REPUBLIC OF SOUTH AFRICA.

EXPLANATORY MEMORANDUM

ON THE

INCOME TAX BILL, 1972.

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GENERAL.

The Bill fixes rates of normal tax payable by individuals and companies and introduces amendments to the Income Tax Act, 1962 (Act No. 58 of 1962), hereinafter referred to as the principal Act, and to certain other laws.

CLAUSE 1 AND THE SCHEDULE.

Rates of Normal Tax.

Rates of normal tax are enacted by clause 1 and Schedule 1 to the Bill.

Individuals.

The rates for persons other than companies apply in respect of the year of assessment ending on 28th February, 1973, or 30th June, 1973, and are provided for in paragraph 1 (*a*) of the Schedule. To the basic tax determined in accordance with the tables in paragraph 1 (*a*) of Schedule 1 is added a surcharge which is payable where the basic tax is R150 or more. The surcharge is 20 per cent of the basic tax but is reduced to 10 per cent of the basic tax in the case of a natural person who is over 60 years of age on the last day of the year of assessment and whose taxable income for that year is R5 000 or less (see the proviso to paragraph 1 (*a*) of Schedule (1)).

The basic tax is calculated on the taxable amount, i.e. the amount remaining after deducting from taxable income the abatements provided for in section 5A of the principal Act.

Companies.

The rates for companies apply in respect of years of assessment i.e. financial years, ending during the twelve-month period from 1st April, 1972, to 31st March, 1973, and are provided for in paragraph 1 (*b*) to (*h*), inclusive, of Schedule 1. Those rates, which apply in respect of taxable income derived in South-West Africa and taxable income derived in the Republic, are as follows:—

(*a*) Taxable income derived otherwise than from mining—

(i) where derived in South-West Africa: 35 cents per R1 (paragraph 1 (*b*) (i) of Schedule 1);

(ii) where derived elsewhere than in South-West Africa, i.e. in the Republic: 40 cents per R1 (paragraph 1 (*b*) (ii) of Schedule 1).

To the tax determined as above is added a surcharge of 2½ per cent of such tax (proviso to paragraph 1 (*b*)) and a loan portion of 5 per cent of such tax (paragraph 1 (*h*) (i)).

(*b*) Taxable income derived from gold mining—

(i) on any mine other than a post-1966 gold mine: an amount determined in accordance with one of the formulae provided for in paragraph 1 (*c*) of Schedule 1 plus a surcharge (which is

not payable in the case of certain assisted gold mines) equal to 5 per cent of the said amount (third proviso to the said paragraph 1 (*c*)) and a loan portion equal to 5 per cent of the said amount (paragraph 1 (*h*) (i) of Schedule 1);

(ii) on a post-1966 gold mine: an amount determined in accordance with one of the formulae provided for in paragraph 1 (*d*) of Schedule 1, plus a surcharge of 5 per cent of the said amount (second proviso to the said paragraph 1 (*d*)) and a loan portion of 5 per cent of the said amount (paragraph 1 (*h*) (i) of Schedule 1).

(*c*) 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, as determined in accordance with paragraph 2 (2) of Schedule 1, or 35 cents per R1, whichever is higher (paragraph 1 (*e*) of Schedule 1).

(*d*) Taxable income from diamond mining: a basic tax of 45 cents per R1, plus a surcharge equal to 10 per cent of the basic tax (paragraph 1 (*f*) of Schedule 1) plus a loan portion equal to 10 per cent of the basic tax (paragraph 1 (*h*) (ii) of Schedule 1).

(*e*) Taxable income from mining operations (other than mining for gold, diamonds or natural oil)—

(i) where derived in South-West Africa: 35 cents per R1 (paragraph 1 (*g*) (i) of Schedule 1);

(ii) where derived elsewhere than in South-West Africa, i.e. in the Republic: 40 cents per R1 (paragraph 1 (*g*) (ii) of Schedule 1).

To the tax determined as above is added a surcharge of $2\frac{1}{2}$ per cent of such tax (proviso to subparagraph (*g*)) and a loan portion of 5 per cent of such tax (paragraph 1 (*h*) (i)).

(*f*) Taxable income derived in the form of dividends: 3 per cent (paragraph 1 (*h*) (iii) of Schedule 1). This is a loan portion.

CLAUSE 2.

Accrual to the Revenue Fund of South-West Africa of a Portion of the Normal Tax Payable by Certain Companies.

In terms of this clause a portion of the normal tax payable by companies on taxable income (other than taxable income from mining operations) derived in South-West Africa will accrue for the benefit of the Revenue Fund of that territory and will be paid into that fund in the manner prescribed in section 22 (2) (*c*) of the South-West Africa Affairs Act, 1969 (Act No. 25 of 1969). The portion so accruing will be one-seventh of the normal tax payable. This is equivalent to 5 cents for every R1 of the taxable income on which the tax is payable.

CLAUSE 3.

The Loan Portion of the Normal Tax.

In terms of this clause the portion of the normal tax determined in accordance with the provisions of paragraph 1 (*h*) of Schedule 1 is a loan portion of that tax and is repayable in accordance with the provisions of section 5 (2B) of the principal Act and the Fifth Schedule to that Act. The loan portion is payable only by companies.

CLAUSES 4 TO 27 INCLUSIVE.

Amendments to the Principal Act

Clauses 4 to 27, inclusive, introduce amendments to the principal Act. The amendments are as follows:—

