REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

REVENUE LAWS AMENDMENT BILL, 2001

[W.P. 2 —'01]

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INTRODUCTION

The Revenue Laws Amendment Bill, 2001, 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 Road Accident Funds Act, 1996, the Uncertificated Securities Tax Act, 1998, the Skills Development Levies Act, 1999, the Taxation Laws Amendment Act, 2000, and the Taxation Laws Amendment Act, 2001.

AMENDMENTS ARISING FROM SIYAKHA INITIATIVES

Siyakha (which means "we are building") is a project which SARS has launched to make more efficient use of its resources through the re-engineering of its processes and the introduction of new technologies. To implement the new initiatives various changes to the tax laws are required. Most of these changes are of an enabling nature and relate to changes to the Customs and Excise Act. Some of the most important initiatives are:

- Better reporting requirements in respect of cargo on importation and exportation.
- Stricter controls in respect of the movement of goods within and through South Africa.
- The movement of the point of liability for excise duties on tobacco, alcohol and oil products closer to the manufacturing stage, thereby removing the need for and control of storage warehouses.
- Better control over the registration and licensing requirements for persons doing customs business.
- Accreditation of licensed or registered persons doing customs business.
- The regulation of electronic communications for purposes of customs and excise procedures.

Provisions to give effect to the Siyakha initiatives are contained in clauses 17, 36, 39, 40, 42, 45, 46, 48, 50 and 51.

CLAUSE 1

Estate Duty: Amendment of section 5 of the Estate Duty Act, 1955

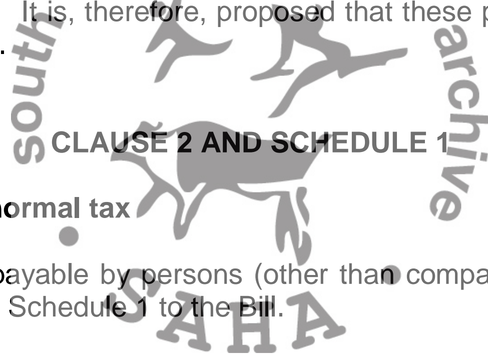
Subclauses (a) and (e): Section 3 of the Estate Duty Act, 1955, provides that the estate of a person consists of all property of that person at the date of death and all property which is deemed to be property of that person at that date. Section 4 provides that the net value of an estate shall be determined by deducting from the total value of all property included in terms of section 3, certain costs and debts of the estate and the value of certain property included therein. The value of the property in an estate must be determined as provided for in section 5.

The opening words of section 5(1) refers to "the value of any property included in the estate". For some time now arguments have been raised that on a literal interpretation

of section 5, that section can only be used to value property for purposes of including that property in the estate of a deceased. Many circumstances, however, arise where a value also needs to be placed on property which qualifies for a deduction for estate duty purposes. Although the valuation rules provided for in section 5 have in practice been applied for purposes of both the inclusion of property in the estate and the deduction thereof in terms of section 4, there has been some uncertainty in this regard. This practice has also been supported by case law.

In order to eliminate this uncertainty, it is proposed that the wording of section 5(1) and (2) be amended to specifically provide that the value of the property determined in terms of this section, shall apply in respect of property to be included in an estate, as well as for purposes of the deductions contemplated in section 4.

Subclauses (b) to (d): Section 5 of the Estate Duty Act, 1955, prescribes how the value of property in an estate must be determined. Subsection (1)*(f)*, *(f)bis* and *(g)* and subsection (2) provide that the value of the property referred to in those paragraphs shall be the fair market value as determined by sworn appraisement by some impartial person appointed by the Commissioner. Although this is a specific requirement in the Act, this is not done in practice and would also have considerable cost implications to SARS if the Commissioner had to obtain a sworn valuation by an impartial person for every asset in an estate. The Commissioner, in any event, has the power in terms of section 8 of the Act to adjust the value of property if the Commissioner is not satisfied with the valuation of an asset of an estate. It is, therefore, proposed that these provisions be amended to remove this requirement.



CLAUSE 2 AND SCHEDULE 1

Income Tax: Rates of normal tax

Rates of normal tax payable by persons (other than companies) and companies are enacted by *clause 2* and Schedule 1 to the Bill.

Persons other than companies

The rates for persons (other than companies) apply in respect of the year of assessment ending on 28 February 2002 or 30 June 2002 and are provided for in paragraph 1 of Schedule 1.

The rates for persons (other than companies and trusts) and special trusts consist of a progressive rate structure ranging between 18 per cent on the lowest income segment (amounts up to R38 000) and 42 per cent which is reached on the income segment above R215 000.

The rates for trusts (other than special trusts) consist of a rate of 32 per cent on taxable income which does not exceed R100 000 and 42 per cent on the income exceeding R100 000.

The rates for—

- persons (other than companies) and special trusts are provided for in paragraph 1*(a)* of Schedule 1; and

- trusts (other than special trusts) are provided for in paragraph 1*(b)* of Schedule 1.

Companies

The rates for companies apply in respect of years of assessment, i.e. the financial year of the company concerned, ending during the 12-month period from 1 April 2001 to 31 March 2002, and are provided for in paragraphs 2*(a)* to *(h)*, inclusive, of Schedule 1.

Those rates are as follows:

(a) Taxable income derived otherwise than from gold mining, long-term insurance business, or by a small business corporation, an employment company, or a foreign company carrying on a trade through a branch or agency in the Republic or a qualifying company enjoying tax holiday status: 30 cents per R1, but in the case of a company which mines for gold and which is exempt from secondary tax on companies in terms of an option exercised by it, 38 cents per R1 of its non-gold mining taxable income (paragraph 2*(a)* of Schedule 1).

(b) Taxable income derived by a company which qualifies as a small business corporation, 15 cents per R1 up to R100 000, and 30 cents per R1 of taxable income exceeding R100 000 (paragraph 2*(b)* of Schedule 1).

(c) Taxable income derived by an employment company, 35 cents per R1 of taxable income (paragraph 2*(c)* of Schedule 1).

(d) Taxable income derived by a company from gold mining: an amount determined in accordance with one of the following formulae—

(i) where such company is not exempt from secondary tax on companies:

$$y = 37 - \frac{185}{x}\text{; or}$$

(ii) where such company is exempt from secondary tax on companies:

$$y = 46 - \frac{230}{x},$$

as provided for in paragraph 2*(d)* of Schedule 1.

(e) Taxable income in the form of "recoupments" of capital expenditure accruing to companies which are or have been gold mining companies: the average rate of tax, determined as provided for, or 30 cents per R1, whichever is the higher (paragraph 2*(e)* of Schedule 1).

(f) Taxable income derived from long-term insurance business: 30 cents per R1 in respect of the insurer's individual policyholder fund, company policyholder fund and corporate fund (paragraph 2*(f)* of Schedule 1).

(g) Taxable income (excluding from gold mining, long-term insurance business, or a qualifying project enjoying tax holiday status, or derived by a small business corporation or an employment company) derived by a company which has its place of effective management outside the Republic and which carries on trade through a branch or an agency within the Republic: 35 cents per R1 (paragraph 2*(g)* of Schedule 1).

(h) Taxable income derived by a qualifying company which has been granted tax holiday status in terms of section 37H of the Income Tax Act, 1962: zero cents per R1 (paragraph 2*(h)* of Schedule 1).

For purposes of paragraph (2)—

(a) 'small business corporation' means any close corporation or any company registered as a private company in terms of the Companies Act, 1973 (Act No. 61 of 1973), the entire shareholding of which is at all times during the year of assessment held by shareholders or members that are natural persons, where—

(i) the gross income for the year of assessment does not exceed R1 million;

(ii) none of the shareholders or members at any time during the year of assessment of the company or close corporation holds any shares or has any interest in the equity of any other company as defined in section 1 (other than a company listed on a stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or any unit portfolio contemplated in paragraph *(e)* of the definition of 'company' in section 1);

(iii) not more than 20 per cent of the gross income of the company or close corporation consists collectively of investment income and income from the rendering of a personal service; and

(iv) such company is not an employment company;

(b) 'employment company' means any company—

(i) which is a labour broker as defined in the Fourth Schedule to the Act, other than a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5) of the said Schedule; or

(ii) which is a personal service company as defined in the Fourth Schedule;

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(c) ‘investment income’ means—

(i) any income in the form of dividends, royalties, rental, annuities or income of a similar nature;

(ii) any interest as contemplated in section 24J, any amount contemplated in section 24K and any other income which, by the laws of the Republic administered by the Commissioner, is subject to the same treatment as income from money lent; and

(iii) any proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property;

(d) ‘personal service’ means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, broking, commercial arts, consulting, draftsmanship, education, engineering, entertainment, health, information technology, journalism, law, management, performing arts, real estate, research, secretarial services, sport, surveying, translation, valuation or veterinary science, which is performed personally by any person who holds an interest in the company or close corporation.”;

(e) income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold, and any other income which results directly from mining for gold.

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CLAUSE 3

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

Subclause (a): The purpose of the amendment proposed in this clause is to ensure that an amount is not included in the definition of “gross income” under both paragraph *(e)*, which includes in gross income any amount determined in accordance with the Second Schedule in respect of a lump sum from a pension fund and paragraph *(e*A*)*, which taxes two-thirds of benefits converted in, or amounts transferred from a pension fund.

Subclause (b): The Municipal Structures Act, 2000 (Act No. 32 of 2000), authorises local authorities to provide services through the use of so-called municipal entities. Employees that are transferred from local authorities to municipal entities are no longer employed by a local authority as defined in the Income Tax Act, 1962, and will, in terms of the current definition of “pension fund”, have to withdraw from their local authority retirement fund to safeguard the tax status of the local authority retirement fund.

The amendment proposed in this clause will ensure that the tax status of a retirement fund established for employees of a local authority is not placed in jeopardy by the continued membership of employees of a so-called municipal entity in circumstances where those employees were previously employees of a local authority as defined in

section 1 of the Income Tax Act. This will apply where a local authority exercises ownership control over these municipal entities.

'Ownership control', in relation to an entity, means the ability to exercise any of the following powers to govern the financial and operating policies of the entity in order to obtain benefits from its activities:

- to appoint or remove the majority of the board of directors or equivalent governing body;
- to appoint or remove that entity's chief executive officer;
- to cast the majority of the votes at meetings of the board of directors or equivalent governing body; or
- to control the majority of the voting rights at a general meeting in the case of a company, co-operative or other body having members;

CLAUSE 4

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

This amendment is consequential upon the insertion of sections 12E and 12G in the Income Tax Act, 1962.

CLAUSE 5

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

Section 5(10) of the Income Tax Act, 1962, was amended by the Taxation Laws Amendment Act, 2001 (Act No. 5 of 2001), to take into account capital gains in the formula contained in paragraph *(g)* which determines the rate of tax to be applied in respect of special remuneration or lump sum payments. This amendment will come into operation on 1 October 2001, i.e. the date when the provisions relating to capital gains tax will come into effect.

