
REPUBLIC OF SOUTH AFRICA.

EXPLANATORY MEMORANDUM

ON THE

INCOME TAX AMENDMENT BILL, 1963.

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CLAUSE ONE.

Paragraph (a) inserts a definition of "financial year" in section *one* of the principal Act. This definition applies only to companies and should be read with section *five* of the principal Act as substituted by clause *two* of the Bill and the definition of "specified date" as substituted by paragraph *(b)* of this clause.

In terms of section *five* of the principal Act as substituted by clause *two* of the Bill the year of assessment of any company will be its financial year. The definition lays down rules for the determination of the financial year of any company, which in the case of a company which carried on any trade or derived gross income during the year of assessment ended 30th June, 1962, will be a year ending on the anniversary of its existing accounting year or on some other date chosen by the company and approved by the Commissioner. In the case of a company which did not carry on any trade or derive gross income during the year of assessment ended 30th June, 1962 or which is incorporated or created after that date the company's financial year will normally close on the last day of February, or on some other date chosen by the company and approved by the Commissioner.

Paragraph (b) substitutes a new definition for the definition of "specified date" in section *one* of the principal Act. This definition should be read with the definition of "financial year" introduced by paragraph *(a)* of this clause, in terms of which the financial year of a company will usually be reckoned from immediately after the specified date of the company in respect of the immediately preceding year of assessment.

Paragraphs (c) and *(d)* expand the definitions of "tax", "the tax", "taxation" and "taxpayer" in section *one* of the principal Act to include for the purposes of Part IV of Chapter III of the principal Act any levy or tax leviable under any previous Income Tax Act and any personal or income tax leviable under any ordinance of a provincial council. Part IV of Chapter III of the principal Act provides for the payment and recovery of tax. The purpose of the amendment is to achieve uniformity in regard to the payment and recovery of all income taxation whether leviable by the Republic or the provinces. This amendment should be read with clauses *thirteen* to *seventeen*, inclusive, of the Bill.

Paragraph (e) substitutes a new definition for the definition of "year of assessment" in section *one* of the principal Act. This amendment is consequential upon the provisions of section *five* of the principal Act as substituted by clause *two* of the Bill, which imposes taxation upon companies in respect of financial years and upon individuals in respect of either a year ending upon the last day of February or the 30th day of June.

CLAUSE TWO.

This clause substitutes a new section for section *five* of the principal Act, and brings about a change in the year of assessment of individuals and companies.

In the case of most individuals normal tax will be levied in respect of the year of assessment ending 30th June, 1962, the period of eight months ending 28th February, 1963 and the year of assessment ending the last day of February, 1964 and each succeeding year of assessment. In the case of certain existing individual farmers, fishermen and diamond diggers who make elections under subparagraph *(2)* of paragraph 18 of the Fourth Schedule not to be provisional taxpayers, normal tax will continue to be levied in respect of the year of assessment ending upon 30th June each year.

In the case of companies normal tax will be levied in respect of their financial years. A definition of "financial year" has been inserted in section *one* of the principal Act by paragraph (a) of clause *one* of the Bill.

CLAUSE THREE.

This clause adds a new sub-section (3) to section *six* of the principal Act, in terms of which the primary rebate for a married or unmarried person and the rebate for a child or dependant in respect of the period of assessment ending 28th February, 1963, is fixed at one-third of the relevant rebate normally allowed in a full year of assessment in any case where a deduction has been made from the taxpayer's income under section *twenty-one bis* of the principal Act as inserted by clause *seven* of the Bill.

CLAUSES FOUR AND FIVE.

The amendments to sections *twelve* and *thirteen* of the principal Act introduced by these clauses are consequential upon the change in the year of assessment brought about by the new section *five* substituted by clause *two* of the Bill.

CLAUSE SIX.

The purpose of the amendment to sub-section (3) of section *nineteen* of the principal Act introduced by this clause is to make it clear that the deduction of a percentage of dividends contemplated by that sub-section is to be determined before the deduction of any amount under section *twenty-one bis* of the principal Act, as inserted by clause *seven* of the Bill.

CLAUSE SEVEN.