Clause of the Bill	*Section of the principal Act affected*	*Nature of Amendment*
4 (1) (*a*)	1: definition of "gross income", paragraph (*e*A) (new)	Gains determined under the provisions of the Sixth Schedule to the principal Act, with regard to insurance policies, must be included in gross income. (See Schedule 3 to the Bill.)
4 (1) (*b*)	1: definition of "married person"	The amendment, which is of a textual nature, is introduced in order to make it clear that the words which appear at the end of the definition, i.e. the words "and who is in respect of such period entitled to any abatement in respect of a child under section 5A (3) (*a*)", do not relate to paragraph (*a*) of the definition.
4 (1) (*c*)	1: definition of "pension fund"	To qualify for recognition as a pension fund for income tax purposes the rules of the fund must provide that not more than one-third of the total value of the annuity or annuities to which any employee becomes entitled, shall be commuted for a single payment, except where the annual value of the annuity or annuities does not exceed R60. In terms of the amendment that amount is increased to R120.
4 (1) (*d*)	1: definition of "Republic"	The amendment is consequential upon the introduction of the Sixth Schedule to the principal Act (Schedule 3 to the Bill).
4 (1) (*e*)	1: definition of "retirement annuity fund"	To qualify for recognition as a retirement annuity fund for income tax purposes the rules of the fund must provide that not more than one-third of the total value of any annuities to which any person becomes entitled, may be commuted for a single payment, except where the annual value of the annuities does not exceed R60. In terms of the amendment that amount is increased to R120.
4 (2)		The amendment introduced by clause 4 (1) (*b*) takes effect as from the tax year ended on the 29th February, 1972.
5	5 (10) (*d*)	Certain gains made under or in respect of insurance policies will be determined under the Sixth Schedule to the principal Act (Schedule 3 of the Bill) and will be required to be included in a taxpayer's gross income (see clause 4 (1) (*a*) of the Bill). Where such a gain relates to a death or maturity benefit or a benefit arising from the surrender or cession of a policy (but excluding any gain calculated in terms of paragraph 7 of the Sixth Schedule) and the period from the commencement date of the policy in question to the date of the happening of the event giving rise to the benefit is two or more full years, the rating formula provided in section 5 (10) of the principal Act will be applied so as to ensure that the taxpayer's marginal rate of tax is not unduly increased. Where the commencement date of a

Clause of the Bill	Section of the principal Act affected	Nature of Amendment
		policy fell before 30th March, 1972, the period will be reckoned from the latter date.
6	8 (4) (*c*)	In terms of section 8 (4) (*b*) of the principal Act, where the allowances granted under section 14 of that Act in respect of a ship are recouped on the loss, sale or disposal of the ship, the amount recouped may, instead of being subjected to tax, be deducted from the cost of a further ship acquired to replace the ship which has been lost, sold or disposed of, for the purpose of calculating the allowances on the further ship. Certian requirements must be met, among them a requirement that a deposit of the amount recouped must be made with the Public Debt Commissioners. This requirement is relaxed so as to apply only to ships of more than 200 gross register tons.
7 (1) (*a*)	10 (1) (*i*) (xiiA)	The interest on deposits in building society savings accounts opened under the State-Aided Home-Ownership Savings Scheme are exempted from normal tax.
7 (1) (*b*)	10 (1) (*i*A)	In terms of the definition of "company" in section 1 of the principal Act, read with the provisions of the Unit Trusts Control Act, No. 18 of 1947, a unit portfolio comprised in a unit trust scheme in securities other than property shares is in certain circumstances regarded as being a company for income tax purposes, and in terms of the definition of "dividend" in the same section distributions of the income of such a unit portfolio to the holders of units (who are regarded as being shareholders) are treated as dividends in their hands. The income of the unit portfolio may consist of dividends on shareholdings and interest on Government and other stocks included in the portfolio. Those dividends are exempt from normal tax in the hands of the unit portfolio (section 10 (1) (*k*) of the principal Act). The interest, however, has hitherto been subject to normal tax in the hands of the unit portfolio at company rates. An exemption is now provided in respect of the interest, to the extent that it is distributed to unit holders by virtue of being registered as such on or after 1st April, 1971. In terms of the amendments introduced by clauses 14 (1) (*c*) and 19 (1) the interest portion of dividend distributions made out of the assets of the unit portfolio will be regarded as being interest and will be taxable as such in the hands of unit holders, whether for purposes of normal tax or non-residents tax on interest. The amendment is to apply as from years of assessment ending on or after 1st April, 1971.
7 (1) (*c*) and (*d*)	10 (1) (*k*)	In terms of the new paragraph (*bb*) inserted by this clause in the proviso to section 10 (1) (*k*) (i) of the principal Act, the interest portion of any dividend derived by a company from a unit portfolio created under the Unit Trusts Control

Clause of the Bill	Section of the principal Act affected	Nature of Amendment
		Act, No. 18 of 1947, and regarded as being a company for income tax purposes, will be excluded from the exemption from normal tax under section 10 (1) (*k*) (i). This amendment should be read with the amendments introduced by clauses 7 (1) (*b*), 14 (1) (*c*) and 29.
		In terms of the amendment to the re-numbered paragraph (*cc*) of the said proviso (hitherto numbered (*bb*)), dividends derived by a unit portfolio of the nature referred to above cease to be exempt from normal tax under that paragraph. Such dividends will, however, be exempt under the new subparagraph (iA) inserted by subclause 7 (1) (*d*) of this clause in section 10 (1) (*k*) of the principal Act. These amendments should be read with the amendment to section 19 (4) of the principal Act introduced by clause 14 (1) (*a*).
		The amendments are to apply as from years of assessment ending on or after 1st April, 1971.
7 (1) (*e*)	10 (1) (*v*A)	In terms of section 9 (2) of the principal Act interest and dividends received by or accrued to any person from a building society registered under the Building Societies Act, No. 24 of 1965, is deemed to be derived from a source within the Republic. In the result, residents of foreign countries are, generally speaking, also liable to normal tax on such interest and dividends. In terms of the new paragraph (*v*A) now introduced to section 10 (1) of the principal Act, where the building society is empowered to carry on its business in a country or territory other than the Republic or South-West Africa, an exemption will be applicable in respect of the interest or dividends paid by the Society to persons (other than companies) who are ordinarily resident in the country or territory in question or to companies which are managed and controlled therein, on investments made through a branch or agency of the society in such country or territory. The amendment is to apply as from years of assessment ending on or after 1st November, 1970. (See also clause 20.)
7 (1) (*f*)	10 (1) (*z*A)	An exemption from normal tax is provided in respect of amounts which are received by or accrue to exporters by way of rebates or other assistance from the State in respect of the financing of exports. A scheme for the payment of such rebates has been in operation since 1st October, 1970, and the exemption is to apply as from the commencement of years of assessment ending on or after that date.
7 (2)		Subclause (2) provides for the commencement of the amendments introduced by subclause (1) (*b*), (*c*), (*d*), (*e*) and (*f*).
8 (1) (*a*)	11 (*h*)	In terms of paragraph (*h*) of the definition of "gross income" in section 1 of the principal Act

