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REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

SMALL BUSINESS TAX AMNESTY AND AMENDMENT OF TAXATION LAWS BILL, 2006

[W.P. 1 —'06]

EXPLANATORY MEMORANDUM ON THE SMALL BUSINESS TAX AMNESTY AND AMENDMENT OF TAXATION LAWS BILL, 2006

INTRODUCTION

The Small Business Tax Amnesty and Amendment of Taxation Laws Bill, 2006, introduces a tax amnesty for small business and introduces amendments to the Transfer Duty Act, 1949, the Estate Duty Act, 1955, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, the Value-Added Tax Act, 1991, the Tax on Retirement Funds Act, 1996, the Uncertificated Securities Tax Act, 1998, and the Local Government: Municipal Structures Act, 1998.

SMALL BUSINESS TAX AMNESTY

Small businesses play an important role in stimulating economic activity, job creation, poverty alleviation and the general improvement of living standards. Many small businesses operate informally, were historically marginalised and were excluded from the economic mainstream, thus remaining outside of the tax system. These small businesses are now keen to regularise their tax affairs but an obstacle is their past non-compliance and the resultant potential tax liabilities, penalties and interest.

SARS' tax-base broadening efforts and "walkabouts" in informal business areas have indicated that numerous small businesses are not on register or have not made full disclosure to SARS and would like the opportunity for regularisation without fear of tax liabilities arising out of past non-compliance. This also includes taxi operators who want to participate in the taxi recapitalisation program.

The Minister of Finance, therefore, announced in the 2006 Budget that Government will introduce a tax amnesty for small business.

The purpose and objective of the tax amnesty is, therefore, to:

- broaden the tax base;
- facilitate the normalisation of the tax affairs of small businesses;
- increase and improve the tax compliance culture; and
- facilitate participation in the taxi recapitalisation program.

Persons who may apply for amnesty

Any individual, unlisted company, close corporation, trust, co-operative, insolvent estate, of an individual, or deceased estate which meets certain requirements may apply for tax amnesty. The requirements are that—

- the individual or entity must carry on a business;
- the gross income (turnover) of the business during the 2005 tax year was not more than R5 million; and
- in the case of a company or close corporation all the shares or members' interests were held directly by individuals on the last day of the 2005 tax year.

For purposes of the amnesty, the "2005 year of assessment" is defined as the year of assessment which ended during the period of 12 months from 1 April 2004 to 31

March 2005.

Small businesses which are unregistered for tax purposes at the end of the 2005 tax year or which are registered taxpayers but whose income from small business activities has not been declared or has been understated will benefit from the amnesty.

Method of application

An applicant must apply for amnesty with the Commissioner on a form and at addresses to be prescribed by the Commissioner. Application forms should be submitted at any time during the period 1 August 2006 to 31 May 2007.

Information to be submitted

The application must contain details of the following: —

- the taxable income for the 2005 tax year in respect of all receipts and accruals which were not declared to the Commissioner before 15 February 2006;
- any employees' tax (PAYE) for the 2005 tax year which the applicant failed to deduct or withhold from remuneration paid to employees or which were deducted or withheld but not declared or paid over to the Commissioner;
- any value-added tax in respect of any taxable supply of goods or services or the importation of any goods or the supply of imported services which the applicant failed to declare to the Commissioner for tax periods ending during the 2005 year of assessment;
- any withholding tax on royalties in respect of an amount paid to any non-resident which was not declared to the Commissioner for the 2005 tax year;
- any secondary tax on companies which the applicant failed to declare in respect of dividends declared or deemed to be declared during the 2005 tax year;
- the unemployment insurance contributions which the applicant as employer failed to declare to the Commissioner for the 2005 tax year; and
- the skills development levies which the applicant as employer failed to declare to the Commissioner for the 2005 tax year.

The applicant must with the application for tax amnesty also submit—

- all relevant returns as required for each of the taxes, levies and contributions mentioned above for which amnesty is being applied, in respect of the 2005 year of assessment or tax periods ending, dividends declared or deemed to be declared or payments made or payable during that year of assessment; and
- a statement of all assets at cost and liabilities of the applicant as at the end of the 2005 tax year.

