REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

INCOME TAX BILL, 1985

[WP 2—85]

ISBN 0 621 09270 3

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM ON THE INCOME TAX BILL, 1985

INTRODUCTION

The Bill fixes the 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. Certain of the amendments have far-reaching effects in three important areas, the first of which concerns the provisions relating to the taxation of fringe benefits; the second the initial allowances in respect of buildings and machinery or plant used by industrialists and by agricultural co-operatives, and the third the taxability, or otherwise, of profits under, or in respect of, insurance policies. A separate explanation at the beginning of this memorandum will make the import of the various amendments easier to follow.

VALUATION OF FRINGE BENEFITS

During the 1984 Parliamentary session a Seventh Schedule, which came into force on 1 March 1985, was added to the principal Act by section 46 of the Income Tax Act, No. 121 of 1984. That Schedule contains rules for valuing benefits relating to employment, in other words, fringe benefits. Certain other amendments in this connection had, of necessity, to be made to the principal Act at the same time.

It has, however, since become clear that adjustments to the legislation were necessary in order to combat questionable schemes aimed at the avoidance of tax on fringe benefits; to amend the valuation rules of certain benefits in order to bring them into line with the actual cost or value thereof; and, lastly, to extend the phasing-out provisions in certain cases. The proposed measures in this connection are discussed below.

Clause 4 (a): In terms of section 8 (1) *(a)* of the principal Act, the unexpended portion of any reimbursive allowance paid to an employee (i.e. any profit which he derives from such an allowance) is included in his taxable income, and section 8 (1) *(b)* lays down rules for determining what portion of a travelling allowance is deemed to have been expended. In terms of the amendment to the latter provision introduced by this subclause, the taxation of the unexpended portion of such a travelling allowance is to be phased in over five years, in such a manner that 25 per cent of the full taxable portion will be taxed in the 1986 tax year, 40 per cent in 1987, 60 per cent in 1988, 80 per cent in 1989 and the full amount as from 1990.

Clause 4 (b) introduces a textual amendment.

Clause 4 (c): Section 8 (1) *(c)* of the principal Act provides that for purposes of section 8 (1) *(a)* an employee who has received a subsistence allowance is in certain circumstances deemed to have expended either R50 or R100 per day out of that allowance. The amendments introduced by this clause are intended to make it clear that in all cases this rule applies only—

(a) where the employee has spent at least one night away from home; and

(b) where the employee is ordinarily resident in the Republic.

The latter amendment is necessary to prevent the payment of large untaxed amounts to foreign citizens brought into the Republic on construction contracts, etc.

Clause 4 (d) introduces a textual amendment to make it clear that provincial councillors are also regarded as holders of public office for the purposes of the Act.

Clause 4 (e): Where a taxpayer who has leased movable or immovable property and had his rental payments deducted for income tax purposes, subsequently acquires the property at a price which is lower than the market value, he is deemed under section 8 (5) of the principal Act to have recouped the difference between the market value and the price paid, and that difference is included in his income. Where an employee acquires an asset from his employer at a price lower than market value, the difference between the market value and the price paid is taxable as a fringe benefit. The amendment to section 8 (5) *(a)* introduced by this subclause provides that where a taxpayer has in these circumstances been taxed under the fringe benefits provisions, he is not also taxable under that section.

Clause 6 (1) (g) introduces a new paragraph *(n*F*)* into section 10 (1) of the principal Act, which provides for a diminishing exemption in respect of the unexpended portion of certain travelling allowances. The effect of this amendment is to provide the same five-year phasing-in relief in respect of public sector travelling allowances (which were previously exempt by law) as that granted in respect of private sector allowances—see the amendment introduced by *clause 4 (a)*.

Clause 6 (1) (f) introduces a textual amendment consequential upon the amendment introduced by *clause 6 (1) (g)*.

Clause 26 (a) increases the *"official rate of interest"*, as defined in paragraph 1 of the Seventh Schedule, from 12 to 18 per cent. The rate serves as a standard in determining the benefit arising from an interest-free or low-interest loan.

Clauses 26 (b) and (c) introduce textual amendments.

Clause 27 (a) introduces a textual amendment which is consequential upon the amendment in terms of *clause 27 (c)*.

