any examination of goods by means of non –intrusive inspection methods.

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 69

Customs and Excise: Amendment of section 6 of the Customs and Excise Act, 1964

Section 6 empowers the Commissioner to appoint *inter alia* places of entry, warehousing places and authorized roads and routes. To achieve more effective customs control, the proposed amendment empowers the Commissioner to appoint places where transit sheds, combination terminals, bulk goods terminals and road vehicle terminals may be established.

The proposed amendment to paragraph *(g)* limits the type of goods that may be removed to a transit shed to break bulk goods and removes the requirement that the goods can only be removed to the transit shed before due entry.

Subsection (6) is inserted to provide that no person may deal with any imported goods landed from any ship or vehicle or load any goods for export unless such a person is a licensee of premises licensed in terms of the Customs and Excise Act. This amendment will ensure more effective control over the movement of goods.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

CLAUSE 70

Customs and Excise: Amendment of section 7 of the Customs and Excise Act, 1964

Section 7 deals with the report of arrival or departure of ships or aircraft. The proposed amendment empowers the Commissioner to prescribe by rule persons who shall electronically submit arrival reports, schedule reports and departure reports.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

CLAUSE 71

Customs and Excise: Amendment of section 8 of the Customs and Excise Act, 1964

Section 8 deals with the submission of cargo reports.

The proposed amendment now prohibits the packing or loading of the cargo into or onto a ship or vehicle for export before a cargo report is received by the Controller and release has been granted. Provision is further made for appropriate penal provisions.

The amendment will provide SARS with advance information on exports, which will be used for risk management purposes.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

CLAUSE 72

Customs and Excise: Amendment of section 11 of the Customs and Excise Act, 1964

Section 11 lists the premises where imported goods may be placed into or delivered to, before due entry thereof. The proposed amendment adds combination terminals, bulk goods terminals, road vehicle terminals to the places where goods may be removed to on landing. These places are in terms of the proposed definitions, licensed places. Further, the proposed amendment also removes the limitation that only unentered goods could be placed in these facilities.

The purpose of the amendment is to improve the control over the movement of imported goods into temporary storage facilities pending the further removal thereof under a customs procedure e.g. warehousing, duty paid, etc.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

CLAUSE 73

Customs and Excise: Insertion of section 11A of the Customs and Excise Act, 1964

SARS may under the general provisions of the Customs and Excise Act affix security seals. In order to facilitate compliance and service delivery, the proposed amendment introduces specific provisions for the affixing of seals by SARS and other parties' e.g. external economic and logistic operators, in safeguarding goods in transit. The proposed amendment also empowers the Commissioner to determine a date by rule where after all goods under customs controls have to be sealed. Provisions relating to the risk and expense of fixing seals have also been made and a penal provision has been inserted relating to the tampering or damaging of seals.

The amendment will improve the security of and control over goods.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

CLAUSE 74

Customs and Excise: Amendment of section 18 of the Customs and Excise Act, 1964

Section 18 provides for the removal of goods in bond. The proposed amendment to subsection (1)*(d)* makes removals in bond by a container operator subject to the provisions of section 44, which deal with the container operators liability for duty as a carrier. The current exemption in respect of security is deleted.

Subsection (1)*(e)* allows for the removal in bond of goods by the pilot of an aircraft under cover of an air cargo transfer manifest from place in the Republic where the goods were landed to their place of entry in the Republic. The proposed amendment limits such removal to a licensed transit shed in the common customs area and extends the category of persons who can remove such goods to include the airline. The current exemption in respect of security is deleted.

The deletion of the exemption of security will allow the Commissioner to exercise his discretion to call for security or not. The amendment aligns the position of container operators and airlines with other carriers of goods.

The amendment to subsection (1)*(e)* will improve the control over air cargo and the inclusion of the reference to the airline reflects current industry and operational realities.

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 75

Customs and Excise: Amendment of section 21 of the Customs and Excise Act, 1964

Section 21 allows for the warehousing of duty free goods for export and subsection 21(3)*(d)*(iii) provides for, *inter alia,* where the importer fails to export duty free goods warehoused for export, within the prescribed time that the goods may be entered for home consumption and payment of duty.

Clients may enter goods for export without any intention of exporting them in order to take advantage of the VAT deferment allowed on duty free goods warehoused for export. They would then rely on the provisions of subsection 21(3)*(d)*(iii) to enter those goods for home consumption. This is contrary to the intention of section 21 and therefore the amendment proposes the deletion of the entry of goods for home consumption and payment of duty option.

CLAUSE 76

Customs and Excise: Amendment of section 21A of the Customs and Excise Act, 1964

Section 21A contains provisions for the administration of customs controlled areas within industrial development zones. The Department of Trade and Industry does not intend to make regulations under the Manufacturing Development Act, 1993 relating to industrial development zones and therefore reference to making of regulations under the said Act is accordingly deleted

CLAUSE 77

Customs and Excise: Amendment of section 31 of the Customs and Excise Act, 1964

Section 31 provides for the entry of spirits for use in manufacture of other products. With the publication of the amended Schedule No. 6 of the Customs and Excise Act on 31 March 2006, the provisions of section 31 have become superfluous as the matters regarding the entry of spirits for use in manufacture of other products are now dealt with in Schedule No. 6 of the Customs and Excise Act and the proposed amendment accordingly deletes section 31.

