REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 1993

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INTRODUCTION

The Taxation Laws Amendment Bill, 1993, introduces amendments to the Marketable Securities Tax Act, 1948, the Transfer Duty Act,1949, the Estate Duty Act, 1955, the Stamp Duties Act, 1968, the Regional Services Councils Act, 1985, the KwaZulu and Natal Joint Services Act, 1990, the Value-Added Tax Act, 1991, and provides a specific stamp duty exemption in respect of Cape Mohair (Holdings) Limited.

CLAUSE 1

Exemptions: Amendment to section 3 of the Marketable Securities Tax Act, 1948

At present the purchase of interest-bearing debentures which are listed on a recognised stock exchange in the Republic by a stockbroker on behalf of someone else, is exempt from marketable securities tax. In terms of the proposed amendment, the exemption in question will be expanded to include interest-bearing securities listed on a financial exchange contemplated in the Financial Markets Control Act, 1989.

CLAUSE 2

Allocation of payments: Amendment to section 6 of the Marketable Securities Tax Act, 1948

In terms of the proposed amendment, applicable with effect from 1 April 1994, any payment made by a person who is liable for an amount of tax and penalty under the Marketable Securities Tax Act, shall be set off against the penalty amount first, and thereafter, to the extent that such payment exceeds the penalty amount, against the tax amount.

Any agreement concluded before 1 April 1994 between the Commissioner and any person liable for the payment of such tax and penalty, and which provides for another method of allocating payments, shall cease to have effect from that date.

CLAUSE 3

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

In terms of the proposed 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 7 to 10 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 1 per cent is payable is increased from the first R50 000 to the first R60 000 of that value or amount. The rate of

duty on the excess over R60 000 up to and including R250 000 will be 5 per cent, and 8 per cent on the value or amount of the excess over R250 000 (compared to the existing rate of 5 per cent on the excess over R50 000).

The adjustments to these rates for transfer duty will bring about greater parity with the increased VAT rate of 14 per cent. The amendments are operative from 7 April 1993 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 4

Allocation of payments: Amendment to section 3 of the Transfer Duty Act, 1949

In terms of the proposed amendment, applicable with effect from 1 April 1994, any payment made by a person who is liable for an amount of duty and penalty under the Transfer Duty Act, shall be set off against the penalty amount first, and thereafter, to the extent that such payment exceeds the penalty amount, against the duty amount.

Any agreement concluded before 1 April 1994 between the Commissioner and any person liable for the payment of such duty and penalty, and which provides for another method of allocating payments, shall cease to have effect from that date.

CLAUSE 5

Exemption from transfer duty: Amendments to section 9 of the Transfer Duty Act, 1949

Subclause (1)(a): The proposed amendments to section 9(1)(b) of the Transfer Duty Act, 1949, are mainly as a consequence of changes made to local government structures and legislation. Divisional councils have been replaced by other structures. Both the Black Affairs Act, 1959 (Act No. 55 of 1959), as well as the Black Affairs Administration Act, 1971 (Act No. 45 of 1971), have been repealed. The Evaton Black Township is a town council and thus any reference to it has become superfluous. The body established under section 2 of the Transvaal Board for the Development of Peri-Urban Areas Ordinance, 1943 (Ordinance No. 20 of 1943), of the Transvaal has been replaced by the Local Government Affairs Council, established by section 2 of the Local Government Affairs Council Act (House of Assembly), 1989 (Act No.84 of 1989). Simultaneously, regional services councils and joint services boards are also exempted.

Subclause (1)(b): As in *subclause (1)(a)* above, the amendments made to section 9(9) of the Transfer Duty Act, 1949, are mainly consequential upon changes made in local government structures and legislation. Divisional councils have been replaced by other structures while the Black Affairs Act, 1959, has been repealed.

Subclause (1)(c): At present an exemption from transfer duty under section 9(12A) of the Transfer Duty Act, 1949, applies 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 R50 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 R20 000. The new subsection (12B) contains provisions similar to the existing subsection (12A) except that the first-mentioned limit of R50 000 is increased to

R60 000 and the last-mentioned limit of R20 000 is increased to R24 000. The new subsection (12B) is in terms of *subclause (2)* operative from 7 April 1993.

CLAUSE 6

Estate duty: Amendments to section 1 of the Estate Duty Act, 1955

Subclause (a): In terms of the proposed amendment a definition of "close corporation" is inserted; it is defined as a close corporation as contemplated in the Close Corporations Act,1984.

Subclause (b): In terms of the proposed amendment the definition of "family company" is deleted. This amendment should be read together with the proposed amendment in *clause 7.*

Subclause (c): In terms of the proposed amendment the definition of the concept "stocks or shares" is amended to put it beyond any doubt that it also includes a member's interest in a close corporation.

CLAUSE 7

Estate duty: Amendments to section 3 of the Estate Duty Act, 1955

Subclause (a): The provisions of section 3(3)(cB) read together with section 3(4) of the Estate Duty Act, 1955, were originally introduced in order to deem any consideration paid by a deceased person for shares issued to him by a family company, to the extent that such consideration exceeds the nominal value of such shares, as a donation made by the deceased to such a company, and the value of such a donation had to be included in the value of the deceased's estate. In terms of the proposed amendment, donations of this nature made during the lifetime of the deceased will be excluded from the property of his estate.