The reference in the proposed symbol 'F' to the preceding year of assessment was omitted in the amendment and it is proposed that section 7(1)*(g)* of the Taxation Laws Amendment Act, 2001, which introduced this amendment be repealed. An amendment to section 5(10)*(g)* to take capital gains into account in the formula is accordingly proposed in this Bill with effect from 1 October 2001.

CLAUSE 6

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

This clause increases the primary rebate in the case of persons under the age of 65 years, from R3 800 to R4 140, and the rebate in respect of persons 65 years and over, from R2 900 to R3 000.

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CLAUSE 7

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

Subclauses (a) to (f): These amendments are consequential upon the introduction of section 12E, 12F and 12G in the Income Tax Act, 1962.

Subclause (g): As it presently reads, section 8(4)*(k)* deems an amount of an allowance previously allowed in respect of a capital asset to have been recouped by a person, where that asset is donated or distributed as a dividend. One of the shortcomings of the current provision is that an asset can be transferred to a shareholder otherwise than by way of a dividend as defined. These include, for example, capital profits distributed during winding-up of a company or reductions in share capital. In such circumstances it may not be possible to recoup an allowance previously allowed in respect of such an asset.

It is proposed that the reference to the distribution of a dividend be deleted and be replaced by a reference to the transfer of an asset to a shareholder, in whatever manner or form. This is a much wider concept which will ensure that all methods of distributing an asset to a shareholder are covered.

Subclause (h): This clause inserts a new provision to provide for the recoupment of the additional industrial investment allowance allowed under section 12G, in addition to the amounts recouped in terms of section 8(4)*(a)*.

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CLAUSE 8

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

The definition of "foreign dividend" in section 9E includes any amount which is a deemed distribution, as contemplated in section 64C, where none of the exclusions in section 64C(4) apply. In order to protect the tax base, it is proposed that the exclusions in sections 64C(4)*(g)* and 64C(4)*(h)*, which deal with loans made by a company to—

- any other company where the equity share capital of both companies are held by the same shareholders;
- its holding company; or
- any other company which is directly or indirectly held by a holding company,

should not apply for purposes of paragraph *(a)* of the definition of "foreign dividend".

CLAUSE 9

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

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

Subclause (b) and (c): Section 10(1)*(i)*(xv) provides for the exemption from tax of the aggregate amount of dividends and interest which, in the case of a taxpayer 65 years

and over, exceeds R4 000 and, in the case of a taxpayer under 65 years, exceeds R3 000.

It is proposed that these exemptions be increased to R5 000 in the case of a taxpayer 65 years and over, and to R4 000 in the case of a taxpayer under 65 years.

CLAUSE 10

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

Subclause (a): Section 11*(b*A*)* makes provision for the deduction of pre-production interest incurred by a taxpayer in respect of any loan, advance or credit used for the acquisition, installation, erection or construction of any plant, machinery or building to be used for purposes of the taxpayer's trade.

Section 12D was inserted in the Income Tax Act, 1962, in 2000, to provide for the depreciation of certain pipelines, transmission lines or cables and railway lines contracted for on or after 23 February 2000, and the construction, erection or installation of which commenced on or after that date. It is proposed that section 11*(b*A*)* be amended retroactively from that date to include pre-production interest incurred in respect of these assets.

It is proposed that this provision should also be amended to include any aircraft hangar, apron, runway and taxiway contemplated in section 12F of the Income Tax Act, 1962, and is consequential upon the introduction of section 12F in the Act.

Subclause (b): This amendment is of a textual nature and corrects the paragraph numbering.

Subclauses (c) to (e): Section 11*(o)* provides for a scrapping allowance of depreciable assets and it is proposed that this paragraph be amended to include aircraft hangars, aprons, runways and taxiways as contemplated in section 12F. This amendment is consequential upon the introduction of section 12F in the Act.

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CLAUSE 11

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

The amendment proposed in this clause is consequential upon the introduction of section 12E in the Income Tax Act, 1962. The reason therefor being that allowances in respect of plant and machinery of a small business corporation used in a process of manufacture will now be allowed as a deduction in terms of the new section 12E.

CLAUSE 12

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

Deduction in respect of certain plant and machinery of small business corporations

As announced by the Minister of Finance in his Budget Speech this year, the full cost of any investment made by a small business corporation in manufacturing assets will be allowed as a deduction in the year of assessment during which those assets are brought into use by the small business corporation for the first time. Section 12E of the Income Tax Act, 1962, gives effect to this proposal and applies to plant and machinery brought into use for the first time on or after 1 April 2001, and which is used in a process of manufacture.

For the purposes of this section a "small business corporation" is defined as a close corporation or private company, where the shareholding is at all times during the year of assessment held by natural persons, and—

(i) the gross income for the year of assessment does not exceed R1 million (provision is made for the amount of R1 million to be reduced where a trade is not carried on for the full year of assessment);
(ii) none of the shareholders or members hold any shares or has any interest in the equity of any other company. This does not apply to any interest in a listed company or a unit portfolio;
(iii) not more than 20% of the gross income of the company or close corporation for that year consists collectively of investment income and income from rendering a personal service; and
(iv) the company is not an employment company.

An "employment company" means a company which is a labour broker (other than a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5) of the Fourth Schedule) or a personal service company as defined in the Fourth Schedule to the Act.

"Investment income" is defined as:

(i) any income in the form of dividends, royalties, rental, annuities or income of a similar nature;
(ii) any interest as contemplated in section 24J, any amount contemplated in section 24K, and any other income which, in terms of legislation administered by the Commissioner, is subject to the same treatment as income from money lent; and
(iii) any proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property.

"Personal service" means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, broking, commercial arts, consulting, draftsmanship, education, engineering, entertainment, health, information technology, journalism, law, management, performing arts, real estate, research, secretarial services, sport, surveying, translation, valuation or veterinary science, which is performed personally by any person who holds an interest in the company or close corporation.

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Section 12E(1) provides that where plant or machinery of a small business corporation is brought into use for the first time on or after 1 April 2001 for the purposes of the taxpayers trade (except mining or farming) and is used by the small business corporation directly in a process of manufacture or similar process, the full cost of the asset shall be allowed as a deduction in the year in which the asset was so brought into use.

Subsection (2) provides for the determination of the cost of the asset and excludes, for example, interest and finance charges.

Subsection (3) provides that any expenditure, except expenditure referred to in section 11*(a)*, which is incurred by the small business corporation during a year of assessment in moving the asset from one location to another, shall be allowed as a deduction from the corporation's income in that year.

Income Tax: Insertion of section 12F in the Income Tax Act, 1962

Deduction in respect of certain aircraft hangars, aprons, runways and taxiways

As was proposed in this year's Budget Review, tax allowances are to be introduced for investment in aircraft hangars and runways. This clause gives effect to this proposal.

In terms of the new section 12F, there will be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition or construction of any aircraft hangar, apron, runway and taxiway on an approved airport, to the extent that such asset is used in carrying on the sole trade of the taxpayer as airport operator. The allowance is equal to five per cent per year of the cost of the asset.

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The cost shall be deemed to be the lesser of—
- the actual cost of acquisition of the asset incurred by the taxpayer; or
- the cost which a person would have incurred if he had acquired or constructed the asset under a cash transaction concluded at arm's length.

This section applies in respect of any aircraft hangar, apron, runway or taxiway contracted for on or after 1 April 2001, and the construction, erection or installation of which commenced on or after that date, and includes any earthworks or supporting structures forming part of such aircraft hangar, apron, runway or taxiway.

Income Tax: Insertion of section 12G in the Income Tax Act, 1962

Additional industrial investment allowance in respect of industrial assets used for qualifying strategic industrial projects

Background

As was announced by the Minister of Finance in his Budget Review this year, an investment allowance for qualifying strategic industrial projects will be introduced to encourage the investment in projects that have significant direct and indirect benefits for

the South African economy. It was proposed in the Budget that R3 billion will be allocated over a four year period for this purpose.

The objective of the new section 12G is to encourage investment in strategic industrial projects located within the Republic by granting an additional industrial investment allowance in respect of industrial assets used for such projects.

Industrial projects will be considered strategic only to the extent that they satisfy the fixed (minimum) criteria in subsection (4) and the scoring criteria in subsection (5) and therefore have the potential to significantly increase economic growth or employment within the Republic.

Additional industrial investment allowance

In terms of section 12G, a company carrying on a qualifying strategic industrial project may—

- deduct 50 per cent of the cost of its industrial assets in the year in which those assets are brought into use, limited to the lesser of the amount of the investment in industrial assets as approved, or R300 million; or
- where the project is approved with preferred status, deduct 100 per cent of the cost of its industrial assets in the year during which the asset is brought into use, limited to the lesser of the amount of the investment in industrial assets as approved, or R600 million.

This deduction is in addition to any other deduction allowable in terms of this Act. The additional industrial investment allowance will, however, only be allowed against income received by or accrued to the company from the carrying on any industrial project.

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Definitions of "industrial asset", "industrial project" and "cost of industrial asset"

An "industrial asset" means—

(a) any plant or machinery acquired or contracted for by a company after the date of approval as a qualifying strategic industrial project, which—
- has never been used before and will be brought into use for the first time by the company within three years from the date of approval as a qualifying strategic industrial project;
- will be used by that company in the Republic for purposes of carrying on an industrial project of that company; and
- will qualify for a deduction in terms of sections 11*(e)* or 12C(1)*(a)*; or

(b) any building or any improvements effected to a building, situated in the Republic, acquired or contracted for by a company after the date of approval as a qualifying strategic industrial project, where such building or such improvements—
- have never been used before and will be brought into use by the company within three years from the date of approval as a qualifying strategic industrial project;
- will be wholly or mainly used for the purposes of carrying on therein any process requiring plant and machinery contemplated in paragraph *(a)*; and

- will qualify for a deduction in terms of section 13(1)*(b)*, *(d*A*)* or *(f)*, other than where the company would qualify for such deduction as a lessor.

The three year period in which an industrial asset must be brought into use for the deduction to be allowed, may be extended by the Minister of Trade and Industry for a period not exceeding one year, if an industrial project consists of industrial assets exceeding R1 billion.

An "industrial project" means—

(a) any manufacturing of products, goods, articles, or other things (excluding tobacco and tobacco related products) within the Republic that is classified under 'Major Division 3: Manufacturing' in the most recent Standard Industrial Classification issued by Statistics South Africa;
(b) any computer and computer related activities; or
(c) any research and development activities.

The "cost of an industrial asset" means the direct expenditure actually incurred by a company to acquire, erect, construct or improve an industrial asset. This, however, excludes—

(a) any amount—
  - to the extent the amount exceeds the fair market value of that asset; or
  - paid to a connected person in relation to that company, to the extent the amount exceeds the lesser of the fair market value of the asset or the costs incurred by that connected person in respect of that asset (or the costs incurred by any other connected person in relation to the company);

(b) any borrowing or finance costs, including interest as contemplated in section 24J or raising fees; and
(c) any amount of the costs which represents an amount directly or indirectly received in the form of any subsidy, rebate, refund or other assistance granted by the national sphere of government pursuant to any investment incentive.