Clause of the Bill	Section of the principal Act affected	Nature of Amendment
		a lessor of land or buildings who has a right to have improvements effected by the lessee, is required to include the value of the improvements in his gross income. (The lessee is, in turn, under another provision of the Act, usually entitled to deduct the value from his income over a number of years). The lessor normally receives his property back only upon the expiration of the lease and section 11 (*h*) of the principal Act empowers the Secretary to make an allowance to the lessor so that, in effect, the lessor is not, at the commencement of the lease taxed on the full value of the improvements but on the discounted value thereof, having regard to the circumstances. The section 11 (*h*) allowance was intended for cases when the lessor and lessee are independent persons dealing at arm's length. This does not apply where the lessee is a company controlled by the lessor or vice versa, or where both parties are companies controlled by a third company. The amendment withdraws the allowance in such circumstances but does not apply where the right to have the improvements effected accrued before 29th March, 1972.
8 (1) (*b*)	11 (*t*)	Under section 11 (*t*) of the principal Act an allowance against income may be made to an employer who incurs expenditure in connection with the erection of dwellings for his employees or who finances the erection of such dwellings by means of advances, or donations, the allowance being 25 per cent of the expenditure incurred or of the amount advanced or donated. The provisions are at present applicable in respect of years of assessment ending not later than 31st December, 1971. In terms of the amendment the period for which the allowance is applicable is extended to 31st December, 1974.
8 (2)		This subclause provides for the commencement of the amendments introduced by subclause (1).
9 (*a*) – (*e*)	11*bis* (1)	If an exporter's current export turnover exceeds his basic export turnover by a certain percentage, the rate of the exporter's allowance is higher than would otherwise be the case. This principle is retained in a modified form and the rules for determining the basic export turnover are relaxed. At present the basic export turnover is calculated for a continuous period not exceeding 36 months preceding the current year of assessment. In terms of the amendments the basic export turnover will normally be the sum of the three lowest export turnovers during the 5 years preceding the current year of assessment, each such export turnover being the export turnover for an export period falling within a year of assessment and the export periods not necessarily being together a continuous period.

Clause of the Bill	*Section of the principal Act affected*	*Nature of Amendment*
9 (*f*)	11*bis* (3)	The basic exporter's allowance is increased from 50 per cent to 75 per cent of the market development expenditure. If the current export turnover exceeds the adjusted basic export turnover by more than 10 per cent of the latter turnover the allowance is to be 100 per cent of the market development expenditure. (At present the 100 per cent allowance is granted only where the increase in export turnover is more than 25 per cent, a 75 per cent allowance being granted where the increase in export turnover is more than 10 per cent but not more than 25 per cent.)
10	11*sex* (new)	Provision is made for a deduction from income of compensation paid by a taxpayer to the Railway Administration for losses incurred by the Administration in operating a railway line which the Administration has (in terms of a written agreement) undertaken to construct and operate. The agreement must provide for the compensation to be paid and the taxpayer's liability for the compensation must be incurred in connecwith a trade carried on by him in the Republic.
11	12	The period within which industrial machinery or plant may, in certain circumstances, qualify for the machinery investment allowance is extended for two years, to 30th June, 1975.
12	13	The period within which industrial buildings or improvements thereto may, in certain circumstances, qualify for the building investment allowance is extended for two years, to 30th June, 1975.
13	18A (1): definition of "college"	Section 18A of the principal Act provides for a deduction to be made from a taxpayer's taxable income in respect of donations made by him to universities and colleges as defined in subsection (1) of that section. The definition of "college" is broadened to include colleges for advanced technical education established or deemed to have been established under other Acts of Parliament besides the Advanced Technical Education Act, 1967 e.g. the Indians Advanced Technical Education Act, No. 12 of 1968.
14 (1) (*a*)	19 (4)	In terms of section 19 (4) of the principal Act dividends distributed by a taxpayer company to another company may in certain circumstances be deducted for normal tax purposes from the taxpayer company's income in the form of dividends. The deduction is not permitted if the dividend distributed is not income in the hands of the receiving company. That requirement is relaxed by this clause so as to permit of the deduction being made also when the dividend would be income in the hands of the receiving company were it not for the fact that the dividend

Clause of the Bill	Section of the principal Act affected	Nature of Amendment
		is exempted from normal tax under section 10 (1) (*k*) (i) of the principal Act. Ignoring the special kinds of dividens referred to in paragrapths (*aa*) and (*bb*) of the proviso to section 10 (1) (*k*) (i), other kinds of dividends derived by a company are to be exempt under section 10 (1) (*k*) (i) only if the company's year of assessment ends before 1st April, 1971, or after 31st March, 1973 (see clause 7 (1) (*c*)). Where a dividend is so exempt, the paying company will not merely by reason of that exemption, be deprived of the deduction under section 19 (4) of the principal Act. A dividend may be exempt from normal tax under a provision of the principal Act other than section 10 (1) (*k*) (i). In such a case (for example a dividend derived by a unit portfolio referred to in section 10 (1) (*k*) (iA) the dividend would not constitute income of the receiving company even though section 10 (1) (*k*) (i) is disregarded, and the taxpayer company will not be entitled to the deduction. (See also clause 7 (1) (*c*) and (*d*).) The amendment effected by clause 14 (1) (*a*) is to be effective in respect of years of assessment ending on or after 1st April, 1971.
14 (1) (*b*)	19 (5A) (new)	Dividends on shares in a permanent building society do not fall within the definition of "dividend" in section 1 of the principal Act. Such dividends have, therefore, not qualified for the deduction allowed under section 19 (3) of the principal Act to persons other than companies in respect of income derived in the form of dividends. As a result of the amendment dividends derived by persons other than companies on indefinite period or fixed period shares in permanent building societies will, with effect from the year of assessment ended 29th February, 1972, qualify for the deduction under section 19 (3) in the same manner as dividends which fall within the said definition. Dividends on special tax-free indefinite period shares in building societies continue to be exempt from normal tax under section 10 (1) (*i*) (xiii) of the principal Act up to a maximum amount of R650 per annum per taxpayer and, to the extent that they are so exempt, are not affected by the amendment to section 19.
14 (1) (*c*)	19 (5B) (new)	This amendment should be read with the amendment introduced by clause 7 (1) (*b*). The dividends distributed to holders of units in a unit portfolio created under the Unit Trusts Control Act, No. 18 of 1947, and treated as a company for income tax purposes will, to the extent that the distribution is made out of interest which is exempt from normal tax in the hands of the unit portfolio under the new paragraph (*i*A) introduced into section 10 (1) of the principal Act, be treated for normal tax purposes as income accruing to the unit holders in the form of