Subclause (b): The amendment proposed in terms of this clause is consequential upon the amendment introduced by *subclause (a).*

CLAUSE 8

Estate duty: Amendments to section 4 of the Estate Duty Act, 1955

Subclause (1)(a): Thus far it has invariably been the policy that expenses related to the erection of a tombstone do not constitute an allowable deduction for estate duty purposes. The proposed amendment will, however, authorise the Commissioner for Inland Revenue to allow as a deduction so much of tombstone expenses as he considers to be fair and reasonable.

Subclause (1)(b): The proposed amendment in terms of this subclause is consequential upon the insertion of paragraph (fA) in section 10(1) of the Income Tax Act, 1962. The amendment will in terms of *subclause (2)* apply in respect of the estate of any person who dies or died on or after the date on which section 10(1)(fA) comes into operation.

Subclause (1)(c): The amendment introduced by this subclause is consequential upon the amendment introduced by *clause 9(b).*

CLAUSE 9

Estate duty: Amendments to section 5 of the Estate Duty Act, 1955

Subclause (a): The amendment introduced by this subclause is consequential upon the amendments introduced by *clause 7.*

Subclause (b): The provisions of section 5(1)(f)*bis* of the Estate Duty Act, 1955, serve as a guideline for determining the value of shares held by a deceased person in a company not listed on a stock exchange. In terms of the proposed amendment the provisions of that section have been amended in such a manner as to put it beyond any doubt that the interest of the deceased in a close corporation on the date of his death shall likewise be determined in terms of the guidelines of that section.

Subclause (c): The amendment introduced by this clause is consequential upon the amendment introduced by *subclause (b).*

CLAUSE 10

Estate duty: Amendments to section 24 of the Estate Duty Act, 1955

Subclause (a): In terms of the amendment introduced by this clause, a decision of the Commissioner in terms of section 24(1) of the Estate Duty Act, 1955, shall be subject to objection and appeal.

Subclause (b): The amendment introduced by this clause is of a textual nature.

Subclause (c): In terms of the amendment introduced by this clause —

(i) a discretion is granted to the Commissioner to extend the period within which a notice of appeal has to be lodged where he is satisfied that reasonable grounds exist for the delay in the lodging of such appeal; and

(ii) the decision of the Commissioner in this regard is made subject to objection and appeal.

CLAUSE 11

Allocation of payments: Amendment to section 25 of the Estate Duty Act, 1955

In terms of the proposed amendment, applicable with effect from 1 April 1994, any payment made by a person who is liable for an amount of duty and interest under the Estate Duty Act, shall be set off against the interest amount first, and thereafter, to the extent that such payment exceeds the interest amount, against the duty amount.

Any agreement concluded before 1 April 1994 between the Commissioner and any person liable for the payment of such duty and interest, and which provides for another method of allocating payments, shall cease to have effect from that date.

CLAUSE 12

Estate duty: Amendment to section 28 of the Estate Duty Act, 1955

In terms of this clause, the maximum fine in respect of the offences as contemplated in section 28(2) of the Estate Duty Act, is increased from R100 to R1 000.

CLAUSE 13

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

Subclauses (1)(a), (1)(b), (1)(c), (1)(d) and (1)(e): The object of the proposed amendments introduced in terms of these subclauses is to delete references to certain local government bodies which have become defunct and to insert references to others, for example the Far West Rand Dolomitic Water Association, irrigation boards, regional services councils and joint services boards, and to exempt them from stamp duties where they are legally liable for the payment of stamp duties in respect of instruments.

Subclauses (1)(f) and (1)(g): The amendments introduced by these subclauses are consequential upon the insertion of paragraphs (fA) and (cL) in section 10(1) of the Income Tax Act, 1962, and will, where applicable, come into operation on the relevant date on which the said paragraph (fA) or (cL), as the case may be, comes into operation.

CLAUSE 14

Stamp duty on insurance policies: Amendment to section 24 of the Stamp Duties Act, 1968

The amendment introduced by this clause is consequential upon the amendment introduced by *clause 18* and prescribes the manner of payment of the stamp duty leviable under Item 18(6) of Schedule 1 to the Stamp Duties Act. This amendment comes into force on 1 September 1993 and shall apply in respect of premiums payable under such a policy or certificate of insurance, or any endorsement thereto or renewal thereof.

CLAUSE 15

Allocation of payments: Amendment to section 30 of the Stamp Duties Act, 1968

In terms of the proposed amendment, applicable with effect from 1 April 1994, any payment made by a person who is liable for an amount of duty and penalty under the Stamp Duties Act, shall be set off against the penalty amount first, and thereafter, to the extent that such payment exceeds the penalty amount, against the duty amount.

Any agreement concluded before 1 April 1994 between the Commissioner and any person liable for the payment of such duty and penalty, and which provides for another method of allocating payments, shall cease to have effect from that date.

CLAUSE 16

Stamp duty on agreements or contracts: Deletion of Item 2 of Schedule 1 to the Stamp Duties Act, 1968

In terms of the amendment introduced by this clause, Item 2 of Schedule 1 to the Stamp Duties Act is deleted and no stamp duty will be payable under that Item in respect of agreements or contracts executed on or after 1 April 1993.

