REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 2007

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INTRODUCTION

The Taxation Laws Amendment Bill, 2007, introduces amendments to the Estate Duty Act, 1955, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, the Value-Added Tax Act, 1991, the Revenue Laws Amendment Act, 2004, the Revenue Laws Amendment Act, 2005, the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 and the Revenue Laws Amendment Act, 2006. The Bill also adjusts rates of normal tax for purposes of the Income Tax Act, 1962, and provides that the Tax on Retirement Funds Act, 1996, does not apply to income accrued after 28 February 2007.

LUMP SUM BENEFITS UPON RETIREMENT OR DEATH

Until the February 2007 Budget announcement of the abolishment of the Tax on Retirement Funds, the South African retirement fund tax system could be referred to as an **"Ett"** system[1]. In an **Ett** system, contributions are tax exempt (the "big" **E**), build-up or growth within the retirement fund is partly taxed at a low rate (small middle **t**) and retirement payouts are partly taxed (last small **t**). The current proposal deals with the partly taxed retirement payouts (i.e. the last small **t**).

1. Permissible lump sum payouts by pension and retirement annuity funds upon retirement

Current legislation

As a general rule, pension and retirement annuity funds may provide a payout of up to 1/3rd of the retirement interest in the form of a lump sum when a fund member retires. The other 2/3^{rds} must be converted to an annuity unless the full retirement interest will result in an annuity of R1 800 per annum or less if an annuity is purchased. In terms of Addendum A of SARS General Note 16, SARS accepts in practice that an annual annuity of R1 800 represents a retirement interest of R25 200 (i.e. SARS will allow the full retirement interest to be paid out to the retirement fund member upon retirement if the interest is R25 200 or less). Should the member's retirement fund interest be more than R25 200, only 1/3rd may be paid out in the form of a lump sum and the remaining 2/3^{rds} must be converted to an annuity.

[1] It is proposed that the middle "t" be changed to an "E" with effect from 1 March 2007.

Problem statement

This full withdrawal of smaller funds is allowed because administration costs (i.e. industry fees) in respect of relatively small annuities often outweigh the benefits. Even though annuities are generally preferred, individuals should not be forced to utilise annuities if the benefits will be consumed by fees.

Over the course of the past few years, the National Treasury has analysed data and information regarding the various costs incurred by retirement fund providers and the fees they charged to retirement fund members. As part of the review of these charges, the costs of annuities provided to retirees were investigated and it was found that R50 000 is the minimum amount required to provide a sustainable annuity. The National Treasury is by no means satisfied with the costs charged on these annuities and will continue to look at various interventions. However, the amount that may be paid out will be increased as an interim measure.

Proposed amendment

Retirees will continue to be able to withdraw 1/3rd of their retirement interest. In addition, retirees may withdraw the remaining 2/3^{rds} provided that this amount does not exceed R50 000, the equivalent of an annual annuity of approximately R4 500 per annum. This means that a person with a retirement interest of R75 000 or less in a fund, will be able to withdraw the full amount in the form of a lump sum. Amendments to the definitions of “pension fund” and “retirement annuity fund” in section 1 of the Income Tax Act, 1962, give effect to this proposal.

2. Tax treatment of lump sum payouts by pension and retirement annuity funds upon retirement (and death)

Current legislation

Permissible lump sums paid upon retirement are partly tax-free. The tax-free amount is generally calculated in terms of two formulas (Formulas A and B) with built-in minimum amounts for members of provident funds and death benefits. These formulas take into account the following variables: (i) for pension, provident and retirement annuity funds, the number of years that the retiree was a member of the retirement fund or years of employment, and (ii) for pension and provident funds, the retiree’s highest annual average salary during any five consecutive years in the service of the employer.

Should a retiree receive more than one lump sum (i.e. if the retiree was a member of more than one retirement fund), the tax-free amount received from one fund reduces the tax-free amount subsequently determined in respect of the other retirement fund. Non-deductible contributions made by a retirement fund member to a retirement fund may later be paid out tax-free upon retirement.

The remaining taxable portion of the lump sum is taxed based on an averaging formula. This averaging formula is based on: (i) the highest average annual tax rate for the tax year in which the retirement lump sum is payable, or (ii) the previous tax year. All taxable amounts are subject to PAYE withholding before payout.

Problem statement

The abovementioned formulas are complex and the tax-free amount is dependant upon information that may not be easy to access. Moreover, the lack of adjustment to the numbers used in the formulas has long been recognized as problematic. The combination of these issues prompted the need for change.

The tax payable on the taxable portion of the lump sum is also difficult to determine, and the averaging formula may be used as a planning opportunity by some individuals. In some circumstances, high net worth individuals artificially suppress overall taxable income levels for the relevant two-year period in order to limit the average tax rate on the taxable portion of the lump sum. Tax-exempt preference shares are often key to these schemes.

Proposed amendment – Tax-free portion

Under the newly created a regime, all retirees will be eligible for tax-free lump sum treatment of R300 000 (as a life-time tax exempt amount). Retirees will continue to additionally receive tax-free lump sum treatment for contributions to the fund that were not tax-deductible when contributed (and for contributions made to a public sector fund on or before 1 March 1998).

Proposed amendment – Taxable portion

The current complexities with respect to the taxable averaging formula on retirement lump sums will be eliminated and replaced by a simplified separate rate schedule. In addition to the first R300 000 tax-free lump sum payout discussed above, the amount from R300 001 through R600 000 will be subject to a flat 18 per cent rate, and the amount from R600 000 through R900 000 will be subject to a flat 27 per cent rate. All amounts above R900 000 will be subject to a flat 36 per cent rate. The payouts received are taxed separately using their own rate schedule and are thus unaffected by deductions, assessed losses and annual rebates. The new system will apply to the aggregate of all retirement lump sums over the retiree's lifetime that are received on or after 1 October 2007. As already provided under current law, fund administrators will have to withhold tax from these payments in accordance with Fourth Schedule to the Income Tax Act, 1962.

3. Withholding tax on lump sum retirement payouts to persons earning less than the tax threshold

Current legislation

Pension fund administrators are obliged to withhold tax from lump sum retirement and withdrawal payments to fund members. The minimum rate of tax to be withheld is 18 per cent.

Problem statement

Lump sum payments paid by retirement funds to persons earning less than the tax threshold are subject to 18 per cent tax, even though these amounts should otherwise be exempt (as a form of low-income relief). These persons have to then register as a taxpayer and claim back the tax withheld. In many instances these individuals are not familiar with the process and effectively suffer a tax which is not due when they fail to claim back.

Proposed amendment

Lump sum payments from retirement funds paid to persons who earned less than the tax threshold in the immediately preceding year of assessment will be exempt from withholding tax.

4. Extraordinary lump sum payouts

Current legislation

The Second Schedule to the Income Tax Act, 1962, governs the tax dispensation with respect to lump sum payments by retirement funds.

Problem statement

Three types of benefits currently payable represent extraordinary payments to retirement fund members (or former members). Until now, no special provision was made for these payments in the Second Schedule due to their one-off nature. These special payments to former members aim to partially rectify unfair practices of the past. In many instances, these rectifying payments are small because either low-income individuals bore a disproportionate share of the burden or because the amounts at issue were spread over a large number of member interests. The administrative burden and costs to obtain tax directives accordingly outweigh the monetary benefit payable to individual former members.

The first tranche of benefit involved the “Statement of Intent,” whereby the Minister of Finance signed an agreement with the long-term insurance industry on 12 December 2005. In terms of this agreement, minimum values should be attributed to retirement fund members (or former members) who discontinued their contributions prematurely. This agreement was formalised in terms of the Regulations under the Long-term Insurance Act, 1998.

In terms of the second tranche, many retirement funds have surplus accounts. The Pension Funds Second Amendment Act, 2001, prescribes that these surplus amounts must be apportioned in terms of a surplus apportionment scheme. In terms of these schemes, members (or former members) may receive their appropriate portion either in the form of cash or as a credit to their member accounts.

In terms of the third tranche, certain retirement fund administrators have negotiated better interest rates with banks by investing the funds of a number of retirement funds under the umbrella of one investment. The full benefit of these higher rates was not always fed through to retirement funds and some (or all) of the additional benefits were regarded as “profits” for the retirement fund administrator. Some of these “profits” will now be properly re-channelled to former retirement fund members.

Proposed amendment

It is proposed that these payments to former members be exempt from income tax. As a result, retirement fund administrators will not have to apply for a tax directive prior to paying these benefits to former fund members.

5. Tax-free payouts relating to membership of public sector funds before 1 March 1998

Current legislation

Lump sums payable by public sector funds to which a member was contributing before 1 March 1998 may be paid out partially tax-free by that fund when a member retires or withdraws from that fund.

Problem statement

A problem arises if the public sector fund member transfers a public sector retirement fund interest to a private sector fund. This transfer to the private sector fund is tax-free. However, upon retirement or withdrawal from the private sector fund, no tax relief is provided for the membership of the public sector fund before 1 March 1998. In essence, the tax-free nature of public sector pre-1 March 1998 membership is not fully carried through to the private sector fund.

Proposed amendment

Legislative amendments are proposed to preserve the tax-free portion of membership before 1 March 1998. The tax-free payout of public pension fund interest before 1 March 1998 will apply to both retirement lump sum benefits and withdrawal benefits from a private sector fund provided the fund interest was "rolled over" from a public sector fund. The effective date of these amendments is 1 March 2006.

CLAUSE-BY-CLAUSE AMENDMENTS

CLAUSE 1

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

Subclause (1): The amendment proposes that the estate duty abatement will be increased from R2,5 million to R3,5 million. The duty now applies only to the extent that the net value of an estate exceeds R3,5 million.

Subclause (2): The proposed amendment in subclause (1) comes into effect for the estates of persons who die on or after 1 March 2007.

