
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 1992

**EXPLANATORY MEMORANDUM ON THE
TAXATION LAWS AMENDMENT BILL, 1992**

INTRODUCTION

The Taxation Laws Amendment Bill, 1992, introduces amendments to the Marketable Securities Tax Act, 1948, the Transfer Duty Act, 1949, the Stamp Duties Act, 1968, the Self-governing Territories Constitution Act, 1971, the Regional Services Councils Act, 1985, the KwaZulu and Natal Joint Services Act, 1990, and the Value-Added Tax Act, 1991.

CLAUSE 1

Marketable securities tax exemptions: Amendment to section 3 of the Marketable Securities Tax Act, 1948

The amendment extends the present exemption in respect of the purchase of marketable securities issued by a water board established under Chapter VII of the Water Act, No. 54 of 1956, to the purchase of marketable securities issued by a body established under Chapter VIIA of that Act. See also the explanation with regard to clause 4(1)(a).

CLAUSE 2

Transfer duty rates: Amendments to section 2 of the Transfer Duty Act, 1949

In terms of the amendments the rates of transfer duty are changed as follows:

- (a) In the case of a person other than a natural person, e.g. a company or other association of persons, the rate is increased from five to seven per cent of the value or amount on which transfer duty is payable;
- (b) in the case of a natural person the value or amount on which the basic rate of one per cent is payable is increased from the first R30 000 to the first R50 000 of that value or amount and the rate of duty on the excess over R50 000 will be five per cent (compared with the existing rate of three per cent on the excess over R30 000).

The amendments are operative from 19 March 1992 in respect of acquisitions of property on or after that date. Renunciations of interests in, or restrictions upon the use or disposal of, property are similarly affected.

CLAUSE 3

Value of property on which transfer duty is payable: Amendment to section 5 of the Transfer Duty Act, 1949

Item 8 of Schedule 1 to the Share Blocks Control Act, 1980, provides for the transfer of units where a sectional title register has been opened. Such units are property for the purposes of the Transfer Duty Act, 1949,

and the transfer thereof is subject to transfer duty, except where an exemption applies. In terms of the Value-Added Tax Act, 1991, value-added tax (VAT) may be payable in respect of the value of the supply of a share in a share block scheme and in terms of amendments to that Act introduced by the Bill such value will include any amount of a loan obligation allocated to such share. The amendment introduced by this clause provides for a reduction of the transfer duty value by an amount equal to the value of the supply of the share on which VAT was levied at the standard or zero rate.

CLAUSE 4

Transfer duty exemptions: Amendments to section 9 of the Transfer Duty Act, 1949

Subclause (1)(a): In terms of the amendment to section 9(1)(bB) of the Transfer Duty Act, 1949, the exemption in respect of the acquisition of property by a water board or irrigation board established under the Water Act, No. 54 of 1956, is extended to the acquisition of property by any body established under Chapter VIIA of that Act. In terms of that Chapter, where the Government of the Republic and the government of any other state have entered into a treaty jointly to construct, operate and maintain a water work, the Minister of Water Affairs and Forestry may, with the concurrence of the Minister of Foreign Affairs, establish a body with the object of undertaking the construction, operation or maintenance of such a water work. An example of such a body established is the Trans Caledon Tunnel Authority (TCTA), which body will be responsible for the South African part of the Lesotho Highlands Water Project. The cost of such a project, including the stamp duty for which the TCTA is liable, is eventually for the account of the RSA (in this case the PWV) water user.

This subclause is deemed to have come into operation on 12 December 1986.

Subclause (1)(b): In terms of section 9(5)(a) of the Transfer Duty Act, 1949, the original acquisition of any real right in land, any rights to minerals and any right to mine for minerals from the Government under any law relating to the mining of minerals, is exempt from transfer duty. Section 9(5)(b) on the other hand provides for exemption in respect of the acquisition in terms of the Mining Rights Act, 1967, of certain rights to mine for precious metals or any lease thereof, of certain surface rights, and of any such right or lease acquired by cession as well as any mining asset, as defined, if acquired under the conditions specified in the section.

By reason of—

- (1) the fact that the Mining Rights Act, 1967, has been repealed and no such further rights can be acquired in terms of that Act, and are also not obtainable in terms of the Minerals Act, 1991; and
- (2) the benefits to be enjoyed by the mining industry under the value-added tax system, namely that a mine registered as a vendor will be entitled to claim input tax in respect of VAT paid in respect of the acquisition of a mineral right from a registered vendor (or where the acquisition is not from a registered vendor, a notional input tax); and
- (3) the fact that the Government is to forfeit its income earned on mining leases as well as the special tax of 1,25 per cent on such income from mining leases which is payable in terms of section

26(8) of the Mining Rights Act, 1967, after a period of 2 years from the date of operation of the Minerals Act, 1991 (see section 47(1)(d) of the last-mentioned Act),

the provisions of section 9(5) of the Transfer Duty Act, 1949, are to be repealed.

Subclause (1)(c): At present an exemption from transfer duty is applicable under subsection (12) of section 9 of the Transfer Duty Act, 1949, in respect of land on which there is a dwelling house or a residential apartment held under sectional title if the value of such property does not exceed R30 000 or in respect of unimproved land acquired for the purpose of erecting a dwelling house thereon if the value of the land does not exceed R12 000. The new subsection (12A) introduced by subclause (1)(c) contains provisions identical to the existing subsection (12) except that the limit of R30 000 is increased to R50 000 and the limit of R12 000 is increased to R20 000. The new subsection (12A) is in terms of *subclause (2)* operative from 19 March 1992.

Subclause (1)(d): In terms of the provisions of section 9(13) of the Transfer Duty Act, 1949, the acquisition of property by one housing utility company from another (in terms of a merger between two such companies) is exempt from transfer duty. A housing utility company for the purposes of the aforementioned provision is a company as contemplated in section 10(1)(cC) of the Income Tax Act, 1962.

The substituted section 9(13), as proposed, will now also exempt from transfer duty the acquisition of property by one housing utility company from another where the acquiring company acquires the property from the "holding company" or "subsidiary" as defined in section 1 of the Companies Act, 1973, or a fellow subsidiary of such acquiring company.

Furthermore, in terms of the amendment now introduced, the expression "housing utility company" will also include an association as envisaged in section 10(1)(cI) of the Income Tax Act, 1962.

CLAUSE 5

Exemption from stamp duties: Amendment to section 4 of the Stamp Duties Act, 1968

Subclause (1)(a): In terms of section 4(1)(b)(iii) an exemption from stamp duty on an instrument is applicable where the duty would be legally payable and borne by various water boards or regional water services corporations. In terms of the amendment introduced by this clause the exemption is extended to any instrument on which the duty would be legally payable and borne by any body established under Chapter VIIA of the Water Act, No. 54 of 1956. See also the explanation with regard to clause 4(1)(a).

This subclause is deemed to have come into operation on 12 December 1986.

Subclause (1)(b): In terms of section 4(1)(f)(iii) of the Stamp Duties Act, 1968, no stamp duty is chargeable in respect of any instrument which is executed by or on behalf of any company, society or association within the Republic which is exempt from income tax in terms of section 10(1)(cF) of the Income Tax Act, 1962, if the duty thereon would be legally payable and borne by such company, society or association.

In terms of the amendment introduced by this subclause, the exemption provided for in section 4(1)(f) of the Stamp Duties Act, 1968, is

extended to a company, society, trust or other association that is exempt from income tax in terms of section 10(1)(cI) or (cJ). This subclause is deemed to have come into operation on 1 March 1991.

Subclause (1)(c): The amendment introduced in terms of this subclause is consequential upon the amendment introduced by subclause (1)(b). This subclause is deemed to have come into operation on 1 March 1991.

Subclause (1)(d): The Lesotho Highlands Development Authority (LHDA) is a statutory body established in the Kingdom of Lesotho and is responsible for the implementation, operation and maintenance of that part of the Lesotho Highlands Water Project (LHWP) situated in Lesotho. The Lesotho part of the LHWP consists of two subparts, the major part being the transfer of water to the PWV area and the secondary part being the establishment of a hydro-electric power station in Lesotho. In terms of the Treaty on the LHWP between the Government of the RSA and the Government of the Kingdom of Lesotho, the full cost of the project relating to the water transfer will be for the account of the RSA. Furthermore, the Treaty provides that tax shall not, as far as both Governments are concerned, form part of the cost of the Project.

In terms of the provision introduced by this subclause, the LHDA will be exempt from stamp duty if the duty thereon is legally payable and borne by the LHDA.

This subclause is deemed to have come into operation on 24 October 1986.

CLAUSE 6

Method of paying stamp duty: Amendment to section 5 of the Stamp Duties Act, 1968

Section 15(7) of the Sectional Titles Act, 1986 (Act No. 95 of 1986), provided that a notarial lease, notarial sublease, sectional mortgage bond or other deed referred to in that section which is presented to the deeds office for registration, must be accompanied by a certificate issued by the Receiver of Revenue, certifying that the required stamp duty has been paid. As a result of this requirement section 5(4)(a) was inserted in the Stamp Duties Act, 1968. This section provides that stamp duty on such a deed shall not be denoted by means of stamps, but is acknowledged by means of the issue of a special receipt. In terms of section 9 of the Sectional Titles Amendment Act, 1991 (Act No. 63 of 1991), which came into operation on 1 January 1992, section 15 of the Sectional Titles Act was substituted and the provisions of subsection (7) of that section no longer apply. The provisions of section 5(4)(a) of the Stamp Duties Act, 1968, therefore became redundant. In terms of the amendment introduced by this clause, section 5(4)(a) is deleted and it follows that the duty payable on such an instrument must be denoted by means of stamps unless the Commissioner otherwise directs. This amendment is effective from 1 January 1992.