CLAUSE 78

Customs and Excise: Amendment of section 37B of the Customs and Excise Act, 1964

Section 37B provides for the manufacture, storage, disposal and use of biofuel, biodiesel and bioethanol.

Subsection (2)*(b)* empowers the Minister to, in terms of any license prescribed in Schedule No. 8 of the Act, exempt any person from the requirement to license for the manufacture of biofuel or any goods used in the production of biofuel.

Due to the fact that the rules for section 37B provide the criteria for distinguishing between different categories of biofuel manufacturers, it is considered more practical to empower the Commissioner to also by rule prescribe the criteria for exempting a person from the requirement to license as a manufacturer of biofuel.

The proposed amendment empowers the Commissioner to exempt manufacturers of biodiesel from licensing in accordance with criteria stipulated in the rules.

Subsection 37B(2)*(c)* empowers the Commissioner to exempt by rule a manufacturer of biofuel from the payment of duty on a specified quantity of biofuel manufactured by him or her, provided that it is meant for the personal use of that person and that it is not put up for sale or otherwise disposed of.

Current policy requires that provision should rather be made for an exemption from the payment of duty on a specified quantity of biofuel manufactured and no further restrictions concerning the use or disposal of such fuel should be imposed.

The proposed amendment is required in order to amend the current biofuel exemption provisions so as to be in line with current policy in that regard.

Subsection 37B(4)*(a)* empowers the Commissioner to require any seller of biodiesel to register with him or her in terms of the provisions of section 59A.

It is considered essential, for purposes of control and audit, to register all manufacturers of biofuels irrespective of whether they are required, as non-exempted persons, to also be licensed for the manufacture of biofuels.

The proposed amendment empowers the Commissioner to require the registration of all manufacturers and sellers of biofuels.

This shall be deemed to have come into operation on 29 March 2006.

CLAUSE 79

Customs and Excise: Amendment of section 38 of the Customs and Excise Act, 1964

Subsection 38(3)(a) provides that every exporter of any goods shall before such goods are exported from the Republic, deliver a bill of entry to the Controller.

It is important for the purposes of conducting examinations, as provided for in the amendment of section 4(8A), of exports, that the bill of entry is delivered to the Controller with sufficient time remaining to conduct examinations before such goods are loaded on board an export vessel.

The proposed amendment allows the Commissioner to prescribe by rule the period within which export entries must be delivered to the Controller.

Subsection (5) is inserted to regulate by rule the transfer of goods from one mode of transport to another or from one such mode of transport to a similar mode of transport in order to better control the movement of goods.

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 80

Customs and Excise: Amendment of section 41 of the Customs and Excise Act, 1964

Paragraph *(d)* in subsection (4) is being deleted as the right of appeal contained in the said paragraph is covered by the provisions of Chapter XA – Part A: Internal Administrative Appeal.

CLAUSE 81

Customs and Excise: Amendment of section 44 of the Customs and Excise Act, 1964

Section 44 provides for the liability of duty and imposes liability on and terminates liability of supply chain participants as cargo moves through the supply chain.

The proposed amendment now extends such liability to container terminal operators, combination terminal operators, bulk goods terminal operator and road vehicle terminal operators as they will in future be required to be licensed in terms of the Customs and Excise Act.

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 82

Customs and Excise: Amendment of section 55 of the Customs and Excise Act, 1964

The heading of Chapter VI, which contains sections 55 – 57A is amended to also make provision for safeguard measures and not only safeguard duties as provided for in the International Trade Administration Act, 2002.

Subsections (2)*(a)*, (3)*(a)* and (4) are amended for the same reason.

CLAUSE 83

Customs and Excise: Amendment of section 56 of the Customs and Excise Act, 1964

Subsection 56 is amended to provide for the amendment and not only the imposition of an anti-dumping duty as provided for in the International Trade Administration Act, 2002.

CLAUSE 84

Customs and Excise: Amendment of section 56A of the Customs and Excise Act, 1964

Subsection (2) is amended to provide for the amendment and not only the imposition of countervailing duties as provided for in the International Trade Administration Act (2002).

CLAUSE 85

Customs and Excise: Amendment of section 57 of the Customs and Excise Act, 1964

The heading as well as subsections (1) and (2) are amended to provide for safeguard measures as provided for in the International Trade Administration Act, 2002.

CLAUSE 86

Customs and Excise: Insertion of section 64H of the Customs and Excise Act, 1964

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations (whether private or public) to achieve more effective customs control.

Section 64H has accordingly been inserted to provide for the licensing of container terminals.

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 87

Customs and Excise: Insertion of section 64IJ of the Customs and Excise Act, 1964

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations(whether private or public) to achieve more effective customs control.

Section 64IJ has accordingly been inserted to provide for the licensing of combination terminals.

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 88

Customs and Excise: Insertion of section 64K of the Customs and Excise Act, 1964

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations(whether private or public) to achieve more effective customs control.