CLAUSE 2

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

RATES:

Table I: Current rates for individuals and special trusts

Taxable Income	Rate of Tax
Not exceeding R100 000	18 per cent of the taxable income
Exceeding R100 000 but not exceeding R160 000	R18 000 plus 25 per cent of the amount by which the taxable income exceeds R100 000
Exceeding R160 000 but not exceeding R220 000	R33 000 plus 30 per cent of the amount by which the taxable income exceeds R160 000
Exceeding R220 000 but not exceeding R300 000	R51 000 plus 35 per cent of the amount by which the taxable income exceeds R220 000
Exceeding R300 000 but not exceeding R400 000	R79 000 plus 38 per cent of the amount by which the taxable income exceeds R300 000
Exceeds R400 000	R117 000 plus 40 per cent of the amount by which the taxable income exceeds R400 000

Table II: Proposed rates for individuals and special trusts

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

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

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

Table IV: Current rate for companies (no change proposed)

Taxable Income	**Rate of Tax**
All taxable income	29% of the taxable income

Table V: Current rate for small business corporations

Taxable Income	**Rate of Tax**
Not exceeding R40 000	0 per cent of the taxable income
Exceeding R40 000 but not exceeding R300 000	10 per cent of the amount by which the taxable income exceeds R40 000
Exceeding R300 000	R26 000 plus 29 per cent of the amount by which the taxable income exceeds R300 000

Table VI: Proposed rate for small business corporations

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

Table VII: Current rate for gold mining companies (no change proposed)

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

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

Taxable Income	**Rate of Tax**
All taxable income	34% of the taxable income

Table IX: Current rate for long-term insurance companies (no change proposed)

Taxable Income	**Rate of Tax**
Taxable income of individual policyholder fund	30% of the taxable income
Taxable income of company policyholder fund	29% of the taxable income
Taxable income of corporate policyholder fund	29% of the taxable income

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

Taxable Income	**Rate of Tax**
All taxable income	0% of the taxable income

Table XI: Current rate for non resident companies (no change proposed)

Taxable Income	**Rate of Tax**
All taxable income from SA source	34% of the taxable income

Table XII: Proposed rate for taxable amount of lump sum benefit derived upon retirement or death

Taxable Amount	Rate of Tax
To the extent the taxable amount does not exceed R300 000	18 per cent of the taxable income amount
To the extent the taxable amount exceeds R300 000 but does not exceed R600 000	R54 000 plus 27 per cent of the taxable amount exceeding R300 000
To the extent the taxable amount exceeds R600 000	R135 000 plus 36 per cent of the taxable amount exceeding R600 000

INCOME TAX MONETARY THRESHOLDS SUBJECT TO PERIODIC LEGISLATIVE CHANGE

Table XIII: General savings thresholds

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Broad-based employee share schemes: Employees can receive tax-exempt shares if the shares are part of a broad-based employee share plan. Companies can also deduct shares issued under the plan.		
Maximum exemption for shares received by employees.	The definition of **"qualifying equity share"** in section 8B(3).	R9 000.
Maximum deduction for shares issued by the employer.	The proviso to section 11(*l*A).	R3 000.
Exemption for interest and certain dividends:		
Exemption for domestic interest and otherwise taxable domestic collective scheme dividends in respect of persons younger than 65 years.	Section 10(1)(*i*)(xv)(*bb*)(B).	R18 000.
Exemption for passive portfolio savings in respect of persons of 65 years or older.	Section 10(1)(*i*)(xv)(*bb*)(A).	R26 000.
Maximum application of the above exemption for foreign interest and otherwise taxable dividends.	Section 10(1)(*i*)(xv)(*aa*).	R3 000.
Annual donations tax exemption:		
Exemption for donations made by entities.	Section 56(2)(*a*) and the proviso thereto.	R10 000.
Exemption for donations made by individuals.	Section 56(2)(*b*).	R100 000.
Capital gains exclusions:		
Annual exclusion for individuals and special trusts.	Paragraph 5(1) of the Eighth Schedule.	R15 000.
Exclusion for the disposal of a primary residence.	Paragraph 45(1) of the 8th Schedule.	R1 500 000.
Maximum market value of all assets allowed to fall within the small business definition on disposal when over 55.	Definition of **"small business"** in paragraph 57(1) of the 8th Schedule.	R5 million.
Exclusion amount on disposal of small business when over 55.	Paragraph 57(3) of the 8th Schedule.	R750 000.
Exclusion on death.	Paragraph 5(2) of the 8th Schedule.	R120 000.

Table XIV: Retirement savings thresholds

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Deductible retirement fund contributions: Pension fund and retirement annuity fund members may deduct their contributions subject to certain percentage or monetary ceilings (the latter of which is provided below).		
Pension fund monetary ceiling for contributions.	The proviso to section 11(*k*)(i).	R1 750.
Pension fund monetary ceiling for arrear contributions.	Paragraph (*aa*) of the proviso to section 11(*k*)(ii).	R1 800.
Retirement annuity fund monetary ceiling for contributions (if also a member of a pension fund).	Section 11(*n*)(*aa*)(B).	R3 500.
Retirement annuity fund monetary ceiling for contributions (if not a member of a pension fund).	Section 11(*n*)(*aa*)(C).	R1 750.
Retirement annuity fund monetary ceiling for arrear contributions.	Section 11(*n*)(*bb*).	R1 800.
Permissible lump sum withdrawals upon retirement: Pension fund and retirement annuity fund members may withdraw lump sums upon retirement.		
Pension fund monetary amount for permissible lump sum withdrawals.	Paragraph (ii)(*dd*) of the proviso to paragraph (*c*) of the definition of **"pension fund"** in section 1.	R50 000.
Retirement annuity fund monetary amount for permissible lump sum withdrawals.	Paragraph (*b*)(ii) of the proviso to the definition of **"retirement annuity fund"** in section 1.	R50 000.
Exempt lump sum portion: Certain lump sums are partly tax free based on a formula within the Second Schedule. This formula contains input amounts as provided below.		
Tax free portion of lump sum benefit	Paragraph (*b*) of the definition of **"formula B"** in paragraph 1 of the Second Schedule.	R300 000.

Table XV: Deductible Business Expenses for Individuals

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Car allowance: Individuals receive an annual vehicle allowance to defray business travel expenses, including deemed depreciation on the vehicle.		
Ceiling on vehicle cost.	Section 8(1)(*b*)(iiiA)(*bb*)(A).	R360 000.
Ceiling on debt relating to vehicle cost.	Section 8(1)(*b*)(iiiA)(*bb*)(B).	R360 000.

Table XVI: Employment related fringe benefits

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Exempt Scholarships and bursaries: Employers can provide exempt scholarships and bursaries to employees and their relatives, subject to annual monetary ceilings.		
Annual ceiling for employees.	Paragraph (ii)(*aa*) of the proviso to section 10(1)(*q*).	R60 000.
Annual ceiling for employee relatives.	Paragraph (ii)(*bb*) of the proviso to section 10(1)(*q*).	R3 000.
Exempt termination benefits: Employees of age 55 or older receive exemption for employment termination-related payments subject to a monetary ceiling.	Section 10(1)(*x*).	R30 000.
Medical scheme contributions: Medical scheme contributions are tax deductible if the individual pays (and tax-free if the employer pays) subject to monthly ceilings.		
Monthly ceiling for schemes with one beneficiary.	Section 18(2)(*c*)(i)(*aa*) & paragraph 12A(1)(*a*) of the 7th Schedule.	R530.
Monthly ceiling for schemes with two beneficiaries.	Section 18(2)(*c*)(i)(*bb*) & paragraph 12A(1)(*b*) of the 7th Schedule.	R1 060.
Additional monthly ceiling for each additional beneficiary.	Section 18(2)(*c*)(i)(*cc*) & paragraph 12A(1)(*c*) of the 7th Schedule.	R320.
Awards for bravery and long service: The deemed value of bravery and long service awards are reduced by the monetary amount indicated.	Paragraph (*b*) of the further proviso to paragraph 5(2) of the Seventh Schedule.	R5 000.
Employee accommodation: Employee accommodation is taxed through a formula if the employer owns the accommodation, but no tax is payable if the employee earns less than the amount indicated.	Paragraph 9(3)(*a*)(ii) of the 7th Schedule.	R43 000.
Exemption for de minimis employee loans: Employee loans below the amount indicated are not deemed to have any value as a fringe benefit.	Paragraph 11(4)(*a*) of the 7th Schedule.	R3 000.
Employer deductions for employee housing: Expenses incurred for providing employee housing is limited to the ceiling indicated (per dwelling).	Paragraph (ii) of the proviso to section 11(*t*).	R6 000.
Additional employer deductions for Learnerships: Employers receive additional deductions for learnerships depending on the circumstances.		
For entering into a learnership with an existing employee, the additional deduction for the employer is limited to the monetary ceiling indicated.	Section 12H(2)(*a*)(i)(*bb*).	R20 000.
For entering into a learnership with a new employee, the additional deduction for the employer is limited to monetary ceiling indicated.	Section 12H(2)(*a*)(ii)(*bb*).	R30 000.

For completing a learnership (all employees), the additional deduction for the employer is limited to the monetary ceiling indicated.	Section 12H(2)(*b*)(ii).	R30 000.
For entering into a learnership with an existing disabled employee, the additional deduction for the employer is limited to the monetary ceiling indicated.	Section 12H(2A)(*a*)(i)(*bb*).	R40 000.
For entering a learnership with a new disabled employee, the additional deduction for the employer is limited to the monetary ceiling indicated.	Section 12H(2A)(*a*)(ii)(*bb*).	R50 000.
For completing a learnership with disabled employees, the additional deduction for the employer is limited to the monetary ceiling indicated.	Section 12H(2A)(*b*)(ii).	R50 000.

Table XVII: Depreciation

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

Table XVIII: Miscellaneous

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Public benefit organizations:		
PBO trading income is exempt up to the greater of 5 per cent of total receipts and accruals or the amount indicated.	Section 10(1)(*c*N)(ii)(*dd*)(ii).	R100 000.
Donations to transfrontier parks will be deduction only if the donation exceeds the amount indicated.	Section 18A(1C)(*a*)(ii).	R1 million.
Recreational clubs: Club trading income is exempt up to the greater of 5 per cent of total receipts and accruals or the amount indicated.	Section 10(1)(*c*O)(iv)(*bb*).	R50 000.
Farming:		
Farmer deductions for employee housing: Expenses incurred by farmers for providing employee housing is limited to the ceiling indicated (per employee).	Paragraph 12(5) of the 1st Schedule.	R6 000.
Prepaid expenses: Prepaid expenses amounts up to the amount indicated will not be deferred until delivery of goods, services or benefits.	Paragraph (*bb*) of the proviso to section 23H(1).	R50 000.

Small Business Corporation: Corporates will qualify for tax incentives if gross income does not exceed the amount referred to.	Section 12E(4)(*a*)(i).	R14 million.

Table XIX: Administration

Description *(The contents of this column are solely for convenience and shall be of no force or effect)*	**Reference to the Income Tax Act, 1962**	**Monetary amount**
Interest for underpayments: If final taxable exceeds the provisional tax paid, the taxpayer must pay interest in respect of provisional tax underpayments to the extent that taxpayer's taxable income exceeds the amount indicated.		
In the case of companies.	Section 89*quat*(2)(*a*).	R20 000.
In the case of persons other than companies.	Section 89*quat*(2)(*b*).	R50 000.
Interest for overpayments: If the provisional tax paid exceeds final taxable income, the taxpayer is entitled to interest in respect of provisional tax overpayments.		
Where the overpayment exceeds the amount indicated.	Section 89*quat*(4)(*a*).	R10 000.
In the case of a company where the taxpayer's taxable income exceeds the amount indicated.	Section 89*quat*(4)(*b*)(i).	R20 000.
In the case of a person other than a company where the taxpayer's taxable income exceeds the amount indicated.	Section 89*quat*(4)(*b*)(ii).	R50 000.
Investment income exemption from provisional tax: If a natural person solely generates income from interest, dividends and real estate rentals, the income amount indicated will be exempt from provisional tax.		
In the case natural persons below age 65.	Paragraph 18(1)(*c*)(ii) of the 4th Schedule.	R10 000.
In the case of natural persons of 65 and older.	Paragraph 18(1)(*d*)(i) of the 4th Schedule.	R80 000.
S.I.T.E. threshold: Tax on employment income is subject to the S.I.T.E (the Standard Income Tax on Employees) system up to the amount indicated.	Items (a) and (b) of paragraph 11B(2) and items (*a*), (*b*)(ii) and (*b*)(iii) of paragraph 11B(3) of the 4th Schedule.	R60 000.
Automatic appeal to the High Court: The full bench of the High Court will have automatic jurisdiction to appeals if the disputed amount exceeds the amount indicated.	Section 83(4B)(*a*).	R50 million.