CLAUSE 17

Stamp duty on marketable securities: Amendments to Item 15 of Schedule 1 to the Stamp Duties Act, 1968

Subclause (a): In terms of the proposed amendment, the exemption from stamp duty under paragraph (p) of the exemptions under Item 15(3) of Schedule 1 to the Stamp Duties Act, which at present applies to interest-bearing securities listed by a recognised stock exchange in the Republic, is expanded to include interest-bearing securities which are listed on a financial exchange contemplated in the Financial Markets Control Act, 1989.

Subclause (b): At present paragraph (v) of the exemptions under Item 15(3) of Schedule 1 to the Stamp Duties Act contains an exemption in respect of the registration of transfer of a share in a share block company where such registration is in consequence of a sale or disposal of such share which constitutes a supply subject to VAT. The proposed amendment in terms of this clause expands the exemption so that it is also applicable where such a supply is subject to VAT charged at a zero rate.

CLAUSE 18

Stamp duty on insurance policies: Amendment to Item 18 of Schedule 1 to the Stamp Duties Act, 1968

With the introduction of VAT the charging section, namely Item 18(6) of Schedule 1 to the Stamp Duties Act, under which stamp duty was imposed on short-term insurance, was deleted because VAT would be imposed on premiums payable under such policies. Due to the development of new insurance products which are not subject to VAT nor to stamp duty in terms of the current provisions of Item 18, it has become necessary to reintroduce the deleted Item 18(6) in an adjusted form. In terms of the proposed amendment, stamp duty will be charged at a rate of 1 per cent on premiums payable in respect of a policy or certificate of insurance or endorsement thereto or renewal thereof which is determined by the Registrar of Insurance in terms of section 67(2) of the Insurance Act, 1943, to be life business, and thus not subject to VAT. Examples of policies of this nature include hospital plan policies and policies covering large medical expenses.

CLAUSE 19

Stamp duty on powers of attorney: Amendment to Item 19 of Schedule 1 to the Stamp Duties Act, 1968

Item 19 of Schedule 1 to the Stamp Duties Act, 1968, requires inter alia that where an employee authorises his employer in terms of a stoporder to pay over a certain amount of such employee's remuneration to a third party, such stoporder is to be stamped as a power of attorney. In terms of the proposed amendment, such a power of attorney will be exempt from stamp duty.

CLAUSE 20

Definition: Amendment to section 1 of the Regional Services Councils Act, 1985

In terms of the proposed amendment, the definition of "person" in section 1 of the Regional Services Councils Act is amended in such a manner as to put it beyond doubt that a "person" also includes a trust.

CLAUSE 21

Definition: Amendment to section 1 of the KwaZulu and Natal Joint Services Act, 1990

In terms of the proposed amendment, the definition of "person" in section 1 of the KwaZulu and Natal Joint Services Act is amended in such a manner as to put it beyond doubt that a "person" also includes a trust.

CLAUSE 22

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

Subclause (a): Where goods or services are supplied by a vendor to a person who is a connected person in relation to the vendor, for example a child of the vendor, in the course of the vendor's enterprise, VAT is in certain circumstances (see section 10(4) of the principal Act and the amendment to that section introduced by *clause 26(a)*) payable in respect of the open market value of the supply.

In terms of this amendment paragraph (a) of the definition of "connected persons" is expanded to include references to the estates of deceased or insolvent persons.

In terms of section 53 of the principal Act a deceased or insolvent person and his estate are deemed to be one and the same person. The amendment introduced by this subclause is designed to remove any doubt there may be as to the applicability of the rules regarding connected persons to supplies of goods or services made by the estate of a deceased or insolvent person to any person who is a connected person in relation to the deceased or insolvent person or to the estate of any person who is a connected person.

Subclause (b): In terms of paragraph (c) of the definition of "enterprise" in section 1 of the principal Act, any activities of a regional services council or a joint services board are deemed to constitute an enterprise. In terms of the amendment proposed by this subclause a regional services council or a joint services board is deemed to carry on an enterprise only to the extent that its activities, when carried on by another local authority, would constitute an enterprise, or its other activities are financed by levies payable to such council or board in terms of the Regional Services Councils Act, 1985, or the KwaZulu and Natal Joint Services Act, 1990.

Subclause (c): Paragraph (ii) of the proviso to the definition of "enterprise" is amended to provide in subparagraph (aa) for those situations where the main business of a concern is located outside the Republic and a branch thereof is carrying on an enterprise in the Republic. The supply outside the Republic of goods or services by the main business is, subject to the conditions of that subparagraph, not deemed to be in the course or furtherance of an enterprise carried on by that business in the Republic. The amendments to sections 8(9), 11(1)(*i*) and 11(2)(o) introduced by *clauses 24(1)(a), 27(1)(b) and 27(1)(d)* are consequential upon this amendment.

A further subparagraph (bb) is also inserted to provide that the supply of goods or services by a branch or main business of a concern, shall not be deemed to be in the course or furtherance of an enterprise carried on by that concern in the Republic where that branch or main business is registered as a vendor under a law imposing a value-added tax or similar tax in a specified country. This is to prevent the same supply being subject to tax in both the Republic and the specified country where that branch is not carrying on an enterprise independently of the main business but is nevertheless registered as a vendor in a specified country.