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Criteria for strategic industrial project

Before an industrial project can qualify as a strategic industrial project, it must comply with certain minimum criteria. These include the following:

(a) the cost of all industrial assets to be acquired by the company, which will be brought into use for that industrial project within three years after the date of approval, will exceed R50 million;
(b) the industrial project will increase production of the relevant industrial sector within the Republic, after taking into account the displacement of any other activities within that sector;
(c) in the case of an industrial project that represents an expansion of an existing industrial project, the expansion will significantly increase production in respect of that existing project;
(d) the company will not receive any concurrent benefit from section 37E or section 37H of this Act;

(e) the industrial project will not constitute an industrial participation project and will not receive any concurrent investment incentive provided by any national sphere of government;

(f) the industrial project will have long-term commercial viability after the deduction provided by this section has been allowed and has been set off against the income of that company;

(g) the company and connected persons in relation to that company must be taxpayers in good standing and must, in this regard, submit—

- a declaration of good standing stating that all their tax affairs are in order; and
- a certificate obtained from the Commissioner confirming that they are registered for tax purposes, that all returns have been rendered timeously and that all tax, duties or levies have been paid, or that arrangements have been made for the submission of any outstanding returns or the payment of any outstanding tax, duties or levies. Where, however, the company requests the Commissioner for a certificate and the Commissioner fails to respond within 60 days, the company shall, in the absence of any proof to the contrary, be deemed to have complied with the provisions of this subparagraph; and

(h) the application for approval of the project by the company is received by the Minister of Trade and Industry after 31 July 2001, but not later than 31 July 2005, in such form and containing such information as the Minister of Trade and Industry may prescribe.

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Criteria for approval as qualifying strategic industrial project

When an industrial project constitutes a strategic industrial project in terms of the abovementioned criteria, the Minister must, after taking into account the recommendations of the adjudication committee, decide whether it is a qualifying strategic industrial project for the purposes of this section. This requires that the Minister must be satisfied that the project will significantly increase growth or employment within the Republic and must, in this regard, have regard to—

(a) the extent to which the strategic industrial project will upgrade an industry within the Republic by—

- utilising processes or supplying products that are new to the Republic;
- acting as a key component to related existing industrial projects within the Republic so as to improve their competitiveness as a whole; or
- engage in any value-added process;

(b) the extent to which the strategic industrial project will provide general business linkages within the Republic by—

- acquiring goods or services from small, medium, and micro enterprises; or
- adding to the physical infrastructure of the Republic that will be available to the general public; and

(c) the extent to which the strategic industrial project will create either direct or indirect employment within the Republic.

Details of these criteria and the extent to which a company must comply therewith will be prescribed by regulation. The regulations must also prescribe in which circumstances a company will be granted preferred status, which will be based on a points system.

If a company acquires a prescribed number of points, the Minister must approve the project as a qualifying strategic industrial project, in which case the company may deduct 50 per cent of the cost of its industrial assets in the year in which the assets are brought into use, limited to the lesser of the amount of the proposed investment in industrial assets as approved, or R300 million. If the company attains a higher prescribed point score, the company will be granted preferred status, which would entitle the company to deduct 100 per cent of the cost of the industrial assets in the year during which the assets are brought into use, limited to the lesser of the amount of the proposed investment in industrial assets as approved, or R600 million.

The Minister of Trade and Industry may, however, not approve any project where the total amount of potential additional industrial investment allowances in respect of that project and all other approved qualifying strategic industrial projects will, in the aggregate, exceed R10 billion. This is in line with the amount set aside by the Minister of Finance for purposes of this incentive, as proposed in the Budget Review.

Reporting requirements

Section 12G contains certain reporting requirements and any company which carries on a qualifying strategic industrial project must, on an annual basis, report to the Minister of Trade and Industry in respect of the progress of the project in terms of the criteria that were taken into account by the Minister when the project was approved.

Withdrawal of approval

There are certain provisions in place which regulate the withdrawal of the benefit where—

- any material facts change during any year of assessment, or the company fails to comply with any criteria which were taken into account in granting the approval and which would have resulted therein that approval would not have been granted if such fact or failure was known at the time;
- the company fails to submit an annual report to the Minister of Trade and Industry; or
- where the approval granted was based on fraudulent information, material misrepresentation or material omission.

In these instances, the Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, withdraw the approval with immediate effect and direct that the Commissioner must disallow all additional industrial investment allowances (including any additional industrial investment allowance allowed during that year or any previous year of assessment) in respect of any asset used in that project.

Where, however, the change in material facts or failure to meet any requirement takes place as a result of any event which is outside the control of the company, the Minister may, taking into account the circumstances of that event, either disregard that change in material facts or may withdraw the approval, but may direct that the Commissioner must only disallow the additional industrial investment allowance in respect of that year and future years of assessment.

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Whenever the Commissioner, on the other hand, discovers information that may cause a full or part withdrawal of deduction, the Commissioner must immediately notify the Minister of Trade and Industry. Furthermore, where the company has provided any fraudulent information, material misrepresentation or material omission with respect to any tax, duty or levy administered by the Commissioner, the Commissioner must disallow all deductions otherwise provided under this section, starting with the date of approval and the Commissioner must notify the Minister of Trade and Industry accordingly.

Penalty upon withdrawal

Where the approval of a project has been withdrawn a company will, in addition to any normal tax, be liable for an amount of additional tax not exceeding twice the difference between the tax calculated before the disallowance of the additional industrial investment allowance and the tax properly chargeable in respect of its taxable income after disallowing the deduction.

Adjudication committee

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The adjudication committee referred to above consists of at least—

- three persons employed by the Department of Trade and Industry, appointed by the Minister of Trade and Industry; and
- three persons employed by either the National Treasury or the South African Revenue Service, appointed by the Minister of Finance.

Either Minister may, however, appoint alternative persons so employed, if any member is not available to perform any function as member of the committee. The adjudication committee is an independent committee which must perform its functions impartially and without fear, favour or prejudice.

The primary functions of the committee are to make recommendations to the Minister of Trade and Industry on the approval of a project as a qualifying strategic industrial project and the withdrawal of any approval. For this purpose, the committee may—

- evaluate any application;
- investigate or cause to be investigated any project for the purposes of this section;
- monitor all qualifying strategic industrial projects—
  - to determine whether the objectives of this section are being achieved; and
  - to advise the Minister of Finance and the Minister of Trade and Industry on any future proposed amendment or adjustment thereof;
- require any company applying for approval to furnish any information or documents necessary for the committee and Minister of Trade and Industry to perform their functions;
- obtain the assistance of any person to advise the committee in relation to any function of the committee; and
- appoint its own chairperson and determine the procedures for its meetings. All procedures must, however, be properly recorded and minuted.

The adjudication committee must act in good faith and it is specifically provided that the committee may not—

- act in any way that is inconsistent with the provisions of the section or expose themselves to any situation involving the risk of a conflict between their responsibilities and private interests; or
- use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

Secrecy provisions

Section 12G also contains a provision that overrides the secrecy provisions in the Income Tax Act, 1962. This will enable the Commissioner to disclose any information relating to the affairs of a company carrying on a qualifying strategic industrial project, to the Minister of Trade and Industry and the adjudication committee to enable the Minister and the committee to perform their functions. Every employee of the Department of Trade and Industry, members of the adjudication committee and persons assisting the committee must, however, comply with the secrecy provisions and any person who contravenes these provisions shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

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Reporting requirements of Minister and Commissioner

The Minister of Trade and Industry is also subject to certain reporting requirements and must, in this regard, submit an annual report to Parliament, setting out the following information in respect of each company that received approval as a qualifying strategic industrial project—

- the name of each company;
- the description of each project;
- the potential national revenue forgone by virtue of the deductions provided to the project;
- the progress relating to the direct benefits of the project in terms of economic growth or employment, setting out the details of the factors on which approval was granted;
- any decisions to withdraw an approval; and
- any decisions to continue any industrial projects despite any material change in facts.

A copy of this report must also be submitted to the Auditor-General.

The Commissioner is also required to submit an annual report to the Auditor-General containing a list of all tax certificates issued under this section, and also setting out the number of failures to respond to taxpayer's requests for such certificates.

CLAUSE 13

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

Section 13 provides for the deduction of an allowance on buildings which is wholly or mainly used for the purpose of carrying on therein, in the course of the trade of the taxpayer, any process of manufacture or any process which is in the opinion of the Commissioner of a similar nature.

This section provides for instances where the building was erected by the taxpayer, or where the taxpayer acquired the building from any other person who was entitled to a deduction under this paragraph. The section also provides for any improvements to such buildings.

No provision is, however, made for instances where the taxpayer acquires a building, to be used by him for carrying on therein a process of manufacture, from any other person, but where the building had never been used before, e.g. where the taxpayer acquires a building from a developer and that property was registered in the name of the developer. It is therefore, proposed that a paragraph be inserted in section 13 to provide that a taxpayer will also be entitled to the allowance in such circumstances.

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CLAUSE 14

Income Tax: Amendment of section 25B of the Income Tax Act, 1962

Subclause (a): These amendments are of a textual nature.

Subclause (b): Section 25B was amended by the Revenue Laws Amendment Act, 2000 (Act No. 59 of 2000), which introduced the residence basis of taxation. Subsection (2A) now provides that where any resident acquires a vested right to any amount which represents capital of a non-resident trust, and—

- that capital arose from income received by or accrued to the trust in any previous year of assessment during which the resident had a contingent right to the income; and
- the income has not been subject to tax in the Republic,

that amount must be included in the income of the resident in the year during which that resident acquires the vested right.

However, if the "income" of the non-resident trust was not received or did not accrue from a source in the Republic, it would not constitute income as defined in the hands of the trust. It is, therefore, proposed that subsection (2A) be amended to also refer to amounts which would have constituted income had the trust been a resident. This amendment will be deemed to have come into operation on 1 March 2001.

Subclause (c): Section 25B(3) was amended by the Revenue Laws Amendment Act, 2000, to provide that deductions and allowances of a trust will not be deemed to be incurred by a beneficiary where that beneficiary acquired a vested right as a result of the exercise of a discretion by the trustee of a trust. It is proposed that this amendment be deleted with retroactive effect to ensure that the trust principles in section 25B are

consistent with those contained in the capital gains tax provisions in the Eighth Schedule.

CLAUSE 15

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

Section 29A of the Income Tax Act, 1962, was amended by the Taxation Laws Amendment Act, 2001 (Act No. 5 of 2001), to *inter alia* provide for an amendment to the formula in terms of which certain expenses are to be deducted by certain policyholder funds, to take into account the fact that certain dividend income (foreign dividends) and capital gains will become taxable.

The purpose of the adjustment to the formula was to eliminate the possibility of double taxation of amounts transferred from policyholder funds to the corporate funds and to allow a portion of selling and administrative expenses in respect of capital gains taxed in policyholder funds.

As the amended section 29A currently reads, the phasing-in of the new formula will only apply in respect of expenses and allowances. It is proposed that the phasing-in should also apply in respect of the transfers from the policyholder funds to the corporate fund.

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CLAUSE 16

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

Section 30, which provides for the approval by the Commissioner of public benefit organisations, was introduced in the Income Tax Act, 1962, by section 35 of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000). This section will come into operation on a date to be determined by the President by proclamation in the *Gazette*.