Section 64K has accordingly been inserted to provide for the licensing of road vehicle terminals

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 89

Customs and Excise: Insertion of section 64L of the Customs and Excise Act, 1964

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations (whether private or public) to achieve more effective customs control.

Section 64L has accordingly been inserted to provide for the licensing of bulk goods terminals.

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 90

Customs and Excise: Insertion of section 64M of the Customs and Excise Act, 1964

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations(whether private or public) to achieve more effective customs control.

Section 64M has accordingly been inserted to provide for the licensing of container operators.

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 91

Customs and Excise: Insertion of section 64N of the Customs and Excise Act, 1964

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations(whether private or public) to achieve more effective customs control.

Section 64N has accordingly been inserted to provide for the licensing of transit shed operators.

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 92

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

In paragraph *(a)* the reference to item 540.02 of Schedule No. 5 is deleted, as this specific item was deleted on 23 September 1999 in Government Gazette No. 20498, Notice No. R1150.

The amendments numbered *(a)* to *(h)* in section 75 are being made as a consequence to the review of Schedule No. 6 to the Act that was published on 31 March 2006. The structure of Schedule No. 6 has changed and therefore different item numbers now exist.

The amendment in paragraph (ij) is a deletion of the 0,5 percent losses for wine and other fermented beverages. The original reason for the introduction of these losses was that manufacturers of wine and other fermented beverages received a full rebate on their losses up to the bottling stage of the product. Any losses occurring after the bottling were dutiable at the relevant rate of duty. In order to compensate for these bottling losses, the 0,5 percent allowance was introduced. The manufacturers of wine and other fermented beverages already receive manufacturing losses in terms of section 20(5) up to the point where the end product leaves the warehouse. The deletion is thus to take away the double allowance of losses.

The amendment in paragraph *(k)* is to include unmarked illuminating kerosene and unmarked specified aliphatic hydrocarbon solvents to qualify for the same losses as distillate fuel.

CLAUSE 93

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

A technical error is being corrected – the reference to section 77(1)*(a)* within subsection (2) is being amended to refer to section 77*(a)* only, as there is no section 77(1)*(a).*

CLAUSE 94

Customs and Excise: Amendment of section 80 of the Customs and Excise Act, 1964

Section 80 deals with serious offences and their punishment.

The proposed amendment creates offences relating to cargo reports, the landing of imported goods and loading of goods for export.

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 95

Customs and Excise: Amendment of section 96 of the Customs and Excise Act, 1964

Section 96 deals with the notice of action and the period for bringing action.

The proposed amendment makes it mandatory for any person who applies to the High Court for an order for the sale of any arrested property as contemplated in the Admiralty Jurisdiction Regulations Act, Act 105 of 1983, to deliver a notice of such an application to SARS.

CLAUSE 96

Customs and Excise: Amendment of section 96A of the Customs and Excise Act, 1964

Section 96A provides for the approval of container operators.

The proposed amendment deletes this provision. This amendment is consequential to the insertion of section 64M that provides for the licensing of container operators.

CLAUSE 97

Customs and Excise: Amendment of section 97 of the Customs and Excise Act, 1964

Section 97 deals with the appointment of an agent by a master, pilot or other carrier.

The current provisions do not make the appointment of an agent mandatory.

The proposed amendment now makes the appointment of an agent mandatory where the means of transport is not owned or chartered by a legal person registered in the Republic in accordance with the laws of the Republic.

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 98

Customs and Excise: Amendment of section 101A of the Customs and Excise Act, 1964

Section 101A makes provision for electronic communication for the purpose of customs and excise procedures.

The Minister of Finance announced in his 2006 Budget Review that large clearing and forwarding agents, importers, carriers and other supply chain participants will be required to communicate electronically with SARS to facilitate risk management, reduce error rates and speed up processing.

The proposed amendment is aimed at empowering the Commissioner to make rules prescribing the persons or class of persons for whom electronic communication is mandatory. The amendment also empowers the Commissioner to exempt persons from mandatory electronic communication.

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 99

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

The amendments in section 105 made in Revenue Laws Amendment Act, 2005 (Act 31 of 2005) were as a result of the need to achieve uniformity with regards to the order in which payments received must be applied in order to discharge any duty owed, as well as other amounts. “Fine” was included in section 105 in view of its presence in section 114.

In the past such fines were paid over to the Controller by the Department of Justice, but this practice is no longer followed and the reference to “fine” is therefore deleted. All fines imposed and collected by the courts are paid directly into the National Revenue Fund.

CLAUSE 100

Customs and Excise: Amendment of section 107 of the Customs and Excise Act, 1964

Section 107 deals with the expenses of landing, examination, weighing, analysis, etc. The proposed amendment extends the application of the said section to transit and transhipment goods. It also extends the meaning of examination to include any examination contemplated in section 4(8A).

This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 101

Customs and Excise: Amendment of section 114 of the Customs and Excise Act, 1964

The amendments in section 114 made in Revenue Laws Amendment Act, 2005 (Act 31 of 2005) were as a result of the need to achieve uniformity with regards to the order in which payments received must be applied in order to discharge any duty owed, as well as other amounts. “Fine” was included in section 114 in view of its presence in section 105.