Subclause (d): The definition of "exported" is amended by the exclusion in paragraph (d)(i) of those cases where the recipient is a resident in the Republic and is carrying on an enterprise as, for example, contemplated in paragraph 4 of the export incentive scheme. Paragraph 4 provides that, subject to certain conditions, supplies to a RSA export trading house may be made at the zero rate.

Subclause (e): The amendment to paragraph (b) of the definition of "input tax" in section 1 makes it clear that the tax fraction of an amount paid in respect of second-hand goods, will be regarded as input tax only where such payment reduces or discharges any obligation in respect of the purchase price, whether an existing obligation or an obligation which will arise in the future. This amendment should be read with the amendment to section 16(3)(a)(ii) dealt with in *clause 30(a)*.

CLAUSE 23

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

The amendments change the rate of tax from 10 per cent to 14 per cent, as announced by the Minister of Finance and of Trade and Industry in Parliament on 17 March 1993.

The amendments are effective from 7 April 1993.

CLAUSE 24

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): This amendment is consequential upon the amendment to paragraph (ii) of the proviso to the definition of "enterprise" proposed in *clause 22(c)*.

Subclause (1)(b): In terms of the provisions of section 18(3), the provision of fringe benefits to employees or office-holders is deemed to be a supply of goods or services made by the vendor in the course of his enterprise. The amendment to section 8(14) is, therefore, a rectification to exclude from the operation of section 8(14) such benefit or advantage, where it consists of the right of use of a motor car (as defined), in which case the vendor was, in terms of section 17(2)(c), not entitled to an input tax deduction in respect of the acquisition of such motor car. The value of the fringe benefit for VAT purposes is, however, restricted to the cost of maintenance and insurance of such motor car.

This rectification is deemed to have come into operation on 30 September 1991.

Subclause (1)(c): In terms of section 8(18) of the principal Act, which comes into operation on the date of promulgation of the amending Act, a share block company is entitled to claim VAT paid by it in respect of the acquisition of goods or services which relate to taxable supplies of shares made on or after that date by the share block developer of the share block scheme, as an input tax credit.

In terms of section 8(18) the input tax deduction permitted under that section will in terms of the last portion of that section, which is now contained in paragraph (a), not be available to a share block company where the share was allotted to the share block developer and the allotment was in fact a taxable supply by the share block company. In that case the

share block company would have been entitled to an input tax credit under the ordinary provisions of the principal Act.

The new paragraph (b) now introduced in section 8(18) provides for the case where a share in a share block company is acquired by a share block developer who is registered as a vendor from a previous owner of the share and has become entitled to treat such share as second-hand goods and a deduction of input tax in respect of his acquisition of the share is claimable by him under paragraph (b) of the definition of "input tax". To the extent that such deduction is claimed the share block company will not be entitled to claim a deduction of input tax by reason of the subsequent supply by the share block developer.

CLAUSE 25

Time of supply: Amendments to section 9 of the Value-Added Tax Act, 1991

Subclause (a): The practical problem often experienced by property developers involved in development projects lasting longer than six months from the date of signing the sale agreement, resulted in this amendment. As the six months period often elapses before transfer of the property in a deeds registry is effected or any payment is made, the reference to the six months period in section 9(3)(d) of the principal Act is deleted by this subclause.

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

CLAUSE 26

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

Subclause (a): Section 10(4) of the principal Act provides that where a supply is made by a vendor for no consideration or for a consideration in money which is less than the open market value of the supply, the supplier and recipient are connected persons in relation to each other and the recipient is not entitled to claim an input tax deduction in respect of the supply, the consideration in money for the supply is deemed to be the open market value of the supply.

The amendment proposed by this subclause is aimed at ensuring that where the recipient, if a consideration equal to the open market value of the supply had been paid by him, would not be entitled to claim the *full* amount of VAT in respect of that supply as an input tax deduction, the consideration in money for the supply is deemed to be the open market value of the supply.

The effect of this amendment is that a vendor will not be able to argue that as the recipient of the supply (being a connected person and a vendor) would be entitled to claim a certain percentage (although less than 100 per cent) of VAT as an input tax credit, section 10(4) is not applicable.

Example A father (being a vendor), gives his son a computer with an open market value of R1140. The son is a vendor, but will use the computer for private purposes as well. The proportion of taxable use of the computer is 60 per cent, and that of private use is 40 per cent.

As section 10(4) presently reads, it could be argued that the father does not have to account for output tax, as that section is not applicable— if a consideration equal to the open market value of the supply had been paid by the son, he would be entitled to claim an input tax deduction, although in respect of 60 per cent of the VAT only. No

VAT would, consequently, be payable by the father in respect of his son's private use of the computer.

In terms of the amendment proposed by this subclause, the father must account for VAT in respect of the open market value of the supply, i.e. R140 VAT, as the son would not be entitled to claim an input tax deduction in respect of the *full* amount of VAT.

The father will then issue a tax invoice to his son, who will be entitled to claim an input tax deduction in respect of 60 per cent of the open market value of the supply, i.e.

$$\frac{14}{114} \times \text{R1 140} \times \frac{60}{100}$$
$$= \text{R84}$$

Subclauses (b), (c) and (d): The amendments to *subclauses (b) and (c)* are of a textual nature.