This clause inserts a new section *twenty-one bis* in the principal Act providing for a special deduction in respect of the period of assessment (called the "transition period") immediately following the year of assessment ended 30th June, 1962.

The deduction will normally be determined with reference to the "taxable amount" derived by the taxpayer during the transition period and the year of assessment ended 30th June, 1962. The term "taxable amount" is defined in sub-section (1) and in terms of the definition the taxable amount will broadly speaking be the taxpayer's profits for the period or year of assessment in question as determined without taking into account any assessed loss brought forward from any preceding year of assessment or the deduction under sub-section (2) or, in the case of a person who is not ordinarily resident in the Republic or a company not registered, managed or controlled in the Republic, any income derived in respect of services, work or labour or any concert, performance, display, exhibition, contest or competition unless such person or company, as the case may be, has during the year of assessment ended 30th June, 1962, derived income of a substantially similar nature. The proviso to the said definition requires the Commissioner to reduce the taxable amount in any case where he is, having regard to the circumstances of the case, of opinion that the amount is abnormally high.

In terms of the definition of "transition period" in sub-section (1) the transition period in relation to an individual will normally be the period of eight months ending 28th February, 1963, and in the case of any company incorporated on or before 30th June, 1962, the first financial year of that company commencing after the year of assessment ending 30th June, 1962.

In terms of sub-section (2) the transition deduction will not be granted in the case of a company which derives income from mining for gold or any person to whom the provisions of section *thirty-three* or sub-section (1) of section *thirty-five* of the principal Act apply (i.e. certain owners or charterers of ships or aircraft or persons in respect of royalty income in respect of whose tax liability advance payments are required to be made under either of the said sections).

The basis for the determination of the transition deduction is set forth in paragraphs (a) to (e), inclusive, of sub-section (2).

In the ordinary case of a taxpayer who derived a taxable amount in respect of the year of assessment ended 30th June, 1962, and in relation to whom the

transition period is the period of eight months ending 28th February, 1963, the deduction will be the lesser of an amount equal to two-thirds of the taxable amount derived by the taxpayer in respect of the year of assessment ended 30th June, 1962, and an amount equal to the taxable amount derived by the taxpayer in respect of the transition period. In a case where the transition period in relation to the taxpayer is a period which commences or is deemed to commence on a date other than 1st July, 1962, or which terminates on a date other than 28th February, 1963, the maximum transition deduction under paragraph (a) of sub-section (2) will be increased or decreased in accordance with the basis of calculation set forth in that paragraph. In no case will the transition deduction be greater than the taxable amount derived by the taxpayer in respect of the transition period.

Provision is made for adjustments to be made by the Commissioner in special or exceptional cases, e.g. where the taxpayer's income is of a seasonal nature (paragraph (d) of sub-section (2)) or the taxpayer has changed his marital status during the year of assessment ended 30th June, 1962 or the transition period (sub-section (3)) or where a private company has been formed or a transaction, operation or scheme has been entered into or carried out having the effect of exempting from taxation income which should otherwise have been subject to taxation (sub-section (5)), or where the taxable amount derived by the taxpayer during the year of assessment ended 30th June, 1962 was abnormally low (paragraph (a) of sub-section (6)).

In terms of sub-section (4) the minimum transition deduction in the case of a taxpayer other than a company will be the lesser of an amount equal to the taxable amount derived by the taxpayer in respect of the transition period and R2,400, or where the period assessed is less than eight months, a proportionately smaller amount. Where the taxpayer and his wife receive separate tax assessments the minimum deduction will not exceed the deduction to which the husband would have been entitled had the combined income of the spouses been assessed as the income of the husband alone.

In terms of sub-section (7) any decision of the Commissioner in the exercise of his discretion under section *twenty-one bis* will be subject to objection and appeal.

CLAUSE EIGHT.

This clause introduces a consequential amendment to section *twenty-two* of the principal Act in regard to the amounts to be taken into account in respect of values of trading stocks, and flows from the amendment to section *sixty-six* of the principal Act introduced by clause *ten* of the Bill.

CLAUSE NINE.

This clause amends section *forty-nine* of the principal Act, which defines certain terms for purposes of undistributed profits tax.