CLAUSE 3

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

Subclause (1)(a): Foreign collective investment schemes are included in the income tax definition of "company". This definition refers to "an arrangement or scheme carried on outside the Republic in pursuance of which members of the public are invited or permitted to invest in a portfolio of a collective investment scheme …". The problem is that the Income Tax Act does not define the phrase "members of the public". The proposed amendment clarifies that this phrase must be given the meaning assigned thereto in terms of section 1 of the Collective Investment Schemes Control Act, 2002. The latter Act defines "members of the public" to include "members of any section of the public, whether selected as clients, members, shareholders, employees or ex-employees of the person issuing an invitation to acquire a participatory interest in a portfolio" and "a financial institution regulated by any law".

In addition, the current definition refers to "an arrangement or scheme … where two or more investors contribute to and hold a participatory interest". However, some schemes have only one holder (e.g. a large financial institution, such as an insurance company) investing in a collective investment scheme on behalf of its clients. The amendment therefore proposes that a foreign collective investment scheme need have only one investor, e.g. an insurance company, to fall into the definition of "company." The effect of this amendment is to put these arrangements on par with other arrangements where intermediary institutions operate on behalf of others but do not hold this form of legal title.

Subclause (1)(b): The proposed amendment provides for the correction of a grammatical error.

Subclause (1)(c): Current law defines a co-operative as "any co-operative as defined in section 1 of the Co-operatives Act, 2005". However, co-operatives may still be registered in terms of the Co-operatives Act, 1981 for a period of three years after the 2005 Act comes into operation. Therefore it is proposed that the definition include a co-operative registered in terms of the 1981 Act in order to reflect this transitional situation.

Secondly, the definition refers to co-operatives "as defined in" the Co-operatives Act, 2005. This reference means that an association of persons that fits the definition despite the lack of registration in terms of the Co-operatives Act could conceivably qualify for benefits under the Income Tax Act. The proposed definition therefore ensures that only registered co-operatives fall under the definition.

Finally, the definition of "co-operative" is modified by substituting the word "co-operative" in the definition with the phrase "association of persons".

Subclause (1)(d): The purpose of the proposed amendment is to clarify that the definitions of "equity share capital" and "equity shares" include a members' interest of a close corporation. This amendment brings the definition of "equity share capital" in line with the definitions of "company" and "shareholder", which also include a close corporation and a member of a close corporation.

Subclause (1)(e) to (j): **SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH.**

Subclause (1)(k): The proposed amendment deletes an obsolete cross reference.

Subclause (1)(l): The proposed amendment updates a cross-reference. Section 18(3)*(e)* and the definition of a "special trust" currently refers to the Mental Health Act, 1973. This Act has been replaced by the Mental Health Care Act, 2002.

Subclause (1)*(m)*: The proposed amendment provides for the correction of a grammatical error.

Subclause (2): The proposed amendments in subclauses (1)(*b*), (*c*), (*k*) and (*m*) come into operation for years of assessment ending on or after 1 January 2007.

Subclause (3): The proposed amendment in subclause (1)(*e*), *(h), (i)* and *(j)* comes into operation on 1 October 2007 and applies in respect of any lump sum benefit accrued on or after that date.

CLAUSE 4

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

Section 5(2B) to (6) makes provision for taxpayers to make compulsory loans to the State. This legislation has not been applied for more than 20 years and is therefore obsolete. The proposed amendment is consequential to the repeal of the Fifth Schedule to the Income Tax Act.

CLAUSE 5

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

SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH.

CLAUSE 6

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

Subclause (1): Section 8(4)(*a*) of the Income Tax Act operates as the general rule for creating income for amounts allowed to be deducted in terms of the Income Tax Act, which have been recovered or recouped. However, no relief from section 8(4)*(a)* exists for section 11D(1) (150% incentive for R&D expenditure), even though section 11D(1) contains its own set of recoupment rules. The proposed amendment thus clarifies that section 8(4)(*a*) does not apply to section 11D(1) expenditure.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 2 November 2006 and applies in respect of any amount that is recovered or recouped on or after that date.

CLAUSE 7

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

The current definition of “right of disposal” in section 8E refers to a “hybrid equity instrument”. To get to the meaning of “hybrid equity instrument” one needs to refer to the definition of “right of disposal”. This is effectively a circular reference and the same result will be achieved by using the word “share” in place of the phrase “hybrid equity instrument”, as proposed by this clause.

CLAUSE 8

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

Section 9B provides that the proceeds from the disposal of certain listed shares will be of a capital nature if owned by the seller for at least 5 years. For purposes of computing the period during which the shares were held, the proviso disregards certain disposals between companies forming part of a “group of companies” as defined in the Taxation Laws Amendment Act, 1988. This proviso is no longer relevant and the amendment proposes its deletion.

CLAUSE 9

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

Subclause (1)(a): Currently “country of residence” is defined in section 9D solely in relation to a controlled foreign company (“CFC”). The problem is that the definition of “country of residence” is also relevant in relation to foreign companies that may not be CFCs. For instance, in terms of section 9D(10)(*a*)(i), the South African Revenue Service may deem a CFC to have a foreign business establishment (and therefore not attribute the income of the CFC to the resident shareholders) if the CFC utilises employees, equipment and facilities of another foreign company that has the same country of residence as that CFC. Therefore, in order to cover these other circumstances, the proposed amendment defines “country of residence” in relation to a foreign company to extend the definition’s meaning beyond CFCs.

Subclause (1)(b): The proposed amendment re-arranges wording to be consistent with other provisions within the Income Tax Act.

Subclause (1)(c): The definition of “foreign company” does not include a co-operative or close corporation that is not a resident. This is an oversight as both may be non-residents (due to foreign located effective management). The amendment therefore proposes that a co-operative and a close corporation are included in the definition of “foreign company”.

Subclause (1)(d), (e), (f), (g) and (h): The proposed amendments correct grammar, punctuation and cross references.

Subclause (1)(i): The amendment clarifies that any ruling providing relief from section 9D can cover pre-existing transactions as well as proposed transactions.

Subclause (2): Subject to subclause (3), the proposed amendments in subclause (1) come into operation for years of assessment ending on or after 2 November 2006.

Subclause (3): The proposed amendment in subclause (1)(*c*) to the extent it refers to paragraph *(c)* of the definition of company applies in respect of any year of assessment ending on or after 1 January 2007.

CLAUSE 10

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

Subclause (1)(a): The proposed amendments correct punctuation, style and grammar.

Subclause (1)(b): The proposed amendment corrects punctuation, style and grammar and deletes an obsolete reference.

Subclause (1)(c) and (d): Currently, section 10 exempts the receipts and accruals of a public benefit organisation derived from a business undertaking or trade if, *inter alia*, the undertaking or activity is directly and integrally related to the sole object of the organisation as referred to in the definition of a “public benefit organisation” in section 30, or if the Minister of Finance approves the undertaking or activity after having regard to the direct connection and interrelationship of the trade to such sole object. The requirement of a “sole object” is inconsistent with many of aspects of the public benefit organisation exemption, which recognises that an organisation of this kind may have more than one object. Under the proposed amendment, the “sole object” test is relaxed to cover the “sole or principal object.”

Subclause (1)(e): Under the proposed amendment, the reference to co-operative is changed in line with the new definition contained in section 1.

Subclause (1)(f): Interest paid in respect of a Tax Redemption Certificate or the loan tax is exempt from tax in terms of section 10(1)(*i*)(iii) and (v) of the Income Tax Act, respectively. Investigation has shown that the first exemption is near obsolete with most of the certificates having been redeemed. The proposed deletion will be effective from 1 March 2008. This future dated deletion will allow the few remaining holders of these certificates enough time to redeem them . The second exemption will be deleted as a consequential amendment to the deletion of the obsolete loan tax provisions of the Fifth Schedule.

Subclause (1)(g): Section 10(1)(*k*)(ii) sets out four different sets of circumstances under which a foreign dividend would be exempt from tax. The proposed amendment inserts the word "or" to clarify that these different circumstances apply in the alternative.

Subclause (1)(h): Under certain circumstances, section 10(1)(*n*G) will exempt from tax any fringe benefit granted by an employer to an employee who retires and is then re-employed by the same employer. The exemption is conditional upon the re-employment of the employee prior to 1 March 1992 and this obsolete provision is therefore deleted.

Subclause (1)(i): The current provision exempts the receipts and accruals of any traditional council contemplated in the Communal Land Rights Act. However, this wording did not suffice to exempt the intended communities. The proposed amendment thus exempts traditional councils, traditional communities and tribes contemplated in the Traditional Leadership and Governance Framework Act, 2003.

Subclause (1)(j): The proposed amendment deletes an obsolete exemption. Both the Manpower Training Act, 1981, as well as the Labour Relations Act, 1956, have been repealed.

Subclause (2): The proposed amendments in subclause (1)(*a*), (*b*), (*e*) and *(i)* come into operation for years of assessment ending on or after 1 January 2007.

Subclause (3): The proposed amendments in subclause (1)(*c*) and (*d*) come into operation for years of assessment commencing on or after 2 November 2006.

Subclause (4): To the extent section 10(1)*(i)*(iii) is deleted, the proposed amendment in subclause (1)(*f*) comes into operation on 1 March 2008.

CLAUSE 11

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

Subclause (1)(a): The proposed amendment deletes an obsolete provision.

Subclause (1)(b): The current provision limits the cost of property transferred between connected persons in order to prevent increases in cost for enhanced tax depreciation. The proposed amendment corrects the improper omission of section 11B(3) and 11D(2) research and development depreciation from the ambit of this anti-avoidance provision.

Subclause (1)(c), (d), (e) and (f): The proposed amendment tightens the depreciation for know-how to that which is “essential to” (as opposed to “connected with”) the use of a patent, design, trade mark, copyright or other property or the right to have such knowledge imparted.

Subclause (1)(g): The section provides for deductions in respect of the cost of registration of intellectual property rights. However, the deduction of the cost of registering trade marks was inadvertently omitted. The proposed amendment corrects this oversight.

Subclause (1)(h): The proposed amendment tightens the depreciation for know-how to that which is “essential to” (as opposed to “connected with”) the use of a patent, design, trade mark, copyright or other property or the right to have such knowledge imparted.

Subclause (1)(i): Depreciation deductions in respect of intellectual property are generally allowed only if the intellectual property is used in the production of income. Currently, the deductions allowed for the acquisition of intellectual property do not have this requirement. For purposes of consistency, the proposed amendment provides that the intellectual property acquired must be used in the production of income in order to qualify for the depreciation deduction.

Subclause (1)(j): The proposed amendment tightens the depreciation for know-how to that which is “essential to” (as opposed to “connected with”) the use of any invention, patent, design, copyright or other property or the right to have such knowledge imparted.

Subclause (1)(k): The proposed amendment corrects grammar.

Subclauses (1)(l) and (m): Annuity payments by a taxpayer to a dependent of a former employee or business partner of that taxpayer is allowed as a deduction against the income of the taxpayer. The deduction is currently limited to R2 500 in each year of assessment. The proposed amendment deletes this limitation on the grounds that these annuity payments are so closely connected to the production of the taxpayer’s income as to justify the deduction thereof in full.