If it is not possible for the applicant to provide full particulars of any amounts declared in a return, the applicant may provide a reasonable estimate of those amounts.

Amnesty Levy

An amnesty levy of 10% of the taxable income determined for the 2005 year of assessment relating to amounts which were not declared to SARS before

15 February 2006, is payable by the applicant. In determining the amount of the levy, any balance of assessed loss or assessed capital loss brought forward from a previous year must be ignored.

Other conditions to qualify for tax amnesty

Tax amnesty will only apply if—

- the applicant pays the full amount of the tax amnesty levy within 12 months from the date of approval or a longer period as the Commissioner may allow;
- the applicant made full disclosure in all the tax returns for the 2005 tax year;
- the estimates made by the applicant are not materially incorrect; and
- the applicant provides all information required to enable the Commissioner to properly evaluate whether the applicant qualifies for amnesty.

Tax amnesty will not apply if the Commissioner has formally notified the applicant of an audit, investigation or other enforcement action relating to tax, contributions or levies covered by a tax amnesty application before the application was submitted. This does not apply if the notice was withdrawn before the tax amnesty application was submitted.

Evaluation process

A separate unit within SARS, with regional presence, will be established to process all applications on a confidential basis.

Scope of the tax amnesty relief

If an application for tax amnesty is successful, the applicant is granted relief from the payment of—

- income tax in respect of any amounts received or accrued or deemed to have been received or accrued by the small business in all tax years before the 2005 tax year;
- employees' tax which the applicant did not deduct or withhold, or which the applicant deducted or withheld but did not pay over to SARS in any year before the 2005 tax year;
- value-added tax in respect of the taxable supply of goods or services or the importation of any goods or the supply of imported services during any tax period ending before the 2005 tax year;
- withholding tax on royalties in respect of any amount paid to a non-resident before the 2005 tax year;
- secondary tax on companies in respect of any dividend declared or deemed to be declared before the 2005 tax year;
- unemployment insurance contributions which the applicant did not declare during any tax year before the 2005 tax year; and
- skills development levies which the applicant did not declare during any tax year before the 2005 tax year.

This relief also covers additional taxes, interest and penalties which relate to the undisclosed amounts.

A successful applicant will not be subjected to criminal prosecution relating to the non-disclosure of amounts for which amnesty is granted, which non-disclosure would

otherwise have constituted an offence in terms of any Act governed by the amnesty legislation.

Exclusion from the tax amnesty relief

The tax amnesty does not apply in respect of any tax, levy, contribution, interest, penalty or additional tax which had already been paid by the applicant before the date of the application or which becomes payable as a result of any return, declaration or information submitted to SARS before the date of the application.

Any approval of a tax amnesty application granted by the Commissioner is void if—

- the applicant fails to pay the full amount of the tax amnesty levy within the period allowed for payment;
- the applicant failed to make full disclosure in the tax amnesty application form or any tax return for the 2005 year of assessment;
- the estimates made by the applicant are materially incorrect; or
- the applicant failed to provide all information required to enable the Commissioner to properly evaluate whether the applicant qualifies for tax amnesty.

Review of Commissioner's decision

An applicant whose application for tax amnesty is denied by the Commissioner may object and appeal against that decision in terms of the normal dispute resolution procedures allowed in the Income Tax Act, 1962.

Treatment of deductions and losses going forward

If tax amnesty is granted to a person, that person may not in any future year of assessment—

- claim any deduction, allowance, assessed loss or assessed capital loss arising during the qualifying period for purposes of determining the person's liability for normal tax thereafter;
- for purposes of calculating that person's liability for secondary tax on companies, set-off the excess of any dividends which accrued in the qualifying period against any dividends declared by the applicant in any dividend cycle ending thereafter;
- claim the deduction of any input tax incurred or any other deduction as contemplated in the Value-Added Tax Act, 1991, incurred by that person during tax periods ending during the period in respect of which the tax amnesty applies, for purposes of calculating that person's liability for value-added tax thereafter.