Paragraph (a) adds words at the end of paragraph (i) of the definition of "distributable income". The effect of this amendment is that a company will for the purposes of the determination of its liability for undistributed profits tax in respect of the year of assessment following the year of assessment ended 30th June, 1962, be entitled to deduct a notional amount representing the amount of normal tax for which the company would have been liable had it not been entitled to the transition deduction provided for in section *twenty-one bis* of the principal Act as inserted by clause *seven* of the Bill.

Paragraph (b) substitutes a new definition for the definition of "specified period". This amendment is consequential upon the amendment introduced by paragraph (b) of clause *one* of the Bill.

The amendment introduced by *paragraph (c)* is of a consequential nature.

CLAUSE TEN.

This clause amends section *sixty-six* of the principal Act.

Paragraph (a) amends sub-section (13), which at present provides for income tax returns to be rendered for a year of assessment ending on 30th June. The only persons who will after 1962 continue to retain as their year of assessment a year ending on 30th June will be certain existing farmers, fishermen and diamond

diggers who elect under sub-paragraph (2) of paragraph 18 of the Fourth Schedule not to be provisional taxpayers. Sub-section (13) will continue to apply in the case of such persons. Other persons will come under the provisions of sub-section (13)*bis*, (13)*ter* or (13)*quat*.

Paragraph (b) introduces three sub-sections numbered (13)*bis*, (13)*ter* and (13)*quat*.

Sub-section (13)bis in effect provides that in the case of an individual whose year of assessment ends upon the last day of February his return of income shall be a full and true return for the whole period under charge be it the transition period of eight months ending 28th February, 1963, or any subsequent year of assessment. In so far as the transition period is concerned, provision is made in sub-paragraphs (i) and (ii) for adjustments to be made if the taxpayer has in respect of the preceding year of assessment, i.e. the year ended 30th June, 1962, been allowed to submit accounts in respect of a period ending on a day other than 30th June, 1962.

Sub-section (13)ter provides for cases where income cannot conveniently be returned for the transition period or any year of assessment referred to in sub-section (13)*bis*.

Sub-section (13)quat provides that the return of income to be made by any company in respect of any year of assessment (other than that ended 30th June, 1962) shall be a full and true return for the whole period of the relevant financial year of the company comprising the year of assessment.

CLAUSE ELEVEN.

The amendment to section *seventy* of the principal Act introduced by this clause is of a consequential nature, resulting from the change from a year of assessment ending on 30th June to a year of assessment ending on the last day of February.

CLAUSE TWELVE.

In terms of section *eighty-eight* of the principal Act where a taxpayer objects to an assessment of normal tax and lodges an appeal to the income tax Special Court his obligation to pay the normal tax is not suspended by his appeal. If the taxpayer's appeal succeeds interest is paid to him on the amount of normal tax refunded to him as a result of the appeal. The amendment introduced by this clause extends these provisions to provincial taxes.

CLAUSE THIRTEEN.

At present interest is chargeable in terms of section *eighty-nine* of the principal Act on any amount of tax paid after the due date at the rate of $1\frac{1}{4}$ cents on each completed R2 of such amount for every completed month contained in the period reckoned from the due date to the date of payment. The interest is charged at the time of payment.

In terms of the amendment introduced by this clause (which is designed to come into operation on 1st April, 1963) interest will be charged on the full outstanding monthly balance of the overdue tax at the rate of $7\frac{1}{2}\%$ per annum for the period during which the tax has remained unpaid. It is the intention that the interest will be debited automatically to the taxpayer's tax account by an electronic computer at the end of each month.

The interest will be charged in respect of all income taxes, State and provincial, and provision is made for the consolidation of the various amounts of interest and penalty-interest found to be due on 31st March, 1963, in respect of arrear taxes under the various Acts of Parliament and provincial ordinances.

CLAUSE FOURTEEN.

This clause inserts sections *eighty-nine bis* and *eighty-nine ter* in the principal Act.

Section *eighty-nine bis* provides for payments to be made in respect of the liability of every employee and provisional taxpayer for tax in accordance with the provisions of the Fourth Schedule and for the payment of interest at the rate of $7\frac{1}{2}\%$ per annum on overdue amounts.