In the past such fines were paid over to the Controller by the Department of Justice, but this practice is no longer followed and the reference to “fine” is therefore deleted. All fines imposed and collected by the courts are paid directly into the National Revenue Fund.

CLAUSE 102

Customs and Excise: Amendment of section 120 of the Customs and Excise Act, 1964

Subsection (1)(d) empowers the Commissioner to make rules regarding the reporting, handling and movement of cargo. The proposed amendment thereto now also empowers the Commissioner to make rules regarding transhipment cargo, goods under customs control and goods in a customs controlled area.
This will come into operation on a date fixed by the President by Proclamation in the Gazette.

CLAUSE 103

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

Where a public benefit organisation acquired a business undertaking or trading activity before 1 January 2001, by way of a donation, inheritance or bequest, the activity may be retain for a period of 7 years. Such undertaking or activity should, however, be transferred to a separate taxable entity within 5/7 years. Special exemptions from stamp duty have been provided for in the Act to facilitate this. The period allowed for such concession, i.e. the exemption from stamp duty will however, expire shortly and the proposed amendment will ensure that with effect from 1 April 2007 the said exemption will no longer apply to public benefit organisations.

CLAUSE 104

Finance and Financial Adjustments Act: Amendment of section 9 of the Finance and Financial Adjustments Act, 1977

See notes on **DIFFERENT SPHERES OF DOMESTIC AND FOREIGN GOVERNMENT**

CLAUSE 105

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

A "foreign donor funded project" as defined in section 1 of the VAT Act, means a project which came about as a result of an international donor funding agreement entered into by the Government of the Republic. The proposed amendment is to clarify that a foreign donor funded project refers to an international agreement entered into by the Government as envisaged in section 231(3) of the Constitution of the Republic of South Africa, 1996. In addition, the international agreement must specifically provide that the funds should not be subject to any form of taxation in the Republic.

CLAUSE 106

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

The proposed amendment is of a textual nature to include the full reference to the Collective Investment Schemes Control Act.

CLAUSE 107

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

The proposed amendment is of a textual nature by replacing the reference to the Statistics Act, 1976, which became obsolete, with the new reference to the Statistics Act, 1999 (Act No. 6 of 1999).

CLAUSE 108

Value-Added Tax: Amendment of section 8 of the Value-Added Tax, 1991

Subclause (a): The purpose of section 8(24) of the VAT Act is to deem a CCAE to supply goods where movable goods are temporarily removed from the CCA to a place in the Republic and such goods are not returned to the CCA within a period of 30 days from its removal, or such other period as approved by the controller. Output tax must be declared by the CCAE in this instance. As it was always the intention that the IDZ operator be treated on a similar basis to a CCAE, the proposed amendment clarifies the original intention by also deeming the IDZ operator to supply goods where movable goods are not returned to the CCA within a period of 30 days from its removal, or such other period as approved by the controller.

Subclause (b): The proposed amendment is to ensure that in circumstances where a vendor receives any payment that is in excess of the consideration charged for that supply and such excess payment is not refunded, output tax will be payable on the excess portion of the payment received. The vendor will have to account for output tax on the excess amount of money received on the last day of the tax period which ends 3 months after the excess payment was received. In the event that the excess payment is refunded by the vendor, he or she will be entitled to claim input tax.

Example 1:

Vendor A, registered on category A, issues a tax invoice to John for R114 (invoice no. 10 dated 01/3/2006) and sends a statement to him a week later. John pays Vendor A R114. His wife on receiving the statement also pays Vendor A R114 on 30/04/2006 in respect of the same invoice. Vendor A retains both payments and does not refund the overpayment received from John's wife.

VAT Treatment:

1. The excess payment of R114 received by Vendor A will be treated as a deemed supply and output tax will be payable.
2. Vendor A will be liable to account for output tax amounting to R14 (i.e. R114 x 14/114) during the 07/2006 tax period, which is the last day of the tax period during which the 3 month period ends, i.e. the 3 month period is calculated from 30/4/2006 and therefore ends on 30/7/2006. (also see proposed amendment to section 10(26)).

Example 2:

Same facts as the above example, however Vendor A refunds (see proposed amendment to section 16(3)(l)) the overpayment received from John's wife on 25/9/2006.

VAT Treatment:

Vendor A on refunding the overpayment of R114 to John on 25/09/2006 will be entitled to input tax of R14 in the 09/06 tax period.

CLAUSE 109

Value-Added Tax: Amendment of section 10 of the Value-Added Tax, 1991

The proposed amendment is consequential upon the insertion of the deeming provision in section 8(24) in Clause 109(b) and determines the value for that deemed supply to be the consideration in money for that supply. See explanatory memorandum under Clause 109(b).

CLAUSE 110

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

Subclause (a): A vendor may in terms of section 11(1)(c), supply movable goods under a rental agreement, charter party or agreement for chartering at the zero rate, if such goods are used in a CCA. However, the current wording allows a vendor to zero rate such supply where the supply is to a vendor in a customs controlled area provided that the movable goods are use exclusively in a CCA. The proposed amendment is to clarify that the zero-rating will only apply to movable goods used in a customs controlled area by a customs controlled area enterprise or an IDZ operator.