Section 30(3) provides that the Commissioner shall approve a public benefit organisation that complies with certain requirements. One of the requirements is that the constitution, will or other written instrument under which the organisation has been established, must contain a provision that prohibits the organisation from carrying on any business undertaking or trading activity, unless the gross income derived from such business undertaking or trading activity does not exceed the greater of 15 per cent of the gross receipts of the organisation or R25 000.

It is proposed that this provision be amended to state it clearly that the total gross income in respect of all such business undertakings or trading activities may not exceed that amount. The amendment will come into operation on the date that section 30 comes into operation.

CLAUSE 17

Income Tax: Amendment of section 66 of the Income Tax Act, 1962

Section 66 of the Income Tax Act, 1962, was amended by the Taxation Laws Amendment Act, 2001 (Act No. 5 of 2001), to make provision for the acceptance of electronic or digital signatures on returns submitted electronically as binding signatures for the purposes of the Act. It is proposed that a further provision be inserted to provide that where during any proceedings or prosecution or in any dispute in which the State, the Minister or the Commissioner is a party, the question arises whether an electronic or digital signature on any return was used with or without the consent and authority of the taxpayer, it will, in the absence of proof to the contrary, be assumed that the signature was used with the consent and authority of that taxpayer.

Furthermore, provisions are inserted to provide for the basis upon which a court must determine the issues necessary to prove the authenticity, the veracity, the origin, the contents, of an electronic or digital signature or any other aspect of any electronic communication submitted to the Commissioner, during any proceedings or prosecution or any dispute in which the State, the Minister or the Commissioner is a party.

The Act now also makes it an offence where a person uses an electronic or digital signature of any other person in any electronic communication to the Commissioner without the consent of that person.

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CLAUSE 18

Income Tax: Amendment of section 75 of the Income Tax Act, 1962

See notes on insertion of section 12G in the Income Tax Act, 1962.

It is proposed that a provision be inserted in section 75 to provide that where a person obtains approval of any project as a qualifying strategic industrial project in terms of section 12G, and such approval was based on any fraudulent information provided or material misrepresentation made by a person, that person shall be guilty of an offence and on conviction shall be liable for a fine or imprisonment not exceeding 2 years.

CLAUSE 19

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

See notes on insertion of Paragraph 11C in the Fourth Schedule to the Income Tax Act, 1962.

Subclauses (a) to (c): The definition of "employee" is amended to include directors of private companies which are not otherwise included in terms of paragraph *(a)* of the definition. A director of a private company will, therefore, be an employee for purposes of the Fourth Schedule in respect of any amount of Pay-As-You-Earn (PAYE) which is deemed to be deducted in terms of paragraph 11C.

Subclause (d): A definition of “month” is inserted in paragraph 1.

Subclause (e): It is proposed that the definition of ‘remuneration’ in the Fourth Schedule be amended to delete the exclusion relating to amounts paid or payable to directors of private companies. This will have the effect that remuneration of directors will become subject to employees’ tax with effect from 1 March 2002.

CLAUSE 20

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

This amendment is consequential upon the insertion of the definition of “month” in paragraph 1 of the Fourth Schedule.

CLAUSE 21

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

Subclause (a): This amendment is consequential upon the insertion of subparagraph (5).

Subclause (b): Paragraph 11C is inserted in the Fourth Schedule to the Income Tax Act, 1962, to provide for the payment of employees’ tax by a private company in respect of any director of the company. This amount of employees’ tax is determined on a notional amount based on the remuneration of the director for the previous year of assessment.

In order to avoid that employees’ tax is paid on that notional amount, as well as on the actual amount of remuneration paid or payable to that director, it is proposed that a provision be inserted to provide that the amount payable in terms of paragraph 11C during the year of assessment must be taken into account in determining the amount of employees’ tax to be deducted or withheld from the actual remuneration paid or payable to the director of a private company.

CLAUSE 22

Income Tax: Insertion of paragraph 11C in the Fourth Schedule to the Income Tax Act, 1962

As was announced in the Budget Review this year, the possibility of bringing all company directors in to the PAYE income tax system was to be investigated. In this regard, a new paragraph 11C of the Fourth Schedule to the Income Tax Act, 1962, is being proposed.

It is proposed that the definition of ‘remuneration’ in the Fourth Schedule be amended to delete the exclusion relating to amounts paid or payable to directors of private

companies. This will have the effect that remuneration of a director of a private company will become subject to employees' tax.

The remuneration of a director of a private company is, however, in many instances only determined after the end of the year of assessment, as the accounts of the company on which a decision is made on the *quantum* of the remuneration are only finalised after year end.

In terms of paragraph 11C, a director of a private company will on a monthly basis be subject to PAYE on a notional amount which is based on the remuneration paid or payable by the company to the director in respect of the last year of assessment which ended before the relevant month. Where the amount of remuneration for that last year of assessment has not been determined yet, the notional amount will be based on the remuneration paid or payable to the director in respect of the year preceding that last year of assessment increased by an amount of 20% (or such other percentage as the Minister may from time to time determine by notice in the *Gazette*).

Where, however, the remuneration for that preceding year has also not been determined as yet, the Commissioner may determine the amount which must be deemed to be remuneration for purposes of that paragraph.

This amount will be a liability of the company and the company will have a right of recovery against the director. This amount will be deemed to be an amount of employees' tax which was required to be deducted in terms of paragraph 2 of the Fourth Schedule.

It must be borne in mind that the provisions of paragraph 10 or 11 may still apply where the circumstances warrant a variation of the basis of the amount of employees' tax, or where as a result of hardship or illness, no employees' tax or a reduced amount must be paid.

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Example 1

A 31 year old director of a private company received the following remuneration from the company she was employed by during the year of assessment ending 28 February 2002:

Salary (monthly)	R250 000
Bonus (at the end of the year)	R147 500
	R397 500
Less: Retirement Annuity Fund (RAF) contribution	R 37 500
Taxable income	R360 000

During the year of assessment ending 28 February 2003 she received the following remuneration:

Salary (R25 000 per month)	R300 000
Bonus (at the end of the year)	R162 000
	R462 000
Less: RAF contributions (R3 750 per month)	R 45 000
Taxable income	R417 000

Calculation of PAYE:

The amount of the deemed monthly remuneration calculated in terms of the formula is–

$$Y = \frac{T}{N}$$

T (remuneration from the company for the previous year)
N (number of months employed by the company in previous year)

$$= \frac{R360\ 000}{12}$$

= R30 000 per month

The amount of actual remuneration paid during the first eleven months is–

R25 000 salary – R3 750 RAF contributions

= R21 250 per month

As the deemed remuneration exceeds the actual remuneration paid from March 2002 to January 2003, employees' tax will be paid monthly based on the deemed remuneration of R30 000 (i.e. R10 785 per month).

During the month of February 2003 the bonus of R162 000 and the balance of remuneration of R21 250 is received by the director which exceeds the deemed remuneration for the month. In determining the amount of tax to be deducted from the director's remuneration account must be taken of the tax paid by the company in respect of that director. The amount of tax must be calculated on a cumulative basis for the year.

Salary less RAF contribution (300 000 – 45 000)	R255 000
Bonus	R162 000
Taxable income	R417 000
Tax on R417 000	R153 360
Less: Tax paid by the company on deemed remuneration (10 785 × 12)	R129 420
Tax deductible from remuneration (paragraph 9(5) of 4th Schedule)	R 23 940

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PAYE for February 2003:

Tax on deemed remuneration	R 10 785
Tax on salary and bonus	R 23 940
Total tax for month	R 34 725

Example 2

A man was director of a private company for the full year of assessment ending on 28 February 2002. He was 63 years old on that date. His earnings are only determined at the end of the year. For this year an amount of R300 000 became payable to him.

An amount of R350 000 became payable to him in February 2003 in respect of the year of assessment ending on 28 February 2003. He also received a payment of R550 000 from a retirement annuity fund to which he contributed until 1999.

Calculation of PAYE:

The amount of the deemed monthly remuneration is calculated in terms of the formula–

$$Y = \frac{R300\,000}{12} \quad \begin{array}{l}\text{(remuneration for the previous year)}\\ \text{(number of months employed by company in previous year)}\end{array}$$

= R25 000 per month

Employees' tax payable monthly on the deemed remuneration is R8 685.
The retirement annuity fund will have to obtain a directive from the Receiver of Revenue to determine the amount of tax to be deducted from the payment made to the director.

In February 2003, when the remuneration of the director is determined to be R350 000, the amount of tax to be deducted is calculated as follows—

Tax paid by the company on deemed remuneration		R 8 685
Amount of employees' tax on R350 000	R125 220	
Less: Tax paid by the company on deemed remuneration (R8 685 x 12 months)	R104 220	
Tax deductible from remuneration (paragraph 9(5) of the 4th Schedule)	R 21 000	R21 000
Total tax for month		R29 685

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CLAUSE 23

Income Tax: Amendment of paragraph 13 of the Fourth Schedule to the Income Tax Act, 1962

Paragraph 13 of the Fourth Schedule provides that an employer must provide an employee with an employees' tax certificate in respect of employees' tax deducted. This provision is made subject to paragraph 11C(5), which provides that a director must first pay the company the amount of tax paid by it in respect of that director before it may issue an employees' tax certificate to that director.

CLAUSE 24

Income Tax: Amendment of paragraph 18 to the Fourth Schedule to the Income Tax Act, 1962

Paragraph 18 of the Fourth Schedule provides that individual taxpayers below the age of 65 years that earn taxable non-employment income of more than R1 000 a year are required to register as provisional taxpayers. As was announced by the Minister of Finance in his Budget Speech this year, the threshold from which individuals will be required to register for provisional tax will be increased to R2 000 a year.

Individuals older than 65 are exempt from the payment of provisional tax if their annual taxable income does not exceed R50 000 and consists exclusively of remuneration, interest, dividends or rent from the lease of fixed property. It is proposed that this threshold be increased to R80 000 a year.

This clause gives effect to this proposal.

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CLAUSE 25

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

Paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962, provides that the Schedule applies to the disposal of any asset of a resident, and to certain assets situated in the Republic of a non-residents. The last-mentioned includes immovable property held by the non-resident or any interest or right of that person to or in immovable property.

For this purpose it is provided that an interest in immovable property in the Republic includes a direct or indirect interest of at least 20% in a company or other entity, where 80% of that company's or entity's net assets are attributable to immovable property in the Republic. It is proposed that the words "directly or indirectly" be inserted to make it clear the 80% of the company or entities net assets can be attributable directly or indirectly to immovable property situated in the Republic.

CLAUSE 26

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

Subclause (a): Sub-item (viii) of subparagraph (1)*(c)* of paragraph 20 provides for the inclusion in the base cost of an amount of donations tax paid by the donee. Section 23*(d)*, however, prohibits the deduction of any tax imposed in terms of the Income Tax Act. It is proposed that the words "despite section 23*(d)*" be added to eliminate any inconsistency between these provisions.