Section *eighty-nine ter* provides for the keeping of a single account in respect of the current and arrear taxes, including provincial taxes, due by any taxpayer and also for the recovery of the outstanding balance of such taxes as a single debt due to the State. This section should be read with the definitions of "tax" and "taxpayer" in section *one* of the principal Act, as amplified by paragraphs (c) and (d) of clause *one* of the Bill.

CLAUSE FIFTEEN.

Section *ninety* of the principal Act prescribes by whom normal tax is payable. The amendment introduced by this clause extends the scope of that section to other taxes on income (including provincial taxes but excluding certain specified taxes) and interest payable in terms of section *eighty-nine* of the principal Act.

CLAUSE SIXTEEN.

Section *ninety-one* of the principal Act prescribes a procedure for the recovery of tax. The amendments introduced by this clause extend the scope of this section to interest payable in terms of section *eighty-nine* of the principal Act. In this section the word "tax" will be given the extended meaning of that term as defined in section *one* of the principal Act as amended by paragraph (c) of clause *one* of the Bill. The amendment introduced by paragraph (f) of this clause deletes a phrase which restricts the meaning of the term "tax" to a tax under the principal Act.

CLAUSE SEVENTEEN.

This clause inserts section *ninety-three bis* in the principal Act. This section confers a special preference on insolvency of employers and others in regard to taxes deducted or withheld by them from amounts due by them to employees and others and not paid to the Commissioner at the date of insolvency.

CLAUSE EIGHTEEN.

This clause inserts section *one hundred and ten bis* in the principal Act. In terms of that section various provisions of the principal Act will apply for the purposes of the provincial ordinances imposing taxes on the incomes of persons other than companies and on persons. The purpose of the amendment is to secure a measure of uniformity in regard to the collection and recovery of Republic and provincial taxes on income and on persons.

CLAUSE NINETEEN.

This clause adds the Fourth Schedule to the principal Act.

CLAUSE TWENTY.

This clause amends the long title of the principal Act.

CLAUSE TWENTY-ONE.

This clause amends section *forty-nine* of the Insolvency Act, 1936. The amendment is designed to make it clear that the Commissioner is not prevented from lodging a claim against the estate of a partnership in respect of income tax.

CLAUSE TWENTY-TWO.

This clause inserts a paragraph numbered (a)*bis* in section *one hundred and one* of the Insolvency Act, 1936. The purpose of the amendment is to apply to interest on overdue tax due by the insolvent the same preference as applies in respect of the tax.

CLAUSE TWENTY-THREE.

This clause amends the definition of "year of assessment" in section *one* of the Financial Relations Consolidation and Amendment Act, 1945, so as to make it clear that for provincial tax purposes a year of assessment is not restricted to a period of twelve months. This amendment is consequential upon the amendment

to section *five* of the Income Tax Act, 1962, effected by clause *two* of the Bill, which *inter alia* provides for taxation to be levied in respect of the period of eight months ending 28th February, 1963.

CLAUSE TWENTY-FOUR.

This clause substitutes a new sub-paragraph for sub-paragraph (ii) of paragraph (b) of sub-section (4) of section *eight* of the Financial Relations Consolidation and Amendment Act, 1945, in regard to the fixing of the rates of provincial income tax. Some individuals will have a year of assessment ending on 28th February and others on 30th June, and in terms of the amendment the same rates will apply in any province in respect of all years of assessment ending during any particular calendar year.

CLAUSE TWENTY-FIVE.

In terms of the amendment introduced by this clause to section *nine* of the Financial Relations Consolidation and Amendment Act, 1945, a provincial council will not have the power to levy any penalty-interest in respect of the late payment of provincial income or personal tax. Interest will, however, be levied in respect of late payments of provincial taxes under section *eighty-nine* of the Income Tax Act, 1962, as substituted by clause *thirteen* of the Bill.

CLAUSE TWENTY-SIX.

This clause amends item (b) of paragraph 8 of the First Schedule to the Financial Relations Consolidation and Amendment Act, 1945. The purpose of the amendment is to empower a provincial council to levy provincial income tax on any entity which is recognized as a person by the Income Tax Act, 1962.