CLAUSE 7

Rate of stamp duty on debit entries: Amendment to Item 6 of Schedule 1 to the Stamp Duties Act, 1968

In terms of the amendment the stamp duty on a debit entry posted to a cheque account, a credit card scheme account, a transmission account or

a Post Office telebank account is increased from 10 cents to 15 cents. The amendment is effective from 1 May 1992.

CLAUSE 8

Stamp duty in respect of marketable securities: Amendment to Item 15 of Schedule 1 to the Stamp Duties Act, 1968

Marketable securities of a water board established under Chapter VII of the Water Act, No. 54 of 1956, are excluded from the imposition of stamp duty levied in terms of Item 15 of Schedule 1 to the Stamp Duties Act, 1968, on the issue or registration of transfer of marketable securities. That exclusion is provided for in subparagraph (viii) of the said Item and in terms of the amendment introduced by this clause that subparagraph is to apply also to any body established under Chapter VIIA of the Water Act, 1956. See also the explanation with regard to clause 4(1)(a).

CLAUSE 9

Payments into the Revenue Funds of Self-governing Territories: Amendments to section 6 of the Self-governing Territories Constitution Act, 1971

Under the existing provisions of subparagraph (iv) of paragraph (a) of subsection (2) of section 6 of the Self-governing Territories Constitution Act, 1971, payments of sales tax by registered vendors in respect of enterprises in the area of a self-governing territory or in respect of occasional sales, when the tax on such sales is paid to a receiver of revenue in that area, are paid into the Revenue Fund of that area. The switch on 30 September 1991 to the value-added tax, which is a multi-stage tax, would in the absence of special provisions, result in a drastic reduction of the revenue of such a territory from sales tax, being an end-user or end-consumer tax, by reason of the fact that the tax on sales of goods would in many cases be payable at earlier stages elsewhere than within the territory concerned, the value added within the territory being only a portion of the sale price. In terms of the amendment introduced by *subclause (1)(a)* the existing provision for the payment of sales tax into the Revenue Fund of an area (i.e. the said subparagraph (iv)) terminates with the financial year ending on 31 March 1992. In terms of the amendment introduced by *subclause (1)(b)* a new paragraph, numbered (aA), is inserted in section 6(2), whereby a self-governing territory will, with effect from the financial year ending on 31 March 1992, be entitled to an amount allocated from collections of sales tax and value-added tax in the Republic. The amount allocated will not be less than the sales tax paid into the territory's Revenue Fund in respect of the financial year ended on 31 March 1990 or the financial year ended on 31 March 1991, whichever amount is greater. In addition formulae are provided whereby the payments for financial years following that which ended on 31 March 1992 may be increased or reduced where collections in the Republic in respect of sales tax and value-added tax (less refunds of tax and payments to specified countries, i.e. countries whose territories formerly formed part of the Republic) in a financial year show an increase or decrease over collections of those taxes in the preceding financial year. Where payments were made in respect of sales tax under the existing provisions of the said subparagraph (iv) for the financial year ended on 31 March 1992 those payments are to be treated as being made in respect of the amount allocated for that year under the new paragraph (aA).

CLAUSE 10

*Manner of payment of regional services and regional establishment levies:
Amendment to section 12 of the Regional Services Councils Act, 1985*

The general rule for the payment of the aforesaid levies is that such levies are payable within a period of 20 days, or such further period as the council may allow, after the end of every month. However, in terms of section 12(1A)(dC) of the said Act, the Minister of Finance is authorized to approve that payments may be made other than on a monthly basis where the monthly liability in respect of the levies is less than a specified amount (at present R50). Concern has been expressed by the business sector that especially in the case of small businesses, the administration costs in complying with this requirement, in many instances exceed the cost of the levies payable. Other sectors of the economy such as the agricultural community, who receive the bulk of their income less frequently than on a monthly basis, have also called for a relaxation of the rules.

In terms of the amendment now introduced the minimum amount rule has been substituted with a new rule in terms of which a council may, upon written application by an employer or person and subject to such conditions as the council may determine, allow the employer or person to pay the total amount of levies for which he is liable, within 20 days after the end of every period of a year or such shorter period as the council may determine.

CLAUSE 11

*Manner of payment of regional services and regional establishment levies:
Amendment to section 16 of the KwaZulu and Natal Joint Services Act,
1990*

The general rule for the payment of the aforesaid levies is that such levies are payable within a period of 20 days, or such further period as the board may allow, after the end of every month. However, in terms of section 16(2)(g) of the said Act, the Minister of Finance is authorized to approve that payments may be made other than on a monthly basis where the monthly liability in respect of the levies is less than a specified amount (at present R50). Concern has been expressed by the business sector that especially in the case of small businesses, the administration costs in complying with this requirement, in many instances exceed the cost of the levies payable. Other sectors of the economy such as the agricultural community, who receive the bulk of their income less frequently than on a monthly basis, have also called for a relaxation of the rules.

In terms of the amendment now introduced the minimum amount rule has been substituted with a new rule in terms of which a board may, upon written application by an employer or person and subject to such conditions as the board may determine, allow the employer or person to pay the total amount of levies for which he is liable, within 20 days after the end of every period of a year or such shorter period as the board may determine.

AMENDMENTS TO THE VALUE-ADDED TAX ACT, 1991:

CLAUSES 12 TO 44

INTRODUCTION

Clauses 12 to 44 of the Bill introduce amendments to the Value-Added Tax Act, 1991, which came into operation on 30 September 1991.

In terms of section 76 of that Act, as amended by section 46 of the Taxation Laws Amendment Act, No. 136 of 1991, the Minister of Finance was empowered to amend the Act. In terms of Government Notice No. 2695 dated 8 November 1991 the Minister amended a number of the provisions of the Act. The amendments will lapse 30 days after the end of the present session of Parliament unless Parliament otherwise provides. The Bill proposes that most of the amendments so made be re-enacted and, in addition, introduces further amendments. Most of the amendments made by the Government Notice were effective from the commencement date of the tax, namely 30 September 1991. In this Memorandum the amendments made in terms of the Government Notice and which are now included in the Bill are indicated. In terms of clause 46 the amendments to the Value-Added Tax Act, 1991, are, with certain exceptions, deemed to have come into operation on 30 September 1991. Where an amendment comes into operation on some other date, such other date is indicated in the portion of this Memorandum dealing with the relevant clause.

CLAUSE 12

Definitions: Amendments to section 1 of the Value-Added Tax Act, 1991

Subclause (1)(a): The definition of "commercial rental establishment" is amended in certain respects in order to clarify the distinction between buildings, premises, structures and other places utilised to provide shorter term accommodation on a commercial basis with those normally utilised as permanent or semi-permanent places of residence of natural persons.

The amended *paragraph (b)* of the definition applies to accommodation in houses, flats, apartments or rooms which are regularly or systematically let or held for letting as residential accommodation for continuous periods not exceeding 45 days in the case of each occupant. Paragraph *(b)* does not apply to accommodation to which paragraph *(a)* or *(bA)* applies. In order to be a commercial rental establishment under paragraph *(b)*, the activity of letting the particular house, flat, apartment or room should be regular or systematic. Paragraph *(b)* applies to persons letting or holding for letting up to four different houses, flats, apartments or rooms. The total annual receipts and accruals from the letting of *each* house, flat, apartment or room must exceed or be reasonably expected to exceed R24 000 in order for the particular house, flat, apartment or room to qualify as a commercial rental establishment.

Paragraph (bA) is inserted to deal with accommodation in houses, flats, apartments, rooms, caravans, houseboats, caravan or camping sites which are let or held for letting as residential accommodation by a person carrying on a business undertaking which holds five or more of such structures for letting within the course of the undertaking. The total annual receipts and accruals from the letting of all such structures must exceed or be reasonably expected to exceed R24 000 in order for those houses, flats, apartments, rooms, caravans, houseboats, caravan or camping sites to constitute a commercial rental establishment. The structures should, furthermore, be regularly or normally let or held for letting for continuous periods not exceeding 45 days in the case of each occupant. The occasional letting of a particular structure to an occupant for a period in excess of 45 days will not vary the classification of that structure as part of a commercial rental establishment. Where a separately identifiable part of a business undertaking exists and the person carrying on such undertaking does not regularly or normally let or hold for letting such structures for periods not exceeding 45 days, the activity

may be treated separately and in such instances the structures forming part of the separately identifiable part will fall within the definition of a "dwelling".

Subclause (1)(a) will come into operation on the date of promulgation of the amending Act.

Subclause (1)(b): The definition of "dwelling" is amended in order to extend its meaning to include buildings, premises, structures or other places which are intended for use as places of residence or abode of natural persons. This subclause will come into operation on the date of promulgation of the amending Act.