Clause of the Bill	Section of the principal Act affected	Nature of Amendment
		interest and not as income in the form of dividends. So far as a person other than a company is concerned the deduction in respect of dividends provided for in section 19 (3) of the principal Act will not be applicable in respect of the interest portion of any dividend accruing to him as a unit holder in a unit portfolio of the nature described. So far as a company is concerned the interest portion of any dividend accruing to it as a unit holder in any such unit portfolio will for normal tax purposes be taxed at the rate of tax applicable in respect of industrial and commercial incomes and not at the rate applicable to the dividend income of companies. A company will not be entitled to any allowance under section 19 (4) against the interest portion in respect of dividends distributed by the company to its shareholders. See also clauses 18 and 19, which deal with non-residents, and clause 29, which relates to the rates of normal tax for years of assessment of companies ending during the period from 1st April 1971 to 31st March, 1972. The amendment is to apply with effect from years of assessment ending on or after 1st April, 1971.
14 (1) (*d*)	19 (6)	The amendment is consequential upon the amendment introduced by clause 14 (1) (*b*). An annuity paid out of building society dividends of the nature referred to in section 19 (5A) of the principal Act is to be treated as an annuity and not as a dividend.
14 (2)		This subclause provides for the commencement of the various amendments introduced by subclause (1) of clause 14.
15	20A	The amendments remove the provision that the special deduction in respect of a married woman's earnings was to be reduced by R1 for every R10 by which the combined income of the two spouses exceeded R8 000.
16	21	The amendment is of a textual nature and is consequential upon the abolition by the Income Tax Act, No. 88 of 1971, of the rebates previously allowed under section 6 of the principal Act and the introduction of the system of abatements provided for in section 5A of the principal Act. The provisions of the principal Act relating to the taxation of divorced and separated persons were changed by the Income Tax Amendment Act, No. 90 of 1962, except in regard to persons who were divorced or judicially separated by orders of court granted in consequence of proceedings instituted not later than 21st March, 1962, or who were separated under written agreements entered into not later than that date. In the case of such persons the provisions of the principal Act, as they existed before the amendment thereof by the Income Tax Amendment Act, 1962, continued to apply. Those provisions related mainly to the treatment of alimony, the status of the persons concerned

Clause of the Bill	*Section of the principal Act affected*	*Nature of Amendment*
		as married or unmarried persons and the rebates allowable for children. In terms of the proviso to section 21, special provision was made for persons who were separated under judicial orders granted in consequence of proceedings instituted on or before 21st March, 1962, or under written agreements entered into on or before that date but who were subsequently divorced or judicially separated under orders of court which provided for the continuation of the alimony payments previously payable, without any variation thereof. In such cases the persons concerned were in effect regarded as having been divorced or judicially separated under court orders granted in consequence of proceedings instituted on or before 21st March, 1962. In terms of the amendment introduced by this clause to section 21 of the principal Act specific provision is made to this effect, the references to sections of the Income Tax Amendment Act, 1962, being deleted as they have become inappropriate.
16 (2)		The amendment introduced by clause (1) is to apply with effect from the year of assessment ended 29th February, 1972.
17	21*ter* (5) (*b*)	The last day by which applications for the development allowance in respect of industrial undertakings in economic development areas may be made is extended from the 30th September, 1972 to the 30th September, 1975.
18	42 (2) (*h*)	In terms of the amendment introduced by this clause a partial exemption from non-resident shareholders tax is provided in respect of dividends distributed out of the assets of certain unit portfolios created under the Unit Trusts Control Act, No. 18 of 1947, which are for income tax purposes regarded as being companies. The exemption applies in respect of the portion of such a dividend which is distributed out of interest derived by such a unit portfolio, to the extent that the interest is exempt from normal tax in the hands of the unit portfolio under the provisions of section 10 (1) (*i*A) of the principal Act (see clause 7 (1) (*b*)). The portion of any dividend so exempted from non-resident shareholders tax may, however, be subject to non-residents tax on interest (see clause 19). The amendment is to be effective from 1st April, 1971. Dividends which became payable to unit holders by virtue of their being registered as such on a date falling before 1st April, 1971, are not affected by the amendment.

Clause of the Bill	*Section of the principal Act affected*	*Nature of Amendment*
19	64B (*h*)	The amendment has reference to dividends distributed out of the assets of certain unit portfolios created under the Unit Trusts Control Act, No. 18 of 1947, which are for income tax purposes regarded as being companies. In terms of the amendment a portion of such a dividend is, to the extent that it is distributed out of receipts or accruals of the unit portfolio in the form of interest which is exempt from normal tax in the hands of the unit portfolio under the provisions of section 10 (1) (*i*A) of the principal Act (see clause 7 (1) (*b*)), deemed for the purposes of non-residents tax on interest to be interest, which, in the appropriate circumstances, will be subject to that tax. Non-resident shareholders tax will not be payable in respect of any portion of a dividend so deemed to be interest – see clause 18. The amendment relates to the interest portion of dividends accruing to persons (other than companies) who are not ordinarily resident in the Republic, or to the deceased estates of such persons, or to companies registered outside the Republic and South-West Africa. Liability for normal tax in respect of the interest portion is dealt with in clause 14 (1) (*c*). The amendment is to be effective from 1st April, 1971. Dividends which become payable to unit holders by virtue of their being registered as such on a date falling before 1st April, 1971, are not affected by the amendment.
20 (1) (*a*)	64C (*a*)	The amendment introduced by this clause has the effect of exempting interest accruing to a non-resident on loans to the South African Broadcasting Corporation, from the non-residents tax on interest.
20 (1) (*b*)	64C (*f*B)	Where interest accrues from a company which is registered, managed or controlled in the Republic (*a*) to a person (other than a company) who is not ordinarily resident in the Republic or (*b*) to a company registered outside the Republic and South-West Africa, there is (unless an exemption is applicable) a charge to non-residents tax on interest. In terms of the new paragraph (*f*B) now introduced to section 64C of the principal Act, a further exemption will be applicable in respect of interest or dividends paid by a South African registered building society empowered to operate in a country or territory outside the Republic and South-West Africa, to persons (other than companies) who are ordinarily resident in that country or territory or to companies which are managed and controlled therein, on investments made through a branch or agency of the building society in the country or territory in question. (See also clause 7 (1) (*e*).)
20 (2)		The amendment introduced by clause 20 (1) (*b*) is to have effect from 1st November, 1970.