CLAUSE TWENTY-SEVEN.

This clause substitutes a new paragraph for paragraph (a) of sub-section (4) of section *twenty-one* of the Exchequer and Audit Act, 1956. At present the said paragraph (a) empowers the State President to make regulations in regard to the allocation to the Consolidated Revenue Fund and the various provincial revenue funds of collections of Republic and provincial income and personal taxes. As the basis of such allocation is now provided in paragraph 33 of the Fourth Schedule to the Income Tax Act, 1962, as added by clause *nineteen* of the Bill, the necessity for such regulations falls away.

CLAUSES TWENTY-EIGHT AND TWENTY-NINE.

The amendments introduced by these clauses to sections *six* and *ten* of the Income Tax Amendment Act, 1962, are consequential upon the introduction of a year of assessment ending the last day of February.

CLAUSE THIRTY.

Section *thirty-six* of the Income Tax Amendment Act, 1962, which is now repealed by this clause, provides for the registration of employers. This was a measure preliminary to the introduction of the Pay-as-you-earn system of income tax collection. Similar provisions are to be found in paragraph 15 of the Fourth Schedule to the principal Act, as introduced by clause *nineteen* of the Bill.

CLAUSE THIRTY-ONE.

This clause provides for the discharge of any loan portion of the normal or super tax imposed in respect of the year of assessment ended 30th June, 1953, 1957, 1958 or 1959 in any case where such tax has been assessed but not paid in full. Where the taxpayer's liability for any such tax has been reduced by an amount which exceeds the balance of such tax owing by him the Commissioner may having regard to the circumstances of the case refund the excess without interest or retain the excess as a set-off against the taxpayer's liability for certain other taxes.

CLAUSE THIRTY-TWO.

This clause provides that the amendments effected by clauses *thirteen* to *sixteen*, inclusive, shall come into operation on 1st April, 1963.

CLAUSE THIRTY-THREE.

This clause prescribes the short title of the Act.

THE FOURTH SCHEDULE TO THE INCOME TAX ACT, 1962.

Paragraph 1 defines various terms for the purposes of the Schedule.

Paragraph 2. Sub-paragraph (1) provides for the deduction of employees' tax from remuneration paid or payable to employees on or after 1st March, 1963.

Sub-paragraph (2) provides for increased deductions or withholding of employees' tax to be made at the request of any employee.

Sub-paragraph (4) provides that employees' tax is to be deducted from the amount of remuneration remaining after the deduction of certain contributions to a pension fund or retirement annuity fund.

Paragraph 3. Sub-paragraph (1) provides for priority of employees' tax deductions over other any deduction which an employer is required to make unless the employer is obliged to make such other deduction under the provisions of any law.

Sub-paragraph (2) provides that paragraph 2 shall apply in respect of all amounts payable by way of remuneration notwithstanding the provisions of any law which provide that any such amount shall not be reduced or shall not be subject to attachment.

Paragraph 4 provides that any amount required to be deducted or withheld under paragraph 2 shall be a debt due to the State and that the employer shall save as otherwise provided be absolutely liable for the due payment thereof to the Commissioner.

Paragraph 5. In terms of sub-paragraph (1) any employer who fails to deduct employees' tax as provided by paragraph 2 will, subject to the provisions of sub-paragraph (2), be personally liable for payment of the tax to the Commissioner. In terms of sub-paragraph (2) the Commissioner may in certain circumstances absolve the employer from his liability under sub-paragraph (1). If the employer has not been absolved from liability under sub-section (2) he will in terms of sub-paragraph (3) have a right of recovery against the employee, and in such case the amount which the employer is required to pay in terms of sub-paragraph (1) will in terms of sub-paragraph (5) be deemed to be a penalty due and payable by the employer.

Where the employer is liable to pay an amount of employees' tax under the provisions of sub-paragraph (3) of paragraph 28, the provisions of sub-paragraph (1) of paragraph 5 will not apply.

Paragraph 6 imposes a penalty in respect of the late payment of any amount of employees' tax. The penalty will be an amount equal to ten per cent of the amount not paid in time but this penalty may be reduced by the Commissioner if he is satisfied that the employer's failure to pay the amount was not due to an intent to postpone payment of such tax or otherwise to evade tax or the employee's obligations under the Act.