Subclause (1)(c): An "employee organisation" is in terms of the definition introduced by this subclause defined as an organisation in which a number of employees in any undertaking, industry, trade, occupation or profession are associated together for the purpose of regulating relations between themselves (or some of them) and their employers (or some of their employers) or mainly for that purpose. In determining whether an organisation exists mainly for the purpose of regulating relations between employees and employers the provision of sickness, accident or unemployment benefits for the members of the organisation or the widows, children, dependants or nominees of deceased members should be disregarded. Employee organisations therefore include organisations such as trade unions, but do not include professional controlling bodies and employer organisations.

This amendment should be read together with the amendment discussed in the portion of this Memorandum dealing with *clause 18(e)* and is a re-enactment of paragraph 1(a) of the Government Notice.

Subclause (1)(d): The definition of "enterprise" is amended by the addition to paragraph (b) of that definition of a subparagraph which provides that the activities of any share block company (see the definition of "share block company" in subclause (1)(l)) other than those management services in respect of which section 12(f) applies, constitute an enterprise where the share block company has applied for voluntary registration as a vendor in terms of section 23(3) and it has been registered as a vendor. This allows share block companies which do not meet the requirements of paragraph (a) of the definition to register as vendors. This amendment should be read with the amendments discussed in the portion of this Memorandum dealing with *clause 15(1)(h)* and will come into operation on a date fixed by the Minister of Finance by notice in the *Gazette*.

Subclause (1)(e): The definition of "enterprise" is amended by the addition of paragraph (vi) to the proviso to the definition which provides that the activity of underwriting insurance business by members of Lloyd's of London shall be deemed not to be the carrying on of an enterprise. Underwriting members of Lloyd's of London will therefore not be required to register as vendors. This amendment is a re-enactment of paragraph 1(b) of the Government Notice.

Subclause (1)(f) expands the definition of "export country" to include a place which is not situated in the Republic or in any specified country. This covers transactions involving the supply of goods while the goods are on the high seas and is designed to prevent double taxation when such goods are subsequently imported into the Republic by the recipient and VAT is payable on importation. The amendment will come into operation on the date of promulgation of the amending Act.

Subclause (1)(g): The definition of “fixed property” is amended to include real rights in land, sectional title units, shares in share block companies and time-sharing interests. This amendment is a re-enactment of paragraph 1(c) of the Government Notice.

Subclause (1)(h): Paragraph (b) of the definition of “input tax” is amended to include second-hand goods which are situated in a specified country as well as second-hand goods which are sold by a resident of a specified country. An input tax credit may therefore be claimed in respect of second-hand goods situated in a specified country or in respect of second-hand goods sold by a resident of a specified country. This amendment is a re-enactment of paragraph 1(d) of the Government Notice.

Subclause (1)(i): The definition of “residential rental establishment” is amended in order to restrict its application to commercial rental establishments contemplated in paragraph (a) or (c) of the definition of “commercial rental establishment”. A house, flat, apartment or room which falls within the meaning of paragraph (b) or (bA) of the definition of “commercial rental establishment” can never qualify as a “residential rental establishment”. The amendment will come into operation on the date of promulgation of the amending Act.

Subclause (1)(j): The definition of “second-hand goods” is amended to exclude gold coins, the supply of which is zero-rated under section 11(1)(k). The implication of this amendment is that the deduction of notional input tax in respect of the purchase of second-hand goods is not available in respect of the purchase by a vendor of a gold coin, the supply of which by a vendor would qualify for zero-rating. This amendment should be read with the amendment discussed in the portion of this Memorandum dealing with *clause 17(e)*. This amendment is a re-enactment of paragraph 1(e) of the Government Notice.

Subclause (1)(k): The definition of “services” is amended to exclude any stamp, form or card which has a money value and has been sold or issued by the State for the payment of any tax or duty levied under any Act of Parliament. This amendment is a re-enactment of paragraph 1(f) of the Government Notice.

Subclause (1)(l): A definition of “share block company” is introduced for textual purposes.

Subclause (1)(m): The definition of “tax” is amended to include any tax chargeable under the Act. This amendment is a re-enactment of paragraph 1(g) of the Government Notice.

Subclause (1)(n): A definition of “transfer payment” is inserted. A “transfer payment” is defined as a transfer payment as contemplated in paragraph A2.9 of the Manual on the Financial Planning and Budgeting System of the State published in terms of section 39 of the Exchequer Act, 1975. The relevant paragraph describes transfer payments as amounts which will not be spent by that department on goods or services but will be paid over to other authorities or persons. This includes all transfers to government authorities, private organisations, households and foreign organisations made available through grants-in-aid, subsidies and contributions. This amendment should be read with the amendment discussed in the portion of this Memorandum dealing with *clause 17(i)*. This amendment is a re-enactment of paragraph 1(h) of the Government Notice.

Subclause (1)(o): This amendment which is of a textual nature is a re-enactment of paragraph 1(i) of the Government Notice.

CLAUSE 13

Financial services: Amendments to section 2 of the Value-Added Tax Act, 1991

Subclause (1)(a): Section 2(1)(k) is amended to include within the scope of financial services (the supply of which is exempt under section 12(a)) the buying or selling of futures contracts or option contracts as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989). This amendment is a re-enactment of paragraph 2 of the Government Notice.

Subclause (1)(b): The amendment is of a textual nature.

Subclause (1)(c): Subsection (4) is added to section 2, consisting of paragraphs (a), (b) and (c).

Paragraph (a) is an anti-avoidance provision. Where a vendor cedes, assigns or otherwise transfers any right to receive payment in relation to a taxable supply and as a result output tax would not be attributable to any tax period, the cession, assignment or other transfer will not be treated as a financial service (financial services being exempt from tax) and the consideration for such cession, assignment or other transfer will consequently be taxable. Avoidance of tax in the case of, for instance, the cession of a rental agreement or an instalment credit agreement to a non-vendor before the relevant time of supply is thus countered.

Paragraph (b) provides that the transfer of any interest or right to be paid money that is or is to be owing under a rental agreement is not to be treated as a financial service (which would be exempt from tax). It will thus not be possible to avoid or reduce tax liability by splitting the payments under a rental agreement between the asset let and an amount which represents the future income stream of the asset.

Paragraph (c) provides that the transfer of any interest in or right to be paid money that is, or is to be, owing by a share block company under its loan obligation to any person who is or will be a shareholder of such company is excluded from "financial services" and is therefore not exempt. This amendment must be read with the amendment introduced by *clause 15(1)(h)*.

Paragraphs (a) and (b) will come into operation on the date of promulgation of the amending Act. Paragraph (c) is to come into operation on a date fixed by the Minister.

CLAUSE 14

Imposition of value-added tax: Amendments to section 7 of the Value-Added Tax Act, 1991

The amendments change the rate of tax from 12 per cent to 10 per cent. The amendments re-enact the provisions of paragraph 3 of the Government Notice.

CLAUSE 15

Certain supplies of goods or services deemed to be made or not made: Amendments to section 8 of the Value-Added Tax Act, 1991

Subclause (1)(a): Section 8(2) is amended to exclude from its operation any goods in respect of the acquisition of which a deduction of

input tax would have been denied if the Act had been applicable prior to 30 September 1991. This amendment makes it clear that no output tax will be payable by a vendor on cancellation of his registration as a vendor on any goods retained by him, whether these goods were acquired before, on or after 30 September 1991, where a deduction of input tax was or would have been denied to the vendor in respect of the acquisition of those goods if the Act was in operation at the time the goods were acquired. This amendment is a re-enactment of paragraph 4(a) of the Government Notice.

Subclause (1)(b): Section 8(2) is amended by the addition of a second proviso which provides that the provisions of section 8(2) will not apply to any goods or rights, in respect of the acquisition of which a deduction of input tax was not or will not be allowed, where the vendor:

- (i) was registered as a vendor due to a *bona fide* error on the part of any person; and
- (ii) has on or before 30 June 1992 requested the Receiver of Revenue to cancel his registration.

Where these requirements are met, but the vendor has before cancellation claimed a deduction of input tax on any goods acquired by him, he will be required to pay output tax in respect of the retention of those goods in the normal manner. This amendment is a re-enactment of paragraph 4(b) of the Government Notice, except that the cut-off date for a request for cancellation of registration has been extended from 31 December 1991 (as originally provided) to 30 June 1992 (as now provided).

Subclauses (1)(c) and (1)(d): The amendments, which are of a textual nature, are re-enactments of paragraph 4(c) and (d) of the Government Notice.

Subclause (1)(e): Section 8(8) is amended to clarify the application thereof to the indemnification of insureds under contracts of insurance.

Where a vendor is indemnified under a contract of insurance in the form of a payment of money, that payment, to the extent that it relates to a loss incurred in the course of carrying on an enterprise, is deemed to be consideration received for a supply of services by that vendor in the course or furtherance of his enterprise. The implication is that the vendor is required to account for an amount of output tax calculated as 1/11th of the total payment received by him from the insurer. Where the indemnification takes place by way of a replacement of goods or by way of a means other than the payment of money by the insurer, no liability for output tax will arise in the hands of the vendor insured.