Subclause (1)(n): **SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH.**

Subclause (1)(o): Section 11(*o*) provides for a deduction of the amount by which the depreciated cost of an asset exceeds the sum of the proceeds received in respect of an asset upon the loss, destruction or alienation thereof. This provision applies to assets that are depreciable over a short period. Sections 11B and 11D dealing with research and development should have been added to the list due to their short-depreciation period. The proposed amendment corrects this oversight.

Subclause (2): The proposed amendment in subclause (1)(*b*) comes into operation on 2 November 2006 and applies in respect of any machinery, implement, utensil or article acquired on or after that date.

Subclause (3): The proposed amendment in subclause (1)(*g*) comes into operation on 2 November 2006 and applies in respect of expenditure incurred on or after that date.

Subclause (4): The proposed amendment in subclause (1)(*k*) comes into operation on 2 November 2006 and applies in respect of any year of assessment commencing on or after that date.

Subclause (5): The proposed amendment in subclause (1)(*l*) comes into operation on 1 March 2007 and applies in respect of any year of assessment commencing on or after that date.

Subclause (6): The proposed amendment in subclause (1)(*o*) comes into operation on 2 November 2006 and applies in respect of any asset that is alienated, lost or destroyed on or after that date.

CLAUSE 12

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

Subclause (1): Section 11A allows the deduction of expenses in terms of section 11 and 11B incurred prior and in preparation for the commencement of trade if those expenses would have been allowed had trade commenced. The proposal updates the section to specifically allow for pre-trade research and development expenses that would otherwise be allowed in terms of the recently introduced section 11D.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 2 November 2006 and applies in respect of any expenditure or loss incurred on or after that date.

CLAUSE 13

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

Subclause (1)(a): Section 11D(1) allows a deduction of 150% of expenditure incurred for purposes of scientific or technological research and development (“R&D”). In addition to certain stylistic changes, the proposed amendments:

- Clarify that qualifying R&D designs under the Designs Act, 1993, must qualify for registration under section 15 of that Act;

- Clarify that the expenditure must not only be directly related to the R&D activity, but that the R&D activity must also be directly related to the discovery, devising or development of scientific and technological intellectual property;

- Remove the reference to “other similar property” as superfluous (note that foreign registered intellectual property can fall under the definition because no requirement exists that the intellectual property must be registered in South Africa);

- Clarifies that any expenditure for knowledge be “essential to” the use of an invention, design or computer program; and

- Clarifies that the R&D expenditure is allowed only for purposes of determining the taxable income if the intellectual property is to be used by the taxpayer in the production of income.

Subclause (1)(b): Section 11D(2) provides depreciation deductions for buildings, machinery, plant (i.e. prototype plants), implements, utensils or articles (i.e. tangible assets) that are used for R&D purposes. The full expenditure is claimed over three years at 50/30/20. In addition to certain stylistic changes, the proposed amendments:

- Clarify that the deductions may be allowed only in respect of assets “owned” by the taxpayer or “acquired by the taxpayer in terms of an instalment credit agreement” (consistent with other capital allowances);

- Clarify that deductions will be allowed only if the asset is used solely and directly for R&D and never previously used by any person for any other purpose;

- Clarify that part of a building may be used exclusively for R&D purposes (leaving the allocation of part R&D usage and non-usage to facts and circumstances);

- Delete references to “direct” costs as superfluous;

- Provide anti-avoidance measures that prevent the artificial inflation of R&D depreciation costs via transfers between connected persons (similar to connected person anti-avoidance measures found elsewhere in the Income Tax Act); and

- Provide limited rollover relief for damaged or destroyed R&D depreciable assets.

Subclause (1)(c): The proposed amendment provides for the correction of a grammatical error.

Subclause (1)(d): The proposed amendment clarifies the distinction between expenditure eligible for the 150 per cent deduction and those expenditure eligible for the 50/30/20 per cent depreciation under subsection (2). To the extent expenditure qualifies for both forms of relief, the 50/30/20 per cent depreciation regime takes precedence (proposed subsection 5A).

As a general matter, taxpayers defraying the expense of another party are eligible for the 150 per cent deduction just as if these taxpayers engaged in the R&D directly. However, the 150 per cent deduction is limited to 100 per cent for taxpayers defraying deductions of connected persons undertaking the R&D activity. This limitation prevents taxpayers from artificially accelerating the 150 per cent deduction by “defraying” funds to connected persons without the connected persons immediately performing the underlying R&D activity.

Subclause (1)(e): The proposed amendment to subsection (6) allows the taxpayer to elect out of the 50/30/20 R&D regime in favour of another depreciation regime (to the extent the item at issue is potentially eligible for different forms of deprecation relief). However, once this election out is taken for a particular item, taxpayers cannot later elect to bring back this item within the section 50/30/20 R&D regime.

Subclause (1)(f): Under current law, if a taxpayer ceases to use a building (or part thereof), the mere cessation triggered recoupment despite the lack of any disposal. This recoupment on cessation has now been removed as impractical (section 11D(9)). Section 11D(2) items will now fall solely within the scope of general recoupment provisions of section 8(4).

Subclause (2): The proposed amendments in subclause (1) come into operation on 2 November 2006 and apply in respect of activities undertaken or assets brought into use on or after that date.

CLAUSE 14

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

Subclause (1): The proposed amendment updates the reference to the Co-operatives Act, 1981 (still in existence for a three-year transitional period) to include the Co-operatives Act, 2005.

Subclause (2): The proposed amendment in subclause (1) comes into operation for years of assessment ending on or after 1 January 2007.

CLAUSE 15

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

Subclause (1): The proposed amendments facilitate the amendment of certain amounts by means of Appendix I to this Bill.

Subclause (2): The proposed amendment in subclause (1) comes into operation for years of assessment commencing on or after that 1 March 2007.

CLAUSE 16

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

This section provides for accelerated depreciation in respect of buildings located in an urban development zone. This depreciation is allowed with effect from the date the urban development zone building is brought into use for purposes of trade. If the taxpayer ceases to use the building for trade any previous year, the taxpayer will not qualify for this accelerated depreciation in the current (or any succeeding) year. However, the proposed amendment clarifies that the denial of this depreciation for cessation of trade applies only if the taxpayer ceases to so use the building after claiming accelerated depreciation under this section.

CLAUSE 17

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

Subclause (1)(a): The proposed amendment provides that contributions to medical schemes in respect of a year of assessment must be taken into account rather than contributions during a year of assessment .

Subclause (1)(b): The proposed amendment facilitates the amendment of the provision by means of Appendix II to this Bill.

Subclause (1)(c): **SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH**

Subclause (1)(d): The proposed amendment updates a cross-reference. Section 18(3)*(e)* and the definition of a "special trust" under of the Income Tax Act currently refer to the Mental Health Act, 1973. This Act has been replaced by the Mental Health Care Act, 2002, and the proposed amendment reflects this replacement.

Subclause (2): The proposed amendment in subclause (1)(*b*) comes into operation for years of assessment commencing on or after 1 March 2007.

CLAUSE 18

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

A taxpayer may deduct donations to certain public benefit organisations to the extent that these donations do not exceed 5 per cent of taxable income for the year. The proposed amendment increases this ceiling to 10 per cent and clarifies that retirement fund lump sum benefits fall outside the denominator for this calculation.

CLAUSE 19

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

Subclause (a): Section 20 provides that no person whose estate has been sequestrated may carry forward an assessed loss incurred prior to the sequestration, unless the sequestration order has been set aside. In the case of a sequestration order set aside, the assessed loss must be reduced by any amount allowed to be set off against the income of the sequestrated estate from carrying on a South Africa trade. Consistent with the shift to worldwide taxation in 2001, the proposed amendment eliminates the South African limitation so that all trades can be taken into account.

The effect is that during the period of sequestration the assessed loss may be claimed against the income of the sequestrated estate, but once the sequestration is set aside, that part of the assessed loss that was set off against the local taxable income of the sequestrated estate is not available to be set off by the taxpayer. However, any part of the assessed loss that was set off against the income of the sequestrated estate derived from foreign sources is available for set off by the taxpayer after sequestration. The proposed amendment provides that assessed losses which have been set off against foreign income should be treated in the same manner as assessed losses that have been set off against local income.

Subclauses (b), (c) and (d): **SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH**

Subclause (e): Currently, section 20(2A) states that the reference in section 20(1) to "taxable income derived by any person from carrying on any trade in the Republic" should be construed as including a reference to taxable income derived by the taxpayer otherwise than from carrying on a trade. However, the words "in the Republic" have been deleted in section 20(1) with the introduction of worldwide taxation. The proposed amendment to section 20(2A) similarly deletes those words.

CLAUSE 20

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

SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH

CLAUSE 21

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

Subclause (1)(a) & (b): Section 23D currently limits the depreciation which may be granted to a taxpayer in respect of a sale-leaseback to prevent inflation of costs to obtain undue depreciation deductions. The proposed amendment corrects the previous unintended omission of sections 11B and 11D.

Subclause (2): The proposed amendments in subclause (1) come into operation on 2 November 2006 and apply in respect of any asset acquired on or after that date.

CLAUSE 22

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

Subclause (1)(a): The proposed amendment adjusts incorrect cross references.

Subclause (1)(b), (c) and (d): These provisions currently limit the film allowances granted in terms of this section to certain costs that have been incurred. The proposed amendment clarifies that the allowance is limited to costs "actually" incurred.

CLAUSE 23

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

Subclause (1)(a): Under section 24I(7A), foreign currency loans between connected persons do not trigger immediate mark-to-market taxation. Any mark-to-market gains and losses are instead spread over 10 years. Section 24I(7A) applies to loans obtained or granted in any year of assessment ending before 8 November 2005. Meanwhile, section 24I(10) allows for deferral until loans are realised when those loans are between connected persons and other similar parties. Section 24I(10) came into operation for years of assessment ending on or after 8 November 2005. At issue is whether pre-8 November 2005 loans falling under section 24I(7A) can benefit from the deferral under section 24I(10). The proposed amendment clarifies that loans benefiting from the spreading of exchange differences over a 10 year period cannot obtain the further benefit of section 24I(10).

Subclause (1)(b): As a result of the Revenue Laws Amendment Act, 2006, exchange differences from a forward exchange contract (or a foreign currency option contract) to hedge the acquisition of company shares are no longer included in (or deducted from) the income of the taxpayer. The proposed amendment provides that premiums in respect of foreign currency option contracts are similarly excluded.

Subclause (1)(c): Due to the Revenue Laws Amendment Act, 2006, as described above, hedging the acquisition of company shares are no longer included in (or deducted from) the income of the taxpayer. Moreover, this exemption for hedging is extended to group situations as long as no income or loss arises for that group's consolidated income statement for financial reporting purposes when following International Financial Reporting Standards. The proposed amendment clarifies that a group can similarly follow South African Statements of Generally Accepted Accounting Practice, which operates under the same methodology.

Subclause (2): The proposed amendments in subclause (1)(*a*) come into operation on 8 November 2005 and apply in respect of any year of assessment ending on or after that date.

Subclause (3): The proposed amendments in subclauses (1)*(b)* and *(c)* come into operation on 31 December 2006 and apply in respect of years of assessment ending on or after 31 December 2006.