Furthermore, sub-item (ix) of subparagraph (1)*(c)* allows as part of base cost of an asset the expenditure actually incurred in respect of the acquisition of an option if the asset was acquired by the exercise of an option. It is proposed that the expenditure to acquire an option also be allowed if the asset was disposed of by the exercise of an option.

Subclause (b): Subparagraph (1)*(g)* includes in the base cost of assets used wholly and exclusively for business purposes certain holding costs such as repairs, rates and interests as a result of the provisions of subparagraph (3). This will only apply to expenditure not allowed as a deduction from income. The expenditure in respect of shares and unit trusts is also allowed, as the income from these assets is totally or mainly exempt and no deduction would be allowed from income. As the income from unit trusts in property shares is fully taxable, it is proposed that the provision be restricted to schemes in securities other than property shares.

Subclause (c): Subparagraph (1)*(h)* provides for the inclusion of certain amounts which have been subject to income tax in the cost of an asset for CGT purposes. The use of the word "acquisition" in both sub-items (i) and (ii) of the subparagraph had the effect that if the expenditure had otherwise been included in the cost in any subparagraph of the paragraph other than (a), the amount could be allowed. This could have resulted in a double deduction and it is proposed that the wording of the sub-items be changed to prevent this.

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Subclauses (d), (e) and (i): Subparagraph (2) prohibits the deduction of certain current costs from expenditure incurred in respect of CGT assets and subparagraph (3) require the deduction of certain amounts from the expenditure. As the purpose of paragraph 20 is to determine base cost, it is inappropriate to use the phrase "base cost" in the reduction process of the determination of base cost. It is proposed that the wording be changed to "expenditure incurred" as it will bring it in line with the use of the same concept in other paragraphs such as, for example, paragraphs 24, 25, 26 and 27.

Subclauses (f), (g) and (h): The interaction of subparagraph 20(1)*(a)*, *(c)*, *(f)* and *(h)* allows an employee who acquired an option or right to acquire marketable securities from his or her employer prior to the valuation date, to effectively claim all the expenditure incurred as well as the valuation date value. It is proposed that a sub-item be added to subparagraph (2) which prohibits the inclusion of the valuation date value in the circumstances described above.

CLAUSE 27

Income Tax: Amendment of paragraph 23 of Eighth Schedule to the Income Tax Act, 1962

This amendment is of a textual nature.

CLAUSE 28

Income Tax: Amendment of paragraph 32 of Eighth Schedule to the Income Tax Act, 1962

Paragraph 32 provides that the base cost of identical assets may be determined by one of three methods, i.e. specific identification, first in first out or weighted average.

It is the intention that one of these three methods must be used and this amendment gives effect thereto.

CLAUSE 29

Income Tax: Amendment of paragraph 45 of Eighth Schedule to the Income Tax Act, 1962

These amendments are of a textual nature.

CLAUSE 30

Income Tax: Amendment of paragraph 46 of Eighth Schedule to the Income Tax Act, 1962

Before a person's residence will qualify as a primary residence, that person or his or her spouse must ordinarily reside in that residence and use it mainly for domestic purposes.

Paragraph 46 regulates the size of the land on which a primary residence is situated which will qualify for the primary residence exemption. One of the requirements is that the land must be used mainly for domestic purposes together with the residence. It is proposed that the word "private" be inserted as certain use of land, e.g. a tennis court or parking may not necessarily be regarded as domestic use.

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CLAUSE 31

Income Tax: Amendment of paragraph 55 of the Eighth Schedule to the Income Tax Act, 1962

Paragraph 55*(a)* provides that a capital gain or loss as a result of the receipt or accrual of an amount in respect of a long-term policy, as contemplated in the Long-term Insurance Act, issued by a South African insurer will be disregarded.

Subparagraphs *(b)* to *(d)* also provide for circumstances where the capital gains and losses arising as a result of the receipt or accruals of amounts from insurance policies will be disregarded, but it is not specifically stated that they must be South African policies.

To put it beyond any doubt it is proposed that a new subparagraph be added to make it clear that all references to policies in this paragraph are to policies as contemplated in the Long-term Insurance Act, 1998.

CLAUSE 32

Income Tax: Amendment of paragraph 60 of Eighth Schedule to the Income Tax Act, 1962

This amendment is of a textual nature.

CLAUSE 33

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

Paragraph 66 provides for the reinvestment in replacement assets which qualify for certain capital allowances. A new section 12E is also being inserted in the Income Tax Act, 1962, whereby a small business corporation would be entitled to the accelerated depreciation of plant and machinery which would normally be allowed under section 12C. It is proposed that section 12E also be included here.

CLAUSE 34

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

Paragraph 84 of the Eighth Schedule to the Income Tax Act, 1962, requires the Minister of Finance to issue regulations for determining a capital gain or loss with respect of currency transactions. These regulations must be issued before 1 July 2001 and must be incorporated into the Eighth Schedule before the end of 2001.

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It is proposed that this date be extended to 31 August 2001, to allow sufficient time to finalise the regulations. The draft regulations will, however, be made available as soon as they have been finalised.

These regulations will be included in the Act in the Taxation Laws Amendment Bill to be tabled by the Minister of Finance in Parliament in 2002.

CLAUSE 35

Income Tax: Amendment of paragraph 86 of the Eighth Schedule to the Income Tax Act, 1962

Paragraph 86 applies in respect of assets acquired during the period from 23 February 2000, up to and including the day before the valuation date (i.e. 1 October 2001). The purpose thereof is to prevent persons from artificially inflating the base cost of their assets.

Paragraph 86 describes different circumstances in which the provisions of the paragraph will apply to transactions and describes how the transactions will be treated for CGT purposes. As there is concern that the current subparagraph (3) is not being correctly understood, it is proposed that it be simplified by dealing with the different circumstances in subsection (2).

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CLAUSE 36

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

A new section 8 is inserted to provide that the Commissioner may prescribe by rule reports listing and describing cargo carried by or loaded on to any ship, aircraft, railway train or other vehicle arriving at or departing from any place in the Republic. Such reports must be in such form containing such particulars and must be submitted to the Controller by such persons in the circumstances and at such times as may be specified by rule.

Provision is further made for outturn reports or other reports concerning goods landed from or unpacked from or packed into or loaded on to any such ship or aircraft to be similarly prescribed. Such outturn reports or other reports are also required in respect of any imported goods unpacked while under the control of any person after landing and before due entry at any place approved by the Commissioner.

The electronic submission of reports relating to imported cargo before arrival of a ship or aircraft in certain circumstances is envisaged. The outturn reports contemplated in the provisions are not currently required and the proposed procedures are expected to improve control over imported and exported goods.

CLAUSE 37

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

This provision is consequential upon the insertion of section 64 to provide for a remover of goods in bond. The proposed amendment of subsection (1)(a) provides that, except as prescribed by rule, a licensed remover of goods in bond may remove in bond imported goods, any excisable or fuel levy goods manufactured in a customs and excise warehouse, as the case may be, to a place in the Republic or other places in other territories in the common customs area or any place outside the common customs area.

Paragraph (b) is amended to exclude the phrase "person in charge of any vehicle". While the master of a ship or pilot of an aircraft may remove in bond goods landed at a place in the Republic goods landed from any vehicle may only be removed by a remover of goods in bond.

In terms of paragraph (c) the owner of or any person beneficially interested in any goods in transit through the Republic may remove such goods in bond except if the Commissioner determines otherwise by rule.

CLAUSE 38

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

This amendment relates to the proposed licensing of a remover of goods in bond as contemplated in section 64D.

CLAUSE 39

Customs and Excise: Amendment of section 19 of the Customs and Excise Act, 1964

Subsection (9) is amended to reduce the period for which imported goods entered for storage or excisable or fuel levy goods manufactured in a customs and excise warehouse, may be retained in a customs and excise warehouse from 5 to 2 years. The Commissioner may, however, on good cause shown permit a longer period. On the date the section comes into operation goods that have been stored for 2 years or longer must be entered for home consumption or export and exported within three months from such date, unless the Commissioner permits a longer period.

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CLAUSE 40

Customs and Excise: Insertion of section 19A in the Customs and Excise Act, 1964

The proposed legislation contains enabling provisions to introduce the so-called Duty at Source system, which in essence means that duty is payable when manufactured excisable or fuel levy goods are removed for home consumption from the customs and excise manufacturing warehouse. The proposed amendments will diminish the number of licensed storage warehouses for excisable goods or fuel levy goods manufactured in the Republic and also restrict the licensing of such warehouses.

Subsection (1)(a)(i) provides that the Commissioner may in respect of any excisable goods specified in Section A of Part 2 of Schedule No. 1 (for example liquor and tobacco) or fuel levy goods (diesel and petrol) or any class or kind of such goods manufactured in the Republic by rule determine whether such goods must be entered or deemed to have been entered for home consumption. This may occur on issuing of any document prescribed by rule and removal from customs and excise manufacturing warehouses as specified in subparagraphs *(aa)* and *(bb)* or any customs and excise storage warehouse licensed by the Commissioner for any special or limited purposes.

In subparagraph (ii) the Commissioner may also restrict by rule the licensing of customs and excise storage warehouses.

Subparagraph (iii) empowers the Commissioner to prescribe various matters by rule which include the time and manner of payment of duty, the deferment of payment and the conditions of deferment and the period or differentiated periods for deferment, accounts to be kept, procedures or requirements or documents relating to the removal of goods from and to such warehouse or for export or for use under rebate of duty.

Subsection (2) provides for the consequences on failure to pay duty on the date prescribed by rule. The amount unpaid will constitute a debt to the State and where payment is not made on or before the prescribed date on two occasions in a calendar year the Commissioner may, without prior notice to the licensee, prohibit for any reasonable period the removal of any goods from such warehouse unless the goods are duly entered and the duty paid before such removal (paragraph (a)(i)) and claim the amount from the surety and take any steps, which may include enforcement of the provisions of the Act (paragraph (a)(ii)).

In the event of late payment the licensee will be liable to payment of an amount not exceeding 10 per cent of the duty concerned as a penalty and to interest from the day following the date on which payment should have been made.

The Commissioner may impose any reasonable conditions when removing the prohibition that the goods must be entered and the duty paid before removal of the goods from the warehouse (paragraph (c)).

Subsection (3) provides for transitional arrangements. When the section comes into operation excisable or fuel levy goods may only be removed to a customs and excise warehouse which is another manufacturing warehouse or a storage warehouse licensed for any special or limited purpose as contemplated in subsection (1) (paragraph (a)).

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The Commissioner may approve any existing licence for any customs and excise storage warehouse as a storage warehouse for special or limited purposes. The Commissioner may further cancel the licence of any such storage warehouse which is not licensed for such special or limited purposes within three months after the date the section comes into operation or within any longer period the Commissioner may on good cause shown consider reasonable.

In terms of subsection (4) the Commissioner may allow any imported goods to be mixed with locally-produced excisable or fuel levy goods of the same class or kind in a customs and excise manufacturing warehouse licensed for the manufacture of such locally-produced goods on payment of any difference in duty between the duty leviable on the imported and locally-produced goods. When goods are so mixed they are subject to the duties leviable and the manufacturing, accounting and removal procedures prescribed in respect of excisable or fuel levy goods manufactured in the warehouse.