The amendment to section 8(8) provides for the situation where an insured is indemnified under a contract of insurance, but the indemnification of the insured takes the form of an indemnity payment by the insurer to a third party on behalf of the insured. In terms of the amendment the amount of the payment to the third party is deemed to be consideration for a supply of a service by the insured to the extent that the insured has incurred a loss in the course of carrying on an enterprise. The implication of this is that a vendor insured is required to account for an amount of output tax calculated as 1/11th of the total payment by the insurer to the third party in the tax period during which the payment to the third party is made by the insurer. The insurer should pay this amount over to the insured. Where the indemnification of the insured takes a form other than the payment of money to the third party no liability for output tax arises in the hands of the insured vendor.

The amendments come into operation on the date of promulgation of the amending Act.

Subclause (1)(f): Section 8(12) which provided that the return of a returnable container was deemed not to be the supply of goods or services is deleted. This amendment should be read together with the amendments discussed in the sections of this Memorandum dealing with *clauses 26(1)(a)* and 36. This amendment is a re-enactment of paragraph 4(e) of the Government Notice.

Subclause (1)(g): Section 8(16) is amended to remove a doubt as to the position where a natural person has prior to the commencement date acquired fixed property which he has used mainly as his private residence and on or after that date he disposes of that property. If he has not claimed any deduction of input tax under section 16(3) in respect of the business use of the property the disposal thereof will not be treated in whole or in part as a supply in the course or furtherance of his enterprise.

Subclause (1)(h) introduces two new subsections to section 8, namely (17) and (18), and these amendments should be read together with clauses 12(1)(d), 12(1)(l), 13(1)(c) and 16(1)(a), which deal with tax treatment of share block companies and their shareholders.

In terms of the provisions of the Act prior to these amendments the practice followed to prevent double taxation in certain circumstances was that only the amount paid for the share in the share block company was subject to tax. The amount of the loan obligation of the company which was allocated, delegated or transferred to the shareholder was not subjected to tax. In most cases all the shares of the share block company are supplied to the share block developer and the share block company does not carry on an activity "continuously or regularly" as is required by paragraph (a) of the definition of "enterprise". The consequence was that these share block companies could not register as vendors nor claim an input credit for inputs supplied to them for the acquisition or erection of a building so that the VAT became a cost to the companies.

This additional cost was normally passed on to shareholders as part of the allocated loan obligation and therefore indirectly borne by them. This tax treatment did not adversely affect non-vendors but in the case of vendors who acquired the share block property for the purposes of making taxable supplies, they effectively bore the tax but were not able to claim input tax credits.

In broad outline the effect of the amendments is that share block companies will be entitled to register voluntarily as vendors and to claim input credits on supplies made to them. To achieve this the full consideration for the share including the loan obligation allocated together with the share, or at any other stage will be subject to tax.

Subsection (17)(a) provides that where, together with the supply of a share in a share block company, any portion of the loan obligation of the share block company is allocated, or any amount of the loan obligation is subsequently delegated, or any interest in or right to be paid money that is, or is to be, owing by the share block company under its loan obligation is transferred to any person who is or will be a shareholder, the allocation, delegation or transfer shall be deemed to form part of the supply of the share.

Subsection (17)(b) provides that where any allocation, delegation or transfer as contemplated in section 17(a) is made but no share is issued at the time the allocation, delegation or transfer is made, such allocation will

be deemed to constitute a separate supply of a share in a share block company.

Subsection (18) provides that for the purposes of the definition of "input tax" and section 18(4) and (5), as applicable to any share block company, any taxable supply made on or after a date fixed by the Minister by a share block developer of any share referred to in subsection (17), shall be deemed to have been made by the share block company to the extent that the supply of the share was not a taxable supply by such company to the share block developer. This section provides for the situation where prior to the date the amendments come into effect the shares and loan obligation of a share block company or part thereof have been allocated to a share block developer who disposes of them after the relevant date. The share block developer will have to levy tax on the amount paid for the shares including any amount of the loan obligation for shares supplied after the relevant date. The section deems the taxable supplies of the shares made by the share block developer to be those of the company only for the purposes of the definition of "input tax" and section 18(4) and (5) and thus enables the company, which is not making taxable supplies, to claim a credit for input tax relating to the shares supplied by the developer. The developer will still have to collect and account for the tax on the supply of the shares.

These amendments will come into operation on a date fixed by the Minister of Finance by notice in the *Gazette*.

CLAUSE 16

Value of supply of goods or services: Amendments to section 10 of the Value-Added Tax Act, 1991

Subclause (1)(a): Section 10 is amended by the introduction of subsection (4A) which is a valuation rule for the supply of shares in a share block company. The rule places it beyond doubt that where such a share is supplied, the consideration in money for the supply shall include the amount of any allocation, delegation or transfer of the loan obligation of the share block company referred to in section 8(17). The amendment will come into operation on a date fixed by the Minister of Finance by notice in the *Gazette*.

Subclause (1)(b): The proviso to section 10(13) is amended to provide for the valuation for VAT purposes of the deemed supply arising from the provision of the right to use a motor vehicle. Both the right to use motor cars and other motor vehicles are covered by the proviso now added to section 10(13). Previously the valuation for VAT purposes of the right to use a motor vehicle, other than a motor car, was the value of the fringe benefit for income tax purposes. The amendment is a re-enactment of paragraph 5(a) of the Government Notice.

Subclause (1)(c): Section 10 is amended by the insertion of subsection (21A), which provides that the value of the supply of any medical, dental or other goods or services by certain benefit funds is deemed to be nil. The goods and services contemplated and the benefit funds involved are discussed in the portion of this Memorandum dealing with *clause 22(e)*.

The implication of this provision is that no VAT will be charged on qualifying supplies by the funds concerned. The amendment is a re-enactment of paragraph 5(b) of the Government Notice.

CLAUSE 17

Zero-rating: Amendments to section 11 of the Value-Added Tax Act, 1991

Subclause (a): The amendment to section 11(1)(e) in terms of which the supply of goods by way of a disposal of a going concern or part thereof is zero-rated, is of a textual nature. Section 11(1)(e) should be read with the new section 18A introduced by *clause 24*.

Subclause (b): Section 11(1)(f) is amended in order to include blank coins in the form of gold the supply of which to the South African Reserve Bank, the South African Mint Company (Proprietary) Limited or any deposit-taking institution registered under the Deposit-taking Institutions Act, 1990, is subject to VAT at the rate of zero per cent. The amendment is a re-enactment of paragraph 6(a) of the Government Notice.

Subclause (c): Supplies of various goods used or consumed for agricultural, pastoral or other farming purposes are zero-rated in terms of section 11(1)(g) read with PART A of Schedule 2 to the Value-Added Tax Act, 1991. The supply of the goods set forth in PART A of Schedule 2 are zero-rated provided certain conditions are met. The conditions are provided in paragraph 2 of PART A and are dealt with in the portion of this Memorandum dealing with *clause 44*. The amendment is a re-enactment of paragraph 6(b) of the Government Notice.

Subclause (d): In terms of the amended section 11(1)(j) the supply of goods consisting of the foodstuffs set forth in PART B of Schedule 2 are zero-rated subject to the conditions prescribed in that Part. The conditions are dealt with in the portion of this Memorandum dealing with *clause 44*. The amendment is a re-enactment of paragraph 6(c) of the Government Notice.

Subclause (e): In terms of paragraph (k) which is inserted in section 11(1), the supply of a gold coin which the South African Reserve Bank has issued in the Republic or which remains in circulation in the Republic, is zero-rated. The zero-rating applies only where the gold coin is supplied in the form of a coin and not where the coin has been incorporated into some other object, e.g. a piece of jewellery such as a bracelet, ring or pendant. This amendment is a re-enactment of paragraph 6(d) of the Government Notice.

Subclause (f): This amendment is of a textual nature and is a re-enactment of paragraph 6(e) of the Government Notice.

Subclause (g): Section 11(2)(h) is amended by the insertion of subparagraph (iii) which provides for the zero-rating of services which comprise:

the storage, repair, maintenance, clearing, management or arranging the provision of a container which is temporarily imported or the arranging of these services, where the services are supplied directly to a person who—

- (i) is not a resident of the Republic; and
- (ii) is not resident nor carrying on business in a specified country; and
- (iii) is not a vendor, otherwise than through an agent or other person.

This amendment is a re-enactment of paragraph 6(f) of the Government Notice.

Subclause (h): This amendment is of a textual nature and is a re-enactment of paragraph 6(g) of the Government Notice.

Subclause (i): Where any payment is made by a public authority or local authority to a vendor or on behalf of a vendor, the vendor is deemed to supply services to such authority to the extent that the payment is made in respect of the taxable supply of goods or services by the vendor to any person.

Section 11(2) is amended by the addition of paragraph (p) which provides that to the extent that a payment from a public authority consists of a "transfer payment" the services deemed to be supplied to the public authority are zero-rated. The definition of a "transfer payment" is introduced by *clause 12(1)(n)*. Paragraph (p) is restricted to transfer payments made by public authorities and does not extend to payments made by local authorities. The amendment is a re-enactment of paragraph 6(h) of the Government Notice.