Clause of the Bill	*Section of the principal Act affected*	*Nature of Amendment*
21 (1)	1st Schedule, paragraph 13	The provisions applicable in the case of a farmer who sells livestock on account of drought or stock disease are made applicable also in the case of a farmer who sells livestock by reason of his participation in a livestock reduction scheme organized by the Government. In terms of those provisions the selling price of the livestock is included in the farmer's income for the year of assessment during which the sale is effected. If, within 9 years after the close of that year of assessment, the farmer purchases livestock to replace the livestock sold, the cost of the livestock purchased is, at the farmer's option, allowed as a deduction in the said year of assessment, a revised assessment being made and a refund of tax being made to the extent necessary. The purchase price of the purchased livestock is not allowed in the subsequent year of assessment during which the actual purchase is made. The claim for the deduction must be made within 10 years after the close of the year of assessment during which the sale of livestock was made The provisions of paragraph 13 are not applicable in the case of a farmer whose tax liability is calculated under the scheme for equalising rates applicable under paragraph 19 of the First Schedule to the principal Act.
21 (2)		The amendments effected by clause 21 (1) are to apply with effect from the year of assessment ended the 28th February, 1970.
22	1st Schedule, paragraph 19	This is a consequential amendment which has become necessary because of the introduction by paragraph 9 of the Third Schedule of this Bill of the rating provisions which are to apply in respect of gains derived from certain insurance policies and included in gross income in terms of paragraph (*e*A) of the definition to that term in section 1 of the principal Act.
23	4th Schedule, paragraph 28 (1) *bis*	In terms of the amended paragraph the Secretary will not be required to set off the provisional tax paid by a taxpayer against any liability of the taxpayer until his liability for the year of assessment in respect of which the provisional tax was paid, has been determined.
24 (1)	5th Schedule, paragraph 2	The effect of the amendment is to exempt any taxpayer from the loan portion of normal tax if before the assessment for the particular period of assessment is raised:— (i) he dies or his estate is sequestrated or in the case of a company, the winding-up or liquidation thereof has commenced; or (ii) in the case of a woman, she marries; or (iii) he leaves the Republic and ceases to carry on business there; or

Clause of the Bill	*Section of the principal Act affected*	*Nature of Amendment*
		(iv) he satisfies the Secretary that he is unlikely to be liable for normal tax in the future.
24 (2)		The amendment will apply in respect of all assessments issued after the date of promulgation of this Act.
25	5th Schedule, paragraph 4	This amendment— (i) effects a textual amendment; and (ii) provides for the loan portion of normal tax which the Secretary repays to taxpayers in accordance with the amended provisions of paragraph 6 of the Fifth Schedule or which is set off against tax owing by the taxpayer in accordance with paragraph 8A of the Fifth Schedule to be charged against the loan account referred to in paragraph 4 (1) of the Fifth Schedule.
26 (1)	5th Schedule, paragraph 6	The amended provisions empower the Secretary to refund the loan portion of any normal tax if— (i) the taxpayer dies or his estate is sequestrated or, in the case of a company, the winding-up or liquidation thereof has commenced; or (ii) in the case of a woman, she marries; or (iii) the taxpayer leaves the Republic and ceases to carry on business there; or (iv) the taxpayer satisfies the Secretary that he is unlikely to be liable for normal tax in the future.
26 (2)		The amendment takes effect in respect of all years of assessment for which the loan portion has been levied but refunds in the circumstances referred to in (ii), (iii) and (iv) above will not normally be made before a date to be determined by the Minister of Finance.
27	5th Schedule, paragraph 8A	A new paragraph is introduced which entitles the Secretary to utilise the loan portion of tax standing to the credit of any taxpayer whose whereabouts is not known as a set off against any other tax which may be owing by the taxpayer.

CLAUSE 28 AND SCHEDULE 3.

Clause 28.—Adds the Third Schedule to the Bill to the principal Act as the Sixth Schedule thereof. This schedule provides for the determination of the gains derived from certain insurance policies which are to be included in "gross income" in terms of the new paragraph (*e*A) which is being added to the definition of that term in section 1 of the principal Act by clause 4 (1) (*a*) of this Bill. The schedule is divided into four parts.

PART I : defines various terms.

PART II : prescribes how the taxable gains are to be calculated.

PART III: defines "standard policies".

PART IV: provides for the deduction at source of the tax payable in respect of a taxable gain.

The definitions in Part I are not dealt with seriatim in this memorandum but are explained together with the provisions to which they relate.

TAXABLE GAINS—PART II.

"Taxable gains" are those which arise from payments or accruals to the taxpayer on *or after the 30th March, 1972*, either in respect of *insurance benefits* derived from a policy which is *not* a *standard policy* or the consideration received or accrued in respect of the cession by him of his rights under such a policy. Specifically *excluded* are—

(i) any accrual under the policy which is subject to normal tax under any other provisions of the principal Act;

(ii) a benefit specifically payable in respect of disablement;

(iii) any consideration payable in respect of the cession of a policy between spouses if they are not living apart permanently; and

(iv) any consideration for the cession of a policy effected at a time when the policy is a standard policy. (Paragraph 2.)

The requirements for the classification of a policy as a *standard policy* are prescribed in Part III.

"*Insurance benefit*" is defined in paragraph 1 and means any amount or benefit payable under an *insurance policy* including—

(i) any bonus or share of profits;

(ii) any amount received by reason of the surrender of the policy; and

(iii) any amount received in respect of the commutation of any annuity payable under the policy.

"*Insurance policy*" is defined in paragraph 1 and means any life, endowment or sinking fund policy. Specifically *excluded* are policies covering benefits payable by pension, provident or retirement annuity funds.

Where the insurance benefit takes the form of a bonus, share of profits or other periodic payment or advance against future benefits the full amount thereof constitutes the taxable gain. (Paragraph 7.)

