[W.P. 1 —'06]

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

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

NATIONAL TREASURY

[W.P. 1 —'06]

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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

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

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.

CLAUSE 31

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

Government introduced the learnership tax allowance in 2002 to encourage on the job training and to enhance skills development in the Republic. This allowance, which is set to expire in October 2006, has boosted the number of learnerships. The Minister of Finance proposed in the 2006 Budget Review that the learnership allowance be extended to October 2011, in line with the extension of the national Skills Development Strategy to 2010. Furthermore, the Minister proposed that the maximum allowance upon the entering into a learnship be increased from R17 500 to R20 000 for existing employees and from R25 000 to R30 000 for new employees. Similarly, it was proposed that the maximum allowance upon completion of all learnerships be increased from R25 000 to R30 000.

The Minister further proposed that, given the additional expenses associated with employing disabled persons as learners, a more favouable learnerhip tax allowance be introduced with effect from 1 July 2006 in respect of disabled learners. In terms of the proposed amendments, an employer will be allowed to deduct an initial allowance of 150 per cent of the annual salary of an existing learner employee with a disability (up to a maximum of R40 000) and 175 per cent for an unemployed learner with a disability (up to a maximum of R50 000). The allowance for disabled persons completing a learnership will be 175 per cent of the employee's annual salary (up to a maximum of R50 000).

CLAUSE 32

Income Tax: Amendment of section 24I of the Income Tax Act, 1962

Subclause (a): Section 24I of the Income Tax Act was amended by the Revenue Laws Amendment Act, 2005, to *inter alia* align the translation of exchange items at the end of the tax year with Generally Accepted Accounting Practice. With this amendment the translation rule relating to a forward exchange contract which is an affected contract was erroneously omitted and it is, therefore, proposed that it be reinserted with effect from the date of the 2005 amendment.

Subclause (b): Section 24I of the Income Tax Act was amended by the Revenue Laws Amendment Act, 2005, to *inter alia* extend the relief measures contained in section 24I(10) to also include foreign currency loans and advances between connected persons which were previously dealt with under the discontinued provisions of section 24I(7A). With this amendment to subsection (10), the proviso thereto was erroneously omitted and it is, therefore, proposed that it be reinserted with effect from the date of the 2005 amendment.

CLAUSE 33

Income Tax: Amendment of section 56 of the Income Tax Act, 1962

As was proposed by the Minister of Finance in the 2006 Budget Review that the annual donations tax exemption will be increased from R30 000 to R50 000 with effect from 1 March 2006. This amendment gives effect to this proposal.

CLAUSE 34

Income Tax: Amendment of paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962

As mentioned by the Minister of Finance in the 2005 and 2006 Budget Reviews, the provisions relating to the motor vehicle allowances are amended as the generous allowance in the formula created an unfair bias in the structuring of salary packages with undue benefits accruing especially to higher income earners. Although the proposed amendments to section 8 of the Income Tax Act address these concerns, the full amount of tax payable on the non-business related portion of the travel allowance only becomes payable on assessment. To ensure that the correct amount of income tax is collected through the PAYE system during the year, it is proposed that the percentage of the monthly motor vehicle allowance which should be subject to PAYE be increased from 50% to 60%. The amendments give effect to this proposal.

CLAUSE 35

Income Tax: Amendment of paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962

Employees who receive free or discounted residential accommodation are subject to fringe benefit taxation. This form of fringe benefit taxation is based on a formula which is partly based on prior year salary less R20 000. As proposed by the Minister of Finance in his 2006 Budget Review, the amount of R20 000 will be doubled to R40 000 and the amendment gives effect to this proposal.

CLAUSE 36

Income Tax: Amendment of paragraph 10 of the Seventh Schedule to the Income Tax Act, 1962

Cross-border travel benefits up to R500 for transport business employees are not subject to fringe benefit taxation. As proposed by the Minister of Finance in his 2006 Budget Review, the R500 monetary cap rule will be deleted as obsolete. The amendment gives effect to this proposal.