CLAUSE 18

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

Subclause (a): In terms of the amendment to section 12(a), the exemption for the supply of financial services has been extended to include the supply of any other goods or services supplied by the supplier of a financial service where the supply of such other goods or services is necessary for the supply of those financial services. The exemption for the supply of goods or services only applies where the supply is made by the supplier of the financial service himself.

Examples of goods or services which will fall into this category are

— valuation fees charged in connection with a loan application where the valuation is performed by an employee of the supplier of the mortgage bond,

and

— a cheque book issued by a bank to a current account holder.

The amendment is a re-enactment of paragraph 7(a) of the Government Notice.

Subclause (b): The amendment is of a textual nature.

Subclause (c): This amendment is of a textual nature and is a re-enactment of paragraph 7(b) of the Government Notice.

Subclause (d): This amendment is of a textual nature and is a re-enactment of paragraph 7(c) of the Government Notice.

Subclause (e): The supply of any goods or services by an employee organisation to any of its members is exempt from VAT to the extent that the payment or consideration for the goods or services supplied by the organisation consists of membership contributions. The amendment is a re-enactment of paragraph 7(d) of the Government Notice.

CLAUSE 19

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

Section 13(4) prescribes a procedure to be followed in respect of the payment of value-added tax on the importation of goods which are not

entered and will not require to be entered for home consumption in terms of the Customs and Excise Act. The tax has to be paid on declaration. The proviso to that section provides that the procedure need not be followed where the tax would be payable by a vendor who would be entitled to a deduction thereof under section 16(3)(a)(iii) or section 16(3)(b)(ii). The proviso has been abused, and in terms of the amendment the Minister may make a regulation providing otherwise to prevent abuse. The amendment will come into operation on the date of promulgation of the amending Act.

CLAUSE 20

Accounting basis: Amendment to section 15 of the Value-Added Tax Act, 1991

In terms of this amendment, the threshold limit for the payments basis of accounting for VAT in section 15(2)(b)(i) is increased from R1 million to R2,5 million. This amendment is a re-enactment of paragraph 8 of the Government Notice.

CLAUSE 21

Calculation of tax payable: Amendments to section 16 of the Value-Added Tax Act, 1991

Subclauses (a), (b), (c) and (d): In terms of section 16(2) the deduction by a vendor of input tax in respect of a supply to him is dependent upon the issue of a tax invoice or a debit note or a credit note and the Commissioner may determine that the deduction of the input tax shall not be made unless the tax invoice, debit note or credit note is retained. The amendments extend these provisions to apply also to input tax in respect of the importation of goods by the vendor and the retention by him or his agent of a bill of entry or other document prescribed in terms of the Customs and Excise Act.

Subclause (e): The amendment to section 16(3)(h) is of a textual nature.

The amendments come into operation on the date of promulgation of the amending Act.

CLAUSE 22

Permissible deductions in respect of input tax: Amendments to section 17 of the Value-Added Tax Act, 1991

Subclause (a): In terms of section 17(1) where goods or services are acquired or imported by a vendor partly for purposes other than the consumption, use or supply thereof in the course of making taxable supplies, the amount of input tax deductible by the vendor in respect of the goods or services is determined on the basis of an apportionment. The amendment is designed to make it clear that the apportionment should be made in the case of certain notional amounts included in the definition of "input tax" in section 1 (e.g. in respect of second-hand goods), in addition to input tax actually paid. The amendment comes into operation on the date of promulgation of the amending Act.

Subclause (b): Paragraph (ii) of the proviso to section 17(2)(a) is extended to include any goods or services acquired by a vendor (including, where the vendor is a partnership, a member of the partner-

ship) for the consumption or enjoyment of such vendor in respect of personal subsistence. Under the original provision a deduction of input tax was denied in cases where the personal subsistence related to a person who was not an employee of the vendor. The original provisions also required that the personal subsistence referred to above, had to be incurred when the person was obliged by the duties of his employment or office to spend a night away from his usual place of residence in the Republic.

The provisions have further been amended to lift the restriction that the usual place of residence must be in the Republic and the requirement is that the night must be spent away from the usual place of residence and working place. This amendment is essentially a re-enactment of paragraph 9(a) of the Government Notice.

Subclause (c): This subclause amends paragraph (iv) of the proviso to section 17(2)(a) so as to exclude a meeting from the list of functions in respect of which an organiser can claim a deduction of input tax in respect of meals or refreshments supplied to participants. A deduction of input tax may only be claimed in respect of a meal or refreshment acquired by the organiser of a seminar or an event similar to a seminar where the meal or refreshment is supplied for a charge to the participant which covers the cost of such meal or refreshment. This amendment is a re-enactment of paragraph 9(b) of the Government Notice.

Subclause (d): This amendment is of a textual nature and is a re-enactment of paragraph 9(c) of the Government Notice.

Subclause (e): A new paragraph (d) is inserted in section 17(2) which denies an input tax deduction in respect of any goods or services acquired by a fund referred to in paragraph (c) of the definition of "benefit fund" in section 1 of the Income Tax Act for the purpose of the supply by the fund of any medical or dental services. The denial also operates in respect of any goods or services acquired in order to supply services directly connected with the medical or dental services or of any goods necessary for or subordinate or incidental to the supply of the medical, dental or subordinate services. The funds referred to in paragraph (c) of the definition of "benefit fund" in section 1 of the Income Tax Act are funds which the Commissioner for Inland Revenue has approved, for income tax purposes, as being a fund *bona fide* established for the purpose of providing sickness, accident or unemployment benefits for its members or mainly for such a purpose and also for the purpose of providing benefits for the widows, children, dependants or nominees of deceased members. This amendment should be read together with the insertion in section 10 of subsection (21A) by clause 16(1)(c), which provides that the value of the supply by such fund of medical or dental services, or services directly connected with such services, or goods necessary for or subordinate or incidental to the supply of such services, is deemed to be nil. The effect of that provision is that no VAT is levied on the charges made by such funds in respect of the services in question, where the fund provides such services to its members. This amendment is a re-enactment of paragraph 9(d) of the Government Notice.

CLAUSE 23

Adjustments: Amendments to section 18 of the Value-Added Tax Act, 1991

Subclause (a): The amendment is designed to make it clear that the provisions of section 18(2) regarding the adjustments required to take account of a subsequent reduction in the extent of application or use of

goods or services in the course of making taxable supplies are limited to capital goods or services. This amendment comes into operation on the date of promulgation of the amending Act.

Subclause (b): Section 18(4) is amended to draw a clear distinction between goods or services acquired before and after 30 September 1991 in determining the applicability of the adjustment to input tax permitted under that section.

Paragraph (a) of the amended section 18(4) deals with the situation where goods or services have been supplied to or imported by a person *prior to 30 September 1991* or goods that have been manufactured, assembled, constructed or produced by him prior to that date. The deduction under section 18(4) will only be permitted where:

- (i) the goods or services were acquired, manufactured, assembled, constructed or produced or applied by such person *wholly* for a purpose other than that of making supplies in the course of an activity which was an enterprise or would have been an enterprise if the Act had been applicable before its promulgation; and
- (ii) the goods or services are *subsequent* to 30 September 1991 applied by that person wholly or partly for consumption, use or supply in the course of making taxable supplies.

Therefore if the goods or services, which were acquired before 30 September 1991, were used or consumed in the course of an activity which would have constituted an "enterprise" as defined in the Act, had the Act been applicable at the time, no adjustment as contemplated in section 18(4) can be made. The adjustment contemplated in section 18(4) may never be claimed in respect of any goods or services in respect of the acquisition of which a deduction of input tax would have been denied under section 17(2) if the Act had been applicable at the time the goods or services were acquired.

Paragraph (b) of the amended section 18(4) deals with the situation where goods or services have been acquired by a person *on or after 30 September 1991* and no deduction under section 16(3) has been made in relation to the acquisition of such goods or services. The adjustment under section 18(4) may be made by a person, who subsequent to 30 September 1991 registers as a vendor, only in respect of those goods or services which were acquired by him on or after 30 September 1991 in respect of the same activity carried on by him before, on and after 30 September 1991. The adjustment may never be claimed in respect of any goods or services in respect of the acquisition of which a deduction of input tax was denied or would have been denied if the person had been a vendor.

This amendment is a re-enactment of paragraph 10(a) of the Government Notice.

Subclause (c): Section 18(5) is amended to make it clear that an adjustment for increased taxable use or application of goods or services may, in the case of goods or services acquired prior to 30 September 1991, only be made where the change in the extent of taxable use is in the course of an activity which was an enterprise or would have been an enterprise if the Act had been applicable before its promulgation. No adjustment may therefore be made in those cases where the extent of the use or consumption of the goods or services in the course of a particular activity does not change where such activity is of the same nature before, on and after 30 September 1991.

This amendment, apart from the insertion of the references to "capital", is a re-enactment of paragraph 10(b) of the Government Notice. The references to "capital" are inserted to make it clear that section 18(5) applies *only* to capital goods *and services*.