Clause 27 (b): Paragraph 2 *(g)* of the Seventh Schedule provides that any subsidy paid under a home ownership or housing scheme constitutes a taxable benefit. The amendment introduced by this subclause expands that provision so as to include a subsidy paid under any type of loan.

Clause 27 (c): Certain housing assistance schemes are structured in such a way that an employer arranges with a third party, usually a financial institution, for a loan to be granted to his employee at a low rate of interest, subject to an additional payment by the employer which effectively provides the third party with a market related rate of interest on the loan. In terms of a new subparagraph, numbered *(g*A*)*, which is inserted in paragraph 2 of the Seventh Schedule by this subclause, where the interest paid by the employee and the additional payment by the employer under such a scheme together exceed the amount of interest which would be payable on the loan at the *"official rate of interest"*, the additional payment by the employer is deemed to be a subsidy, which will be dealt with under paragraph 2 *(g)* and, where applicable, paragraph 14 of the Seventh Schedule. This provision will also apply to loans granted for purposes

other than housing. The amendment introduced by *clause 27 (a)* provides that in such a case the loan is not regarded as a low-interest loan and is consequently not subject to the taxation rules applying to loans.

Clause 27 (d) introduces a textual amendment.

Clause 28: Under paragraph 5 (3) *(b)* of the Seventh Schedule, an award costing not more than R2 000 given for long service does not constitute a taxable benefit. To clarify the doubt which has arisen as to what constitutes long service, that expression has been defined as an initial unbroken period of service of not less than 20 years or a subsequent unbroken period of service of 10 years.

Clause 29: In terms of paragraph 6 of the Seventh Schedule, the right of use of an asset is valued at 15 per cent per annum of the cost of the asset to the employer. Under a scheme devised to exploit this provision, employers acquire assets, such as suits of clothing, which have a relatively short useful life and which are allocated to a specific employee for the whole or most of that useful life. This situation is tantamount to the asset being given to the employee, and the relevant provision has thus been amended to provide that in such cases, the value to the employee is deemed to be the cost of the asset to the employer, and that value is deemed to accrue to the employee on the date on which he is given the right of use.

Clause 30 substitutes a new scale of values to be applied in determining the monthly value of the use of an employer-owned vehicle.

Clause 31 amends paragraph 9 of the Seventh Schedule to provide for cases where an employer rents from an employee the employee's private residence and then grants him free or cheap occupation thereof. The situation commonly arises where the nature of the employer's trade is such that he would normally provide his staff with official housing. Although the transaction takes the form of a rental, the rent paid by the employer to the employee is in effect nothing more than a housing allowance. The relevant paragraph has accordingly been amended to provide that the benefit to the employee is deemed to be the rental he receives, and the formula based on salary, which is normally used to determine the rental value of accommodation supplied by an employer, will not be applied. It is also provided that the rental received by the employee will not be taxable under the ordinary provisions of the law.

Clause 32: Under another type of housing scheme in existence, the employee's house is acquired by, and registered in the name of, his employer. The employee is in terms of an agreement with the employer either entitled or obliged to acquire the house, either on termination of his service or after the expiry of a fixed period, at the original cost to the employer. During his occupation of the house, the employee pays a rental which is calculated as a given percentage of that cost. The scheme is in effect identical to the grant by the employer of a low-interest housing loan, and this clause introduces an amendment which provides that the scheme be treated as such. It is also provided that when the employee ultimately purchases the house from the employer, which will probably be at a price considerably lower than its then market value, the provisions of paragraph 2 *(a)* will not be applied to tax the difference between market value and purchase price, provided, however, that that purchase price is not lower than the original cost to the employer.

Clause 33 introduces a textual amendment.

Clause 34 amends paragraph 12 of the Seventh Schedule to remove the provision in terms of which a housing subsidy paid in respect of a bond

bearing interest at a rate higher than the official rate of interest, is taxable only to the extent to which it subsidises interest up to the official rate. All subsidies will consequently be fully taxable.

Clause 35 introduces a textual amendment.