Reporting by the Commissioner and Minister

The Commissioner must provide the following information relating to the tax amnesty process to the Minister of Finance and the Auditor-General—

- the number of applications received and the number of applications approved and rejected;
- the number of new taxpayers registered (per tax type) as a result of the tax amnesty;

- details per tax type of the amounts of tax declared under the tax amnesty (per tax type) which were not previously disclosed to the Commissioner;
- details per tax type of the amounts of all taxes payable for the 2006 year of assessment by applicants who obtained tax amnesty approval; and
- the total amount of all levies payable by all applicants.

This information must be provided in a form which does not disclose the identity of any applicant. The information must be submitted at a time as agreed between the Commissioner and the Minister of Finance and Auditor-General. The Minister of Finance must report to Parliament on the above information.

REGIONAL SERVICES LEVIES AND REGIONAL ESTABLISHMENT LEVIES

As announced by the Minister of Finance in his 2005 Budget Review, the regional services levies are to be repealed with effect from 1 July 2006. This measure provides significant direct tax relief to business, amounting to R7 billion for 2006/07 and totalling R24 billion over the Medium Term Expenditure Framework period. The administrative burden will be significantly lowered for all businesses and its removal will effectively lower the costs of job creation. The power to levy and claim levies in terms of the Regional Services Council Act, 1985 and the (KwaZulu-Natal) Joint Services Board Act, 1990, vests in district and metropolitan municipalities. This power is assigned to these municipalities in terms of section 93(6) of the Local Government: Municipal Structures Act, 1998. In order to effectively repeal the RSC levies, this section should be repealed thereby withdrawing the power of district and metropolitan municipalities to levy and claim these levies.

The repeal of Section 93(6) will only come into force once replacement legislation has been promulgated, but will take effect from 1 July 2006. The replacement legislation will be in the form of the Municipal Fiscal Powers and Functions Bill. It is envisaged that this Bill will go to Parliament shortly.

AMENDMENTS RELATING TO MUNICIPALITIES FOR PURPOSES OF THE VALUE-ADDED TAX, 1991

Currently where a local authority (municipality) charges municipal rates, that charge does not form part of the municipality's taxable activities in terms of paragraph (c) of the definition of "enterprise" in section 1 of the VAT Act. Consequently, municipalities may not claim any input tax on expenses incurred in connection with the services provided to the public at large, which are funded out of rates income. For example, the provision of fire services, street lighting, road infrastructure, public amenities such as parks and gardens, and the maintenance of those facilities. A result of the existing dispensation is that it complicates the administration of VAT in a municipality in respect of the apportionment of input tax.

It was therefore announced in the Minister's Budget speech on 15 February 2006 that municipal property rates will be zero-rated for VAT purposes with effect from 1 July 2006. The aim being primarily to unlock input tax related to non-taxable or "out of scope" supplies which municipalities could not claim prior to 1 July 2006. In addition, the budget proposal sought to simplify the municipality's accounting and tax records.

In order to achieve these aims, a number of amendments to the VAT Act had to be

effected. The proposed amendments intend to bring all the activities of the municipality within the scope of the ordinary test for an "enterprise", except for those activities which are specifically exempt in terms of section 12 of the VAT Act (e.g. bus transport and rental of residential housing).

The activities presently listed in Regulation 2570 dated 21 October 1991, such as caravan parks, hiking trails, nurseries, game farms, etc. are presently only taxable if the municipality is able to at least break even on the associated costs of making those supplies. The effect of the proposed amendments for the activities listed in Regulation 2570 is that the activities become taxable at the standard rate, as it falls within the enterprise with effect from 1 July 2006 without having to meet any profitability or breakeven requirement.

The proposal is achieved through the following amendments:

- The deletion of paragraph *(c)* and the deletion of the specific exclusion of a municipality in paragraph (a) of the definition of "enterprise" in section 1 of the VAT Act. The list of activities contained in Regulation 2570 dated 21 October 1991 will become obsolete;
- The insertion of section 8(27) which clarifies that a municipality is deemed to supply services to the owner of rateable property, to the extent that the owner is charged a "municipal rate";
- The insertion of a new zero-rating provision (section 11(2)*(w)* of the VAT Act) which applies in respect of municipal rate charges; and
- The blocking of all input tax adjustments on assets which were acquired prior to 1 July 2006, which will now be applied in a taxable activity.