CLAUSE 24

Adjustments in consequence of acquisition of going concern wholly or partly for purposes other than making taxable supplies: Insertion of section 18A in the Value-Added Tax Act, 1991

Section 18A is inserted to provide for a liability for tax in certain situations where a vendor has acquired an enterprise or part thereof as a going concern. In terms of section 11(1)(e) the supply to a registered vendor of an enterprise or part of an enterprise which is capable of separate operation as a going concern is subject to tax at the rate of zero per cent. In certain instances a registered vendor may acquire a going concern at the rate of zero per cent in order to carry on an exempt or other non-taxable activity. In such instances a liability for tax is avoided.

In terms of subsection (1) of section 18A a vendor is deemed to have supplied an enterprise, part of an enterprise or any goods or services forming part of a going concern by way of a taxable supply in those instances where an enterprise or part of an enterprise has been supplied to him at the rate of zero per cent and such enterprise or part or any goods or services forming part of such enterprise or part are acquired by him wholly or partly for a purpose other than for consumption, use or supply in the course of making taxable supplies. The implication of this provision is that the vendor acquiring the going concern is liable for an amount of output tax.

Subsection (2) of section 18A provides the basis for calculation of the output tax payable by the recipient of a going concern in the circumstances contemplated in subsection (1). The value of the supply is deemed to be the cost to the vendor of acquiring such enterprise, part, goods or services reduced by an amount which bears to the amount of the full cost of the enterprise, part, goods or services the same ratio as the intended use or application of the enterprise, part, goods or services in the course of making taxable supplies bears to the total intended use or application. In this way the output tax payable by the vendor is calculated by applying the rate of tax to the portion of the cost of acquisition of the enterprise, part, goods or services which is attributable to the exempt or non-taxable activities of the vendor. The proviso to subsection (2) excludes from the value of the deemed supply and hence the operation of subsection (1), the cost of any goods or services which form part of the enterprise or part of an enterprise acquired and in respect of the acquisition of which by the vendor a deduction of input tax would be denied by section 17(2).

Subsection (3) provides that the output tax payable should be accounted for by the vendor in the tax period during which the supply to him of the going concern takes place. In terms of section 8(7) of the Act the disposal of an enterprise (or part thereof) as a going concern is deemed to be a supply of goods and the tax period will be the tax period during which an invoice is issued or any payment is received.

In terms of subsection (4) the cost to the vendor of any goods or services acquired by him as part of the supply to him of a going concern at the rate of zero per cent is deemed to be an amount equal to an appropriate allocation of the full purchase price to the specific goods or services plus an amount equal to the rate of tax, applicable at the time

of supply, applied to the amount so allocated to the particular goods or services. The adjusted cost so calculated is used for any subsequent adjustments required under section 18(2), (4) or (5) in respect of the changed use, subsequent to acquisition, of any goods or services acquired as part of a going concern.

The new section 18A comes into operation on the date of promulgation of the amending Act.

CLAUSE 25

Tax invoices: Amendments to section 20 of the Value-Added Tax Act, 1991

Subclause (1)(a): Section 20(4)(g) was amended by paragraph 11(1)(a) of the Government Notice in order to standardise the permissible forms of tax invoices for supplies with a consideration of R200 or more. In terms of that amendment (which was to come into operation on 1 April 1992) there would no longer have been a choice available to suppliers to reflect their charge for taxable supplies in an inclusive manner. Vendors were required to reflect

- the value of the supply, and
- the amount of VAT charged, and
- the consideration for the supply, on any tax invoice issued in respect of a supply for a consideration of R200 or more.

That amendment is repeated in the amendment introduced by *subclause (1)(a)* as subparagraph (i) of section 20(4)(g) but a further subparagraph (ii) is added to that section allowing a vendor who calculates tax by applying the tax fraction to reflect

- the consideration for the supply, and
- either the amount of tax charged or a statement that the consideration includes a charge in respect of tax and the rate of tax charged.

The amendments are effective from 1 April 1992.

Subclause (1)(b): Section 20(5)(e) is amended in order to extend the permissible forms of tax invoices for supplies with a consideration of less than R200. The amendments are similar to the amendments introduced by *subclause (1)(a)* in relation to supplies with a consideration of R200 or more. This amendment is a re-enactment of paragraph 11(1)(b) of the Government Notice.

CLAUSE 26

Credit and debit notes: Amendments to section 21 of the Value-Added Tax Act, 1991

Subclause (1)(a): Section 21(1)(d) is amended to permit the issue of a credit note by any vendor who refunds a deposit on a returnable container. In terms of the amendment a vendor who refunds a deposit on a returnable container is deemed to have made the supply of the returnable container in respect of which the deposit was charged. The effect of these amendments is to permit any vendor refunding a deposit on a returnable container to make an adjustment in calculating tax payable. This amendment is in substance a re-enactment of paragraph 12(1)(a) of the Government Notice.

Subclause (1)(b): In terms of the amendment to section 21(3)(a)(iii) the name and address of the recipient of a supply need not be reflected on a credit note issued in respect of that supply where the vendor issued a simplified tax invoice in respect of the relevant supply. This amendment is in substance a re-enactment of paragraph 12(1)(b) of the Government Notice.

Subclause (1)(c): The particulars required to be reflected on a credit note in terms of section 21(3)(a)(v) are simplified. The particulars required are

- the amount by which the value of the supply shown on a tax invoice has been reduced and the amount of the excess tax, and
- where the tax charged is calculated by applying the tax fraction to the consideration, the amount by which the consideration has been reduced and either the amount of excess tax or a statement that the reduction includes tax and the rate of tax included.

The amendment is effective from 1 April 1992. (Section 21(3)(a)(v) was amended by paragraph 12(1)(c) of the Government Notice. The wording of the amendment introduced by subclause (1)(c) differs in certain respects from the amendment introduced by the Government Notice, mainly by reason of the introduction by the present amendment of the provision in regard to the particulars now permitted where the tax charged was calculated by applying the tax fraction.)

Subclause (1)(d): In terms of the amendment to section 21(3)(b)(iii) the name and address of the recipient of a supply need not be reflected on a debit note issued in respect of that supply where the vendor issued a simplified tax invoice in respect of the relevant supply. This amendment is a re-enactment of paragraph 12(1)(d) of the Government Notice.

Subclause (1)(e): Section 21(3)(b)(v) is amended in respect of the particulars required to be reflected on a debit note. The particulars are similar to those required for a credit note (see *subclause (1)(c)*), taking into account that a debit note is issued when there is an increase in the tax that is calculated, whereas a credit note relates to a reduction in the tax.

This amendment is effective from 1 April 1992.

The amendment effected by paragraph 12(1)(e) of the Government Notice falls away, the difference in wording relating mainly to the particulars now permitted where the tax was calculated by applying the tax fraction.

Subclause (1)(f): The amendment brings the Afrikaans text of paragraph (C) of the proviso to section 21(3) into line with the English text.

CLAUSE 27

Irrecoverable debts: Amendments to section 22 of the Value-Added Tax Act, 1991

Subclause (a): Paragraph (iii) of the first proviso to section 22(1) is amended to provide that the adjustment to input tax arising from an irrecoverable debt written off in respect of a supply under an instalment credit agreement must be calculated by applying the tax fraction as applicable at the time of the supply under the instalment credit agreement. This amendment re-enacts paragraph 13 of the Government Notice.

Subclause (b): In terms of section 22(2) where a vendor recovers in whole or in part an amount in respect of which a deduction was made in respect of the tax portion thereof which was written off as irrecoverable, he must account for the tax portion of the amount recovered. In terms of the amendment the provisions of section 22(2) will also apply where an irrecoverable amount of this nature becomes recoverable by virtue of the reassignment to the vendor of the underlying debt. The tax content of the recovered amount is treated as tax charged in respect of a taxable supply and has to be accounted for by the vendor.

This amendment is effective from the date of promulgation of the amending Act.

CLAUSE 28

Tax period: Amendment to section 27 of the Value-Added Tax Act, 1991

Section 27(6)(ii) is amended to allow vendors to choose a tax period which ends within 10 days before or after the last day of the calendar month. This amendment re-enacts paragraph 14 of the Government Notice.

CLAUSE 29

Returns and payments of tax: Amendment to section 28 of the Value-Added Tax Act, 1991

Vendors are required to pay the VAT owing by them in respect of a particular tax period by the twenty-fifth day of the month following the end of the tax period. Where a vendor elects to adopt a date other than the last day of the calendar month, payment must still be made by the twenty-fifth day of the month commencing after the last day of the calendar month.

The proviso to section 28(1) has been amended to provide that where payment of the full amount of VAT owing by a vendor is effected by the Commissioner by means of an electronic transfer and the requirements for the transfer of the tax have been met by the vendor, the electronic transfer will not be effected prior to the last business day of the month during which the tax is due to be paid by the vendor. Vendors are entitled to make an election on each VAT return (which must be submitted on or before the twenty-fifth day of the month) to pay the VAT owing by them by means of an electronic transfer. The Commissioner will effect the electronic transfer. It is incumbent on the vendor who has made such an election to ensure that sufficient funds are available in his bank account on the last business day of the month and until the transfer is effected. Where sufficient funds are not available the vendor will not have met the requirements for electronic transfer and the tax will be outstanding from the twenty-fifth day of the month. Where an electronic transfer is effected the period for payment of the tax is deemed to end on the last business day of the month. This provision ensures that penalties and interest are not payable by a vendor who has elected to pay the VAT by means of an electronic transfer if he has met the requirements for the electronic transfer.