Clause 36 inserts a new paragraph, numbered 13A, in the Seventh Schedule. In terms of this paragraph, a full-time employee whose earnings during the previous year did not exceed R8 000, will not be taxable on a housing benefit (low-interest loan or subsidy) paid under a housing scheme approved by the Commissioner. This concession is not restricted to existing housing schemes, but can also apply to new schemes to be formed. The concession will, however, not be granted where such housing benefits are granted in substitution for other remuneration. Where the employee's earnings exceed R8 000, the concession will be phased out by taxing so much of the benefit as is equal to the amount by which those earnings exceed R8 000.

Clause 37 (a): In terms of paragraph 14 of the Seventh Schedule, the taxation of a benefit derived under an approved housing scheme in respect of a loan utilized for the purposes of acquiring, erecting, extending or improving an employee's private residence, will be phased in over seven years. This subclause amends that paragraph to make it clear that the phasing-in concession also applies to a new loan taken to replace a loan utilized for such a purpose, but also provides that either loan must have been utilized wholly for such a purpose.

Clause 37 (b) introduces an amendment which limits the seven-year phasing-in provided under paragraph 14 to so much of any new housing loan made on or after 1 March 1985 as does not exceed R50 000, or where an existing loan is increased on or after that date, to so much of the sum of the existing loan and the new loan as does not exceed that amount. However, where an employee who prior to 1 March 1985 had a housing loan which exceeded that amount, is transferred or changes his employment and in consequence has to redeem his old loan and make a new loan, the new loan will qualify for phasing in up to the amount of the old loan.

Clause 38: Paragraph 15 of the Seventh Schedule presently provides for a two-year phasing-in of the taxation of certain benefits (i.e. a 50 per cent deduction is granted in the 1986 year of assessment). In terms of the amendment introduced by this clause, the two-year period will continue to apply to the benefit derived from the use of an asset other than residential accommodation or a motor vehicle. However, the benefit derived from—

(a) the right of use of a motor vehicle;

(b) the occupation of residential accommodation; or

(c) an interest-free or low-interest loan (other than an approved housing loan) granted on or before 13 February 1985,

will now be phased in over a period of five years, in such manner that 25 per cent of the benefit will be taxed in the 1986 tax year, 40 per cent in 1987, 60 per cent in 1988, 80 per cent in 1989 and the full benefit as from the 1990 tax year. The benefit under a loan granted after 13 February 1985 will not be subject to any phasing in.

Clause 39: The Minister of Finance is empowered under paragraph 20 of the Seventh Schedule to amend certain fixed amounts and percentages contained in that Schedule by means of a notice in the *Gazette*, but he may

only do so before the commencement of the tax year in respect of which the amendments are to apply. As changing prices and interest rates may well require urgent upward or downward adjustments to be made, the relevant provision is amended in terms of this clause to permit the Minister to make such amendments at any time.

INITIAL ALLOWANCES

A. Machinery or Plant

1. In terms of section 12 (1) of the principal Act a taxpayer is entitled to an initial allowance of 25 per cent of the cost of new or unused, as well as used, machinery or plant used by him directly in a process of manufacture, or in a similar process. A lessor of such machinery or plant is entitled to a similar allowance if the machinery or plant is used by the lessee directly in a process of manufacture or in a process similar thereto. The allowance merely accelerates the writing off of the relevant assets and does not have the effect of permitting deductions which, in the aggregate, are in excess of the cost of the assets.

In terms of the amendments introduced by *clause 9 (1)* the initial allowances is increased from 25 to 50 per cent in respect of new or unused machinery or plant brought into use on or after 1 July 1985 but on or before 31 December 1986.

The investment allowance of 30 per cent, which is allowable to industrialists and lessors in addition to the 25 per cent initial allowance, lapses in respect of machinery or plant brought into use after 30 June 1985. Used machinery or plant did not qualify for the investment allowance.

2. Under the provisions of section 27 (2) *(d)* of the principal Act a co-operative is entitled to a special machinery initial allowance equal to 25 per cent of the cost of new or unused machinery or plant used for the storage or packing of the products of its members or for subjecting such products to a primary process. In addition, a co-operative may claim a special investment allowance equal to 30 per cent of the cost of such machinery or plant as is brought into use before 30 June 1985.

The amendment effected by *clause 15 (1) (b)* increases the special initial allowance from 25 to 50 per cent in the case of machinery or plant brought into use on or after 1 July 1985 but on or before 31 December 1986.