This section will come into operation on the date or dates and in respect of the goods specified by the President by proclamation in the Gazette.

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CLAUSE 41

Customs and Excise: Amendment of section 20 of the Customs and Excise Act, 1964

The amendment to subsection (4) is consequential upon the insertion of section 19A.

The amendment will come into operation on a date fixed by the President by proclamation in the Gazette.

CLAUSE 42

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

Paragraph *(a)* of subsection (3) presently requires that a bill of entry for export must be delivered to the Controller before the goods are exported, but the Commissioner may allow in certain circumstances that the bill of entry is delivered at such time as he deems reasonable.

The proper administration of trade agreements and tariff concessions and the operation of electronic processing systems for exports require that bills of entry for export should be submitted to the Controller before export of the goods.

However, in order to allow for any exceptions, the Commissioner may prescribe by rule the circumstances and times at which the bills of entry should be delivered.

CLAUSE 43

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

A new subsection (13) is added which enables the Commissioner to allow by rule any master, pilot or other carrier, container operator or depot operator to deliver any imported goods before due entry thereof to any other person licensed or registered as the Commissioner may determine and on compliance with the conditions and procedures prescribed in the rule (paragraph (a)).

Paragraph (b) of the subsection specifies when the liability for duty of the master, pilot or other carrier, container operator or depot operator or such other person ceases.

The subsection will come into operation on a date fixed by the President by proclamation in the Gazette.

CLAUSE 44

Customs and Excise: Amendment of heading of Chapter VIII of the Customs and Excise Act, 1964

This clause amends the heading of Chapter VIII of the Customs and Excise Act, 1964.

CLAUSE 45

Customs and Excise: Insertion of section 59A in the Customs and Excise Act, 1964

This section provides, generally, for registration of persons participating in activities regulated by the Act. Presently, various persons such as importers, exporters, clearing agents, rebate registrants, licensees and others register for the purpose of allocation of code numbers.

Registration is also required under various other provisions, for example, sections 46A, 47B and 75.

Such a registration is necessary for the purpose of electronic processing of customs and excise business.

The Commissioner may by rule prescribe various matters relating to registration under the section, which includes any general or particular category of registration, an application form and qualifying requirements for registration, the activities and persons included or excluded from registration and the date from which any person or the different dates from which any class of persons will be required to register under the section and the rules before transacting any business in relation to customs and excise matters.

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The Commissioner may refuse any application for registration or cancel or suspend any registration.

The provisions of section 60(2) apply *mutatis mutandis* to any decision by the Commissioner to refuse an application or cancel or suspend a registration.

CLAUSE 46

Customs and Excise: Amendment of section 60 of the Customs and Excise Act, 1964

This measure will require that persons other than those currently provided for in the Act should be licensed.

The proposed amendment to section 60(1), accordingly, provides that the activities for which a licence is required, the persons who are required to licence, the procedures, conditions and other requirements relating to such licence, if not prescribed elsewhere in the Act, may be prescribed in the Notes to the item in which such licence is specified and any rules made by the Commissioner.

Section 60(2) which provides for the refusal and the cancellation or suspension of licences has been restructured and contains additional provisions which include that the Commissioner must give a licensee notice and allow a reasonable opportunity to respond and make representations before cancellation or suspension of the licence.

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CLAUSE 47

Customs and Excise: Amendment of section 64B of the Customs and Excise Act, 1964

The proposed amendments enable the Commissioner to prescribe by rule a date from which the applicant for a clearing agent's licence must be in possession of a qualification obtained at such time and with at least such qualifying mark as may be stated in such rule.

CLAUSE 48

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

Licensing of remover of goods in bond

The proposed new section provides for the licensing of a remover of goods in bond.

Subsection (1) prohibits any person, except if exempted by rule, from removing any goods in bond in terms of section 18(1)(a) or for export in terms of section 18A, or any other goods that may be specified by rule unless licensed as a remover of goods in bond.

Any remover in bond exempted from licensing must in addition to any provisions of the Act governing the removal or carriage of goods in bond generally, comply with such other requirements as may be prescribed in the rules for the section (subsection (2)(b)).

Subsection (3) provides for requirements relating to the application to be licensed as a remover of goods in bond.

Subsection (4) empowers the Commissioner to prescribe by rule technical specifications and other requirements in respect of any vehicle, container or other transport equipment used in the removal or carriage of goods in bond.

The Commissioner may, after the date the section comes into operation, determine a date by rule from which no person may remove any goods in bond under the Act in any vehicle, container or other transport equipment that is not approved by the Commissioner as complying with the specifications and other requirements prescribed in the rule.

The vehicle, container or other transport equipment used for the removal of goods in bond under the section must be marked as prescribed by rule.

Subsection (5) provides for the furnishing of security.

Subsection (6) provides that in addition to any liability incurred under the Act, a licensed remover of goods in bond is liable for the fulfillment of all obligations imposed under the Act on any other person in respect of any goods removed or carried by such remover including the payment of duties and charges and to any penalties or amounts demanded under section 88(2)(a).

The liability of the remover does not affect the liability incurred in respect of such goods by the master, pilot, container operator, importer, exporter, manufacturer, licensee or any other principal or agent referred to in section 99.

In terms of subsection (7) the security provided by a licensed remover may not be utilised or accepted as security for the fulfillment of any obligation in terms of the Act by any other such remover in bond.

Subsection (8) empowers the Commissioner to refuse any application for a licence, cancel or suspend a licence.

In terms of subsection (9) the Commissioner may make rules concerning various matters which include that the Commissioner may delegate or assign any of the powers that may be exercised or assign any of the duties that must be performed by the Commissioner to any officer or other person.

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

Accredited clients

The proposed section provides for accredited clients. In terms of subsection (1) the Commissioner may confer accredited client status on any applicant therefor who is licensed or registered under the Act.

Accredited client status may be acquired on conforming with any reasonable requirements determined by the Commissioner which may include that the applicant proves an appropriate record of compliance with customs and excise procedures and that the accounting records and other documents kept for providing evidence of compliance with customs procedures utilise information prepared in a manner consistent with general accounting principles appropriate to the procedure concerned. Other requirements may include that an effective computer system is in operation, that the person who will administer the accredited client requirements has sufficient knowledge of customs laws and procedures to implement and maintain an efficient and effective client compliance system and that the applicant has sufficient financial resources.

The Commissioner may conduct any investigation that may be reasonably necessary to verify any statements in the application and also enter into an agreement which may include deferment of payment of any duty or value-added tax.

The Commissioner may prescribe by rule such matters as the application form, the form of agreement and standards of conduct.

The Commissioner may, further, refuse any application for accredited client status or cancel or suspend such status.

The section will come into operation on a date fixed by the President by proclamation in the Gazette.

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CLAUSE 49

Customs and Excise: Amendment of section 69 of the Customs and Excise Act, 1964

The amendment to section 69 is necessary as a result of the Budget Proposals. The Budget Proposals provided that the "value determination formula for domestically-produced goods will be eliminated and duties will be levied on the invoice price of dutiable items". The effect of the implementation of these proposals on section 69 is that subsection (1)(a) will only apply to items 126.01, 126.02, 126.03, 126.04 and 126.05 (motor vehicles) of Section B of Part 2 of Schedule No. 1 of the Customs and Excise Act.

Paragraph (a) is amended accordingly. In paragraph (d) provision is now made that for the purpose of assessing excise duty on the other items of Section B of Part 2 of Schedule No. 1, the value thereof is the "invoice price". This represents the price paid or payable as contemplated in subsection (2)(b) and as the Commissioner may further prescribe by rule for the goods when sold for home consumption in the ordinary course

of trade, in the condition and the usual trade packing ready for sale in the retail trade to any buyers not deemed to be related as specified in section 66(2)(a) (paragraph (d)(i)).

In subsection (2)(b) the price paid or payable is defined as meaning the total payment made or to be made either directly or indirectly by the buyer to or for the benefit of the seller of the goods, but does not include dividends or other payments passing from the buyer to the seller which do not directly relate to the goods.

Where buyers are related the price of the goods sold at comparable trade and quantity levels to unrelated buyers at or about the same time as the goods sold to related buyers, is applicable.

In both cases the price excludes the non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1 or any value-added tax payable. The price also excludes any deduction from such price in respect of goods specified in any item of Section B of Part 2 of Schedule No. 1, as may be prescribed by the Commissioner.

Subsection (3) is amended to require the Commissioner to have regard to the relevant provisions of subsection (1) or (2) when a value is determined in respect of goods of which the value cannot be ascertained or has been incorrectly ascertained.

The section is deemed to have come into operation on 1 July 2001.

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CLAUSE 50

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

The Budget Proposals contained diesel fuel concessions in respect of use in farming, forestry and mining (including off-shore). Provision was also made for a concession in respect of the rail freight sector, which will be exempt from the Road Accident Fund levy.

Concessions for fishing and coastal shipping in the form of a rebate of fuel levy is already operative. A concession for the National Sea Rescue Institute was also announced.

In respect of farming, forestry and mining the concession is based on qualifying consumption which is 80 per cent of total consumption.

According to the Budget Proposals:

a) Farming, forestry and on-shore mining will receive–
   - 25,6 cents a litre of fuel levy on qualifying consumption; and
   - the full 16,5 cents a litre on Road Accident Fund levy on qualifying consumption.

b) Off-shore mining and the National Sea Rescue (and also coastal shipping and fishing) will receive 100 per cent concession of the fuel levy and the Road Accident Fund levy.

c) Rail freight will receive 100 per cent of the Road Accident Fund levy.

The concession will be administered by means of a refund system. The refunds are provided for under the Customs and Excise Act and Schedules while payment will be administered by means of the system in operation for refunding value-added tax. The rebate system for fishing and coastal shipping will also change to a refund system from 4 July 2001.

Section 75 presently still contains the provisions for the previous refunds of fuel levy under other items of Schedules Nos. 5 and 6 and it is therefore necessary to substitute these provisions to provide for the new policy and the procedures for administering the system.

The amendments in respect of section 75 accordingly provide *inter alia* for a refund of the fuel levy leviable on distillate fuel (diesel) in terms of Part 5 of Schedule No. 1 of the Customs and Excise Act and a refund of the Road Accident Fund levy leviable on diesel as contemplated in section 5 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996). The refunds will be granted in accordance with the provisions in item 540.02 of Schedule No. 5 or item 640.03 of Schedule No. 6 to the extent stated in the items.

In terms of subsection (1A)(c) the Commissioner may withdraw money from the National Revenue Fund for refunding the amount of such Road Accident Fund levy as if it were a fuel levy payable and paid under the Act and refundable in terms of Schedule No. 5 or 6.

For the purposes of payment, the Commissioner may set off any amount refundable to any person in terms of the section and the items against any amount of value-added tax payable by such person (subsection (1A)(d)).

Any refund of the fuel levies is deemed to be a provisional refund subject to proof by the user that the fuel was purchased and used in respect of the provisions of the section and the said items of Schedule No. 5 or 6 (subsection (1A)(e)).