Subclause (b): A vendor may in terms of section 11(1)(m) supply movable goods (excluding a “motor car”) in terms of a sale or instalment credit agreement to a registered vendor in a customs controlled area, if such goods are physically delivered by the supplier or by the supplier’s cartage contractor. The proposed amendment replaces the reference to a registered vendor with that of a CCAE or an IDZ operator. The zero rating therefore only applies when the movable goods are supplied to a CCAE or IDZ operator. The remaining amendments are of a textual nature to clarify that the zero rating only applies where the supplier is contractually liable for the delivery of the goods into the CCA.

Subclause (c): The VAT Act currently does not make provision for the supply of fixed property situated in a CCA, to be zero rated. The proposed amendment is to allow a vendor to supply fixed property or the right to use or the granting of permission to use such fixed property under any rental agreement or any other agreement, at the zero rate where the fixed property is situated in a customs controlled area. The supply must however be made to a CCAE or an IDZ operator to qualify for the zero rate.

Subclause (d): The proposed amendment is of a textual nature by including the word “or” at the end of paragraph (q).

Subclause (e): The VAT Act does not provide for a specific zero rating where a vendor supplies goods and/or services to a public authority. Accordingly, such supply will be standard rated. The proposed amendment will provide for the payment (i.e. compensation) received by the vendor in terms of section 19 of the Animal Diseases Act, 1984 (Act No. 35 of 1984) to be zero rated in respect of the supply by the vendor to the public authority of controlled animals or things.

Subclause (f): Section 11(2)(k) currently entitles a vendor to supply services, which are physically rendered to any registered vendor in a customs controlled area at the zero rate. The registered vendor does not have to be a customs controlled area enterprise or an IDZ operator. The proposed amendment replaces the reference to a registered vendor with that of a CCAE and as it was always the intention that an IDZ operator will also be receiving the same benefit as that of a CCAE where services are supplied physically in a CCA to a CCAE or an IDZ operator at the zero rate, the proposed amendment therefore also clarifies this intention by inserting an IDZ operator.

Subclause (g): The receipt of international donor funding by a “foreign donor funded project” as defined, is currently zero rated in terms of section 11(2)(q) read with section 8(5B). The proposed amendment is to further regulate the zero-rating of the international donor funding received by the project only to the extent that the zero-rating has been approved by the Minister after consultation with the Minister of Foreign Affairs.

CLAUSE 111

Value-Added Tax: Amendment of section 12 of the Value-Added Tax, 1991

Subclause (a): The proposed amendment amends the reference to the Income Tax Act.

Subclause (b): The proposed amendment is to clarify that the supply of training or education as envisaged in 12(h)(i)(cc)(A) and (B) and not the promotion thereof, is exempt from VAT.

Subclauses (c) and (d): The proposed amendment is of a textual nature by the deletion of the word "or" at the end of sub item (E) and the inclusion of the word "or" at the end of subparagraph (ii).

CLAUSE 112

Value-Added Tax: Amendment to section 15 of the Value-Added Tax, 1991

With the introduction in the Taxation Laws Amendment Act, No 9 of 2006 (TLA 2006), of the new definition of "municipality" in section 1 of the VAT Act, certain entities which previously fell within the definition of a "local authority" in section 1 of the VAT Act prior to its deletion in the TLA 2006 no longer fell within the definition of "municipality" in section 1 of the VAT Act. As a result, these entities would not qualify to account for VAT the payments basis.

The basis for extending the list to the vendors mentioned below to account for VAT on the payments basis is that these vendors are rendering similar services, e.g. electricity, gas, water, drainage, removal or disposal of sewage or garbage to that of municipalities.

Regional electricity distributors (RED's) will be assuming the duties of providing electricity and collecting the fees for such services from the general public. The proposed amendment will therefore ensure that the RED's account for VAT on the payments basis. As a result, the transfer of the electricity distribution businesses to the RED'S will not result in an adjustment in terms of section 2(4)(a) of the VAT Act.

The proposed amendment extends the list of vendors who may account for VAT on the payments basis to that of—

(a) any water board or regional water services corporation or any other institution which has powers similar to those of any such boards or corporations which are listed in Schedule 3B of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and which entity would have fallen within the definition of "local authority" in section 1 of the VAT Act, as it read prior to that definition being deleted as from 1 July 2006;

(b) a regional electricity distributor, being an electricity distribution services provider established after 31 December 2005 that is listed under the Public Finance Management Act, 1999 (Act No. 1 of 1999) or established after that date under the Local Government: Municipal Systems Act, (No. 32 of 2000); and

(c) municipal entities as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and which supplies electricity, gas, water, drainage, removal or disposal of sewage or garbage.

The proposed amendment which will allow the entities, which are listed in Schedule 3B of the Public Finance Management Act, 1999, and municipal entities as defined in section 1 of the Local Government: Municipal Systems Act, 2000, to be on the payments basis, will be effective from 1 July 2006.