CLAUSE 24

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

Subclause (1): Section 26B currently provides for the determination of the tax on the net amount of a dividend declared by an oil and gas company. The problem is that the section does not provide for the manner of determining the amount of the net dividend. The proposed amendment clarifies that the net amount of any dividend is determined in terms of section 64B(3).

Subclause (2): The proposed amendments in subclause (1) come into operation on 2 November 2006 and apply in respect of any dividend declared on or after that date.

CLAUSE 25

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

Subclause (1)(a): Section 30 currently defines a "public benefit organisation" to include an agency or branch of an offshore organisation that is exempt in the home country. It was not the intention to include an agent of the offshore organisation. The proposed amendment now restricts this definition to include only a branch of an offshore organisation.

Subclause (1)(b): In prior years, public benefit organisations were permitted to hold only certain categories of investments. In limited circumstances, the proviso to section 30(3)*(b)*(ii) permitted public benefit organisations to retain investments which were not within these categories. Because the Revenue Laws Amendment Act, 2006, deleted these restrictions, the proviso is now superfluous and will be deleted.

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

Subclause (1)(d): As discussed above, section 30 currently defines a "public benefit organisation" to include an agency or branch of an offshore organisation that is exempt in the home country. The proposed amendment now restricts this definition to include only a branch of an offshore organisation.

Subclause (1)(e): The proposed amendment corrects punctuation.

Subclause (2): The proposed amendments in subclause (1) come into operation for years of assessment commencing on or after 2 November 2006.

CLAUSE 26

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

Subclause (1)(a) and (b): The proposed amendment corrects cross references and grammar.

Subclause (2): The proposed amendments in subclause (1) come into operation for years of assessment commencing on or after 1 April 2007.

CLAUSE 27

Income Tax: Repeal of section 32 of the Income Tax Act, 1962

Section 32 provides for the computation of taxable income in respect of persons that carry on the business of transmitting messages to foreign countries by means of submarine cable or wireless apparatus. The provision is obsolete and the proposed amendment provides for the deletion thereof.

CLAUSE 28

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

Subclause (1)(a), (b), (c), (d), (e), (f), (g),(h), (j), (k) and (l): The proposed amendments correct grammar, cross references, technical errors and renumbering.

Subclause (1)(i): In terms of section 37A(5) the constitution of a closure rehabilitation company or the instrument establishing a closure rehabilitation trust must incorporate the provisions contained in section 37A. The proposed amendment allows a two-year transitional period within which these provisions must be incorporated into the above constitution or trust instrument. In order to qualify for this transitional relief, responsible persons acting in a fiduciary capacity must furnish a written undertaking to the Commissioner that section 37A compliance will otherwise occur throughout this interim period.

Subclause (2): The proposed amendments in subclause (1) come into operation for years of assessment ending on or after 1 January 2007.

CLAUSE 29

Income Tax: Repeal of section 37E of the Income Tax Act, 1962

Subclause (1): Before being limited by sunset provisions, section 37E provided special dispensation in respect of persons that carried on a process whereby raw material or intermediate products were processed to yield an intermediate product or final product. The proposed amendment repeals this provision as obsolete with effect from 29 February 2008 because its sunset provisions have already passed. The future repeal date exists in order to allow taxpayers sufficient time within which to utilise the few last remaining negotiable tax credit certificates still outstanding as a result of this obsolete provision.

Subclause (2): The proposed amendment comes into effect on 29 February 2008.

CLAUSE 30

Income Tax: Amendment of section 38 of the Income Tax Act, 1962

Subclause (1): The proposed amendment utilises the new definition for co-operatives inserted by this Bill.

Subclause (2): The proposed amendments in subclause (1) come into operation for years of assessment ending on or after 1 January 2007.

CLAUSE 31

Income Tax: Amendment of section 40B of the Income Tax Act, 1962

Subclause (1): The reference to the Co-operatives Act, 1981, (still in existence for a three-year transitional period) is updated to also include the Co-operatives Act, 2005.

Subclause (2): The proposed amendment in subclause (1) comes into operation for years of assessment ending on or after 1 January 2007.

CLAUSE 32

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

Subclause (a): For purposes of the corporate restructuring rules in sections 41 to 47 the term “base cost” is defined as having the same meaning as it bears in the Eighth Schedule. However, for the purposes of sections 42, 43 and 44 the base cost must be determined as if the asset had been disposed of on the date of the transaction for “proceeds” equal to the market value of the asset as at that date.

The latter deeming provision is required in order to enable the base cost of pre-valuation date assets to be determined where the time-apportionment base cost or 20 per cent of proceeds methods are adopted.

The present wording has proved problematic in at least two instances. First, In the case of the disposal of a share, it is unclear whether any capital distribution received or accrued on or after the valuation date but prior to the transaction must be added to the deemed proceeds in terms of paragraph 76(1)*(b)* of the Eighth Schedule.

Secondly, in the case of an allowance asset, it would seem that no account must be taken of any recoupment that would have arisen on the date of the transaction in determining the proceeds. The deeming provision simply provides the "end result" proceeds without applying paragraph 35 (3)*(a)* of the Eighth Schedule. For example, assume that a fully written off allowance asset which cost R100 has a current market of R120. The definition of "base cost" deems the proceeds to be R120, when they should be R20 (R120 consideration less R100 recoupment). It is proposed that the matter be rectified by substituting the word "proceeds" with the words "an amount received or accrued". In that way, the proceeds will still have to be determined in terms of the core rules of the Eighth Schedule.

Subclause (b): The definition of **"equity share"** is deleted in section 41 because this definition can now be found in section 1.

Subclause (c): The proposed amendment corrects grammar.

Subclause (d): The definition of **"foreign financial instrument holding company"** in section 41 requires a foreign company to hold a certain prescribed proportion of its assets as financial instruments. The proviso incorrectly refers to a requirement that the company holds more than the prescribed proportion. The proposed amendment deletes the words "more than".

Subclause (e): The proposed amendment deletes the word "or" as superfluous.

Subclause (f) and (g): These are consequential changes to the proposed amendments to sections 44(13) and 47(6).

CLAUSE 33

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

If an asset is transferred in terms of a section 42 tax-free company formation transaction, any allowances are rolled over from the transferor to the transferee as if they are one and the same person. However, the section does not expressly allow for a roll over of deductions. The proposed amendment corrects this oversight.

CLAUSE 34

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

Subclause (a): If an asset is transferred in terms of a section 44 tax-free amalgamation transaction, any allowances are rolled over from the transferor to the transferee as if they are one and the same person. However, the section does not expressly allow a roll over of deductions. The proposed amendment corrects this oversight.

Subclause (b): In terms of section 44(6), amalgamated company shareholders receive rollover treatment in respect of the disposal of their amalgamated company shares and the acquisition of resultant company shares. Section 44(6)*(a)*(i) currently refers to the amalgamated company shareholders receiving resultant company shares "in return for" their amalgamated company shares. These words were intended to describe the practical effect of an amalgamation transaction. However, it is understood that some persons are arguing that the effect of these words is to render the rollover ineffective because the resultant company shares are not technically received in return for the amalgamated company shares. Whilst the argument is not accepted on the grounds that it defeats the clear intention of the legislature, it is proposed that the present wording be clarified.

Subclause (c): As a theoretical matter, section 44 amalgamations should act as a deferral mechanism. All assets and tax attributes should rollover from the target company to the acquiring company with the acquiring company subsequently bearing these tax benefits and burdens. This same theory holds for the Secondary Tax on Companies (STC). The distribution of acquiring company shares in an amalgamation is accordingly free from STC. However, the profits of the target company do not rollover to the acquiring company. The net result is often a complete STC exemption when the acquiring company makes a distribution of former target company assets.

It has come to Government's attention that certain private stakeholders are attempting avoidance transactions that are specifically aimed at exploiting this gap. In these transactions, a pre-existing target company with substantial assets and profits is amalgamated into a newly formed company without assets or profits. The newly formed company then distributes the former target company assets, but this distribution is free from the STC due to the lack of profits within the newly formed acquiring company.

Given the above anomaly, the proposed amendment inserts section 44(9A) which deems the resultant company's equity share capital (and share premium) arising from the amalgamation to be profits not of a capital nature available for distribution to shareholders to the extent of any profits distributed by the amalgamated company in terms of subsection (9). The result is that the amalgamated company's profits are effectively rolled over to the resultant company, so that STC remains payable when the resultant company makes subsequent distribution.

Subclause (d): The period in which to complete an amalgamation is extended because the 6 month date is often impractical due to difficulties in extinguishing the amalgamated company's debts. Under the new rule, taxpayers have 18 months to undertake liquidation steps under section 41(4) (or a longer period as the Commissioner may allow).

Subclause (2): The proposed amendment in subclause (1)*(c)* comes into operation on 21 February 2007 and applies in respect of the reduction or redemption of the capital of a resultant company occurring on or after that date.

CLAUSE 35

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

Subclause (a): If an asset is transferred in terms of a section 45 tax-free intra group transaction, any allowances are rolled over from the transferor to the transferee as if they are one and the same person. However, the section does not expressly allow a roll over of deductions. The proposed amendment corrects this oversight.

Subclause (b): The proposed amendment corrects grammar.

CLAUSE 36

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

Subclause (1)(a): The proposed amendment corrects a cross reference. In addition, section 46(4) refers to "previously held shares". The problem is that these shares should be referred to as "unbundling shares" in the context of section 46. The proposed amendment will replace the former wording with the latter.

Subclause (1)(b): Section 46 refers to the tax-free "distribution" of shares in the context of an unbundling transaction. The problem is that section 46(7) refers to the "disposal" of shares. For purposes of consistency and clarity, the proposed amendment replaces "disposal" with "distribution".

Subclause (1)(c): Section 46 currently provides that a distribution of shares pursuant to an unbundling transaction must be disregarded for purposes of determining the taxable income or assessed loss of the unbundling company. Subsection (7) provides that the provisions of the section do not apply to a shareholder who is not subject to normal tax or tax in terms of the Tax on

Retirement Funds Act, 1996. The reference to the latter tax is deleted in consequence of the announcement that the Tax on Retirement Funds is to be abolished.

With the abolishment of the Tax on Retirement Funds, the 5 per cent threshold must be reconsidered because many companies are held in large part by pension funds. A single private pension fund can hold up to 15 per cent of a single unbundling company's shares (and a government employee pension fund can hold even more). In order not to unfairly prejudice unbundling companies with large pension fund shareholders, the 5 per cent test is being liberalized. Shareholdings of up to 20 per cent (taking into account connected persons shareholdings) by persons not subject to normal tax are now permissible.

Subclause (2): The proposed amendment in subclause (1)(*c*) comes into operation on 1 March 2007 and shall apply in respect of any unbundling transaction entered into on or after that date.

CLAUSE 37

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

Subclause (1)(a): If an asset is transferred in terms of a liquidation distribution to another company, the transfer will be tax-free if the transferee is subject to normal tax or tax in terms of the Tax on Retirement Funds Act, 1996. The reference to the latter tax is deleted in consequence of the announcement that the Tax on Retirement Funds is to be abolished.

Subclause (1)(b): If an asset is transferred in terms of a section 47 tax-free liquidation distribution, any allowances are rolled over from the transferor to the transferee as if they are one and the same person. However, the section does not expressly allow for a roll over of deductions. The proposed amendment corrects this oversight.