Section 10(5) of the principal Act contains the valuation provision for section 8(2) and (9) of the Act. In terms of section 8(2), output tax is payable on the assets of a business at the deregistration of the vendor, and in terms of section 8(9), output tax is payable where goods or services are provided to a branch outside the Republic. The valuation provision is based on the lesser of the cost or the open market value of the goods or services.

Where the goods or services in respect of which section 8(2) or (9) is applicable, were acquired by the vendor in the circumstances referred to in section 10(4) (i.e. where the parties are connected persons, and no consideration or a consideration which is less than the open market value was paid by the recipient), the cost — for purposes of section 10(5) — is either nil or an amount which is less than the open market value of the goods or services at acquisition thereof.

The result of the amendment to section 10(5) proposed by *subclause (d)*, is that the cost includes the open market value which was, at acquisition, deemed to apply, or, where the open market value was not deemed to apply since the recipient would have been entitled to an input tax credit in respect of the full amount of VAT, the open market value which would have applied, were it not for the fact that the recipient would have been entitled to such credit in respect of the full amount of VAT, to the extent that such open market value exceeds any consideration in money paid for the supply.

Subclause (e): The amendment to subparagraph (i)(aa) of the paragraph defining the meaning of the expression "A" in section 10(9) is of a textual nature.

In terms of section 18(2) of the principal Act, where a recipient acquired capital goods or services wholly or partly for the purpose of consumption, use or supply in the course of making taxable supplies and the extent of the application or use of such goods or services for the purposes of making taxable supplies is subsequently reduced, such goods or services are deemed to have been supplied by way of a taxable supply. The effect of this provision is that an adjustment must be made in respect of the increased non-taxable use of the goods or services. The consideration for that supply is determined in accordance with the formula $A \times (B — C)$ contained in section 10(9) of the principal Act. The expression "A" in the formula represents the lesser of, *inter alia*, the cost of the goods or services and the open market value thereof.

If such capital goods or services were acquired from a connected

person for no consideration or for a consideration which is less than the open market value of the supply, the cost thereof is either nil or the amount paid by the recipient (unless, of course, further expenses were incurred in respect of those goods or services, in which case the cost will include such expenses). In terms of section 10(4) of the principal Act, as discussed above, where the recipient — if a consideration equal to the open market value of the supply has been paid by him — would not be entitled to claim an input tax deduction in respect of the full amount of VAT in respect of the supply, the supplier would have had to account for output tax calculated as the tax fraction of the open market value of the supply. Where increased non-taxable use occurs, it is evident that the amount of VAT paid to the fisc should also be increased.

The proviso added by this subclause is aimed at ensuring that an adjustment is made in respect of such increased non-taxable application or use of the goods or services. The cost of such goods or services is in terms of the proviso deemed to include the open market value of the original supply, as determined in accordance with section 10(4) or, where the open market value was not deemed to apply since the recipient would have been entitled to an input tax credit in respect of the full amount of VAT, the open market value which would have applied, were it not for the fact that the recipient would have been entitled to such credit in respect of the full amount of VAT, to the extent that such open market value exceeds any consideration in money paid for the supply. (This ensures that the amount paid by the recipient is not included in the cost twice.)

CLAUSE 27

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

Subclause (1)(a): Section 11(1) is amended by the insertion of a new paragraph (hB) which provides for the application of the zero rate to the supply of goods consisting of anti-knock preparations referred to in Heading No. 38.11.11.20 of PART A of Schedule 1, the importation of which is exempt from VAT in terms of section 13(3) of the principal Act.

In terms of *subclause (2)*, this amendment is effective from 15 July 1992.

Subclauses (1)(b) and (1)(d): These amendments are consequential upon the amendment to paragraph (ii) of the proviso to the definition of "enterprise" in section 1, contained in *clause 22(c)*.

Subclause (1)(c): Section 11(2)(g)(ii) of the principal Act is amended by the insertion of a reference to Item 470.03. The effect of this amendment is that services supplied directly in respect of goods cleared in terms of a permit issued by the Director-General: Trade and Industry, on the recommendation of the Board on Tariffs and Trade, for use in the manufacturing, processing, finishing, equipping or packing of goods exclusively for export, are subject to VAT at the zero rate.

CLAUSE 28

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

The amendment extends the choice a body corporate or share block company has in relation to the levying of VAT on the supply of managing services to its members. The Commissioner may in consequence of a written application by such body corporate or share block company, in effect, direct that the supply of such managing services be partially subject to the standard rate to the extent that the supply is in relation to members

who make taxable supplies and be partially exempt from VAT to the extent that the supply is in relation to members who either make exempt supplies or who make supplies otherwise than in the course or furtherance of an enterprise.

CLAUSE 29

Collection of tax on importation of goods, determination of value thereof and exemptions from tax: Amendment to section 13 of the Value-Added Tax Act, 1991

This amendment brings the Afrikaans text into line with the English text.