The provisions of the Value-Added Tax Act in respect of interest apply when the fuel levy and Road Accident Fund levy are being recovered as it is in excess of the amount due or is not duly refundable.

The Commissioner must furnish an audited statement at the end of each calendar month to the Chief Executive Officer of the Road Accident Fund reflecting the quantity of distillate fuel in litres and the amount of Road Accident Fund levy refunded during such month. The Chief Executive Officer must repay the amount to the Commissioner not later than the last working day of each calendar month immediately succeeding the calendar month covered by the statement furnished by the Commissioner (subsection (1B)).

(An amendment to section 5 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996), is also proposed in this amendment Bill according to which the Chief Executive Officer must from time to time withdraw money from the Fund for repayment to the Commissioner of the amounts refunded by the Commissioner and recoverable from the Fund in accordance with the provisions of section 75(1A) and (1B), respectively.)

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Any amount repaid by the Road Accident Fund will be paid into the National Revenue Fund as if it were a recovery of fuel levy under the section.

Subsection (1B) further provides that any refund of Road Accident Fund levy by the Commissioner to any applicant is deemed to be a refund of duty and any amount paid which was not duly payable or in excess of the amount due is recoverable as provided in section 76A and when recovered, must be repaid by the Commissioner to the Road Accident Fund each calendar month.

It is also provided that the Commissioner may enter into a written agreement with the Chief Executive Officer of the Road Accident Fund to regulate any incidental matter which it may be necessary or expedient to regulate in order to achieve or promote the objects of the subsection.

Subsection (1C) empowers the Commissioner to investigate any application for a refund to determine whether the fuel has been purchased, delivered to the premises of the user and is being stored or used or has been used as provided in the section and the items concerned.

Paragraph (b) contains a definition of "user" and also states that "distillate fuel" includes "diesel" and "diesel" includes "distillate fuel".

The refunds of levies specified in the section and the items concerned will apply to fuel purchased on or after the date the amendment contemplated in subsection (15) comes into operation. (Subsection (15) empowers the Minister to amend Schedule No. 5 or 6 to provide for a refund of fuel levy and Road Accident Fund levy.)

Paragraph (c) contains provisions relating to the extent of the refund and the effect of any amendment of the items.

Any user who has been granted a refund must furnish the Commissioner at such times as may be prescribed in the notes to item 640.03 with a declaration in relation to the purchase and use of the fuel. If the declaration is not furnished the user is deemed to have used the fuel for a purpose or use other than the purpose or use stated in the items of Schedule No. 5 or 6 and the amount of the refund is deemed to be a refund not duly payable and is recoverable in terms of section 76A.

An amount that is not duly refundable or in excess of the amount due is also recoverable as provided in terms of section 76A.

Subsection (4A) requires any person who registers for a diesel refund as contemplated in subsection (1A), to register in addition as a user under this section.

The subsection further provides for such matters as the application (return) for refund of levies which must be in such form and declare such particulars and must be for such quantities and such periods and must be submitted within such period as may be determined by the Commissioner, the issuing of invoices and the keeping of such invoices and the keeping of books, accounts and documents. If a person fails to keep the invoice, complete the books, accounts and documents or forthwith furnish any officer at such officer's request with the books, accounts and documents, the user is liable to

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repay the levies refunded on the fuel to which such failure relates unless the user proves that the fuel has been used as provided in the items of Schedule No. 5 or 6.

In terms of subsection (4A)(f) the Commissioner may in the stated circumstances refuse registration as contemplated in subsection (1A)(b)(ii) or (4A)(a) or cancel or suspend a registration.

Subsection (4A)(g) empowers the Commissioner to delegate by rule any of the Commissioner's powers, duties or functions under the Act.

Subsection (4A)(h) is a penal provision. If a person falsely applies for a refund or uses or disposes of the fuel contrary to the provisions of item 540.02 of Schedule No. 5 or item 640.03 of Schedule No. 6, such person is guilty of an offence and liable on conviction to a fine not exceeding R100 000 or double the amount of the levies refunded, whichever is the greater or to imprisonment of not exceeding 10 years or both such fine or imprisonment.

In terms of subsection (7A) any person who applies or disposes of fuel contrary to the provisions of the relevant items of Schedule No. 5 or 6, must repay any amount refunded on demand to the Commissioner.

Subsection (14) is substituted to provide that the Commissioner may determine the period within which application for a refund of such levies must be submitted.

Provision is made in subsection (15) that the Minister may amend Schedule No. 5 or 6 to provide for a refund of the fuel levies.

These provisions are deemed to have come into operation on 4 July 2001.

Subsection (17) presently empowers the Commissioner to allow deductions from the dutiable quantity of goods specified in the paragraphs of the subsection, of a percentage equal to a stated percentage. The amendment now limits such deductions to a percentage not exceeding the stated percentage.

The paragraphs of the subsection are amended in consequence of the introduction of the Duty at Source System referred to in the comments in the Explanatory Memorandum under the new section 19A.

In terms of paragraph *(a)* the Commissioner may allow a deduction, in the case of wine spirits (ethyl alcohol) manufactured in the Republic and entered for use and used in a customs and excise manufacturing warehouse (excluding spirits specified in paragraph *(b*A*)* which refers to spirits stored in a customs and excise warehouse for export) in the manufacture of spirituous beverages equal to the actual manufacturing loss of a quantity so entered and used or 1,5 per cent thereof, whichever is the least.

In paragraph *(b)* a similar provision is made for a deduction in respect of spirits (ethyl alcohol other than wine spirits) manufactured in the Republic and entered for use and used in a customs and excise manufacturing warehouse in the manufacture of spirituous beverages. The allowable deduction is here also restricted to the actual manufacturing loss of any quantity so entered and used or 1.5 per cent, whichever is the least.

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In paragraph *(d)* which provides for a deduction from the dutiable quantity in respect of imported or excisable petrol entered for storage and stored in a customs and excise storage warehouse, the provision for excisable petrol is deleted in view of the intended introduction of Duty at Source and the consequential elimination of storage warehouses for excisable goods.

Paragraph *(e)* presently provides for a deduction in the case of imported or excisable petrol, distillate fuels or residual fuel oils of a percentage of any quantity removed in bond unpacked by ship from one place in the Republic to another place in the Republic. In view of the introduction of Duty at Source, the reference to excisable is also deleted in this paragraph.

For the same reason paragraph *(f)* is amended to indicate that a deduction will only be allowed on imported distillate fuels entered for storage and stored in a customs and excise storage warehouse.

A new subsection 18A is inserted to empower the Commissioner to prescribe by rule an average percentage deduction, and the circumstances in which such deduction will be allowed, from the dutiable quantity of any excisable goods removed from a customs and excise manufacturing warehouse.

The amendments to the subsection will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

CLAUSE 51

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

The viability of most recommendations emanating from the restructuring of the customs and excise work procedures depends on the successful implementation and regulation of an electronic communication system. The legislation proposed in this section accordingly intends to regulate electronic communication for the purposes of customs and excise procedures.

The proposed legislation is principally based on the Uncitral Model Law on Electronic Commerce, provisions in the Australian Customs Act and the Information and Technology Act of India.

Subsection (1) provides for definitions which include computer, computer system, data, digital signature, originator, registered user and user agreement.

In terms of subsection (2)(a), the Commissioner may establish and maintain a computer system for the purposes of the electronic processing of any document and procedure to which the Act relates.

Subsection (2)(b) requires that only a registered user who has entered into a user agreement may communicate with the Commissioner, a Controller or any officer by computer. Such a person must also comply with any other requirements prescribed under the Act.

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Such communication is dependent thereon that the computer system of the Commissioner can accept the communication (paragraph (c)).

Subsections (3) and (5) specify requirements in respect of the application for registration as a user. The application must be accompanied by a practice statement and a completed user agreement.

Subsection (4) provides for the conditions to be set out in the user agreement.

Subsections (6) and (7) relate to the approval and refusal of an application and cancellation or suspension of a registration. Subsection (7)(c) and (d) provides for the allocation of digital signatures.

Subsection (8) provides for the keeping of records in electronic form (paragraph (a)), while paragraph (b) states when an electronic communication is attributed to the originator (see definition in subsection (1)).

Subsection (9) regulates the receipt and acknowledgement of an electronic communication. The subsection further provides in paragraph (c) for requirements relating to the dispatch and the time of receipt of an electronic communication.

Subsection (10) authorises the affixing of electronic signatures to documents which are electronically submitted. Paragraph (c) of the subsection circumscribes digital signature for the purposes of the definition in subsection (1).

Subsections (11) and (12) are evidentiary provisions.

Subsection (13) states that when a computer system is inoperative, communication between the Commissioner and the registered user must be by paper document as prescribed by rule.

In terms of subsection (14), the Commissioner may at any time require from any registered user who has submitted any electronic communication, production of any original documents required to be produced under the provisions of the Act.

Subsection (15) is a penal provision.

Subsection (16) empowers the Commissioner to make rules which include, to delegate any power which may be exercised or assign any of the duties which shall be performed in terms of the Act to any officer or other person.

The section will come into operation on a date to be fixed by the President by proclamation in the Gazette.

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CLAUSE 52

Customs and Excise: Amendment of Schedule No. 1 of Act 91 of 1964

This clause provides for the amendment of Schedule No. 1 to the Customs and Excise Act, 1964, and the date of commencement thereof. Such amendments are reflected in Schedule 2 to this Bill. It arises from the taxation proposals which were tabled by the Minister of Finance during his Budget Speech and contains the amendments to the rates of duty in respect of alcoholic and tobacco products.

CLAUSE 53

Customs and Excise: Continuation of certain amendments of Schedules Nos. 1 to 6 and 10 of Act 91 of 1964

This clause provides for the continuation of the amendments to the Schedules to the Act effected by the Minister during the 2000 calendar year.

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CLAUSE 54

Stamp Duties: Amendment of section 1 of the Stamp Duties Act, 1968

The amendments proposed in this clause are consequential upon the repeal of item 5 of Schedule 1 to the Stamp Duties Act, 1968.

CLAUSE 55

Stamp Duties: Amendment of section 7 of Stamp Duties Act, 1968

This amendment is consequential upon the repeal of item 5 of Schedule 1 to the Stamp Duties Act, 1968.

CLAUSE 56

Stamp Duties: Amendment of section 10 of the Stamp Duties Act, 1968

This amendment is consequential upon the repeal of item 5 of Schedule 1 to the Stamp Duties Act, 1968.

CLAUSE 57

Stamp Duties: Repeal of section 16 of the Stamp Duties Act, 1968

This amendment is consequential upon the repeal of item 5 of Schedule 1 to the Stamp Duties Act, 1968.

CLAUSE 58

Stamp Duties: Repeal of section 17 of the Stamp Duties Act, 1968

This amendment is consequential upon the repeal of item 5 of Schedule 1 to the Stamp Duties Act, 1968.

CLAUSE 59

Stamp Duties: Repeal of section 18 of the Stamp Duties Act, 1968

This amendment is consequential upon the repeal of item 5 of Schedule 1 to the Stamp Duties Act, 1968.