The proposed amendment which will allow regional electricity distributors, licensed in terms of the Electricity Regulation Act, 2006), to be on the payments basis will be effective from 1 August 2006.

CLAUSE 113

Value-Added Tax: Amendment of section 16 of the Value-Added Tax, 1991

Subclauses (a) and (c): Vendors have 5 years to claim input tax from the date on which a tax invoice for that supply should have been issued as contemplated in section 20(1), i.e. within 21 days from the date of the supply. However, instances exist where the vendor will not be in possession of a tax invoice, as the provisions of section 20(1) are not applicable. The proposed amendment ensures that, where the vendor will not be in possession of a tax invoice, but will have other documentary proof in respect of the acquisition of goods or services, the vendor will be entitled to claim input tax within 5 years from the date the vendor for the first time became entitled to such deduction.

Example:

A vendor, registered on category C, purchases fixed property from a non-vendor and pays transfer duty (on 1 October 2006). As the transaction is not a vatable transaction, the vendor will not be in possession of a tax invoice. In terms of the proposed amendment to the proviso to section 16(2), the vendor will be entitled to claim the notional input tax within 5 years after the end of the tax period during which the vendor for the first time became entitled to such deduction i.e. the vendor has 5 years from the October 2006 tax period to submit the input tax claim. The last tax period in which the vendor may therefore submit the input tax claim is in the October 2011 tax period.

Subclause (b): See explanatory memorandum on clause 109(b).
The proposed amendment allows a vendor who accounted for output tax on the overpayment/excess amount in terms of section 8(27) and subsequently refunds the overpayment to its customer, to deduct as input tax, the amount equal to the tax fraction of the excess amount. See example 2 in clause 109(b).

Subclause (d): Where a vendor awards a prize or winnings, the vendor will be entitled to claim an amount limited to the VAT incurred. In the case of second-hand goods, the vendor will be entitled to a deduction of the notional input tax. The proposed amendment is to clarify that the vendor who awards a prize or winnings is also, as from 1 February 2006, entitled to a deduction limited to the input tax, i.e. VAT, transfer duty or stamp duty paid. The proposed amendment therefore extends the deduction to not only the VAT, but also to the transfer duty and stamp duty paid.

CLAUSE 114

Value-Added Tax: Amendment of section 17 of the Value-Added Tax, 1991

Subclause (a): The proposed amendment is of a textual nature by replacing the incorrect reference.

Subclause (b): Entertainment expenses are generally denied as input tax. The purpose of section 17(2)(a) of the VAT Act is to unblock entertainment expenses. Section 17(2)(a)(ii) only allows a vendor to claim input tax on personal subsistence in respect of the vendor’s employees or office holders, who are by reason of their duties, away from their usual working-place or their usual place of residence. However, vendors are often required to pay for the costs (which include VAT) in respect of meals, refreshments and accommodation of self-employed natural persons, which the vendor contracts with to render services.

The proposed amendment to section 17(2)(a)(ii) is intended to extend the current provision of personal subsistence, being that of a meal, refreshment or accommodation, to self employed natural persons. This will now entitle vendors who are required to pay costs (which include VAT) for the personal subsistence of self employed natural persons, to deduct input tax on such expenses. This will only apply where the self employed natural persons are by reason of the contractual obligations with the vendor obliged to spend any night away from their usual place of residence and usual working place.

Subclause (c): The proposed amendment is to ensure that a foreign donor funded project is only entitled to claim input tax in respect of entertainment and other expenses prohibited in terms of section 17(2) to the extent that the international donor funding received from the international donor has been approved by the Minister in consultation with the Minister of Foreign Affairs to be zero rated in terms of section 11(2)(q).

CLAUSE 115

Value-Added Tax: Amendment of section 18 of the Value-Added Tax, 1991

The proposed amendment is consequential upon the insertion of section 11(1)(mA) to the VAT Act, where a vendor supplies fixed property, or the right to use or the granting of permission to use fixed property under any rental agreement or any other agreement at the zero rate to a registered vendor (i.e. a CCAE or an IDZ operator) in a customs controlled area (see clause 107(c)). In addition, the CCAE or IDZ operator must make an output tax adjustment where goods or services are not acquired wholly for consumption, use or supply in the course of making taxable supplies within a customs controlled area.

Example:
Where fixed property (land together with a factory) was purchased by a CCAE to be used in the course of making taxable supplies, and the factory is partially being used for residential purposes/accommodation for one of the CCAE's employees (security guard). The CCAE must make an output tax adjustment in respect of the portion which is used for making exempt supplies.

CLAUSE 116

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

A vendor, being the recipient of second-hand goods (not being a taxable supply), is not required to keep records as envisaged in terms of section 20(8) of the VAT Act, where the consideration in money for the supply of second-hand goods does not exceed R20. The proposed amendment is to reduce compliance costs of vendors, by increasing the total consideration in money for the supply from R20 to R50 or an amount determined by the Commissioner. The requirements to keep records in terms of section 20(8) of the VAT Act must be complied with when the supply exceeds R50 or such other amount as determined by the Commissioner.