Paragraph 7 invalidates any agreement between an employer and an employee whereby the employer undertakes not to deduct or withhold employees' tax.

In terms of *paragraph 8* an employee will not be entitled to recover from an employer any amount of employees' tax deducted by the employer from the employee's remuneration.

Paragraph 9 provides that the Commissioner may prescribe deduction tables in respect of employees' tax, which shall come into force on a date to be notified by the Commissioner in the *Gazette*.

In terms of sub-paragraph (3) where the remuneration from which employees' tax is to be deducted is a lump sum to which the proviso to paragraph (c), or paragraph (d) or (e) of the definition of "gross income" in section *one* of the Act

applies, the amount of employees' tax must be ascertained from the Commissioner by the employer before paying out the lump sum.

Paragraph 10 authorizes the Commissioner to agree with any employer as to the basis of determination of amounts of employees' tax deductions if the Commissioner is satisfied that the circumstances of the case warrant a variation of the basis provided in paragraph 9. Any such agreement may be terminated by the Commissioner or the employer concerned and such agreement will terminate on the expiration of a period of three months from the date of giving notice of termination.

In terms of *paragraph 11* the Commissioner may issue a directive to any employer in regard to the amount of employees' tax to be deducted in the case of any employee. The directive may be issued in order to alleviate hardship to the employee concerned or to correct any error in regard to the calculation of employees' tax or in any case where the employee has in terms of sub-paragraph (2) of paragraph 12 applied to the Commissioner for the issue of a directive to the employer. The employer concerned will be obliged to comply with such directive.

Paragraph 12 provides for the furnishing of returns of personal particulars by employees to their employers. In terms of sub-paragraph (2) the employee may instead of submitting the return of personal particulars to the employer apply to the Commissioner for a directive to be issued to the employer under paragraph 11.

In terms of sub-paragraph (3) an employer who has not at any time received a return of personal particulars whatsoever from the employee or a directive from the Commissioner under paragraph 11, is obliged to deduct or withhold employees' tax from the remuneration of that employee at the rate applicable to an unmarried person who is not entitled to have any child or stepchild taken into account in the determination of the amount of employees' tax to be deducted or withheld.

In terms of sub-paragraph (4) if an employee's latest return of personal particulars discloses that the employee is a divorced person the employer shall until he has in respect of that employee received a directive from the Commissioner issued under paragraph 11 deduct or withhold employees' tax at the rate applicable to an unmarried person with due regard to the number of children or stepchildren of the employee disclosed in the return who will not have reached the age of eighteen years on the last day of the employee's year of assessment.

Paragraph 13 provides for the delivery at annual or, in some cases, shorter intervals of employees' tax certificates by employers to employees. Every such certificate will be required to disclose details of the remuneration of the employee concerned and the employees' tax deducted by the employer from such remuneration. Ordinarily the certificate will be required to be delivered within fourteen days after the end of the year or other period to which the certificate relates. Where the employer ceases altogether to be an employer the certificate is required to be delivered within seven days of the date on which the employer has ceased to be an employer. The period for the delivery of any employees' tax certificate may be extended by the Commissioner in any particular case.

In terms of sub-paragraph (5) it will be the duty of any employee who has not received an employees' tax certificate within the period allowed by sub-paragraph (2) forthwith to apply to the employer for such certificate and in terms of sub-paragraph (6) every taxpayer shall when rendering a return of income under section *sixty-six* of the Act attach all employees' tax certificates in his possession disclosing information in respect of the relevant year of assessment.

In terms of sub-paragraph (11) the Commissioner shall be responsible for controlling the issue to employers of unused employees' tax certificates and may prescribe conditions in regard to the manner in which such unused certificates may be used, and employers are required to account to the Commissioner for used, unused, cancelled or spoiled certificates as and when required by the Commissioner.

Sub-paragraph (12) provides that in the case of an employer having a mechanized accounting system the Commissioner may subject to such conditions as he may impose approve the use by such employer of employees' tax certificates in a form other than the form prescribed for general use.