Paragraph 8 prescribes the method for calculating the taxable gain which arises from a payment in consequence of the death of the insured, or the maturity or surrender or cession of the policy.

Such a gain is normally determined by deducting the sum of—

(*a*) the total of the premiums due under the policy since the time when the taxpayer became the owner of the policy until the happening of the event giving rise to the benefit in question; (paragraph 8 (3) (i) (*aa*)) and

(*b*) any amounts which the taxpayer may have paid as consideration for the cession to him of the rights under the policy; (paragraph 8 (3) (i) (*bb*)) and

(*c*) if the taxpayer was the owner of the policy on the 29th March, 1972, an amount equivalent to the gain which he would have made had he surrendered the policy on that date, (paragraph 8 (3) (iii))

from the amount or value of the insurance benefit derived from the policy in question or the amount of the consideration received in respect of the cession of the rights under the policy as the case may be. (Paragraph 8 (3) (*a*).)

In the case of an insurance benefit which arises from the partial surrender or the partial cession of a policy the sum of the deductible amounts is reduced in the ratio that the amount of the insurance benefit or the consideration in respect of the cession bears to the benefit or consideration which would have been received had the full policy been surrendered or ceded. (Provisos I and II to paragraph 8 (3) (i).)

In making the determination of a taxable gain *all* insurance benefits, including those which are not taxable, received by the taxpayer under the policy since he became the owner thereof as well as *all* considerations which may have been received in respect of partial cessions in that time must be taken into account. (Paragraph 8 (3) (*b*), (*c*) and (*d*).) Any gains in respect of the policy which have been taxed in previous years of assessment are, however, deducted (paragraph 8 (3) (ii)) and the calculated gain is then further reduced by an amount which bears the same ratio to the calculated gain as the total of the non-taxable insurance benefits together with insurance benefits and considerations which were payable before the 30th March, 1972, bears to the total amount of insurance benefits and considerations received or deemed to be received by the taxpayer since he became the owner of the policy. (Paragraph 8 (4).)

In the determination of a taxable gain which arises from an insurance policy which the taxpayer acquired by way of cession for *no* consideration a deduction is allowed in addition to any other admissible deductions of an amount equivalent to the excess of the surrender value of the policy at the time of the cession over the gain which would have been made had the policy been surrendered at that time. (Paragraph 8 (3) (i) (*bb*) (B).)

Where an insurance benefit consists of or includes the right to receive an annuity that right is valued for purposes of making the apportionment referred to above (paragraph 8 (4)) by capitalising at 6% the annual value of the annuity over the life expectancy of the annuitant or for a lesser period if the annuity is not to be paid for the life of the annuitant. (Paragraph 8 (5) and (6).)

Where an insurance benefit accrues to a person who is not the owner of the policy in question that benefit is deemed to have accrued to the owner of the policy and where the benefit is a death or maturity benefit it is deemed to have so accrued immediately prior to the death or maturity. (Paragraphs 3 and 8 (1).) The taxable gain will be included in the taxable income of the owner but he will be entitled to recover the tax attributable to that gain from the person to whom the insurance benefit accrued. (Paragraph 3.)

Where the owner of an insurance policy cedes the policy as security for the payment of a debt or as indemnity against a loss he is deemed to remain the owner of the policy. (Paragraph 4.)

A person who acquires an insurance policy from his spouse from whom he is not living apart permanently, is deemed to have acquired the policy in the way and at the time his spouse acquired it and any gains made by such person are to be determined as though the policy had been owned by one person. In determining any taxable gains in respect of the policy, any amount which he may have paid to his spouse as consideration for the cession to him of the policy will be disregarded. Any amount which the spouse may have paid as consideration for the cession of the policy to her as well as any premiums paid by her during her ownership will, however, be taken into account.

Paragraph 6 prescribes the circumstances in which an insurance benefit or the consideration in respect of the cession of a policy are to be deemed to be from a source within the Republic. They are—

(i) if the owner of the policy is ordinarily resident in the Republic (or being a company, it was registered, managed or controlled in the

Republic) at the time of the accrual of the insurance benefit or consideration in question; or

(ii) if the contract of insurance in question was concluded in the Republic or the policy was issued in the Republic; or

(iii) if the policy is a domestic policy as defined in section 1 of the Insurance Act, 1943.

Accruals to any *person* (other than a company) ordinarily resident in South-West Africa are excluded if he made the proposal for the policy while he was ordinarily resident in that territory.

(In relation to a company "Republic" includes South-West Africa—see clause 4 (1) (*d*) of the Bill).

No deduction may be made against any insurance benefit in respect of any debts owing to the insurer in respect of amounts withheld by the insurer unless they are deductible under paragraph 8. (Paragraph 8 (7).)

The amount of any taxable gain other than a gain arising from an insurance benefit in the form of a bonus, share of profits or other periodic payment or advance against future benefits, is partially excluded from the taxpayer's taxable income for the purpose of fixing the *rate* of tax payable for the relevant year of assessment. (Paragraph 9, and see clauses 5 and 22 of the Bill.)

PART III—STANDARD POLICIES.

A standard policy is a life policy as defined in the Insurance Act, 1943, which secures the payment of an insurance benefit—

(i) upon the death or earlier disablement of the person insured, or

(ii) at the end of a specified term of not less than *ten* years (commencing not earlier than three months before the commencement date of the policy) or upon the earlier death or disablement of the person insured. (Paragraph 10 (1).)

Certain other policies are also deemed to be standard policies. (See paragraph 13.)

Paragraph 11 prescribes certain conditions in regard to the premiums payable under a standard policy referred to in paragraph 10. They are—

(i) The premiums must be payable at yearly or shorter intervals over a period of not less than five years commencing not earlier than three months before the commencement date of the policy or until earlier death or disablement.

(ii) The total premiums payable for any one year must not exceed twice the premiums payable for any other year.

A standard policy will not cease to be classified as such if in terms of a "waiver of premium benefit" clause incorporated in the policy the premiums are waived, either wholly or partially, in consequence of the death or disablement of a person specified in the policy. (Paragraph 11 (2) and (3).)

Paragraph 12 provides that a standard policy must not provide for the payment of any insurance benefit within a period of ten years from the commencement date of the policy, except—

(i) a benefit which becomes payable by reason of the death or disability of the person insured;

(ii) a benefit consisting of an ordinary bonus or share of profits;

(iii) a benefit by way of a waiver of premium; and

(iv) a benefit upon the surrender of the whole policy. (See, however, paragraph 14 (1) (*g*).)