B. Buildings

1. An allowance equal to 2 per cent per annum of the cost of a building, or improvements, in which a process of manufacture or a similar process, is carried on, is at present allowed. The effect of the allowance is that the cost of the building or improvements is allowed as a deduction from income in equal instalments over a period of 50 years. Moreover, if a process of manufacture is carried on in the buildings, or improvements thereto, an investment allowance equal to 20 per cent of the cost thereof is also granted. The effect of the two allowances is that 120 per cent of the cost of the buildings or improvements is ultimately allowed as a deduction from income. The investment allowance will, however, lapse in respect of buildings or improvements the erection of which is commenced after 30 June 1985.

Clauses 10 (1) (a), (b), (c) and (d) will have the effect of granting, in addition to the annual allowance of 2 per cent, an initial allowance of 17,5

per cent. The latter allowance will, however, apply only to the cost of buildings or improvements in which a process of manufacture is carried on and is a one-time deduction in the year in which the building is brought into use for the first time or the improvements are completed. The 2 per cent annual allowance is calculated on the cost price of the buildings or improvements after the deduction of the 17,5 per cent initial allowance, and the sum of the deductions is limited to such cost. Only buildings the erection of which was commenced before 31 December 1986 and which were brought into use on or before 31 December 1987 will qualify for the intitial allowance. The same rule applies in respect of improvements to buildings.

2. Co-operatives are currently entitled also to a 2 per cent per annum allowance and an investment allowance of 20 per cent of the cost of buildings or improvements brought into use as a storage building. The investment allowance will, however, lapse in the case of buildings the erection of which is commenced after 30 June 1985, or improvements which are commenced after that date.

In terms of the amendments introduced by *clauses 15 (1) (a), (c) and (d)* there will now be allowed, in addition to the 2 per cent per annum deduction, an initial allowance of 17,5 per cent of the cost of buildings the erection of which is commenced before 31 December 1986 and which are brought into use before 31 December 1987 and of the cost of improvements which are commenced before the former date and brought into use before the latter date. As in the case of the buildings referred to in paragraph 1 above, the 2 per cent allowance will be calculated on the cost price of the buildings or improvements after deduction of the 17,5 per cent initial allowance, and the sum total of the allowance will not exceed the cost of the buildings or improvements.

GAINS UNDER INSURANCE POLICIES

Gains made under life assurance policies have traditionally been regarded as receipts or accruals of a capital nature which are not subject to tax. The ever-increasing popularity of policies which carried no insurance risk cover and required the payment of only one premium which could be withdrawn (by surrender of the policy) at any time, and which in effect were nothing but investment deposits, resulted in the introduction in 1972 of paragraph *(e*A*)* of the definition of *"gross income"* and the Sixth Schedule to the principal Act. Paragraph *(e*A*)* subjects to tax any gain made under a policy which is not a standard policy, and the Sixth Schedule sets out requirements with which a policy must comply to qualify as a standard policy. Briefly stated, the Schedule requires *inter alia* that premiums be paid for a minimum period of five years, that benefits (other than death or disability benefits) may not be payable within the first 10 years, and that premium fluctuations be within prescribed limits. It was felt that these restrictions would limit the use of insurance policies as investment instruments, but recent mushrooming growth in the marketing of policies carrying no risk cover has shown that this is not the case. The following amendments to the Sixth Schedule are accordingly proposed in the case of a policy the proposal for which is accepted after 24 May 1985 (hereinafter referred to as a "new policy"):

Clause 21: Paragraph 10 of the Schedule is amended to provide that any new policy must at all times provide for the payment of a death benefit which is not less than eight times the premiums payable in the first year. Certain portions of the premiums paid, i.e. in respect of additional benefits on accidental death or as a health or abnormal risk loading, are not taken into account for this purpose.

Clause 22 (a) amends paragraph 11 (1) *(a)* and *(b)* of the Schedule to provide that premiums under a new policy must be payable for a period of at least 10 years.

Clause 22 (d) inserts a new item, numbered *(c*A*)*, in paragraph 11 (1) to provide that premiums under a new policy may not be reduced, and may not be escalated at a rate exceeding 15 per cent per annum.