CLAUSE 37

Income Tax: Amendment of paragraph 12B of the Eighth Schedule to the Income Tax Act, 1962

No value will be placed on any taxable benefit resulting form the provision of medical treatment listed in any category of the prescribed minimum benefits determined by the Minister of Health, which is provided to the employee (or his or her spouse or children) in terms of a scheme or programme of that employer which does not constitute the carrying on of the business of a medical scheme, who are beneficiaries of a medical scheme registered under the provisions of the Medical Schemes Act, 1998, if the total cost of any treatment provided in terms of that programme is recovered from that medical scheme.

CLAUSE 38

Income Tax: Amendment of paragraph 5 of the Eighth Schedule to the Income Tax Act, 1962

In terms of paragraph 5 of the Eighth Schedule, a natural person has an annual exclusion of R10 000 in respect of capital gains or capital losses during a year of assessment. This effectively means that after setting off all capital gains and losses for the year, any balance remaining (whether a gain or loss) which is less than R10 000 is disregarded. This annual exclusion increases to R50 000 in the year that a person dies.

The Minister of Finance proposed in the 2006 Budget Review that the annual exclusion will increase from R10 000 to R12 500 and in the year of death of a taxpayer increase from R50 000 to R60 000. The amendments give effect to this proposal.

CLAUSE 39

Income Tax: Amendment of paragraph 45 of the Eighth Schedule to the Income Tax Act, 1962

Paragraph 45 of the Eighth Schedule to the Income Tax Act provides for an exclusion of the first R1 million capital gain or loss realised from the disposal of a primary residence of the taxpayer. The Minister of Finance proposed in the 2006 Budget Review that this exclusion will be increased to R1,5 million with effect from 1 March 2006. The amendment gives effect to this proposal.

CLAUSE 40

Income Tax: Amendment of paragraph 57 of the Eighth Schedule to the Income Tax Act, 1962

Paragraph 57 of the Eighth Schedule to the Income Tax Act provides for the exclusion of the first R500 000 of any capital gain realised from the disposal of an asset of or interest in a small business in certain circumstances. The Minister of Finance announced in his Budget Review this year that this amount will be increased to R750 000. This amendment gives effect to that proposal.

CLAUSE 41

Income Tax: Amendment of paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962

In 2005 anti-avoidance measures were introduced in order to prevent multinationals from utilising the participation exemption for capital gains with little or no consideration remaining within the South African jurisdiction. The measures cover situations where the consideration on disposal of foreign shares is distributed *in specie*. However, a distribution of cash would not trigger the anti-avoidance rules. It is proposed that subparagraph (3) be amended in order to cover the distribution of all forms of consideration under the anti-avoidance rule. Furthermore, it is proposed that subparagraph (4) be amended to ensure that the company to which distributions were made, which qualified for the STC exemption contained in section 64B(5)*(f)* or the participation exemption in section 10(1)*(k)*(ii)*(dd)* of the Income Tax Act, also be subject to the anti-avoidance rules on the disposal of the distribution received.

CLAUSE 42

Customs and Excise: Amendment of section 4 of the Customs and Excise Act, 1964

Section 4(8A)(a) empowers an officer to stop and detain goods in order to determine whether the provisions of the Customs and Excise Act, or any other law, has been complied with before the goods are allowed to pass from the control of the Commissioner as contemplated in section 107(2)(a) of the Act.

The current wording of subsection (8A)(a) does not, for the purposes of the subsection, include ships, vehicles and containers contemplated in section 1(2) in the description of “goods”.

The proposed amendment to subsection (8A)(a) is aimed at providing for the stopping, detention and examination of all goods under the control of the Commissioner, including ships, vehicles or any container contemplated in section 1(2), whether for the purposes of the Customs and Excise Act or any other law as contemplated in section 107(2)(a). The amendment also clearly vests the general power of examination which is required to give effect to the aims of the subsection in a customs officer.

CLAUSE 43

Customs and Excise: Amendment of section 107 of the Customs and Excise Act, 1964

Section 107(1) deals with the expenses relating to the handling, examination, weighing, analysis, etc of goods for the purposes of the Customs and Excise Act. It also specifies the persons responsible for such costs.

Section 107(2)(a) prohibits the Commissioner from allowing goods to pass from under his or her control until the provisions of this Act or any other law relating to the importation, or exportation, or transit carriage through the Republic of goods have been complied with in respect of such goods.

The proposed insertion of subsection (3) is consequential to the amendment of section 4(8A)(a) and includes, for the purposes of subsections 107(1) and 107(2)(a), any ship, vehicle or container contemplated in section 1(2) in the description of “goods”.