Paragraph 13 deems certain policies to be standard policies. These are as follows—

(i) A policy the benefits (other than surrender benefits) under which are payable only on the death or disablement of the person insured. (Paragraph 13 (1) (*a*).)

(ii) A policy which does not permit the payment of any benefits (other than surrender benefits) within a period of ten years from the commencement date or upon the earlier death or disablement of the person insured. (Paragraph 13 (1) (*b*).)

(iii) Any policy which was taken out before the 30th March, 1972, unless—

(*a*) subsequent to that date its terms are so varied that it does not meet with the requirements of a standard policy under the various provisions referred to above, or

(*b*) if only one premium became payable under the policy on or after 1st January, 1968, or if all the premiums thereunder were payable within a 12-month period ending on or after that date. (Paragraph 13 (1) (*c*).)

A policy which is a non-standard policy is deemed to become a standard policy at the end of a period of ten years commencing on or after the commencement date of the policy if during that period—

(i) no insurance benefit was paid out;

(ii) no loan was made by the insurer on the security of the policy;

(iii) the policy was owned by the same owner; and

(iv) no additional premiums or considerations (over and above regular premiums of the kind referred to in paragraph 11) became payable to the insurer unless those additional payments were payable at regular yearly or shorter intervals over a period of at least five years (or until the earlier death or disability of the insured) and the additional payments for any one year were not more than double such payments for any other year. If the additional payments remain unpaid for a period of thirteen months the policy will not become a standard policy. (Paragraph 13 (2).)

Paragraph 14 prescribes certain conditions under which a standard policy will become a non-standard policy. The circumstances in which this happens are as follows—

(i) In the case of a policy which met the requirements for a standard policy under paragraphs 10, 11 and 12, its terms are so varied that they no longer meet with those requirements. (Paragraph 14 (1) (*a*).)

(ii) In the case of a policy which does not meet the requirements for a standard policy laid down in paragraphs 10, 11 and 12 but which is deemed by paragraph 13 to be a standard policy because it either only provides for benefits on the death or disablement of the person insured or does not permit the payment of any benefits before the expiry of ten years or the earlier death or disablement of the insured, the terms relating to the payment of benefits are varied to remove those restrictions. If the policy does not meet the requirement regarding the payment of premiums over a period of at least five years it will cease to be a standard policy also if it is surrendered within ten years of the commencement date. (Paragraph 14 (1) (*b*).)

(iii) In the case of a policy which under paragraph 13 (1) (*c*) is deemed to be a standard policy because it was taken out before the 30th March, 1972, the terms are varied and the policy, as varied, does not meet the requirements of a standard policy under paragraphs 10, 11 and 12, or under paragraph 13 (1) (*a*) or (*b*). (Paragraph 14 (1) (*c*).)

(iv) If during the first five years of the policy the premiums remain unpaid for thirteen months, except as a result of a waiver of premium benefit. This will not apply in the case of a policy taken out before the 30th March, 1972, and not subsequently varied. Neither will it apply if the policy in question has been surrendered or made a paid-up policy within the period of five years (but see (vii)) or, if the policy has lapsed, the premiums are subsequently paid and the policy is reinstated within a period which the Secretary considers reasonable. (Paragraphs 14 (1) (*d*) and 14 (1) (*g*).)

(v) The premiums or other consideration payable under the policy are increased unless the total payable in any one period of twelve months is not more than double the total amount payable in respect of any other period of twelve months. This will not apply in a case where the total premiums and considerations paid by the owner of the policy in respect of *all* his policies with a particular insurer in the year in which the increased premiums or consideration become payable and each of the four preceding years do not exceed R2 000. (Paragraph 14 (1) (*e*).)

(vi) In the case of a policy which does not conform with the requirement that the premiums must be paid at regular intervals over a minimum 5-year period but which meets the requirements of paragraph 13 and is accordingly deemed to be a standard policy, the premiums are increased or additional consideration is paid to the insurer subsequent to the 30th March, 1972. (Paragraph 14 (1) (*f*).)

(vii) In the case of a policy which conformed with the requirement as to payment of regular premiums over five years it is either surrendered in whole or in part within a period of ten years from the commencement date or it is converted into a paid-up policy within five years from that date. This will not apply if the total premiums paid by the owner in respect of *all* his policies with the particular insurer in the year in which the policy is surrendered or made paid-up and in each of the four preceding years did not exceed R2 000. (Paragraph 14 (1) (*g*).)

(viii) In the case of a policy which qualified as a standard policy on or after the 30th March, 1972, under the provisions of paragraph 13 (1) (*a*) and (*b*), a loan or advance is granted by the insurer under or on security or strength of the policy *unless* interest is payable on such loan or advance at a rate not less than the highest rate of interest charged by the insurer at the time the loan or advance was granted on loans or advances granted on standard policies issued by the insurer. (Paragraph 14 (1) (*h*).)

If it is provided that a policy is to be effective only as long as another policy remains in force then neither policy will qualify as a standard policy unless, if they had constituted a single policy, it would have qualified as such. (Paragraph 15.)

When an insurer issues a policy which is not a standard policy he must within a period of three months inform the policy holder that the policy is not a standard policy. Within six months after the promulgation of the Income Tax Act, 1972, he must inform the owners of non-standard policies issued before that date that their policies are not standard policies. Also, if a policy ceases to be a standard policy, he must within three months inform the holder of the change and within six months from the date of promulgation of the Income Tax Act, 1972, he must inform the holders of policies which ceased to be standard policies before that date, of the change. (Paragraph 16.)

Part IV—Deduction or Withholding of Tax.

An insurer who on or after the date of promulgation of the Income Tax Amendment Act, 1972, pays or becomes liable to pay a taxable insurance benefit to a policy holder must deduct and within fourteen days, pay to the Secretary an amount equivalent to fifteen per cent of the taxable gain. If the insurer cannot calculate the taxable gain he must deduct fifteen per cent of the gross amount of the insurance benefit. (Paragraph 17.)

The insurer must issue a certificate in respect of any amount deducted by him from an insurance benefit to the Secretary, the owner of the policy and, if necessary, the person to whom the benefit was paid. He shall also notify the Secretary of the payment of any insurance benefit under a non-standard policy from which no taxable gain arises. (Paragraph 18.)