Definition of a "designated entity"

A "municipal entity" as defined in section 1 of the Local Government: Municipal Systems Act, 2000, does not fall within the definition of a "municipality" as defined in section 1 of the VAT Act. The proposed amendment includes a municipal entity in the definition of a "designated entity" in section 1 of the VAT Act, unless the Minister is satisfied that the activities of the municipal entity are of a regulatory nature and has specifically notified that municipal entity that its supplies are not made in the course or furtherance of an enterprise. Therefore, a municipal entity will be deemed in terms of section 8(5) of the VAT Act to supply services at the standard rate to the municipality or public authority where applicable, where there is no actual supply in terms of section 7(1)(a) of the VAT Act.

Definition of an "enterprise"

The proposed amendment is to ensure that as far as possible, all the activities of the municipality (except for those which are exempt under section 12 of the VAT Act) are brought within the ambit of paragraph *(a)* of the definition of "enterprise". Since it is proposed that a municipality's activities be included in paragraph *(a)* of the definition with effect from 1 July 2006, there will no longer be a need for specific enterprise rules for municipalities. It is therefore proposed that paragraph *(c)* of the definition of "enterprise" be deleted.

The proposed amendment will ensure that the municipality levies VAT at the standard rate on all supplies, which are not otherwise zero-rated under section 11 or exempt under section 12 of the VAT Act. The municipality will, in turn, be entitled to claim the input tax incurred in carrying on those taxable activities under the normal rules for claiming input tax. However, there is an exception, in that no input tax

adjustment will be allowed in terms of section 18(4) of the VAT Act where the municipality applies goods and services which it acquired on or before 1 July 2006 for taxable supplies on or after that date. It is also proposed that no future adjustments on any change in use of the said goods or services in terms of sections 18(2), (4) and (5) of the VAT Act will be required, as long as those goods or services continue to be used in the municipality's enterprise.

Where a municipality imposes a penalty or fine, e.g. traffic fines, in respect of an unlawful activity, that charge is not taxable, as it is not in respect of any supply of goods or services by the municipality or provincial authority (as the case may be). Fines are generally levied in terms of provincial or national laws, or municipal by-laws, the administration of which is assigned to municipalities.

The collection of license fees in terms of the Road Traffic Act will not be in the course or furtherance of the municipality's enterprise, as the actual charging/levying of the license fee is not in respect of the supply of any goods or services made by the municipality, but rather the authority of the Province (a public authority). However, where the municipality is paid/refunded a certain percentage of the licence fee collected on behalf of the Province, the municipality is liable to account for VAT at the standard rate on that amount, as it is in respect of the service, which the municipality renders of collecting the fees on behalf of the other authority.

Where the municipality has the authority to levy licenses or similar charges for access to facilities for its own account the license or similar charge will be taxable at the standard rate of 14%.

The term "local authority" is replaced by the term "municipality"

The proposed amendment is due to the term "local authority" becoming redundant as various Acts applicable to the local sphere of Government, now refer to "municipalities". The proposed amendments to sections 1 (definitions of "grant" and "person"), 8(5), 8(5A), 10(14), 11(2)(n), 11(2)(s), 15(2A), 46(c), the proviso to 46, 48 and paragraph 5 of Schedule 1, are consequential upon the deletion of the definition of "local authority" and the insertion of the definition of "municipality" in section 1 of the VAT Act.

Definition of a "municipality"

A "**municipality**" is defined as being an organ of the State within the local sphere of government, which exercises legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998, and which has the power to levy a municipal rate in terms of section 2 of the Local Government: Municipal Property Rates Act, 2004, even if the power might not have been invoked.

It is important to note that a municipality does not include any public entity listed in the Schedules to the Public Finance Management Act, 1999 ("PFMA"). Therefore, it is clear that an entity which is listed on the PFMA cannot also be a "municipality" as defined in section 1 of the VAT Act.