Subclause (1)(c): In terms of section 47(3A)*(a)* one of the requirements for affording rollover treatment to a liquidating company is that the equity shares in that company must be cancelled. This reference is confusing because, under South African company law, shares are not technically cancelled upon liquidation or deregistration of a company. It is proposed that the reference to cancellation be changed to refer to the disposal of the shares as a result of the liquidation, winding up or deregistration of the liquidating company. This amendment brings the wording in section 47(3A)(*a*) in line with similar wording used in section 47(5).

Subclause (1)(d): The proposed amendment is consequential to the newly added 18-month rule for amalgamations. This amendment (along with the amalgamation 18 month limit) also clarifies that all section 41(4) liquidation steps can be extended with the Commissioner's consent.

Subclause (2): The proposed amendment in subclause (1)(*a*) comes into operation on 1 March 2007 and applies in respect of any liquidation distribution made on or after that date.

CLAUSE 38

Donations Tax: Amendment of section 56 of the Income Tax Act, 1962

Subclause (1)(a): The proposed amendment provides that donations made to or for the benefit of any traditional council, traditional community or tribe shall not be subject to donations tax.

Subclause (1)(b): The proposed amendment provides that donations made by or to or a recreational club that is exempt from income tax, shall not be subject to donations tax. This amendment follows long-standing precedent that was unintentionally broken due to changes effected by the Revenue Laws Amendment Act, 2006.

Subclause (2): Subclause (1)(*a*) comes into operation on 7 February 2007 and shall apply in respect of any donation made on or after that date.

Subclause (3): Subclause (1)(*b*) comes into operation on 1 April 2007 and shall apply in respect of any donation made on or after that date.

CLAUSE 39

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

Subclause (1)(a): The proposed amendment is consequential to the liquidation date changes made in section 47.

Subclause (1)(b): The proposed amendment corrects style.

Subclause (2): The proposed amendment in subclause (1)(*b*) comes into operation on 7 February 2007 and applies in respect of any dividend cycle commencing on or after that date.

CLAUSE 40

Income Tax: Amendment of section 80C of the Income Tax Act, 1962

Subclause (1): The proposed amendment inserts a word inadvertently omitted.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 2 November 2006 and applies to any arrangement (or steps therein or parts thereof) entered into on or after that date.

CLAUSE 41

Income Tax: Amendment of section 80E of the Income Tax Act, 1962

Subclause (1): The proposed amendments correct grammar.

Subclause (2): The proposed amendments in subclause (1) come into operation on 2 November 2006 and applies to any arrangement (or steps therein or parts thereof) entered into on or after that date.

CLAUSE 42

Income Tax: Amendment of section 80L of the Income Tax Act, 1962

Subclause (1)(a): The General Anti-Avoidance Rule denies tax benefits that arise as a result of avoidance arrangements. There is an argument that due to the very existence of the GAAR, there can never be a tax benefit and therefore the GAAR can never be applied. The proposed amendment clarifies that the definition of an "avoidance arrangement" means an arrangement that results in a tax benefit that would arise but for the provisions of the GAAR .

Subclause (1)(b): The proposed amendment corrects style.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 2 November 2006 and applies to any arrangement (or steps therein or parts thereof) entered into on or after that date.

CLAUSE 43

Income Tax: Amendment of section 89quat of the Income Tax Act, 1962

Subclause (1): The proposed amendment is to facilitate the proposed amendment of various monetary thresholds within the Income Tax Act by Appendix II to this Bill.

Subclause (2): The proposed amendment in subclause (1) comes into operation for years of assessment commencing on or after 1 March 2007.

CLAUSE 44

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

The proposed amendment simplifies the method whereby first time farmers compute the average taxable income. The proposal is that first-time farmers will have an average taxable income for the first period of assessment equal to two-thirds of the taxable income for that period.

CLAUSE 45

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

Subclauses (a) and (b): The proposed amendment deletes references to the loan tax as a consequential amendment to the proposal to delete the Fifth Schedule.

CLAUSE 46

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

Subclauses (1)(a) to (e): **SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH**

Subclause (2): The proposed amendments in subclause (1) (except for subclause (1)*(e)*) come into operation on 1 October 2007 and apply to all lump sums accrued on or after that date.

Subclause (3): The proposed amendments in subclause (1)*(e)* come into operation on 1 March 2006 and apply to all lump sums accrued on or after that date.

CLAUSE 47

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

SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH

CLAUSE 48

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

SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH

CLAUSE 49

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

SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH

CLAUSE 50

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

SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH

CLAUSE 51

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

SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH

CLAUSE 52

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

SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH

CLAUSE 53

Income Tax: Amendment of paragraph 7 of the Second Schedule to the Income Tax Act, 1962

SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH

CLAUSE 54

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

Subclauses (1)(a) to (c): The proposed amendments provide for the correction of grammatical errors and an incorrect date.

Subclauses (1)(d) to (g): The proposed amendments limit the circumstances under which employee's tax is withheld in the case of sole proprietorships.

Subclause (2): The amendments in subclause (1), except subclause (1)*(c),* come into operation on 1 March 2007.

Subclause (3): The amendments in subclause (1)*(c)* apply in respect of any year of assessment commencing on or after 1 April 2006.

CLAUSE 55

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

Subclause (1)(a): Persons who make use of personal service entities are generally required to withhold employees tax from such entities. Paragraph 2(1A) of the Fourth Schedule currently provides that a person will not be required to deduct employees' tax in respect of an entity which provides the employee with services, if the entity has provided the employee with an affidavit to the effect that it does not derive more than 80 per cent of its income from one client. The proposed amendment provides that this affidavit must be provided in respect of each year of assessment.

Subclause (1)(b): The proviso to subparagraph (5) provides that the Commissioner may under certain circumstances not issue a certificate of exemption in respect of employees' tax to be deducted from amounts paid to a person in respect of services rendered, unless that person is a labour broker that employs more than three employees. The proposed amendment lowers the required number of employees to three or more.

Subclause (2): The proposed amendments in subclause (1) come into operation on 7 February 2007.

CLAUSE 56

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

SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH

CLAUSE 57

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

Subclause (1)(a): **SEE NOTES ON LUMP SUM BENEFITS UPON RETIREMENT OR DEATH**

Subclause (1)(b): Currently, where the amount of SITE withheld by the employer exceeds or falls short of the amount of SITE that ought to have been deducted by R5 or less, the employer may disregard the excess or short fall and treat the amount withheld as final. The proposed amendment authorizes the Commissioner to adjust the R5 threshold.

Subclause (2): Subclause (1)(*a*) shall come into operation on 1 October 2007 and applies in respect of any lump sum benefit accrued on or after that date.

Subclause (3): Subclause (1)(*b*) comes into operation on 1 March 2007.

CLAUSE 58

Income Tax: Repeal of the Fifth Schedule to the Income Tax Act, 1962

The proposed amendment repeals the Fifth Schedule in consequence of the repeal of the provisions of the Income Tax Act relating to the imposition of the loan tax. The Fifth Schedule determines, *inter alia*, the time and manner for payment and repayment of the loan tax and the payment of interest thereon.

CLAUSE 59

Amendment of paragraph 12A of the Seventh Schedule to the Income tax Act, 1962

Subclause (1): The proposed amendment facilitates the amendment of the paragraph in the manner contemplated in Appendix I to this Bill.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 1 March 2007 and applies in respect of any year of assessment commencing on or after that date.

CLAUSE 60

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

Subclause (1)(a): The proposed amendments correct grammar.

Subclause (1)(b): Paragraph 20(4) currently includes exchange differences in the computation of base cost if the exchange difference arose due to the taxpayer hedging the acquisition of certain equity shares. The proposed amendment now also includes in the computation of base cost the amount of any premium paid or received in respect of any such hedge.

Subclause (2): The proposed amendments in subclause (1)(*a*) come into operation for years of assessment ending on or after 1 January 2007.

Subclause (3): The proposed amendments in subsection (1)(*b*) come into operation for years of assessment ending on or after 31 December 2006.

CLAUSE 61

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

Paragraph 29(1)*(b)* of the Eighth Schedule deals with the determination of a valuation date market value for certain unlisted participatory interests in collective investment schemes. Paragraph 29(1)*(b)*(i) deals with the values of local units in a portfolio of a unit trust on 1 October 2001 which were published in the *Gazette*, while paragraph 29(1)*(b)*(ii) deals with the values of participatory interests in foreign collective investment schemes on valuation date (that is, either on 1 October 2001 or any later valuation date).

Subclause (1)(a): The amendment is of a textual nature and is consequential upon the introduction of the Collective Investment Schemes Control Act,2002.

Subclause (1)(b): It is proposed that the reference to a unit be replaced by a reference to a participatory interest. This amendment is consequential upon the introduction of the Collective Investment Schemes Control Act, 2002. It is furthermore proposed that it be clarified that the date on which the valuation must take place where there is no management company is the valuation date.

Subclause (1)(c): The proposed amendment is of a textual nature and substitutes the word “paragraph” with the word “paragraphs”.

Subclause (2): The proposed amendment in subclause (1)(*c*) comes into operation for years of assessment ending on or after 1 January 2007.

CLAUSE 62

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

Subclause (1): The proposed amendment inserts the words “instrument on that recognised exchange at close of business”, which were inadvertently omitted.

Subclause (2): The proposed amendment in subclause (1) comes into operation for years of assessment ending on or after 1 January 2007.

CLAUSE 63

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

Paragraph 39(3)*(b)* relaxes the clog loss rule in relation to disposals between the four funds of an insurer. The provision was widened by section 73(1)*(a)* of the Revenue Laws Amendment Act, 2005, to include all inter-fund disposals. The amendment came into effect on 1 February 2006 and applies in respect of any disposal on or after that date. Previously paragraph 33(3)*(b)* only excluded disposals required as a result of a change of policyholders or to balance the assets and liabilities of the four funds in terms of section 29A(6) and (7) on the basis that such transfers were involuntary. The exclusion now includes disposals on terms of sections 29A(6), (7) and (8).

As a result of the amendment there is some doubt as to whether pre-1 February 2006 clogged losses can be utilised against subsequent capital gains, even in transactions with the same fund. This is because paragraph 39(2) requires that before a set off can be achieved the parties must still be connected at the time of the subsequent capital gain. It is proposed that this be addressed by deeming the four funds not to be connected persons for purposes of only paragraph 39(1). Thus they will still remain connected persons for purposes of paragraph 39(2). This will enable a pre-1 February 2006 clogged loss arising from a transaction with one fund of an insurer to be set off against a subsequent capital gain arising from a transaction with the same fund. It is further proposed that the amendment be backdated to 1 February 2006.

CLAUSE 64

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

Paragraph 63A(b) contains two exclusions for capital gains and losses derived by public benefit organizations. The opening words of the provision refer to "substantially the whole of the use of that asset by that public benefit organization on or after valuation date". It is proposed that the word "or" be replaced with the word "and". This will prevent a PBO from losing its exclusion where it traded on its valuation date but not for substantially the rest of the period after valuation date.

The proposed amendment comes into operation for years of assessment commencing on or after 1 April 2006.

CLAUSE 65

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

The proposed amendment deletes a superfluous word.