Clause 23: Paragraph 12 *(b)* of the Schedule provides that cash bonuses may be paid in certain circumstances. This clause amends that subparagraph to prevent the payment of cash bonuses under a new policy until the expiry of a period of at least 10 years.

Clause 24: Paragraph 14 of the Schedule sets out various circumstances in which a standard policy ceases to be such.

In terms of the amendment to paragraph 14 (1) *(b)*, introduced by *subclause (a)*, a new policy will cease to be a standard policy if, within the first 10 years, the premiums are reduced or cease to be payable.

Subclause (b) amends paragraph 14 (1) *(c)* to provide that a new policy will cease to be standard if, within the first 10 years, any premium payable is paid more than 13 months late. This provision will not apply, however, where the sum of the annual premiums under that policy and any other policies issued by the insurer to the same person, does not exceed R4 000. (The lastmentioned exclusion applies in certain other circumstances as well, and is hereinafter referred to as the "R4 000 rule").

Under paragraph 14 (1) *(e)*, a policy is rendered non-standard if it is surrendered wholly or in part within the first 10 years, but this rule does not apply if all that is surrendered (i.e. cashed) is the right to certain bonuses. *Subclause (d)* removes this concession in the case of new policies, and any partial surrenders will cause the policy to become non-standard, except where the R4 000 rule applies.

Subclause (e) amends paragraph 14 (1) *(f)* to provide that a new policy will be rendered non-standard if it is made paid-up within the first 10 years, except where the R4 000 rule applies.

Subclause (g) inserts a new subparagraph, numbered *(h)*, in paragraph 14 of the Schedule. The effect of this subparagraph is that any policy, whether old or new, will be rendered non-standard if, on or after 25 May 1985, a loan is made by the insurer under the policy, or by any other person on the strength or security of the policy. This provision will apply irrespective of whether interest is charged on the loan or not, but does not apply where the R4 000 rule applies.

Subclauses (c), (f) and (h) introduce textual amendments consequential upon the amendments discussed above.

Paragraph 16 of the Schedule requires an insurer to notify the policyholder and the Commissioner when any policy issued by him has, for whatever reason, become non-standard. Where a bank, for example, grants a loan on the security of a insurance policy, it will normally register with the insurer a session of the policy in its favour. *Clause 25* adds a new subparagraph 14 (5), which requires an insurer who is notified that a policy issued by him has been ceded, pledged or assigned, to notify the Commissioner thereof, unless—

(a) the insurer is satisfied that the policy was not ceded as security for a loan; or

(b) the R4 000 rule applies.

CLAUSE 1 AND THE SCHEDULE

Rates of Normal Tax

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

1. *Individuals*

The rates for persons (other than companies) apply in respect of the year of assessment ending on 28 February 1986 or 30 June 1986 and are provided for in paragraph 1 of the Schedule. The tax is calculated on taxable income and separate rates are fixed in respect of married and unmarried persons. In the case of married persons the maximum basic rate of 50 per cent is reached at a taxable income of R60 000 and in the case of an unmarried person at a taxable income of R42 000. A surcharge of 7 per cent is also payable by all married and unmarried persons and is calculated on so much of the basic tax, after deduction of the appropriate rebates, as exceeds the sum of R750.

2. *Companies*

The rates for companies apply in respect of years of assessment, i.e. financial years, ending during the 12-month period from 1 April 1985 to 31 March 1986, and are provided for in paragraph 1 *(b)* to *(g)*, inclusive, of the Schedule. Those rates are as follows:

(a) Taxable income derived otherwise than from mining: 50 cents per R1 (paragraph 1 *(b)* of the Schedule).

(b) Taxable income derived from gold mining—

(i) by 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 the Schedule plus a surcharge equal to 25 per cent of the said amount (second proviso to the said paragraph 1 *(c)*);

(ii) by a post-1966 gold mine: an amount determined in accordance with one of the formulae provided for in paragraph 1 *(d)* of the Schedule, plus a surcharge of 25 per cent of the said amount (second proviso to the said paragraph 1 *(d)*).

(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, determined as provided or 35 cents per R1, whichever is higher (paragraph 1 *(e)* of the Schedule).

(d) Taxable income from diamond mining: a basic tax of 45 cents per R1, plus a surcharge equal to 25 per cent of the basic tax (paragraph 1 *(f)* of the Schedule).