CLAUSE 117

Value-Added Tax: Amendment of section 22 of the Value-Added Tax, 1991

Subclause (a): The proposed amendment alters the grammatical error.

Subclause (b): Where a vendor registered on the invoice basis claimed input tax on supplies and fails to pay the supplier within 12 months, the vendor is required to account for output tax in terms of section 22(3) of that portion of the amount that remains unpaid. An anomaly exists within the VAT Act as currently, no output adjustment is required where the vendor de-registers for VAT purposes, has not paid the supplier of the goods or services, has claimed input tax but has not accounted for output tax due to the fact that the 12 month period has not expired. The proposed amendment will ensure that output tax is accounted for at the time the vendor ceases to be a vendor in terms of section 8(2) and when that vendor has not fully paid the supplier of the goods or services.

CLAUSE 118

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

Subclause (a): The proposed amendment is of a grammatical nature.

Subclause (b): In terms of section 32(5), SARS is not allowed to issue another assessment once an assessment has been issued and the vendor has accepted or not objected to the assessment. The proposed amendment will allow SARS to issue additional assessments to the extent that it is found that the vendor has not complied with the provisions of the VAT Act. This authority to issue additional assessments will be akin to the authority SARS has in issuing additional assessments in terms of the Income Tax Act.

CLAUSE 119

Value-Added Tax: Amendment of section 41 of the Value-Added Tax, 1991

The proposed amendment, which inserts the second proviso, allows the Commissioner to withdraw any written decision issued prior to 1 January 2007 where the Commissioner prescribes that the written decision does not have binding effect. Such withdrawal will be from the date of the written notification thereof by the Commissioner. The withdrawal of the written decision where any contractual obligation was incurred in accordance with the written decision given by the Commissioner to the person concerned before such withdrawal to supply or receive the goods or services concerned, may not affect the liability or non-liability of that person for the payment of tax in accordance with such decision or the entitlement or otherwise to a deduction of tax, as determined in accordance with such decision, as the case may be.

The proposed amendment is to restrict the operation of the provisions of section 41(c) to written decisions issued on or before 31 December 2006.

Any written decision issued prior to 1 January 2007 in respect of supplies made after 1 January 2007, shall not be binding, except to the extent which the Commissioner confirms, in writing, that such written decision is binding. The proposed amendment, allows the Commissioner to withdraw any written decision issued prior to 1 January 2007 where the Commissioner prescribes that the written decision does not have binding effect. Such withdrawal will be from the date of the written notification thereof by the Commissioner.

The withdrawal of the written decision where any contractual obligation was incurred in accordance with the written decision given by the Commissioner to the person concerned before such withdrawal to supply or receive the goods or services concerned, may not affect the liability or non-liability of that person for the payment of tax in accordance with such decision or his entitlement or otherwise to a deduction of tax, as determined in accordance with such decision.

CLAUSE 120

Value-Added Tax: Amendment of section 41A of the Value-Added Tax, 1991

This amendment inserts a section relating to advance tax rulings. The provisions contained in the Income Tax Act, 1962, relating to advance tax rulings apply *mutatis mutandis* for purposes of the VAT Act.

CLAUSE 121

Value-Added Tax: Amendment of section 41B of the Value-Added Tax, 1991

The proposed amendment allows the Commissioner to issue binding 'VAT rulings' or 'VAT class rulings', which is a written statement by the Commissioner in respect of the application or the interpretation of the VAT Act. The proposed amendment furthermore, ensures that the provisions applicable to "advance tax rulings" catered for in the Income Tax Act, will apply *mutatis mutandis.*

'VAT rulings' will be issued under the provisions of 'binding private rulings' whereas 'VAT class rulings' will be issued under the provisions of 'binding class rulings'.

The 'VAT rulings' and 'VAT class rulings' will not be subject to any fees as envisaged in the Income Tax legislation governing "advance tax rulings".

In terms of the proposed amendment, the Commissioner will only be required to publish decisions that set a new precedent.

CLAUSE 122

Value-Added Tax: Amendment of section 44 of the Value-Added Tax, 1991

The proposed amendment provides for the treatment of *de minimus* refunds.

CLAUSE 123

Uncertificated Securities Tax: Amendment of section 5A of the Uncertificated Securities Tax Act, 1998

Currently the liability to pay UST and the responsibility to effect payment in terms of section 5A of the Act lies with the person acquiring beneficial ownership or who cancels or redeems securities.

The proposed amendment is to provide for this person (client) to effect payment of UST through—

(1) a participant, where the CSDP holds securities for a non-controlled client; or

(2) a member (broker) which will cover a controlled client arrangement.

CLAUSE 124

Uncertificated Securities Tax: Amendment of section 7 of the Uncertified Securities Tax Act, 1998

The proposed amendment is consequential upon the proposed amendment to section 5A set out in clause 123 and regulates the timing of payment of UST by the participant or member to the Commissioner.