CLAUSE 30

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

Subclause (a): The amendment proposed by this subclause makes it clear that an input tax credit in respect of the acquisition of second-hand goods may be claimed only to the extent that a payment is made which reduces or discharges any obligation in respect of the purchase price, whether an existing obligation or an obligation which will arise in the future.

An input tax credit may, consequently, not be claimed where payment is made by way of, for example, the crediting of a loan account or promissory notes.

Subclause (b): Section 16(3)(b)(i) provides that a vendor who accounts for VAT on the payments basis may, in certain circumstances, claim an input tax deduction only to the extent that payment has been made in respect of the supply to him.

In terms of this amendment, a reference to section 9(3)(d) is inserted in section 16(3)(b)(i). The effect of the amendment is that a vendor may claim an input tax credit in respect of a supply of fixed property to him, only to the extent that payment has been made.

The other amendment proposed by this subclause, makes it clear that only payment which reduces or discharges any obligation in respect of the purchase price, will enable the vendor to claim an input tax credit. (See also *subclause (a)*.)

Subclause (c): The amendment to subparagraph (i)(aa) of the paragraph defining the meaning of the expression "B" in section 16(3)(h) is of a textual nature.

In terms of section 16(3)(h) of the principal Act, a vendor is entitled to claim an input tax deduction in respect of the portion of goods or services which was previously used for non-taxable purposes, when he supplies or applies such goods or services for taxable purposes. This prevents double taxation to the extent that he has to account for VAT in respect of a portion of the goods or services in respect of which he has not yet been entitled to claim an input tax credit.

The amount of the input tax deduction is determined in accordance with the formula A x B x C, in which formula the expression "B" represents the lesser of, *inter alia*, the cost of the goods or services and the open market value thereof.

If such goods or services were acquired from a connected person for no consideration or for a consideration which is less than the open market value of the supply, the cost thereof is either nil or the amount paid by the recipient (unless, of course, further expenses were incurred in respect of those goods or services, in which case the cost will include such expenses). In terms of section 10(4) of the principal Act, as discussed in the portion of this Memorandum dealing with *clause 26(a)*, where the recipient — if a consideration equal to the open market value of the supply had been paid by him — would not be entitled to claim an input tax deduction in respect of the full amount of VAT in respect of the supply, the supplier would have had to account for output tax calculated as the tax fraction of the open market value of the supply.

Therefore, although the recipient paid no VAT, or paid VAT only on an amount which is less than the open market value of the goods or services, the supplier had to account for VAT on the open market value. In order to ensure that the vendor can claim an input tax deduction in respect of such VAT which has previously been accounted for by that supplier, the proviso added by this subclause provides that the cost of such goods or services is deemed to include the open market value of the original supply, as determined in accordance with section 10(4), to the extent that it exceeds any consideration in money paid for the supply. (This ensures that any amount paid by the recipient is not included in the cost twice.)

Subclause (d): In terms of section 16(4)(b)(i), a vendor who accounts for VAT on the payments basis is, in certain circumstances, entitled to account for VAT only to the extent that payment has been received.

A reference to section 9(4) is added by this subclause, which has the effect that where goods are appropriated in circumstances where the whole of the consideration cannot be determined at that stage, the vendor has to account for output tax only to the extent that payment of consideration is received.

The other amendment proposed by this subclause ensures that 'payment' is treated in the same manner for purposes of calculating output tax and input tax. The vendor will have to account for output tax only to the extent that he receives payment which reduces or discharges any obligation in respect of the purchase price. (See also *subclauses (a) and (b)*.)

CLAUSE 31

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

Subclause (a): A vendor must, in terms of the first proviso to section 17(1), claim the full amount of VAT paid in respect of the acquisition of goods or services where the intended use of such goods or services for making taxable supplies is at least 90 per cent of the total intended use of such goods or services, whereafter an adjustment must be made in terms of section 18(1) in respect of that part of the goods or services used otherwise than for making taxable supplies. The amendment enables the vendor to make an apportionment at the time of the acquisition of the goods or services and to claim an input tax credit only to the extent that the goods will be used for making taxable supplies.

Subclause (b): According to this amendment, where a vendor acquires goods or services for making taxable supplies, he can make an apportionment between that part of the VAT paid in respect of the acquisition of such goods or services for which he is entitled to an input tax credit and that part

which relates to entertainment in respect whereof an input tax credit is denied.

Subclause (c): This amendment makes it clear that a local authority is entitled to an input tax credit in respect of the acquisition of goods or services for purposes of entertainment only to the extent that the local authority receives a composite amount for rates on the value of fixed property and other service levies from any person in respect of the taxable supply of goods or services as contemplated in section 8(6)(a), or where the entertainment will be provided in the course of the supply of goods or services referred to in paragraph (c)(iv) of the definition of "enterprise" in section 1 (i.e. the categories of business in respect of which a local authority is deemed to carry on an enterprise, e.g. caravan parks, pleasure and holiday resorts).

CLAUSE 32

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

Subclauses (a) and (b): The amendments proposed in *subclause (a)* to subparagraph (i) of the paragraph defining the meaning of the expression "B" in section 18(4) and in *subclause (b)* to subparagraph (i)(aa) of the paragraph defining the meaning of the expression "B" in section 18(5), are of a textual nature.