CLAUSE 60

Stamp Duties: Repeal of section 25 of the Stamp Duties Act, 1968

This amendment is consequential upon the repeal of item 20 of Schedule 1 to the Stamp Duties Act, 1968.

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CLAUSE 61

Stamp Duties: Repeal of item 5 of Schedule 1 to the Stamp Duties Act, 1968

Item 5 prescribes the tariff of stamp duties on bills of exchange and promissory notes.

It was announced by the Minister of Finance in his Budget Review this year that stamp duties on these instruments will be removed with effect from 1 April 2001. This clause gives effect to this proposal.

CLAUSE 62

Stamp Duties: Amendment of item 6 of Schedule 1 of the Stamp Duties Act, 1968

A debit entry for purposes of item 6 of Schedule 1 to the Stamp Duties Act, 1968, means any entry by means of which a debit is posted to, *inter alia*, any other account at a banking institution or the Postbank into which the depositor may deposit money and from which the institution or the Postbank where the account is held, may make a payment to any other person or electronically transfer an amount to the account of any other person. An amendment is proposed to make it clear that such other account could also be any other account of the same person.

CLAUSE 63

Stamp Duties: Repeal of item 11 of Schedule 1 to the Stamp Duties Act, 1968

Item 11 prescribes the tariff of stamp duties on customs and excise documents, i.e. original bills or documents of entry.

It was announced by the Minister of Finance in his Budget Review this year that stamp duties on these instruments will be removed with effect from 1 April 2001. This clause gives effect to this proposal.

CLAUSE 64

Stamp Duties: Repeal of item 20 of Schedule 1 to the Stamp Duties Act, 1968

Item 20 prescribes the tariff of stamp duties on securities and suretyships.

It was announced by the Minister of Finance in his Budget Review this year that stamp duties on securities and suretyships be removed with effect from 1 April 2001. This clause gives effect to this proposal.

CLAUSE 65

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

The proposed amendments to the definitions in section 1 comprise the insertion of a new definition for "commercial accommodation", the deletion of the definitions of "commercial rental establishment" and "residential rental establishment" and the substitution of the amendment of the definitions of "domestic goods and services" and "dwelling".

These proposed amendments, together with the amendment of section 10(10) and 12*(c)*, are intended to simplify the provisions of the Value-Added Tax Act relating to the supply of accommodation in hotels, boarding houses, retirement homes and similar establishments. In the 2001 Budget Review it was announced that these provisions would be revised.

The Act provides that short-term stays in accommodation establishments are taxed at the full value of such supplies, while only 60% of such value is taxed where the accommodation constitutes the dwelling of the occupant. The reason for this is that persons resident in their own or rented dwellings are not subject to VAT on the full cost thereof. Mortgage interest and municipal rates, or alternatively, rent are exempt from VAT. The South African VAT base is roughly 60 per cent of GDP. Natural persons living in accommodation establishments should be taxed at an equivalent rate.

It should be borne in mind that most people living in boarding houses, retirement (old age) homes and homes for children or handicapped persons do not stay there as a matter of choice, but of financial or other necessity. Accommodation in your own home

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in a retirement village (but not the frail care section) is treated as accommodation in your own home. Rental and life-right schemes are thus exempt from VAT.

The present provisions are extremely complicated and depend on whether the person will stay for more than 45 days, on whether 70% or more of the residents stay for more than 45 days, whether more than 20% of the charge relates to food and on the number of units let. They place an unreasonable burden on vendors, are impractical and are seldom applied correctly.

The proposed amendment has only one test – will the person stay for more than 28 days or not? – If not, the charge is taxed in full, otherwise only 60% thereof is taxed. It follows that stays of longer than a month qualify for VAT on a lower value. The effective rate of VAT is reduced from 12.28 per cent (14 ÷ 114) to 7,36 per cent (14 ÷ 114 x 60%). As is presently the case, the accommodation enterprise will be entitled to a full input tax deduction in respect of the VAT it pays on its inputs.

Very few people have holidays at a hotel or other holiday accommodation for periods exceeding 28 days and holidaymakers will thus not benefit from the proposed amendments. The VAT levied on employees temporarily stationed away from home is reclaimable by their employers. Whether VAT is charged on the full charge or on only 60% thereof is immaterial, as the VAT is recoverable as input tax by employers.

It should be noted that it is proposed that long-term stays in hospitals and convalescent homes (but not hospices) no longer qualify for the concessionary rate. These institutions do not constitute the dwelling of the occupant and furthermore supply many other services. Goods and services supplied by State hospitals are exempt from VAT.

The proposed amendment is to come into effect on 1 October 2001.

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CLAUSE 66

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

Business enterprises and members of the public need to be able to verify whether persons who supply goods and services to them, are registered as vendors for VAT purposes. Availability of this information will also facilitate investigations and encourage reporting of tax evaders.

The proposed introduction of section 6(2)*(e)* will allow the Commissioner to publish the names and VAT registration numbers of vendors for this purpose, for instance on the SARS website, without disclosing confidential information. The proposed amendment will render paragraph *(d)* superfluous.

CLAUSE 67

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

The proposed amendment to subsection (6) is consequential upon the amendment of the definition of "local authority" in section 1 by section 64 of the Revenue Laws

Amendment Act, 2000 (Act No. 59 of 2000), which provides that the transfer of all assets and liabilities from a disestablished to a new local authority will have no VAT consequences.

It has since transpired that, until the new local authorities are able to take over the accounting systems of the disestablished local authorities, those divisions will retain separate VAT registrations. The proposed amendment is necessary to ensure that when their accounting systems are consolidated with those of the new local authority, such event will not constitute a supply subject to VAT.

CLAUSE 68

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

The proposed amendment of subsection (10), the valuation section in the case of commercial accommodation, reduces the period of 45 days to 28 days. This will have the effect that VAT will be charged at the standard rate (14%) on the full value of the supply where accommodation and domestic goods and services (including meals) in a hotel, boarding house, retirement home or similar establishment are supplied for 28 days or less, and on only 60% of the value where occupied longer – that is as the dwelling of a natural person - irrespective of the circumstances or nature of the commercial accommodation. The supply of any other goods or services will be taxed at the full rate, as will the charge for any goods and services charged separately.

The deletion of subparagraph *(b)* is due to the deletion of the definition of "commercial rental establishment", the new definition of "commercial accommodation" and the deletion of the definition of "residential rental establishment". The deletion of subparagraph *(c)* is in order to simplify the entire calculation.

These amendments are to come into effect on 1 October 2001

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CLAUSE 69

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

The proposed amendment of section 12(c) relating to the exemption in respect of dwellings, is to cater for employers and local authorities supplying accommodation. It is to come into effect on 1 October 2001.

CLAUSE 70

Value-Added Tax: Amendment of section 13 of the Value-Added Tax Act, 1991

The proposed amendment is intended to make it clear that any officer under the control, direction or supervision of the Commissioner may be authorised to collect VAT on importation.

CLAUSE 71

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

When VAT was introduced in 1991, arrangements in terms of section 72 of the Act were made with the sugar and wattle industries to operate a flat rate scheme for small scale farmers making deliveries to sugar mills and saw mills. Flat rate schemes, which are found in many VAT jurisdictions, allow, for example the mills, to claim input tax incurred by their suppliers without the suppliers having to register as vendors. The flat rate scheme reduces the administrative burden on small-scale farmers (some of whom are illiterate). The addition of paragraph *(k)* is proposed to formalise the flat rate scheme in the Act and to avoid the problem that many of these farmers may not have turnovers in excess of R20 000 per annum.

In 1998 amendments were introduced to section 16(2) and 44(1) of the Value-Added Tax Act, 1991, relating to input tax deductions after five years. The first proviso to section 16(3) is also amended accordingly.

CLAUSE 72

Value-Added Tax: Amendment of section 58 of the Value-Added Tax Act, 1991

The amendment is consequential upon the amendment of section 20(1) of the Act by section 91 of Act 53 of 1999.

CLAUSE 73

Value-Added Tax: Amendment of Item 2 and Item 15 of Schedule 2 to the Value-Added Tax Act, 1991

Item 2, Maize meal and Item 15, Milk, are amended to accommodate the addition of limited quantities of additives such as minerals and vitamins for increased nutritional value in accordance with recommendations received in this regard.

CLAUSE 74

Road Accident Fund: Amendment of section 5 of the Road Accident Funds Act, 1996

This amendment is consequential upon the proposed insertion of sections 75(1A) and (1B).

CLAUSE 75

Uncertificated Securities Tax: Amendment of section 6 of the Uncertificated Securities Tax Act, 1998

Section 6(1)*(b)*(iii) of the Uncertificated Securities Tax, 1998, provides for an exemption in respect of a change in beneficial ownership in securities if the securities are interest bearing debentures (including debenture stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not) listed by any stock exchange.

An amendment is proposed to also provide for an exemption in respect of a change in beneficial ownership in securities which are interest bearing debentures listed by a financial exchange. This will bring the exemptions in line with section 3*(d)* of the Marketable Securities Tax Act, 1948 (Act No. 32 of 1948).

CLAUSE 76

Skills Development Levies: Amendment of section 6 of the Skills Development Levies Act, 1999

Section 6 of the Skills Development Levies Act, 1999, makes provision for the payment of the levy to the Commissioner and requires a statement containing certain information to be submitted at the time of payment. Subsection (5) provides that the Commissioner must, before the seventh day of each month, notify the Director-General of—

- the names of employers in each SETA and the amount of levies, interest and penalties collected from, and refunds made to, those employers; and
- the names of employers which do not fall within the jurisdiction of any SETA and the amount of levies, interest and penalties collected from, and refunds made to, those employers, during the previous month.

It is proposed that, as the information cannot always from a practical point of view be provided to the Director General of Labour within that time frame, section 6 be amended to make provision for a period to be agreed by the Commissioner and the Director-General of Labour.

CLAUSE 77

Skills Development Levies: Insertion of section 20A in the Skills Development Levies Act, 1999

Section 90 of the Magistrates Court Act, 1944, provides that a person charged with any offence must be tried by a court having jurisdiction within the area in which the offence was committed.

It is proposed that the jurisdiction of the courts be extended. This clause provides that a person who is charged with an offence under this Act may, notwithstanding anything to

the contrary contained in any law, be tried in respect of that offence by any court having jurisdiction within any area in which such person resides or carries on business.

CLAUSE 78

Income Tax: Amendment of section 21 of the Taxation Laws Amendment Act, 2000

Section 10(1)*(d)* of the Income Tax Act, 1962, was amended by section 21 of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000). This amendment will, however, only come into operation on a date to be determined by the President by proclamation in the *Gazette*.

The wording of the amended section 10(1)*(d)* will, however, require that the Commissioner approve every benefit fund. Due to the administrative burden that this will place on SARS, it is proposed that this paragraph be amended to do away with this approval requirement for benefit funds.

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CLAUSE 79

Income Tax: Amendment of section 7 of the Taxation Laws Amendment Act, 2001

See notes to amendment of section 5(10) of the Income Tax Act, 1962, in *clause 5*.

CLAUSE 80

Short title and commencement.

This clause provides the short title and commencement date of the Bill.