CLAUSE 125

Uncertificated Securities Tax: Amendment of section 12 of the Uncertified Securities Tax Act, 1998

The proposed amendment is to clarify that the member or participant may recover the UST payable on the acquisition of securities or rights or entitlements in securities or the cancellation or redemption of those securities from the person who acquires those securities, rights or entitlements in securities or who cancels or redeems those securities.

CLAUSE 126

Customs and Excise: Amendment of section 42 of the Revenue Laws Amendment Act, 2001

In view of the amendment to section 38(3), this section is no longer applicable and is therefore repealed with immediate effect.

CLAUSE 127

Unemployment Insurance Act: Amendment of section 3 of the Unemployment Insurance Act, 2001

The proposed amendment is textual in nature.

CLAUSE 128

Unemployment Insurance Act: Amendment of section 14 of the Unemployment Insurance Act, 2001

In 2003 the Unemployment Insurance Act, 2001 was amended to effectively exclude those unemployed who receive a monthly State old-age pension (SOAP) in terms of the Social Assistance Act, 1992. The amendment essentially reinforced an already existing disparity between the Unemployment Insurance Contributions Act, 2002, and the Unemployment Insurance Act, 2001 in that the Unemployment Insurance Act denies benefits to SOAP pensioners although they will still be liable to contribute to the fund in terms of the fund in terms of the Unemployment Contributions Act if employed.

Consequently the Minister announced in the 2005 Budget Review that it is proposed that efforts be made to properly align the Unemployment Insurance Contributions Act with the Unemployment Insurance Act in order to ensure that all parties paying into the system will receive full benefits.

As the benefits paid in terms of the Unemployment Insurance Act are directly linked to the contributions made by an employee and the period over which such contributions were made, the proposed amendment now enables a working individual who is receiving a SOAP and who is liable for Unemployment Insurance Fund contributions to also be eligible for benefits from the fund should that individual become unemployed despite the fact that the individual is in receipt of a SOAP.

CLAUSE 129

Customs and Excise: Amendment of section 145 of the Revenue Laws Amendment Act, 2003

The value determination formula for domestically produced goods was eliminated with effect from 1 July 2001 and duties were levied thereafter on the invoice price of dutiable items. On 22 December 2003 section 61(1)(*d*A) was promulgated. It provides for the value for excise duty purposes of digital video discs (DVD's), recorded compact discs, audio tapes and video tapes. However, the provisions of section 61(1)(*d*A) were not made retrospective.

The proposed amendment is aimed at making the provisions of section 69(1)(*d*A) retrospective in order to clarify the legal position relating to what value was applicable for assessing the excise duty for the period 1 July 2001 until its promulgation.

CLAUSE 130

Value-Added Tax: Amendment of section 42 of the Second Revenue Laws Amendment Act, 2004

The proposed amendment deletes section 54A of the Value-Added Tax Act, 1991 which related to the advance rulings contained in the Income Tax Act, 1962.

CLAUSE 131

Income Tax: Amendment of section 26 of the Taxation Laws Amendment Act, 2005

The proposed amendment extends the deadline by which the shares issued in exchange for a right held in a non proprietary exchange must be issued. In addition, the effective date of the provision which deems the rights in a non proprietary exchange to be one and the same as the shares in the company assuming all the functions of the non proprietary exchange received in exchange does not cover tax years of holders of these rights ending during the period from 1 July 2005 to 31 December 2005. The proposed amendment corrects this oversight.

CLAUSE 132

Value-Added Tax: Repeal of section 12 of the Taxation Laws Second Amendment Act, 2005

The proposed amendment repeals section 41A as inserted by section 12 of the Taxation Laws Second Amendment Act, 2005 as a result of the proposed insertion of section 41A by the Revenue Laws Amendment Act, 2006.

CLAUSE 133

Customs and Excise: Amendment of section 22 of the Revenue Laws Second Amendment Act, 2005

Section 77D was inserted by section 147 of Act 45 of 2005 and then amended by section 22 of the Revenue Laws Second Amendment Act, Act 32 of 2005 where subsection (2) of section 77D was deleted. Due to this deletion, the reference to subsection (1) of section 77D is being deleted. All these paragraphs will only come into operation on the date Part A of Chapter XA comes into operation, which will be promulgated on a later date.

CLAUSE 134

Income Tax: Amendment of the index of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

The proposed amendment is textual in nature.

CLAUSE 135

Income Tax: Amendment of section 11 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

The proposed amendment is textual in nature.

CLAUSE 136

Income Tax: Amendment of section 23 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

The proposed amendment is textual in nature.

CLAUSE 137

Income Tax: Amendment of section 30 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

The proposed amendment is of a consequential nature.

CLAUSE 138

Income Tax: Amendment of section 54 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

The proposed amendment is textual in nature.

CLAUSE 139

Income Tax: Amendment of section 61 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

The proposed amendment is textual in nature.

CLAUSE 140

Income Tax: Amendment of Schedule 1 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

The proposed amendment is textual in nature.

CLAUSE 141

Income Tax: Amendment of section 1 of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

The proposed amendment is textual in nature.

CLAUSE 142

Income Tax: Amendment of section 6 of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

The proposed amendment is textual in nature.

CLAUSE 143

Short title and commencement date

This clause provides for the short title of this Bill.