A vendor is in terms of section 18(4) and (5) of the principal Act entitled to claim, in certain circumstances, an input tax deduction where the taxable application or use of goods or services is increased.

The same problem relating to the cost of the goods or services where the provisions of section 10(4) of the principal Act were applicable to the acquisition of such goods or services, which is discussed in the part of this Memorandum dealing with the amendment to section 16(3)(h) (see *clause 30(c)*) is eliminated by the provisos added by *subclauses (a) and (b)*.

CLAUSE 33

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

In terms of this amendment the maximum amount in respect whereof an abbreviated tax invoice may be issued is increased to R500.

CLAUSE 34

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

Subclause (a): In terms of section 21(2)(b) of the principal Act, where a vendor issues a credit note in respect of a supply made by him in a previous tax period, he must make a deduction of input tax in his VAT return in respect of the excess VAT accounted for. This has the effect of reducing the amount of output tax for which he has already accounted. This method is, however, not in accordance with all vendors' accounting systems. In terms of the amendment introduced by this subclause, the vendor may, instead of deducting an amount of input tax, reduce the amount of his output tax.

Subclause (b): Section 21(6) provides that where a recipient-vendor receives a credit note or other notice or otherwise knows that the amount of input tax deducted by him in a previous VAT return in respect of a supply of goods or services to him is incorrect, he must account for output

tax in respect of the excess VAT claimed as an input tax credit in the previous VAT return. This amendment provides that the vendor may, instead of increasing his output tax, reduce the amount of input tax claimable by him.

CLAUSE 35

Appeals against decisions of special court: Amendment to section 34 of the Value-Added Tax Act, 1991

This amendment brings the Afrikaans text into line with the English text.

CLAUSE 36

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

In terms of the existing provisions of section 41 of the principal Act where certain rulings or decisions are withdrawn the withdrawal does not have a retrospective effect. The amendments introduced by this paragraph limit these provisions to those cases where written rulings or decisions were given and where general oral rulings or oral decisions were given before the promulgation of the amending Act.

The purpose of the amendments is to eliminate the confusion and uncertainty which often exists regarding the circumstances under consideration and the exact answer given, for example during a telephone conversation.

CLAUSE 37

Refunds: Amendments to section 44 of the Value-Added Tax Act, 1991

Subclause (a): This subclause amends paragraph (ii) of the proviso to subsection (1) by reducing the amount which is not automatically refunded to the vendor from R100 to R10 or less.

Subclause (b): This subclause amends subsection (4) by reducing the amount which is not automatically refunded to the vendor from R100 to R10 or less.

CLAUSE 38

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

Subclause (a): In terms of section 55(1) of the principal Act, a vendor must keep, *inter alia*, such books of account as may enable him to observe the requirements of the Act and enable the Commissioner to satisfy himself that the vendor has observed such requirements.

The amendment proposed by this subclause provides that where books of account are generated by means of a computer, they must be retained in the form of a computer print-out.

Subclause (b): Section 55(1)(a) contains a list of different records which must be retained by a vendor. That list is extended by this subclause to include bank statements, deposit slips, stock lists and paid cheques.

Subclause (c): The amendments to section 55(2) of the principal Act, *inter alia*, place it beyond doubt that the books of account, records and documents required to be retained by the vendor, must at all reasonable

times be open for inspection, whether in their original form or in another form authorised by the Commissioner in terms of section 55(4). The other amendments to section 55(2) are of a textual nature.

Subclause (d): Section 55(3) of the principal Act prescribes the period during which the records required to be kept in terms of subsection (1), must be retained.

The amendment proposed by this subclause is aimed at bringing the prescribed record-keeping period for value-added tax purposes into line with the income tax period. In terms of the new paragraph (a) introduced by this subclause, any records which must be kept for VAT and income tax purposes, whether in their original form or in another form authorised by the Commissioner in terms of section 55(4), must be kept for the period referred to in section 75(1)(f) of the Income Tax Act, 1962.

Subclause (e): In terms of section 55(4) of the principal Act, the Commissioner may authorise the retention of microfilm copies or computer tape records in lieu of the original records required to be maintained in terms of section 55(1) of the principal Act.

The amendment proposed by this subclause is aimed at providing for advanced technology in respect of data storage media without having to amend the Act every time a new storage medium is developed. The proposed subsection (4)(a) provides that the Commissioner may, subject to such conditions as he may determine, authorise the retention of the information contained in any documents which must be retained in terms of section 55, other than ledgers, cash books, journals and paid cheques, in a manner acceptable to him, in lieu of the retention of the originals of such documents.

In terms of the proposed subsection (4)(b), where documents are retained in such an acceptable manner, the originals thereof must be retained for a period of one year from the beginning of the period for which they would normally have to be retained.

CLAUSE 39

Offences: Amendment to section 58 of the Value-Added Tax Act, 1991

This amendment is consequential upon the amendments to section 55, introduced by *clause 38*.

CLAUSE 40

Offences and penalties in regard to tax evasion: Amendments to section 59 of the Value-Added Tax Act, 1991

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

Subclause (b): In terms of the new section 59(1)(*i*) introduced by this subclause, it will be an offence if any person, with intent to either avoid the payment of VAT or to obtain a refund to which he is not entitled, or with intent to assist someone else to avoid such payment or obtain such refund, for the purposes of section 16(2) fabricates, produces, furnishes or makes use of any tax invoice, debit note, credit note, bill of entry or other document contemplated in that section, knowing such tax invoice etc, to be false.