The amount deducted from an insurance benefit shall be set off against the owner's income tax liability and if the amount deducted is in excess of the liability the excess shall be refunded or credited to the owner. (Paragraph 19 (1).)

If the deduction was made from an insurance benefit payable to some person other than the taxpayer, only so much of the amount deducted as the Secretary determines to be attributable to the inclusion in the taxpayer's taxable income of the taxable gain shall be set off against the taxpayer's tax liability and the excess shall be refunded to the insurer to be paid to the person from whom the deduction was made. (Paragraph 19 (2).)

Insurers must within six months from the date of promulgation of the Income Tax Act, 1972, issue certificates in respect of taxable insurance benefits paid or payable by them prior to that date to the Secretary, to the owners of the relevant policies and, if necessary, to the person to whom the payments were made. (Paragraph 20.)

The Secretary may, if he is satisfied that the tax due in respect of an insurance benefit can be recovered from the taxpayer concerned, direct that no deduction be made by the insurer or that a reduced amount be deducted and if the insurer has failed to make any deduction, he may absolve the insurer from his obligations under the Act. (Paragraph 21.)

If an insurer fails to pay any tax, which he is required to deduct, to the Secretary within the prescribed period of fourteen days, interest will accrue thereon at the rate of seven and a half per cent per annum. (Paragraph 22.)

The insurer shall be absolutely liable for the due payment to the Secretary of any amount which he is required to deduct and the Secretary may recover any such amount together with interest in the manner prescribed in section 91 of the principal Act. Any agreement whereby an insurer undertakes not to make the deduction shall be void and the owner of a policy shall not be entitled to recover from the insurer any tax deducted by the insurer. (Paragraph 23.)

CLAUSE 29.

This clause introduces an amendment to paragraph 2 of the Schedule to the Income Tax Act, 1971. That Schedule *inter alia* lays down the rates of tax payable in respect of taxable incomes of companies for years of assessment ending during the period of 12 months ending 31st March, 1972. Different rates are provided in respect of various kinds of taxable income. Paragraph 1 (*b*) of the Schedule provides rates in respect of "taxable income of any company (excluding taxable income in the form of dividends, taxable income derived from mining operations and taxable income referred to in subparagraph (*e*))".

Paragraph 1 (i) of the schedule provides rates in respect of the loan portion of the normal tax payable by companies and included therein is item (iv): "a sum equal to seven and a half per cent of so much of the company's taxable income as is derived in the form of dividends".

The amendment introduced by this clause relates to distributions made to companies out of the assets of unit portfolios created under the Unit Trusts Control Act, No. 18 of 1947.

The proposed *subparagraph (2A)* (*a*) concerns distributions made out of the assets pertaining to a unit portfolio comprised in a unit trust scheme in property shares. A distribution of this nature is not a dividend as defined in the principal Act. It is regarded as a distribution of (*a*) rents derived by the fixed property companies in the unit trust scheme and (*b*) interest derived from Government and other stocks included in the unit portfolio. The rents derived by the fixed property companies are passed on to the trustee under the unit trust scheme by way of dividends. A dividend declared by a fixed property company is, under the provisions of section 11 (*s*) of the principal Act, allowed as a deduction from that company's income, thereby relieving that company from liability for tax on so much of its rental income as is equal to the amount of the dividend. The dividend, together with other income relating to the unit portfolio, is regarded as being trust income and the unit holders are taxed on so much thereof as is distributed to them. The full amount of the distribution is taxed in the hands of the unit holders, whether they are companies or other persons. The deductions allowed against dividends under section 19 (3) and (4) of the principal Act are not allowable against such a distribution, nor (by reason of specific exclusions) against any portion of such a distribution as may consist of dividends from fixed property companies. The proposed subparagraph (2A) introduced by this clause is designed to make it clear that no portion of any such distribution is, where the unit holder is a company, to be regarded as being income in the form of dividends and that the rates of tax applicable are the rates provided in paragraph 1 (*b*) of the Schedule.

The proposed *subparagraph (2A)* (*b*) concerns distributions made out of the assets pertaining to certain unit portfolios comprised in unit trust schemes in securities other than property shares. Such a unit portfolio is in certain circumstances regarded for income tax purposes as being a company (paragraph (*e*) of the definition of "company" in section 1 of the principal Act) and in such a case distributions of its income are, by virtue of the definition of "dividend" in that section, regarded as being dividends. In terms of the amendments introduced by clauses 14 (1) (*c*) and 19 (1) a portion of such a dividend is in certain circumstances to be regarded as being interest and not a dividend. The proposed subparagraph (2A) introduced by this clause is designed to make it clear, where such a dividend is derived by a company, that the interest portion thereof is subject to tax at the rate provided in paragraph 1 (*b*) of the Schedule.

The amendment is to be applicable in respect of years of assessment of companies ending during the period of twelve months ending 31st March, 1972.

CLAUSE 30.

This clause amends section 99 of the Insolvency Act, 1936, to accord certain preference to a claim by the Secretary against the insolvent estate of an insurer in respect of tax withheld from insurance benefits in accordance with the Sixth Schedule of the principal Act which is being added by clause 28 of this Bill.

CLAUSE 31.

This clause repeals certain redundant provisions relating to provincial taxes.

CLAUSES 32 AND 33.

These clauses amend sections 77 and 81 of the Income Tax Ordinance, 1961, of South-West Africa to give taxpayers the right of appeal against a decision by the Secretary to a Court constituted under the Income Tax Act, 1962, for the area of jurisdiction of the South-West Africa Division of the Supreme Court of South Africa. Hitherto their right of appeal has been to a Court constituted in terms of the Income Tax Ordinance, 1961, of South-West Africa.

CLAUSE 34.

This clause provides for the commencement of certain amendments.

CLAUSE 35.

This clause provides for the Act to apply also in the Territory of South-West Africa.

CLAUSE 36.

This clause prescribes the short title.

SCHEDULE 1.

Schedule 1 is dealt with in the portion of this Memorandum dealing with clause 1.

SCHEDULE 2.

This Schedule furnishes details of the provisions repealed by clause 31.

SCHEDULE 3.

Schedule 3 is dealt with in the portion of this Memorandum dealing with clause 28.

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