Definition of "municipal rate"

It is proposed to insert a definition for a "**municipal rate**" which means the amount levied in terms of section 2 of the Local Government: Municipal Property Rates Act,

2004 (Act No. 6 of 2004) by a municipality on 'rateable property' as defined in section 1 of that Act. This is to ensure that only the amount of property rates raised by the municipality is subjected to the zero rate and not the other charges for goods or services supplied by the municipality (e.g. water. electricity, entrance fees, sewage, etc).

However, where a municipality charges a flat rate/single consideration for municipal rates, electricity, gas, water, drainage, removal or disposal of sewage or garbage or goods or services that are incidental to or necessary for the supply of such goods or services, such flat rate will be taxable at the standard rate of 14%.

CHAPTER 1

CLAUSES 1 - 18

Small Business Tax Amnesty

See notes under SMALL BUSINESS TAX AMNESTY.

CHAPTER II

CLAUSE 19

Transfer duty: Amendment of section 2 of the Transfer Duty Act, 1949

Transfer duty is levied in terms of section 2 of the Transfer Duty Act on the acquisition of fixed property in South Africa. Currently, the rates for property acquired by natural persons are—

- 0% on the first R190 000 of the value of the property;
- 5% on the value between R190 001 up to R330 000; and
- 8% on the value above 330 000.

Given the substantial increases in property prices over the past few years, the Minister of Finance has proposed that the exempt (zero-rated) threshold for transfer duty be increased to R500 000. It is also proposed that the 8% rate apply in respect of amounts in excess of R1 million. The new graduated rate structure will therefore be as follows:

- 0% on the first R500 000 of the value of the property;
- 5% on the values between R500 001 up to R1 million; and
- 8% on values above R1 million.

The rate for persons other than natural persons is currently 10%. It is proposed that this rate be aligned with the maximum rate for natural persons of 8%.

The new rate structure will apply in respect of acquisitions of property on or after 1 March 2006.

CLAUSE 20

Transfer duty: Amendment of section 5 of the Transfer Duty Act, 1949

The proposed amendment is of a textual nature as the reference to a divisional council has become obsolete.

CLAUSE 21

Transfer duty: Amendment of section 9 of the Transfer Duty Act, 1949

A divorced spouse married out of community of property can not acquire the sole ownership in the whole or any portion of property registered in the name of his or her divorced spouse exempt from transfer duty where that property or portion is transferred to that divorced spouse as a result of the dissolution of their marriage. The proposed amendment will ensure that transfer duty will not be payable on the acquisition of property as a result of the death of a spouse or divorce irrespective of whether the marriage was in or out of community of property.

CLAUSE 22

Estate Duty: Amendment of section 4A of the Estate Duty Act, 1955

As proposed by the Minister of Finance in his 2006 Budget Review, the estate duty exemption will be increased from R1,5 million to R2,5 million with effect from 1 March 2006. The amendment gives effect to this proposal.

CLAUSE 23

Fixing of rates of normal tax

Income Tax: Rates of normal tax

Rates of normal tax payable by all persons are enacted by this clause and Schedule 1 to the Bill.

Persons other than companies

The rates for persons (other than companies) apply in respect of the year of assessment ending on 28 February 2007 and are provided for in paragraph 1 of Schedule 1. More specifically, the rates for—

- persons (other than companies) and special trusts are provided for in paragraph 1*(a)* of Schedule 1 and consist of a progressive rate structure ranging between 18 per cent on the lowest portion of taxable income (amounts up to R100 000) and 40 per cent which is reached on the portion of taxable income above R400 000; and

- trusts (other than special trusts) are provided for in paragraph 1*(b)* of Schedule 1 and are fixed at a single rate of 40 per cent on all taxable income.

Companies

The rates for companies apply in respect of years of assessment, i.e. the financial year of the company concerned, ending during the 12-month period from 1 April 2006 to 31 March 2007, and are provided for in paragraphs 2*(a)* to *(h)* inclusive, of Schedule 1.