(e) Taxable income from mining operations (other than mining for gold or diamonds): 50 cents per R1 (paragraph 1 *(g)* of the Schedule). To the tax as calculated above a surcharge equal to 15 per cent of such tax is added (see proviso to subparagraph *(g)*). A further levy, by way of additional normal tax, is provided for in respect of taxable income from oil mining in terms of section 5 (2A) of the principal Act.

CLAUSE 2

Definitions: Amendment of section 1 of the principal Act

Subclause (1) (a): The principal Act contains various references to a director of a company. The proposed definition of *"director"* will make those references applicable also in the case of members of close corporations who exercise functions similar to those exercised by a director of a company.

Subclause (1) (b): This is a textual amendment.

Subclause (1) (c): The effect of the amendments introduced by this subclause is that benefits paid by the pension fund established for the benefit of employees of the Development Bank of Southern Africa will, for income tax purposes, be treated in the same way as benefits paid by the Government Service Pension Fund.

Subclause (1) (d): This amendment is of a textual nature.

Subclause (2) fixes the dates on which the amendments introduced by *subclauses (1) (a) and (d)* come into operation.

CLAUSE 3

Rebates: Amendment of section 6 of the principal Act

Subclause (a) increases the primary rebate for married persons from R460 to R880 while *subclause (b)* increases the primary rebate for unmarried persons from R380 to R620.

Subclause (c) has the effect of increasing the additional rebate of R300 for persons over the age of 70 years, and R120 for persons over the age of 65 years but under the age of 70 years, to R500.

CLAUSE 4

Certain amounts to be included in income or taxable income: Amendment to section 8 of the principal Act

The amendments introduced by this clause are dealt with in the special section relating to the taxation of fringe benefits.

CLAUSE 5

Circumstances in which amounts deemed to have accrued from sources within the Republic: Section 9 (1) of the principal Act

Where a person who is ordinarily resident in the Republic carries on business as the owner or charterer of a ship the income derived therefrom is deemed to be derived from a source within the Republic irrespective of where the ship is operated. The amendment effected by this clause will result in the income derived from the leasing of containers being dealt with in the same manner.

CLAUSE 6

Exemptions: Amendment of section 10 of the principal Act

The amendment effected by *subclause (1) (a)* provides for the exemption from tax of the remuneration of the State President. It also introduces amendments of a textual nature.

Section 10 (1) *(f)* of the principal Act exempts from tax the receipts and accruals of all ecclesiastical, charitable and educational institutions of a public character. It is, however, the practice, and subject to certain conditions which the Commissioner for Inland Revenue has prescribed administratively, to grant exemption from tax to testamentary and *inter vivos* trusts which have been formed for the sole purpose of distributing their income to ecclesiastical, charitable and educational institutions of a public character. The purpose of *subclause (1) (b)* is to embody this practice in the law.

Interest earned on an investment of R40 000 in Post Office Savings Bank Certificates and on an investment of R30 000 in National Savings Certificates is exempt from tax. The issue of the latter type of certificate was suspended with effect from 1 September 1984, but it has been decided to raise the limit in respect of Post Office Savings Bank Certificates to R70 000 in order to maintain the total exempt investment at that figure. *Subclause (1) (c)* provides that interest on such an investment will also be exempt from tax.

In terms of the existing provisions of the principal Act the first R100 of a taxpayer's income derived by way of interest and dividends is exempt from tax. The exemption is, in the first place, applicable to income derived by way of interest, including the interest component of income derived from a unit portfolio comprised in a unit trust scheme and dividends from a fixed property company. (Dividends of this nature are treated as interest for income tax purposes). Any balance of the R100 is, in the second place, allowed against income derived by way of dividends.

The purpose of the amendments effected by *subclauses (1) (d) and (e)* and *clause 12 (1) (a)* is to increase the present R100 exemption to R250. The exemption will, however, in future not apply to income derived by way of dividends, except in respect of dividends on shares in a permanent building society.

Subclauses (1) (f) and (g) relate to the taxation of fringe benefits. See the separate explanation.

Sublcause (1) (h) exempts from tax any amount, other than interest, which is paid by the State to a taxpayer in respect of an export incentive scheme if such payment is in lieu of a compensation allowance or compensation credit to which he has become entitled in terms of section 11*bis* (6) of the principal Act.