This amendment re-enacts paragraph 15 of the Government Notice.

CLAUSE 30

Penalty and interest for failure to pay tax when due: Amendment to section 39 of the Value-Added Tax Act, 1991

This amendment is of a textual nature and is a re-enactment of paragraph 16 of the Government Notice.

CLAUSE 31

Recovery of tax: Amendments to section 40 of the Value-Added Tax Act, 1991

Section 40(4) is amended to alter the order in which a payment to the Commissioner is allocated as between various components of the total amount outstanding. This amendment re-enacts paragraph 17 of the Government Notice.

CLAUSE 32

Liability for tax in respect of certain past supplies or importations: Amendments to section 41 of the Value-Added Tax Act, 1991

Subclause (a): An amendment is made to section 41(d)(ii) to clarify the determination of the prescription period for the recovery of unpaid VAT on the importation of goods.

Subclause (b): A further subparagraph (iiA) is inserted in section 41(d) which provides for the situation where VAT was payable on excise duty in terms of section 7(3)(a) and was not paid on the date on which liability arose for the payment of the excise duty. In this situation the period of prescription for the recovery of VAT by the Commissioner commences on the date on which liability for the payment of the excise duty arose.

Subclause (c): This amendment should be read together with the amendment introduced by subclause (a), being consequential thereon.

Subclause (d): This amendment is consequential upon the amendment introduced by subclause (b).

The amendments introduced by this clause re-enact the provisions of paragraph 18 of the Government Notice.

CLAUSE 33

Interest on delayed refunds: Amendment to section 45 of the Value-Added Tax Act, 1991

Where the Commissioner for Inland Revenue does not within a period of 21 business days after the date on which a vendor's return in respect of a tax period is received refund any amount of tax refundable in terms of section 44(1) of the Act (broadly speaking, where the amounts of his input tax for the period exceeds the amounts of his output tax for the period) interest becomes payable to the vendor except where the vendor's return is incomplete or defective in any material respect or he is in default in respect of his obligations to render a return. The amendment is of a textual nature and confirms that interest will not be payable if the vendor is in default in respect of his obligations to furnish a return for a preceding tax period (and thus not the return for the current tax period).

The amendment is effective from the date of promulgation of the amending Act.

CLAUSE 34

Agents and auctioneers: Amendments to section 54 of the Value-Added Tax Act, 1991

The amendments deal with the case where an agent imports goods on behalf of a principal. In terms of the amendment introduced by *subclause (a)* the importation is deemed to be made by the principal and not the agent, but a bill of entry or other customs document may nevertheless be held by the agent. Where a bill of entry or other customs document is issued to the agent the agent is in terms of the amendment introduced by *subclause (b)* required to keep sufficient records to enable the principal's name and address and registration number to be ascertained.

The amendments are effective from the date of promulgation of the amending Act.

CLAUSE 35

Records: Amendment to section 55 of the Value-Added Tax Act, 1991

In terms of the amendment to section 55 (which in general terms requires vendors to keep records for VAT purposes and refers in particular to tax invoices and credit and debit notes), vendors are also required to keep records of importations of goods and documents relating thereto. The amendment is effective from the date of promulgation of the amending Act.

CLAUSE 36

Prices deemed to include tax: Substitution of section 64 of the Value-Added Tax Act, 1991

Subsection (1) is amended to make it clear that a price charged by a vendor in respect of a taxable supply of goods or services shall be deemed to include tax payable in terms of section 7(1)(a), whether or not the vendor has included tax in the price. This negates any suggestion that where tax is payable it is not recoverable from the vendor because he has not included it in his price.

A further subsection, numbered (2), is added to section 64 which provides that the amount of any deposit payable to or refundable by a vendor in respect of a returnable container shall be deemed to include tax. The implication of this amendment is that deposits on returnable containers should be refunded together with the VAT charged thereon.

The amendment is a re-enactment of paragraph 19 of the Government Notice.

CLAUSE 37

Prices advertised or quoted to include tax: Amendment to section 65 of the Value-Added Tax Act, 1991

In terms of this amendment, a further proviso is added to section 65 to regulate the advertising of prices where prices exclusive and inclusive of VAT are advertised or quoted. In terms of the new paragraph (i) of

the proviso, where a price inclusive of tax and the price excluding tax for a supply are advertised or quoted, both prices must be advertised or quoted with equal prominence and impact. This amendment is a re-enactment of paragraph 20 of the Government Notice.

CLAUSE 38

Contract price or consideration may be varied according to rate of value-added tax: Amendments to section 67 of the Value-Added Tax Act, 1991

Subclause (a): A textual amendment is made to section 67(1) to make it clear that any amount of VAT recovered by a vendor in respect of a contract price established before the commencement of VAT forms part of the consideration for the relevant supply of goods or services. In order to calculate the output tax payable by the vendor the tax fraction must be applied to the total consideration for the supply which includes any VAT charged. This amendment is a re-enactment of paragraph 21 of the Government Notice.

Subclause (b): When VAT is imposed or withdrawn or the rate of tax is increased or decreased, section 67(3) provides that an adjustment may be made to any fee, charge or other amount which is fixed by any law or measure having the force of law, notwithstanding the fact that that relevant law or measure fixing the fee or charge has not at that stage been changed. When a change contemplated above occurs, the fee, charge or amount may be increased by the amount of tax or additional tax when the tax is imposed or the rate is increased, but shall be decreased when the tax is withdrawn or the rate is reduced.

The proviso added by subclause (b) provides that when any such fee, charge or other amount is calculated as a percentage or fraction of another amount which represents the consideration in money (tax inclusive price) of a taxable supply of goods and services, section 67(3) cannot be construed as permitting any further increase or decrease in any such fee, charge or other amount. The reason for this is that by applying a percentage to a tax inclusive amount, the fee for services is automatically increased. To illustrate, if a fee is calculated at 5 per cent of a non-taxable supply of, say, R1 000 before VAT was introduced it would have amounted to R50. After VAT was introduced the supply became taxable and the consideration in money for that supply would be R1 100 (i.e. plus 10 per cent VAT). The fee based on 5 per cent of the consideration automatically increases to R55. The purpose of the proviso is to prevent vendors, in the circumstances contemplated in section 67(3) from taking advantage of any change in rates to increase their fees by the amount of R5,50 (i.e. 10 per cent of R55). This amendment does not affect contractual arrangements between parties.

The new proviso comes into operation on the date of promulgation of the amending Act.

CLAUSES 39 and 40

Reliefs granted to diplomats: Amendment of sections 68 and 69 of the Value-Added Tax Act, 1991

The amendments are of a textual nature.

CLAUSE 41

Prevention of or relief from double taxation in Republic and specified country: Amendment to section 75 of the Value-Added Tax Act, 1991

In terms of this amendment a proviso is added to section 75(2)(a) which provides that any payments made by the government of a specified country to the Government of the Republic in terms of an agreement

concluded between the countries for the prevention of double taxation shall accrue to the State Revenue Fund. It further provides that payments by the Government of the Republic to a government of a specified country in terms of such an agreement shall be made as a drawback of revenue charged to the State Revenue Fund. This amendment is a re-enactment of paragraph 22 of the Government Notice.

CLAUSE 42

Transitional matters: Amendments to section 78 of the Value-Added Tax Act, 1991

Subclause (a): In terms of this amendment, a proviso is added to section 78(9)(a) which provides for the situation where the sale of land (supply of goods) is linked to a construction contract in respect of fixed property (supply of services) in such a way that for transfer duty purposes the sale of the land and the construction of the buildings is treated as a single transaction in terms of section 6(1)(c) of the Transfer Duty Act, 1949. In terms of the proviso such agreements are deemed to be one agreement for the sale of fixed property even though there is a supply of goods by one party and a supply of services by another party. The implication of this amendment is that VAT was not payable on the sale of the land or the construction service, but that transfer duty was payable. This applies even if the construction service is performed to any extent on or after 30 September 1991. Any VAT incurred by the building contractor under a construction contract dealt with under the proviso did not rate for a deduction of input tax under section 16(3) of the Act.

Subclause (b): In terms of this amendment, various new paragraphs are inserted in section 78(9). *Paragraph (aA)* provides that the sale of a *dwelling* concluded by a vendor on or before 31 March 1992 shall be deemed not to be a supply of goods if the vendor held the property as trading stock and the dwelling concerned was completed within 12 months before 30 September 1991.

Paragraph (aB) provides for a reduced VAT rate of 6 per cent to be applied in respect of a sale of *land* concluded between 30 September 1991 and 31 March 1992 for the sole or principal purpose of the erection by or for the purchaser of a dwelling or dwellings on the land. The purchaser must have given written confirmation to the seller of his intention to erect a dwelling or dwellings.