Those rates are as follows:

(a) Taxable income derived otherwise than—

(i) by a small business corporation or an employment company;
(ii) from gold mining;
(iii) from long-term insurance business;
(iv) by a non-resident through a branch or agency in the Republic; or
(v) by a qualifying company enjoying tax holiday status:

29 cents per R1. However, in the case of a company which mines for gold and which is exempt from secondary tax on companies in terms of an option exercised by it, 37 cents per R1 of its non-gold mining taxable income (paragraph 2*(a)* of Schedule 1).

(b) Taxable income derived by a company which qualifies as a small business corporation as defined in section 12E:

(i) 0 cents in respect of taxable income up to R40 000
(ii) 10 cents per R1 of taxable income exceeding R40 000, but up to R300 000, and
(iii) 29 cents per R1 of taxable income exceeding R300 000 (paragraph 2*(b)* of Schedule 1).

(c) Taxable income derived by an employment company as defined in section 12E: 34 cents per R1 of taxable income (paragraph 2*(c)* of Schedule 1).

(d) Taxable income derived by a company from gold mining: an amount determined in accordance with one of the following formulae—

(i) where such company is not exempt from secondary tax on companies:

$$y = 35 - \frac{175}{x}\text{; or}$$

(ii) where such company is exempt from secondary tax on companies:

$$y = 45 - \frac{225}{x},$$

as provided for in paragraph 2*(d)* of Schedule 1.

(e) Taxable income in the form of "recoupments" of capital expenditure accruing to companies which are or have been gold mining companies: the average rate of tax, determined as provided, or 29 cents per R1, whichever is the higher (paragraph 2*(e)* of Schedule 1).

(f) Taxable income derived from long-term insurance business:

(i) 30 cents per R1 in respect of the insurer's individual policyholder fund; and
(ii) 29 cents per R1 in respect of the insurer's company policyholder fund and corporate fund

(paragraph 2*(f)* of Schedule 1).

(g) Taxable income (excluding from gold mining, long-term insurance business, or a qualifying project enjoying tax holiday status, or derived by a small business corporation or an employment company) derived by a non-resident which carries on trade through a branch or an agency within the Republic: 34 cents per R1 (paragraph 2*(g)* of Schedule 1).

Example 1:

Facts. Company is incorporated in South Africa but maintains its place of effective management in Foreign Country. Company generates R100 000 of taxable income through a retail sales branch located in South Africa. No treaty for the avoidance of double taxation exists between South Africa and Foreign Country.

Result. Even though Company maintains its effective place of management outside South Africa, the 34 per cent rate described in paragraph 2*(g)* does not apply to the R100 000 of taxable income because Company is a South African resident for income tax purposes by virtue of its South African incorporation.

Example 2:

Facts. The facts are the same as Example 1, except that South Africa and Foreign Country have entered into a treaty for the avoidance of double taxation. The treaty determines the residence of a company based on the location of that company's place of effective management.

Result. Company does not qualify as a South Africa resident for income tax purposes because the treaty views Company as a resident of Foreign Country. The 34 per cent rate described in paragraph 2*(g)* applies to the R100 000 of taxable income because Company is a non-resident for income tax purposes and that income is derived through a South African branch. STC is not payable by the Company as it is not a resident.

(h) Taxable income derived by a qualifying company which has been granted tax holiday status in terms of section 37H of the Income Tax Act, 1962: zero cents per R1 (paragraph 2*(h)* of Schedule 1).

For purposes of paragraph 2 of Schedule 1, income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold, and any other income which results directly from mining for gold.

CLAUSE 24

DRAFT

Income Tax: Amendment of section 1 of the Income Tax Act, 1962

This amendment is consequential upon the amendment of paragraph *(a)* of the definition of "dividend" by the Revenue Laws Second Amendment Act, 2005.

CLAUSE 25

Income Tax: Amendment of section 4 of the Income Tax Act, 1962

National Treasury only has access to any class of taxpayers' data for purposes of policy design and revenue estimation. This limited access is insufficient in the case of public entities given National Treasury's role in appropriating funds. The National Treasury is now given access to individual taxpayer data to the extent that the taxpayer involved is an entity as listed in the Public Finance Management Act, 1999 and the Local Government: Municipal Finance Management Act, 2003.