CLAUSE 66

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

Subclause (1): The proposed amendment corrects an incorrect cross-reference.

Subclause (2): The proposed amendment in subclause (1) comes into operation for years of assessment ending on or after 1 January 2007.

CLAUSE 67

Income Tax: Amendment of paragraph 66 of the Eighth Schedule to the Income Tax Act, 1962

Subclause (1)(a) to (c): The proposed amendments provide that where an asset has been depreciated in terms of section 11D(2) (assets used for scientific or technological research and development) any capital gain realised in respect of the disposal thereof is be disregarded if there is a reinvestment in replacement assets.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 2 November 2006 and applies in respect of any disposal on or after that date.

CLAUSE 68

Income Tax: Amendment of paragraph 84 of the Eighth Schedule to the Income Tax Act, 1962

The proposed amendment corrects a spelling error.

CLAUSE 69

Income Tax: Amendment of Paragraph 4 of Part II of the Ninth Schedule to the Income Tax Act, 1962

Subclause (1): The proposed amendment corrects grammar.

Subclause (2): The proposed amendment in subclause (1) comes into operation for years of assessment ending on or after 1 January 2007.

CLAUSE 70

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

Subclause (1)(a) and (b): The proposed amendments correct grammar.

Subclause (1)(c): The proposed amendment clarifies that the final words of paragraph (*c*) of the definition of **"refining"** apply to paragraphs (*a), (b) and (c)* of that definition.

Subclause (2): The proposed amendments in subclause (1) come into operation for years of assessment commencing on or after 2 November 2006.

CLAUSE 71

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

Subclause (1)(a) and (b): The proposed amendment deletes obsolete references to a branch or agency.

Subclause (2): The proposed amendments in subclause (1) apply in respect of years of assessment commencing on or after 2 November 2006.

CLAUSE 72

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

Subclause (1): Paragraph 3 of the Tenth Schedule currently provides for the determination of STC on the net amount of a dividend declared by an oil and gas company. The problem is that the paragraph does not provide for the manner of determining the amount of the net dividend. The proposed amendment clarifies that the net amount of any dividend is determined in terms of section 64B(3).

Subclause (2): The proposed amendment in subclause (1) comes into operation on 7 February 2007.

CLAUSE 73

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

Subclause (1): The proposed amendment corrects grammar.

Subclause (2): The proposed amendment in subclause (1) comes into operation for years of assessment commencing on or after 2 November 2006.

CLAUSE 74

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

Subclause (1): The proposed amendment corrects grammar.

Subclause (2): The proposed amendment in subclause (1) comes into operation for years of assessment commencing on or after 2 November 2006.

CLAUSE 75

Income Tax: Amendment of paragraph 7 of the Tenth Schedule to the Income Tax Act, 1962

Subclause (1)(a) and (b): The current wording of paragraph 7 refers to an amount of gross income which should be deducted from income. The proposed amendment aligns the wording with the accepted reduction process in determining taxable income.

Subclause (2): The proposed amendments in subclause (1) come into operation for years of assessment commencing on or after 2 November 2006.

CLAUSE 76

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

Subclause (1): The proposed amendment, read in conjunction with Appendix II to this Bill, proposes the amendment of certain provisions of the Customs and Excise Act.

Subclause (2): Subject to section 58(1) of the Customs and Excise Act, the proposed amendments in subclause (1) come into operation on 21 February 2007.

CLAUSE 77

Customs and Excise: Continuation of certain amendments of Schedule No. 1 to 6 and 10 of the Customs and Excise Act, 1964

The proposed amendment amends certain provisions and rates of the Customs and Excise Act.

CLAUSE 78

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

Subclause (1): The proposed amendment improves style by removing a superfluous reference to the Income Tax Act, 1962.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 7 February 2007.

CLAUSE 79

Stamp Duties: Amendment of section 22 of the Stamp Duties Act, 1968

Subclause (1)(a) and (b): Section 22(2) provides the rules for determining the period for which a lease must be stamped. Under current law, a lease of an indefinite period must be stamped for a period of two years. It is proposed that the period be extended to five years. This change is in line with the new exemption for leases of not longer than five years.

Subclause (1)(c): Section 22(3) currently provides special rules for the continuance, renewal or extension of leases that must be exercised in writing. This distinction makes little sense and the current cross-reference to subsection (4) is obsolete. It is accordingly proposed that section 22(3) be deleted in its entirety.

Subclause 1(d): Section 22(8) currently provides for refunds if a lease is terminated before the end of the period for which duty has been paid. This refund is based entirely on a proportionate calculation based on the remaining period after termination. This proportionate system is unfair if the actual period of lease is not longer than five years from the date of the commencement of the rental period as contemplated in the lease agreement. The reason is that leases which do not exceed five years are now wholly exempt. The proposed amendment makes provision for two instances where a refund may be claimed. Firstly, where the lease is terminated before a period of five years from the date of the commencement of the rental period as contemplated in the lease agreement, the total duty paid is refundable. Secondly, where there is an early termination of a lease after a period of five years, a proportionate amount of the duty paid is refundable.

Subclause (2): The proposed amendments in subclause (1) come into operation on 1 June 2007 for any lease or agreement of lease executed on or after that date.

CLAUSE 80

Stamp Duties: Amendment of Item 14 of Schedule 1 to the Stamp Duties Act, 1968

Subclause (1): In terms of Item 14 of Schedule 1, leases are subject to the stamp duty at a rate of 0.5 per cent. The proposed amendment provides that only leases or agreements of lease (including any instrument intended to or operating as a lease or sub-lease or as an agreement to let or sub-let) whereby immovable property is let for a period of longer than five years are subject to stamp duty.

Example:
A lease providing for annual turnover rental was entered into on 2 November 2006 for a period of five years. As the lease annual turnover rental could not be quantified at the time of the execution of the lease agreement, the lessor would have to pay stamp duty on the rental which becomes quantifiable during its tax year. The proposed amendment will have the effect of exempting turnover rental which becomes quantifiable on or after 1 June 2007 due to the fact that the term of the lease does not exceed five years.

Currently, an exemption exists for leases where the duty payable does not in aggregate exceed R500. In order to simplify administration it is proposed that leases with a term of five years or less not be subject to stamp duty and that the R500 exemption be withdrawn. However, this five year exemption will not apply to leases where the total lease period exceeds five years after taking into account possible extensions and renewals. For instance: In the case of a lease of three years that is subject to a renewal of three years, the stamp duty applies because the aggregate period exceeds five years.

The proposed amendment provides that the cap on the stamp duty payable (which is currently ten per cent of the value of the property in relation to the lease) be aligned with the maximum rate of duty payable in terms of the Transfer Duty Act, 1949, which is currently eight per cent of the value of a property.

Subclause (2): Subclause (1) comes into operation on 1 June 2007 and applies in respect of—

(*a*) any lease or agreement of lease executed on or after 1 June 2007; and

(*b*) on any lease or agreement of lease executed before 1 June 2007 in respect of which consideration becomes quantifiable on or after that date as a result of the application of section 8(1)*(e)* of the Stamp Duties Act, 1968.

CLAUSE 81

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

Subclause (1)(a): The proposed amendment is to clarify that for any establishment to supply "commercial accommodation" as defined in section 1 of the VAT Act, the annual receipts for such supply must exceed or be reasonably expected to exceed R60 000 in any 12 month period. The calculation must therefore be made for any 12 month period and not for a calendar year.

Subclause (1)(b): The proposed amendment aligns the definition of a "municipality" with that of the Income Tax Act, 1962.

CLAUSE 82

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

Subclause (1)(a) and (b): The value of a supply of goods or services is the VAT exclusive amount whereas the consideration for a supply of goods or services is the VAT inclusive amount. The proposed amendment is to provide clarity by replacing the phrase "value of the consideration" with the phrase "amount of the consideration" and the "value of tax" with the "amount of tax".

Subclause (1)(c): Section 10(3) determines the amount on which VAT must be calculated for a supply. The value of a supply of goods or services is the VAT exclusive amount whereas the consideration for a supply of goods or services is the VAT inclusive amount. The proposed amendment is to clarify that the tax fraction will be applied to any consideration, whether in money or otherwise, received for any supply of goods or services.

CLAUSE 83

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

Subclauses *(1)(a)* and *(b)*: The proposed amendment is consequential upon the introduction of the environmental levy levied in terms of Part 3 of Schedule No.1 to the Customs and Excise Act, 1964. The environmental levy was taxable at the standard rate in terms of section 7(3)*(a)* of the VAT Act as from 24 January 2005. However, the provisions of the VAT Act which deals with the deduction of input tax in respect of the VAT paid on environmental levies was not catered for and therefore the proposed amendment will now rectify the situation.

Subclause (2): The proposed amendment comes into operation on 24 January 2005.

CLAUSE 84

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

Subclause (1)(a): Where a vendor acquires goods or services or imports goods partly for consumption, use of supply in the course of making taxable supplies and partly for another intended use, the vendor may claim input tax in the same ratio as the intended use (i.e. apportionment method) of such goods or services. The apportionment method was determined by the Commissioner in accordance with a general written ruling or a written ruling. The proposed amendment is to make provision for the Commissioner to determine the ratio by issuing rulings as contemplated in section 41A or 41B of the VAT Act.

Subclause (1)(b): The proposed amendment deletes the phrase “by way of a general written ruling or a written ruling given to such vendor” as this is already catered for in the opening words of section 17(1) of the VAT Act.

Subclause (1)(c) and (1)(d): 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)* by Notice in the *Gazette*.

Subclause (2): The proposed amendments in subclauses (*a*) and (*b*) come into operation on 1 January 2007.

CLAUSE 85

Value-Added Tax: Amendment of Item 413.00 of Schedule 1 to the Value-added Tax Act, 1991

Subclause (1): The proposed amendment provides for the importation of consumable, semi-durable or promotional Championship related goods (excluding tobacco products and cosmetics) by a FIFA Flagship Store Operator to be exempt from VAT from 1 April 2006 instead of six months before the 2009 Confederations Cup.

Subclause (2): The proposed amendment comes into operation on 1 April 2006.

CLAUSE 86

Tax on Retirement Funds: Amendment of section 1 of the Tax on Retirement Funds Act, 1996

Subclause (1): The proposed amendment provides that tax shall no longer be imposed under the Tax on Retirement Funds Act for tax periods ending after 28 February 2007.

Subclause (2): The proposed amendment comes into operation on 1 March 2007.

CLAUSE 87

Income Tax: Amendment of section 30 of the Revenue Laws Amendment Act, 2004

Section 35A of the Income Tax Act, 1962, deals with CGT withholding tax on non-residents who dispose of property in South Africa. The section was inserted into the principal Act by section 30 of the Revenue Laws Amendment Act, 2004. It was originally to come into operation on a date to be proclaimed by the President. It is now proposed that section 35A will come into operation on 1 September 2007 and apply to any disposal on or after that date.

CLAUSE 88

Income Tax: Amendment of section 16 of the Revenue Laws Amendment Act, 2005

The proposed amendment inserts an effective date for section 16(1)*(g)* of the Revenue Laws Amendment Act to align it with the effective date of section 44(1), which inserted sections 47A to 47K in the Income Tax Act, 1962. Sections 47A to 47K deal with the final withholding tax regime on gross payments made to foreign entertainers and sportspersons. Section 16(1)*(g)* of the Revenue Laws Amendment Act inserted section 10(1)*(l*A*)* in the Income Tax Act, 1962, to allow for an exemption of amounts that are taxed under the final withholding tax regime to avoid double taxation.