Subclause (2) fixes the date on which the amendment introduced by *subclause (1) (a)* comes into operation.

CLAUSE 7

*Marketing allowance: Amendment of section 11*bis *of the principal Act*

This amendment is consequential upon the amendment introduced by *clause 6 (1) (h)* and prevents a taxpayer from obtaining a double benefit in respect of compensation to which he has become entitled in terms of an export incentive scheme.

CLAUSE 8

*Employees training allowance: Amendment of section 11*sept *of the principal Act*

The deduction in respect of training expenses is granted only in the case of those employees whose remuneration does not exceed R15 000 per annum. The amendment effected by *subclause (1)* removes this restriction if the employee being trained is an instructor.

Subclause (2) fixes the date on which the amendment introduced by *subclause (1)* comes into operation.

CLAUSE 9

Initial and investment allowances: Amendment of section 12 of the principal Act

The amendments introduced by this clause are dealt with in detail earlier in this memorandum.

CLAUSE 10

Deductions in respect of buildings used in a process of manufacture: Amendment of section 13 of the principal Act

See the detailed explanation earlier in this memorandum.

CLAUSE 11

Deduction in respect of medical and dental expenses: Amendment of section 18 of the principal Act

Subclause (a) will result in the deduction in respect of medical and dental expenses being increased as follows in the case of married and unmarried persons over the age of 60, but under the age of 70 years:

Married — from R3 000 to R4 000
Unmarried — from R2 250 to R3 000

In terms of *subclause (b)* the deduction in respect of medical and dental expenses in the case of persons under the age of 60 years will be increased as follows:

Married — from R1 000 to R1 500
Unmarried — from R750 to R1 000

CLAUSE 12

Deductions and set-off from income derived from dividends: Amendment of section 19 of the principal Act

This amendment is consequential upon certain amendments effected in terms of *clauses 6 (1) (d), (e) and 12 (1) (a)*. See the explanation relating to *clause 6*.

Subclause (1) (b) effects an amendment of the textual nature.

Subclause (2) fixes the date on which the amendment effected by *subclause (1) (b)* comes into operation.

CLAUSE 13

Limitation of allowances granted to lessors of manufacturing machinery or plant or aircraft: Amendment of section 23A of the principal Act

Section 23A was introduced into the principal Act during the 1984 Parliamentary session in order to limit the deduction of the incentive allowance granted *inter alia* to lessors of aircraft to the income derived from the leasing of such aircraft. The provision has, however, had the effect of prejudicing a taxpayer who acquires an aircraft for the purposes of his own trade but who leases it out to others when he is not using it himself. It was never the intention to prejudice a taxpayer in this way and *subclause (1)* removes the anomaly.

Subclause (2) fixes the date on which the amendment effected by *subclause (1)* shall come into operation.

CLAUSE 14

Hire-purchase or other agreements providing for postponement of passing of property concerned: Amendment of section 24 of the principal Act

Section 24 provides that if any taxpayer has entered into an agreement in respect of any property (movable or immovable) the effect of which is that ownership passes to the purchaser on or after the receipt by the taxpayer of the whole or a certain portion payable in terms of the agreement, then the whole amount is deemed to have accrued to the taxpayer on the date on which the contract is concluded. A deduction may, however, be allowed to the seller in respect of any portion of the sale price which has not been received by him at the close of his financial year. The allowance is intended to apply only to long-term agreements, but it has been found that many short-term credit transactions are being entered into in such a way that the seller is being enabled to postpone his tax liability to an unnecessary extent. The amendment introduced by this clause is intended to limit the deduction to amounts owing in respect of agreements having a minimum term of 12 months.

CLAUSE 15

Determination of taxable income of co-operative societies and companies: Amendment of section 27 of the principal Act

The amendments effected by this clause relate to the initial allowances granted to co-operatives and are dealt with separately in this memorandum.

CLAUSE 16

Calculation of redemption allowance and unredeemed balance of capital expenditure in connection with mining operations: Amendment of section 36 of the principal Act

The provisions of the new subsection introduced by *subclause (1)* will have the effect that where more than one mine is operated by the same person the capital expenses relating to any one mine may be set off only against the income from that mine unless the Minister of Finance, in consultation with the Minister of Mineral and Energy Affairs and having re-

gard to the relevant fiscal, financial and technical implications, otherwise decides.