CLAUSE 26

Income Tax: Amendment of section 6 of the Income Tax Act, 1962

The proposed amendment increases the primary rebate from R6 300 to R7 200. This change means that the tax threshold for individuals under age 65 is increased to R40 000 and for individuals at least 65 years of age is increased to R65 000.

CLAUSE 27

Income Tax: Amendment of section 8 of the Income Tax Act, 1962

Section 8 of the Income Tax Act determines the taxable portion of an allowance or advance paid by a principal to a recipient. This taxable portion, however, does not include any allowance or advance to the extent that it was actually expended by the recipient on *inter alia* travelling on business. Section 8 contains a deeming provision relating to the distance travelled by a taxpayer to avoid the need to maintain exact details of business travel in the form of a logbook. In terms of this deeming provision the first 16 000 kilometres travelled by a person in a year is deemed to be private travel. The deemed private travel is deducted from the distance travelled in a year (limited to a total of 32 000 kilometres) and the balance is deemed to constitute business travel. The rate per kilometre applied to determine the amount expended on business travel is based on a cost table fixed by the Minister in respect of different categories of vehicles.

The deduction of deemed business expenses against a motor vehicle allowance has increased substantially over the years. As mentioned by the Minister of Finance in his 2005 Budget Review, this generous allowance in the current formula creates an unfair bias in the structuring of salary packages with undue benefits accruing especially to higher income earners. As part of the package of reform in this area, the Minister proposed that the deemed private kilometres be increased from 16 000 to 18 000 and this amendment gives effect to that proposal.

CLAUSE 28

DRAFT

Income Tax: Amendment of section 9B of the Income Tax Act, 1962

Section 9B of the Income Tax Act provides for the circumstances in which amounts received or accrued from the disposal of listed shares are deemed to be of a capital nature. This section applies in respect of all taxpayers, whether natural persons or companies. Section 9B(8), however, only applies in respect of companies. This section provides that amounts included in the income of a company as a result of the application, disposal or distribution of a share in a manner contemplated in section 22(8)*(b)* (for example as a result of a donation of a share), must be deemed to be an amount which accrued to the company as a result of the disposal of the share. There is no rationale for this provision applying only in respect of companies and it is proposed that it be extended to also apply in respect of natural persons and other entities.

CLAUSE 29

Income Tax: Amendment of section 10 of the Income Tax Act, 1962

Subclauses (a), (b) and (c): The interest and dividend exemption is currently fixed at R15 000 for taxpayers under 65 years of age and R22 000 for taxpayers aged 65 years and older. The Minister of Finance proposed in his Budget Review this year that the interest and dividend income exemption be raised with effect from 1 March 2006 to R16 500 for taxpayers under the age of 65 and to R24 500 for taxpayers age 65 and over. Currently, up to R2 000 of this exemption may be applied to interest and dividends from foreign sources and the balance applies in respect of domestic interest. The Minister further proposed that this amount be increased to R2 500.

Subclauses (d) and (e): Any amount received by or accrued to or in favour of any person from the State in terms of the Regional Industrial Development Programme which came into operation on 1 May 1991, or by way of a grant in terms of the Simplified Regional Industrial Development Programme, which came into operation on 1 October 1996, shall be exempt from normal tax. These old manufacturing support schemes were replaced by the Department of Trade and Industry with a range of new programs announced by the Department of Trade and Industry in September 2000.

CLAUSE 30

Income Tax: Amendment of section 12E of the Income Tax Act, 1962

Currently, small business corporations enjoy certain tax benefits, i.e. a beneficial rate structure, an immediate 100 per cent write off in respect of manufacturing assets and an accelerated write off in respect of other assets. A small business corporation is defined in section 12E of the Income Tax Act, 1962, and one of the criteria is that the gross income for the relevant year of assessment does not exceed R6 million.

The Minister of Finance proposed in the 2006 Budget Review that the turnover limit for small business corporations will be increased from R6 million to R14 million. The amendment gives effect to this proposal.