CLAUSE 89

Small Business Tax Amnesty: Insertion of section 2A in the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

Subclause (1): In order to target the small business tax amnesty at relatively unsophisticated small businesses, amnesty is restricted to businesses with a turnover of up to R10 million in the 2006 year of assessment that are conducted by individuals, companies owned only by individuals or trusts with only individuals as beneficiaries.

It would appear that there are several hundred active small businesses carried on through trusts that do not qualify for amnesty, although these trusts were founded with the intent of benefiting the members of a family and have operated on this basis. This is the result of poor advice and the use of "boiler-plate" trust deeds that permit the trustees to nominate beneficiaries that may be legal entities.

The proposed amendment will permit the Commissioner to relax the requirement that all trust beneficiaries be individuals in cases where a trust can show that:
- Income or assets were vested in or distributed to beneficiaries in the 2006 year of assessment or the prior two years of assessment; and
- These beneficiaries were all individuals.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 1 August 2006.

CLAUSE 90

Small Business Tax Amnesty: Amendment of section 3 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

Subclause (1): The application period for the small business tax amnesty opened on 1 August 2006 and closed on 31 May 2007. An extension of one month to 30 June 2007 is proposed in the light of the surge of applications in the closing days of the application period, the additional time some potential applicants required for the preparation of financial statements and other supporting documents, and the representations made by business and professional organizations.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 31 May 2007.

CLAUSE 91

Small Business Tax Amnesty: Insertion of section 9A in the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

Subclause (1): The concern has been raised that there are circumstances where a strict reading of the income tax legislation could result in the taxation of relief granted in terms of the small business amnesty legislation. This was not the intention.

Section 9A(1) provides an explicit income tax exemption and capital gains exclusion in respect of small business amnesty relief in terms of section 8, while section 9A(3) provides an explicit capital gains exclusion in respect of the waiver of additional tax, penalty or interest in terms of section 13 and its associated regulations. Equally, however, successful amnesty applicants should not be permitted to abuse these provisions by attempting to deduct third party claims relating to the exempt or excluded amounts or by restating returns. Sections 9A(3) and 11A give effect to these matching anti-abuse measures.

Subclause (2): The proposed amendments in subclause (1) come into operation on 1 August 2006.

CLAUSE 92

Small Business Tax Amnesty: Amendment of section 13 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

Subclause (1): The proposed amendment provides that references to 31 May 2007 in any regulations issued in terms of section 13 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act should be construed to be a reference to 30 June 2007, to match the extended application period.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 31 May 2007.

CLAUSE 93

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

Subclause (1): Currently, Schedule I to the abovementioned Act sets the rate of tax for public benefit organisations and recreational clubs for years of assessment ending on or before 31 March 2006.

The first problem is that clubs will not be taxed in terms of the Income Tax Act, 1962, until 1 April 2007 and therefore the reference to clubs is proposed to be deleted as superfluous.

The second problem is that the abovementioned Act sets the rate for a public benefit organisation but does not contain a definition thereof nor refers to the fact that the rate applies to a public benefit organisation that has been approved by the SARS. The proposed amendment therefore provides that the rate of 29 per cent applies in respect of public benefit organisations as defined in the Income Tax Act, 1962, and that are approved by the SARS.

Subclause (2): The proposed amendment in subclause (1) comes into operation from 25 July 2006.

CLAUSE 94

Long Title: Amendment of the Long Title to the Revenue Laws Amendment Act, 2006

Subclause (1): The proposed amendments correct the Long Title to the abovementioned Act.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 7 February 2007.

CLAUSE 95

Income Tax: Amendment of section 3 of the Revenue Laws Amendment Act, 2006

Subclause (1): Currently, section 3(2) of the abovementioned Act provides that the amendments to the definition of “retirement annuity fund” in the Income Tax Act, 1962, would come into operation on a date to be determined by the President. This was incorrect and the amendments should have come into operation for years of assessment ending on or after 1 January 2007, as provided in section 107 of the abovementioned Act. The proposed amendment rectifies this situation.

In addition, certain effective dates were not provided for in respect of the definitions of “mining operations” and “mining” in the Income Tax Act, 1962. The amendments to these definitions were in consequence to the insertion of the section 26B and the 10^{th} Schedule to the Income Tax Act, 1962, and therefore the proposed amendment aligns these effective dates with the effective date of that section and that schedule.

Subclause (2): The proposed amendments in subclause (1) come into operation from years of assessment commencing on or after 2 November 2006.

CLAUSE 96

Income Tax: Amendment of section 9 of the Revenue Laws Amendment Act, 2006

Subclause (1): The proposed amendment corrects an incorrect effective date.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 7 February 2007.

CLAUSE 97

Income Tax: Amendment of section 10 of the Revenue Laws Amendment Act, 2006

Subclause (1): The proposed amendment corrects grammar and an incorrect cross reference.

Subclause (2): The proposed amendments in subclause (1) come into operation from years of assessment commencing on or after 1 April 2007.

CLAUSE 98

Income Tax: Amendment of section 11 of the Revenue Laws Amendment Act, 2006

Subclause (1): The proposed amendment corrects style and amends the date upon which section 11(*h*B) of the Income Tax Act, 1962, comes into operation.

Subclause (2): The proposed amendments in subclause (1) come into operation for years of assessment ending on or after 2 November 2006.

CLAUSE 99

Income Tax Amendment of section 13 of the Revenue Laws Amendment Act, 2006

Subclause (1): The proposed amendment provides that the deductions for expenditure incurred for scientific or technological research and development shall be allowed only in respect of research and development activities undertaken on or after 2 November 2006. In addition this amendment deletes an unintended reference to assets of a capital nature.

Subclause (2): The proposed amendments in subclause (1) come into operation on 7 February 2007.

CLAUSE 100

Income Tax: Amendment of section 14 of the Revenue Laws Amendment Act, 2006

Subclause (1): The proposed amendment corrects grammar.

Subclause (2): The proposed amendments in subclause (1) come into operation on 7 February 2007.

CLAUSE 101

Income Tax: Amendment of section 15 of the Revenue Laws Amendment Act, 2006

Subclause (1): The proposed amendment corrects style.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 7 February 2007.

CLAUSE 102

Income Tax: Amendment of section 21 of the Revenue Laws Amendment Act, 2006

Subclause (1): The proposed amendment inserts 2 November 2006 as the date after which years of assessment commence during which the Tenth Schedule to the Income Tax Act, 1962 comes into operation.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 7 February 2007.

CLAUSE 103

Income Tax: Amendment of section 28 of the Revenue Laws Amendment Act, 2006

Subclause (1): The proposed amendment clarifies that the amendments in section 28 of the Revenue Laws Amendment Act, 2006 apply in respect of any transaction entered into on or after 8 November 2005.

Subclause (2): The proposed amendments in subclause (1) come into operation on 7 February 2007.

CLAUSE 104

Income Tax: Amendment of section 35 of the Revenue Laws Amendment Act, 2006

Subclause (1): The proposed amendment corrects spelling.

Subclause (2): The proposed amendment in subsection (1) comes into operation on 7 February 2007.

CLAUSE 105

Income Tax: Amendment of section 43 of the Revenue Laws Amendment Act, 2006

Subclause (1): The proposed amendment inserts the date upon which section 43 of the Revenue Laws Amendment Act, 2006 comes into operation.

Subsection (2): The proposed amendment in subsection (1) comes into operation on 1 March 2006.

CLAUSE 106

Customs and Excise: Amendment of section 64 of the Revenue Laws Amendment Act, 2006

The proposed amendment corrects grammar. The words "of the goods" are replaced by "thereof" in paragraphs *(a)*(ii) and *(c)*(ii) of subsection (4) and where a comma is taken out in subsection (5A)*(a)*(ii).

CLAUSE 107

Customs and Excise: Amendment of section 70 of the Revenue Laws Amendment Act, 2006

This is a technical correction to specify the effective date on which paragraphs *(a)* to *(h)* must come into operation. Paragraphs *(a)* to *(h)* come into operation with retrospective effect as from 1 April 2006. No change is proposed in respect of paragraphs *(i)* and *(j)*.

CLAUSE 108

Value-Added Tax: Amendment of section 77 of the Revenue Laws Amendment Act, 2006

Section 77*(d)* is repealed and replaced with a new definition of "municipality". See proposed amendment of section 1 of the Value-Added Tax Act, 1991.

CLAUSE 109

Value-Added Tax: Amendment of section 89 of the Revenue Laws Amendment Act, 2006

The proposed amendment inserts an effective date.

CLAUSE 110

Income Tax: Repeal of section 96 of the Revenue Laws Amendment Act, 2006

Subclause (1): The proposal repeals an incorrect amendment.

Subclause (2): The proposed amendment in subclause (1) comes into operation on 7 February 2007.

CLAUSE 111

2010 FIFA World Cup South Africa: Amendment of section 106 of the Revenue Laws Amendment Act, 2006

The proposed amendment is to allow the supply of the services comprising the organizing, staging and the hosting of the 2010 FIFA World Cup South Africa which are rendered by the Local Organizing Committee to FIFA, to be made at the zero rate as from 14 May 2004 and not 1 April 2006 as initially allowed for in Part VII of the Schedule 1 to the Revenue Laws Amendment Act, 2006.

CLAUSE 112

2010 FIFA World Cup South Africa: Amendment of Schedule 1 to the Revenue Laws Amendment Act, 2006

The proposed amendment corrects grammar.

CLAUSE 113

Customs and Excise: Amendment of Schedule 2 to the Revenue Laws Amendment Act, 2006

This is a technical amendment in respect of incorrect headings. The words "Amendments to Schedule No.4 to the Customs and Excise Act, 1964 (Section 106)" are deleted and the words "of Schedule No. 4 to the Customs and Excise Act, 1964" are added to Part 1A.

CLAUSE 114

Amendment of section 31 of the Diamonds Amendment Act, 2005

Anomalies in current law may temporarily leave the current 15 percent diamond export levy (in terms of the Diamonds Act, 1986) without exemption when the proposed diamond export levy takes effect. A flat 15 per cent levy would undermine the careful balancing of interests that the proposed levy is trying to achieve.

This proposal maintains the exemptions currently in place in order to facilitate a smooth transition to the proposed levy. Paragraph 2 first confirms the continuing existence of long outstanding section 59 agreements. It also confirms that persons outside the section 59 agreement process can export unpolished diamonds free from the diamond export levy as long as they properly offer diamonds at a diamond exchange and export centre beforehand. The latter is a well entrenched practice.

CLAUSE 115

Amendment of section 63 of the Diamonds Act, 1986

The proposal correctly separates the time table for diamond export levy issues from other regulatory Diamonds Act changes. The cut off for the current levy export exemptions will now be determined by the Minister of Finance so this cut off will coincide with the introduction of the proposed diamond export levy. The 1-year cut off provided by the Diamonds Amendment Act, 2005, will be limited to non-export levy issues.

CLAUSE 116

Short title and commencement date

This section provides for the short title and commencement of the Bill.