Paragraph (aC) provides for the imposition of VAT at a reduced rate in certain circumstances where a sale of fixed property including a dwelling was concluded. A VAT rate of 3 per cent is applicable if the dwelling was completed on or before 31 December 1991 and the agreement for sale had been concluded between 22 August 1991 and 31 December 1991. A VAT rate of 6 per cent was applicable if the dwelling was completed on or after 1 January 1992 and on or before 31 March 1992 and the agreement for sale had been concluded between 22 August 1991 and 31 March 1992. In terms of paragraph (i) of the proviso to paragraph (aC) where a sale of land was linked to a construction contract in respect of fixed property in such a way that for transfer duty purposes the sale of the land and the construction of the building was treated as a single transaction in terms of section 6(1)(c) of the Transfer Duty Act, 1949, the two agreements were for the purposes of determining the applicable VAT rate deemed to be one agreement for the sale of the property. In terms of paragraph (ii) of the proviso the tax

payable in respect of the supply of land and the supply of construction services in the circumstances contemplated in paragraph (i) of the proviso shall be separately payable. The implication of this provision is that the supplier of the land and the supplier of the construction services was separately liable for the particular supply made by him despite the agreements being treated as one agreement for the purposes of determining the applicable VAT rate. The normal time of supply rules applied to each of the particular supplies. Paragraph (iii) of the proviso provides for the situation where the agreement was concluded before 30 September 1991. In such a case the provisions of section 78(9)(a) would ordinarily have been applicable instead of the provisions of section 78(9)(aC). The proviso allowed the parties a choice as to which of these two provisions was to apply to their transactions. Where the parties elected that section 78(9)(aC) should be applicable to their transactions the seller and purchaser must have agreed in writing that section 78(9)(a) did not apply and that section 78(9)(aC) applied in its place.

Paragraph (aD) provides for a reduced rate of VAT in respect of the supply of certain construction services. Where the construction service consisted of the construction of a new dwelling and the construction agreement was concluded on or before 31 March 1992 the applicable rate of VAT was reduced to 6 per cent to the extent that the construction services were performed on or before 31 March 1992. The concessionary rate of 6 per cent was also applicable to construction services supplied by subcontractors to main contractors to the extent that the subcontractors' construction services were performed on or before 31 March 1992 in respect of the construction of a new dwelling.

Subclause (c): In terms of this amendment, section 78(10)(b) extends the deduction of input tax allowed in respect of sales tax borne on stocks of consumable goods or maintenance spares held by a vendor on 30 September 1991 to consumable goods or maintenance spares imported by the vendor before 30 September 1991.

Subclause (d): This amendment brings the Afrikaans text of section 78(10A) into line with the English text.

Subclause (e): This amendment is consequential upon the amendment of the rate at which value-added tax is charged.

The amendments introduced by this clause re-enact the provisions of paragraph 23 of the Government Notice.

CLAUSE 43

Exemptions from tax on the importation of goods: Amendments to Schedule 1 to the Value-Added Tax Act, 1991

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

Subclause (1)(b): Schedule 1 to the Act is amended by the insertion of an additional item, namely Item No. 470.03 in PART A of the Schedule, which relates to goods cleared for use in the manufacturing, processing, finishing, equipping or packing of goods exclusively for export.

Subclause (1)(c) inserts in paragraph 1 of PART A a reference to Heading No. 10.05, which relates to maize.

Subclause (1)(d) inserts in paragraph 1 of PART A references to Heading No. 27.10/2710.00.12, relating to petrol, Heading No. 27.10/2710.00.16, relating to distillate fuels, and Heading No. 38.11.11.20 relating to anti-knock preparations.

Subclause (1)(e) adds to PART A of the Schedule a paragraph numbered 4, which relates to gold coins issued in the Republic and which remain in circulation.

Subclause (1)(f): A reference to Item 470.03 is inserted in paragraph 1(a) of PART B of Schedule 1.

Subclause (1)(g) inserts in paragraph 1(a) of PART B a reference to Heading No. 10.05.

Subclause (1)(h) inserts in paragraph 1(a) of PART B references to Headings Nos. 27.10/2710.00.12, 27.10/2710.00.16 and 38.11.11.20.

Subclause (1)(i) inserts in paragraph 1(b) of PART B of Schedule 1 a reference to paragraph 4 of PART A of the Schedule.

Subclause (1)(j): This amendment brings the Afrikaans text of paragraph 1(c) of PART B of the Schedule into line with the English text.

Subclause (1)(k): This amendment brings the Afrikaans text of paragraph 1 of PART C into line with the English text.

Subclause (1)(l): A reference to Item 470.03 is inserted in paragraph 1(a) of PART C of Schedule 1.

Subclause (1)(m) inserts in paragraph 1(a) of PART C a reference to Heading No. 10.05.

Subclause (1)(n) inserts in paragraph 1(a) of PART C references to Headings Nos. 27.10/27.00.12, 27.10/2710.00.16 and 38.11.11.20.

Subclause (1)(o): Subparagraphs (b) and (c) of paragraph 1 of PART C are substituted as indicated in the amendment. In subparagraph (b) a reference to paragraph 4 of PART A of the Schedule is inserted. In paragraph (c) the reference to "any specified country" is altered to a reference to Botswana, Lesotho, Namibia or Swaziland. Paragraph (c) relates to the temporary importation from any such country of motor vehicles by employees of an enterprise.

Subclause (1)(p) adds to PART C a paragraph, numbered 3, which exempts from the tax on importation goods which were previously imported into or produced or manufactured in the Republic, then exported to Botswana, Lesotho, Namibia or Swaziland and thereafter brought back by the exporter without having been subjected to any manufacturing process, manipulation or modification and without a change of ownership, if the goods were acquired before 30 September 1991 or, if acquired after that date, tax was paid in respect of the acquisition thereof and has not been refunded.

The amendments effected by *subclause (1)(a), (b), (f), (k) and (l)* are re-enactments of paragraphs 24(a), (b), (d), (f) and (g) of the Government Notice.

The amendments effected by *subclause (1)(c), (g) and (m)* in respect of maize are effective from 1 April 1992.

The other amendments will be effective from the date of promulgation of the amending Act.

The exemption in respect of rice which was provided in paragraph 24(c), (e) and (h) of the Government Notice is not repeated in this clause and will cease to apply as from the date of promulgation of the amending Act.

CLAUSE 44

Schedule 2: Amendments to Schedule 2 to the Value-Added Tax Act, 1991

Subclause (a): The existing Schedule 2 is divided into PARTS A and B, PART A setting forth various goods which may be supplied to farmers at zero rate and PART B setting forth various foodstuffs which may be supplied at zero rate. *Subclause (a)* is a re-enactment of paragraph 25(a) of the Government Notice.

Subclause (b) substitutes new paragraphs for the existing paragraphs 1 and 2 (now in PART A). In terms of section 11(1)(g) of the Act, read with the Schedule (i.e. PART A) the rate of zero per cent is applicable in respect of the supply of goods used or consumed for agricultural, pastoral or other farming purposes. The goods in question are redefined and are set forth in paragraph 1. Certain conditions for the application of zero rating in respect of such goods are prescribed in paragraph 2. The purchaser of the goods must be a registered vendor who has satisfied the Commissioner or the Commissioner for Inland Revenue of a specified country that he is carrying on farming operations and he must have a notice of registration authorizing him to obtain the goods at zero per cent. A tax invoice must be issued stating the registration number of the purchaser and there must not be any prohibition on the acquisition, disposal, sale or use of the goods in terms of section 7bis of the Fertilizers, Farm Feed, Agricultural Remedies and Stock Remedies Act, No. 36 of 1947).

The Commissioner may cancel an authorization granted under paragraph 2 if the vendor is in default in respect of his obligation under the Act to furnish any return or to pay tax or if the vendor has ceased to carry on farming operations or he has utilised the notice of registration for purposes other than the carrying on of his farming operations, the Commissioner may in such a case require the vendor to surrender his notice of registration so that an amended notice, excluding the authorization may be issued if necessary.

In terms of *subclause 2(b)* these provisions are effective from 1 June 1992.

Subclause (c): The amendment effected by paragraph 25(1)(c) of the Government Notice, whereby the supply of certain foodstuffs were zero rated, was effective until 31 March 1992. The amendment effected by this clause, with effect from 1 April 1992, provides for the supply of the same foodstuffs, except fresh milk and rice, to be zero rated. As in the Government Notice, the supply of meals, refreshments, cooked or prepared foods or any drink, so as to be ready for immediate consumption, does not qualify for the zero rate. In terms of paragraph 3 of the new PART B of Schedule 2 introduced by this subclause Items 3 to 10 of paragraph 1 (defining the foodstuffs concerned) will cease to apply on and after such date as the Minister may fix by notice in the *Gazette*. Items 1 and 2, relating to brown bread and maize meal, are not affected.

CLAUSE 45

Withdrawal of Government Notice

In terms of this clause Government Notice No. 2695 of 8 November 1991 is withdrawn. As indicated earlier in this Memorandum that Notice contained amendments to the Value-Added Tax Act, 1991, which are for the most part re-enacted in this Bill.

CLAUSE 46

Commencement date of certain amendments

The amendments effected by the amending Act to the principal Act, except the sections indicated in this clause, are deemed to have come into operation on 30 September 1991. The commencement dates of the excepted sections are indicated in the portions of this Memorandum dealing with those sections.

CLAUSE 47

Short title

The short title of the amending Act is the Taxation Laws Amendment Act, 1992.