In terms of sub-paragraph (13) a person who ceases to be an employer shall, unless the Commissioner otherwise directs, surrender all unused employees' tax certificates in his possession within fourteen days of his ceasing to be an employer. Sub-paragraph (14) permits any officer who has been authorized thereto by the

Commissioner in writing or by telegram to search for and seize unused employees' tax certificates which any person has failed to surrender as required by sub-paragraph (12) or (13).

Paragraph 14 requires every employer to maintain a record showing the remuneration paid or due to each of his employees and the employees' tax deducted or withheld from such remuneration, to furnish to the Commissioner declarations when making payments of employees' tax and to render to the Commissioner annual returns of the names and addresses of employees, the remuneration of employees and employees' tax deducted or withheld from such remuneration.

Paragraph 15 provides for the registration of employers.

Paragraph 16. Sub-paragraph (1) lays down the duties, responsibilities and liabilities of representative employers. (The term "representative employer" is defined in paragraph 1 of the Fourth Schedule.)

Sub-paragraph (2) provides in what circumstances employees' tax or interest on employees' tax or any penalty imposed under Part II of the Fourth Schedule shall be recoverable from a representative employer or a person who is in terms of the definition of "employer" in paragraph 1 of the Fourth Schedule an employer by virtue of his having paid or become liable to pay remuneration in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, or an executor in a deceased estate, or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund.

Paragraph 17. Sub-paragraph (1) provides that every provisional taxpayer (as defined in paragraph 1 of the Fourth Schedule) shall make payments (called provisional tax) in respect of his liability for normal and provincial taxes. The first year of assessment in respect of which provisional tax will be payable will be the first year of assessment ending after 28th February, 1963, or in the case of a person other than a company, the period of eight months ending 28th February, 1963, if in respect of that period the Commissioner has in terms of sub-section (13) *ter* of section *sixty-six* of the Act agreed to accept accounts to a date falling after 28th February, 1963.

If any period for payment of provisional tax ends on or before 31st March, 1963, such period is extended by sub-paragraph (2) to 30th April, 1963.

Sub-paragraphs (3) and (4) provide rules for estimating the liability of any provisional taxpayer for normal and provincial taxes.

Paragraph 18. Sub-paragraph (1) provides for exemptions from the payment of provisional tax.

Item (a) of that sub-paragraph provides for the case of a person (other than a company) who derives income only by way of remuneration, rents, interests, dividends or any amount referred to in paragraph (i), (iii), (v), (vi) or (vii) of the definition of "remuneration" in paragraph 1 of the Fourth Schedule if his taxable income during any period in respect of which provisional tax would be payable by him, by way of rents, interest, dividends and any amount referred to in the said paragraph (vii) does not in the aggregate exceed R400.

Item (b) of sub-paragraph (1) provides for the cases of certain owners or charterers of ships or aircraft who are required to make payments in respect of normal tax under section *thirty-three* of the principal Act and certain persons in receipt of income by way of royalties or similar income in respect of whose liability for normal tax payments are required to be made under section *thirty-five* of the principal Act.

Item (c) of sub-paragraph (1) provides for the cases of certain farmers, fishermen, and diamond diggers who have under the provisions of sub-paragraph (2) elected not to be provisional taxpayers and have not under the provisions of sub-paragraph (3) become provisional taxpayers.

Sub-paragraph (2) gives certain persons (other than companies) who satisfy the Commissioner that their taxable income will be wholly or mainly derived from farming, fishing or diamond digging operations the opportunity to elect not to be provisional taxpayers. In the case of a person who carries on such operations on 28th February, 1963, the election must be made not later than 30th June, 1963. In the case of a person commencing to carry on farming, fishing or diamond digging operations after 28th February, 1963, but not later than 30th June, 1965,

the election must be made not later than the last day of the year of assessment during which such operations are commenced.

Sub-paragraph (3) provides that an election made under sub-paragraph (2) shall be binding upon the person making such election and shall remain in force until the Commissioner agrees in writing to the person concerned becoming a provisional taxpayer or until it appears to the Commissioner that it is unlikely that such person will derive his taxable income wholly or mainly from farming, fishing or diamond digging operations.