CLAUSE 41

Application of increased or reduced tax rate: Amendments to section 67A of the Value-Added Tax Act, 1991

Subclause (1)(a): In terms of section 67A(2) of the principal Act, the supply of goods in respect of which the time of supply falls on or before 6 April 1993 but which are delivered after that date are subject to VAT at the new increased rate.

The Deputy Minister of Finance announced in Parliament on 1 April 1993 that the rule in regard to delivery of goods in these circumstances is to be relaxed. The amendment introduced by this subclause brings section 67A(2) into line with the announcement that where goods are supplied (i.e. as contemplated in terms of the general rules in the Act) before 7 April 1993 and are delivered within 21 days of that date, the old rate will apply.

Subclause (1)(b): This subclause introduces a new section 67A(5) which applies to lay-by agreements. Where a lay-by agreement is concluded before the date on which an increase of the VAT rate becomes effective and a deposit in respect of the agreement was paid before that date, the rate at which tax is leviable will be the rate at which tax would have been levied had the supply taken place on the date on which such agreement was concluded, i.e. the old rate. This provision will prevent hardship where a person entered into a lay-by agreement at a certain VAT rate and the rate is increased before the time of supply of the agreement (delivery of the goods) takes place, which would have the effect of a higher amount of VAT being payable.

These amendments are effective from 17 March 1993.

CLAUSE 42

Issue of diplomatic tax relief certificates to certain diplomats and representatives of diplomatic and consular missions: Amendment to section 69 of the Value-Added Tax Act, 1991

In terms of section 69 of the principal Act, the Commissioner may, at the request of the Director-General: Foreign Affairs, register certain diplomats and representatives of diplomatic and consular missions and issue diplomatic tax relief certificates to them.

In terms of the proviso added to section 69 by this clause, the Commissioner may, in consultation with the said Director-General, cancel such registration with effect from a date determined by the Commissioner and require such diplomat or representative to surrender such diplomatic tax relief certificate.

CLAUSE 43

Amendments varying rate of tax or certain fixed amounts or Schedule 1 or 2: Amendment to section 76 of the Value-Added Tax Act, 1991

This amendment is consequential upon the amendment introduced by the insertion of a new paragraph (bA) to the definition of "commercial rental establishment" by section 12(1)(a) of the Taxation Laws Amendment Act, No. 136 of 1992.

CLAUSE 44

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

Subclause (1)(a): A reference to Headings Nos. 07.01 to 07.09 and 07.13, which relate to certain edible vegetables, certain roots and tubers, and 08.06/0806.10 and 08.07 to 08.10, which relate to certain edible fruit, is inserted in paragraph 1 of PART A.

Subclause (1)(b): A reference to Headings Nos. 10.06, 16.04/1604.13.15 and 16.04/1604.13.20, which relate to rice, sardinella and pilchards respectively, is inserted in paragraph 1 of PART A.

Subclause (1)(c): inserts in paragraph 1(a) of PART B a reference to Headings Nos. 07.01 to 07.09, 07.13, 08.06/0806.10 and 08.07 to 08.10.

Subclause (1)(d): inserts in paragraph 1(a) of PART B references to Headings Nos. 10.06, 16.04/1604.13.15 and 16.04/1604.13.20.

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

Subclause (1)(f): The reference to Item 409.02 in paragraph 1(a) of PART C is deleted.

Subclause (1)(g): inserts in paragraph 1(a) of PART C a reference to Headings Nos. 07.01 to 07.09, 07.13, 08.06/0806.10 and 08.07 to 08.10.

Subclause (1)(h): References to Headings Nos. 10.06, 16.04/1604.13.15 and 16.04/1604.13.20 are inserted in paragraph 1(a) of PART C.

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

Subclause (2)(a): The amendments effected by subclause (1)(a), (c) and (g) are effective from 7 April 1993.

Subclause (2)(b): The amendments effected by subclause (1)(b), (d) and (h) in respect of Heading No. 10.06 are effective from 7 April 1993, and in respect of Headings Nos. 16.04/1604.13.15 and 16.04/1604.13.20 from 31 July 1992.

CLAUSE 45

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

In terms of this clause, the list of additional items of foodstuffs in respect of the supply of which the zero rate will apply, as announced by the Minister of Finance and of Trade and Industry on 10 March 1993, is inserted in PART B of Schedule 2 to the principal Act.

The additional items which qualify for the zero rate are rice, vegetables, fruit, vegetable oil, milk, cultured milk, brown wheaten meal, eggs and edible legumes and pulse of leguminous plants. The descriptions of these items are contained in this clause.

This provision is effective from 7 April 1993.

CLAUSE 46

Special exemption in respect of shares issued by Cape Mohair (Holdings) Limited

The amendment provides for the once only exemption from stamp duty in respect of the issue of 4 000 000 ordinary shares of 1 cent each by Cape

Mohair (Holdings) Limited to its registered producers as referred to in its Articles of Association.

CLAUSE 47

Short title

The short title of the amending Act is the Taxation Laws Amendment Act, 1993.