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REPUBLIC OF SOUTH AFRICA

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**EXPLANATORY MEMORANDUM**

ON THE

**INCOME TAX AMENDMENT BILL, 1993**

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INTRODUCTION

The Income Tax Amendment Bill, 1993, introduces amendments to the Income Tax Act, 1962, as well as certain amendments to the Income Tax Act, 1993.

CLAUSE 1

*Amounts to be taken into account in respect of trading stock: Amendment of section 22 of the Income Tax Act, 1962*

*Subclause (1)(a) and (b):* During 1990 the Income Tax Act, 1962 (the Act), was amended to include the value of work-in-progress in the construction industry as well as consumable stores and spares in trading stock. At the same time provision was made for the phasing in of the amounts which were included in a taxpayer's trading stock as a result of the abovementioned amendment. Since it has been found that the possible loss of the deduction in terms of section 22(3B) of the Act in rationalisation schemes could hamper the rationalisation of businesses, the proposed amendment has the effect that the Commissioner may, under circumstances which he may prescribe, grant permission that the purchaser of a commercial or industrial undertaking may still qualify for a deduction contemplated in section 22(3B). It is, however, a condition that both the purchaser and the seller are managed, controlled or owned by substantially the same persons.

CLAUSE 2

*Provisions with regard to leave pay: Amendment of section 23E of the Income Tax Act, 1962*

Section 23E of the Act was introduced this year in terms of the Income Tax Act, 1993, and provides that an employer may not claim a deduction in respect of any leave to which his employees become entitled during years of assessment ending on or after 1 January 1994, until the relevant amount is actually paid by him or becomes due and payable. It also provides that the employee will not be taxable on a leave accrual until he becomes entitled to a payment in respect thereof. At the same time however, certain amounts claimed as leave pay provisions, being the value of leave which employees are entitled to take in future years, are gradually disallowed. Section 23E(7) therefore makes provision for the phasing in of the disallowance of a deduction in respect of leave pay. The phasing in takes the form of a diminishing deduction of the leave pay provision as defined in section 23E(1), over a period of 5 years. Where the taxpayer, however, ceases to carry on his trade in any year, the deduction falls away. Since it has been brought to the Commissioner's attention that the possible loss of the deduction in cases of rationalisation schemes could hamper the rationalisation of businesses, the proposed amendment has the effect that the Commissioner may, under circumstances prescribed by him, grant permission that the purchaser of a commercial or industrial undertaking is still entitled to a deduction contemplated in section 23E(7). It is, however, a condition that both the purchaser and the seller are managed, controlled or owned by substantially the same persons.

### CLAUSE 3

*Standard Income Tax on Employees (SITE): Amendment of paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962*

All employees are required to furnish their employers with updated returns of their personal particulars (eg marital status and number of children qualifying for a rebate) in sufficient time to enable their employers to take these particulars into account when determining the employees' liability for SITE. An employee who fails to furnish such a return, and in consequence becomes liable for a greater amount of SITE than would otherwise be the case, is not entitled to a refund. This finality is required for the correct functioning of the SITE system, and has been in place since the introduction of SITE in 1988.

To assist employees who, through ignorance of the provisions of the law, failed to furnish such updated returns in respect of the 1991, 1992 and 1993 years of assessment, it is nevertheless proposed in terms of the amendment introduced by this clause that authorisation be granted to the Commissioner so that he may refund amounts of SITE which have been overpaid by such employees in respect of such years of assessment.

### CLAUSE 4

*Special provisions with regard to unbundling transactions: Amendment of section 60 of the Income Tax Act, 1993*

Section 60 of the Income Tax Act, 1993, introduced certain special provisions with regard to the tax treatment of unbundling transactions. The concept of "distributable shares" is defined in subsection (1) of the abovementioned section and is limited to listed shares which are held by an unbundling company or an intermediate company (the holder) for its own benefit.

In terms of the proposed amendment, the concept is extended to also include shares in an unlisted company, which are held on 22 November 1993 by the holder for its own benefit if such unlisted shares are, pursuant to a distribution *in specie* in the course of an unbundling transaction, listed within 6 months after the distribution, or within a further period as the Commissioner may approve. It is a further condition that—

- (a) the holder's interest in the unlisted company consists of at least 30 per cent of the equity share capital of the unlisted company; or
- (b) the unlisted shares represent at least 70 per cent of the market value of the assets of the holder.

### CLAUSE 5

This clause provides the short title of the Bill.