In terms of sub-paragraph (4) any decision of the Commissioner in the exercise of his discretion under item (b) of sub-paragraph (3) will be subject to objection and appeal.

Paragraph 19 provides for an estimate of taxable income to be made by every provisional taxpayer during each period within which provisional tax is payable by him. In the case of the taxpayer who is allowed to pay provisional tax in three instalments, the estimated taxable income as disclosed by the estimates made in respect of the first two instalments may not be less than the amount of the taxpayer's taxable income for the immediately preceding year of assessment (unless the Commissioner having regard to the circumstances of the case agrees to accept a lower estimate). In the second proviso to sub-paragraph (1) and in sub-paragraph (4) provision is made for cases where the immediately preceding year of assessment is the transition period. Provision is made in sub-paragraph (1) for cases where taxpayers fail to make estimates of their taxable income and in sub-paragraph (3) for cases where unsatisfactory estimates are made.

Paragraph 20. Sub-paragraph (1) provides that additional tax shall be payable by a provisional taxpayer whose final or last estimate of taxable income in respect of any year of assessment is less than ninety per cent of his taxable income as finally determined for that year and also less than his taxable income for the immediately preceding year of assessment. The additional tax will be an amount equal to twenty per cent of the difference between the sum of normal and provincial taxes as calculated in respect of the taxable income as finally estimated by the taxpayer and the lesser of—

- (a) the sum of the normal and provincial taxes calculated in respect of ninety per cent of his taxable income as finally determined for the relevant year of assessment; and
- (b) the sum of the amounts of normal and provincial taxes calculated in respect of his taxable income for the immediately preceding year of assessment at the rates applicable in respect of the year of assessment in respect of which the estimate has been submitted.

Sub-paragraph (2) provides that the Commissioner may in certain circumstances remit the additional tax in whole or in part, and sub-paragraph (4) provides that any decision of the Commissioner in the exercise of his discretion under sub-paragraph (2) shall be subject to objection and appeal.

In terms of sub-paragraph (3) the additional tax will not be payable where the taxpayer's final or last estimate has been increased by the Commissioner under sub-paragraph (3) of paragraph 19.

Paragraph 21 prescribes the manner in which provisional tax is payable by provisional taxpayers (other than companies) whose taxable income is not normally derived wholly or mainly from farming, fishing or diamond digging.

Paragraph 22 prescribes the manner in which provisional tax is payable by provisional taxpayers (other than companies) whose taxable income is normally derived wholly or mainly from farming, fishing or diamond digging.

Paragraph 23 prescribes the manner in which provisional tax is payable by companies.

Paragraph 24 provides that the Commissioner may absolve any provisional taxpayer from making payment of any amount of provisional tax payable in terms of item (a) or (b) of paragraph 21 or paragraph 22 or item (a) or (b) of paragraph 23, if he is satisfied that the taxable income which may be derived by the taxpayer for the year of assessment in question cannot be estimated on the facts available at the time when payment of the amount in question has to be made.

Paragraph 25 provides that the Commissioner may grant extensions of time for the payment of provisional tax.

Paragraph 26 provides that the Commissioner's decision in regard to certain matters shall be final and conclusive.

Paragraph 27 provides for the payment of a penalty in respect of late payments of provisional tax. The penalty will be an amount equal to ten per cent of the amount not paid in time, but may in certain circumstances be remitted by the Commissioner in part or in whole.

Paragraph 28 prescribes the manner in which employees' tax and provisional tax will be set off against the taxpayer's liability for taxation, and provides for incidental matters.

Paragraph 29 provides that no refund of any amount of employees' tax or provisional tax shall be made to the taxpayer concerned otherwise than as provided in paragraph 28.

Paragraph 30 prescribes various offences.

Paragraph 31 provides for the recovery of employees' tax, provisional tax, any penalty or additional tax payable in terms of the Fourth Schedule and any interest payable in terms of section *eighty-nine bis* of the Act.

Paragraph 32 extends the scope of certain provisions of the Act for the purposes of the Fourth Schedule.

Paragraph 33 prescribes the basis on which payments shall be made to and refunds from the Consolidated Revenue Fund and the various provincial revenue funds.