Subclause (2) fixes the date on which the amendments effected by *subclause (1)* shall come into operation.

CLAUSE 17

Private companies: Insertion of section 40B in the principal Act

Section 40A provides *inter alia* that if a company, which has been converted into a close corporation, had, at the close of the year of assessment which preceded the date of conversion, profits on hand which would have constituted dividends had they been distributed to shareholders, such company shall be deemed to have made a distribution to the corporation on the date of conversion, and the corporation is subject to tax on such amount. The rate of such tax is, however, limited to 10 per cent, and it is calculated separately without regard to any assessed losses.

The new section 40B inserted by this clause extends this principle to private companies which are planning to apply for liquidation or deregistration and, by virtue of the composition of their shareholding, qualify for conversion to a close corporation.

CLAUSE 18

Exemptions: Donations tax: Amendment of section 56 of the principal Act

The amendment effected by *subclause (1)* arises directly from the coming into operation of the Matrimonial Property Act, 1984 (Act No. 88 of 1984). In terms of section 21 of that Act spouses may, during the subsistence of their marriage, change their matrimonial property system in various ways. Disposals of property in these circumstances will consequently not be subject to donations tax.

Subclause (2) fixes the date on which the amendment effected by *subclause (1)* comes into operation.

CLAUSE 19

Appeal to specially constituted court against Commissioner's decision: Amendment of section 83 of the principal Act

This amendment is of a textual nature.

CLAUSE 20

Persons by whom normal tax is payable: Amendment of section 90 of the principal Act

This amendment is of a textual nature.

CLAUSES 21, 22, 23, 24 AND 25

Gains under or in respect of insurance policies: Amendment of the Sixth Schedule to the principal Act

The amendments effected by these clauses are explained in detail in a separate section of this memorandum.

CLAUSES 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 AND 39

The Amendments introduced by these clauses relate to fringe benefits and are dealt with in the separate explanation.

CLAUSE 40

Deletion of subsection (2) of section 7 of the Income Tax Act, 1983

The provisions of the abovementioned subsection are now incorporated in the principal Act in terms of *clause 20*.

CLAUSE 41

This is a substantive clause which empowers the Commissioner not to assess certain fringe benefits to tax if they were received prior to 28 February 1985 in the following circumstances:

(a) if the benefit was received during the year ended 28 February 1985 or an earlier year, and now constitutes a taxable benefit in terms of the Seventh Schedule, but was in terms of prevailing practice not formerly regarded as being taxable; and

(b) if the benefit was received during the year ended 28 February 1984 or an earlier year of assessment and the Commissioner is statisfied that the value of such benefit was not disclosed by the taxpayer by reason of a *bona fide* belief on his part that it was not subject to tax.

CLAUSE 42

This clause provides that where a taxpayer voluntarily comes forward by 30 August 1985 and discloses to his Receiver of Revenue the information required to determine his true liability for tax, but which information was previously withheld from the Receiver, then:

(a) no penalty will be imposed on the taxpayer in respect of the tax in question; and

(b) no criminal proceedings will be instituted against the taxpayer.

The same leniency will be shown to persons who:

(i) up to now have not applied for income tax returns and for that reason are not on charge for income tax with Inland Revenue; or

(ii) are or were registered as taxpayers with Inland Revenue but have been lost trace of,

and who come forward by 30 June 1985 and rectify the omission.

The concessions referred to above will not apply to persons who are on charge at an office of a Receiver of Revenue for income tax purposes and have failed to render the returns sent to them or to pay the tax due by them within the periods specified by law. In their cases Receivers of Revenue will, in the ordinary course of the performance of their duties, continue to take the usual steps (which may include legal action) to procure the rendition of outstanding returns and the payment of any taxes and penalties that may be due, to raise assessments and to impose the penalties prescribed by the Act.

CLAUSE 43

Commencement of certain amendments

This clause provides that the amendments to the principal Act effected by the amending Act are to apply with effect from years of assessment ending on or after 1 January 1986, except where otherwise provided or the context otherwise indicates.

CLAUSE 44

This clause gives the short title of the amending Act.