CLAUSE 44

Customs and Excise: Amendment of Schedule No. 1 to the Customs and Excise Act, 1964

This clause provides for the amendment of Schedule No. 1 to the Customs and Excise Act. These amendments are reflected in Schedule 2 to this Bill. These amendments give effect to the taxation proposals which were tabled by the Minister of Finance during his Budget Speech this year and contain the rates of duty in respect of alcoholic and tobacco products.

CLAUSE 45

Customs and Excise: Continuation of certain amendments of Schedules Nos. 1 to 6 and 10 to the Customs and Excise Act, 1964

This clause provides for the continuation of the amendments to the Schedules to the Customs and Excise Act, which were effected by the Minister of Finance during the 2005 calendar year.

CLAUSE 46

Stamp Duties: Amendment of section 1 of the Stamp Duties Act, 1968

The proposed amendment is consequential upon the introduction of electronic stamping. Adhesive revenue stamps and impressed stamps (franking machines) will be phased out and these provisions will become obsolete. The proposed amendment will come into operation on a date fixed by the President by proclamation in the *Gazette*.

CLAUSE 47

Stamp Duties: Amendment of item 14 of Schedule 1 to the Stamp Duties Act, 1968

Currently item 14 of Schedule 1 to the Stamp Duties Act provides that stamp duty is not payable if the duty calculated on a lease or agreement of lease does not in aggregate exceed R200 over the period of the lease. In order to reduce the compliance burden for taxpayers entering into lower-value rental agreements and the administrative burden on SARS, the Minister of Finance proposed in the 2006 Budget Review that this exemption level will be increased to R500. The amendment gives effect to this proposal.

CLAUSE 48

Stamp Duties: Amendment of item 15 of Schedule 1 to the Stamp Duties Act, 1968

Currently participatory interests in a collective investment scheme which is a trust are not subject to Stamp Duty. The proposed amendment aligns the treatment of collective investment schemes which are Open Ended Investment Companies with that of the Uncertificated Securities Tax Act, 1998. See the proposed amendment to section 6 of the Uncertificated Securities Tax Act.

The proposed amendment will result in participatory interests in all Collective Investment Schemes (Unit Trusts and Open Ended Investment Companies) being exempt from stamp duty.

CLAUSE 49

Value-Added Tax: Amendment of section 1 of the Value-Added Tax Act, 1991

See notes under AMENDMENTS RELATING TO MUNICIPALITIES FOR PURPOSES OF VALUE-ADDED TAX.

CLAUSE 50

Value-Added Tax: Amendment of section 2 of the Value-Added Tax Act, 1991

The proposed amendment is to clarify that it was always intended that the granting of an option falls within the ambit of a financial service, which is exempt from VAT in terms of section 12*(a)*.

CLAUSE 51

Value-Added Tax: Amendment of section 6 of the Value-Added Tax Act, 1991

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 52

Value-Added Tax: Amendment of section 8 of the Value-Added Tax Act, 1991

See notes under AMENDMENTS RELATING TO MUNICIPALITIES FOR PURPOSES OF VALUE-ADDED TAX.

It is proposed that section 8(6)*(a)* and *(b)* be deleted due to paragraph *(c)* of the definition of "enterprise" in section 1 of the VAT Act being deleted and municipal rates being drawn into the VAT net. The single supply, i.e. the flat rate is excluded from the definition of a "municipal rate" in section 1 of the VAT Act and therefore results in VAT being levied at the standard rate on the supply.

The proposed amendment to section 8(23) is consequential upon the deletion of paragraph (c) of the definition of "enterprise" in section 1.

The proposed amendment to section 8(27) is to deem the municipality to supply services to the owner of property to the extent that the municipality levies a "municipal rate" as defined in section 1 of the VAT Act on that person's property.

CLAUSE 53

Value-Added Tax: Amendment of section 10 of the Value-Added Tax Act, 1991

The proposed amendment is consequential upon the deletion of section 8(6)*(a)* and *(b)* of the VAT Act.

CLAUSE 54

Value-Added Tax: Amendment of section 11 of the Value-Added Tax Act, 1991

Subclause (1)(a): In his 2002 Budget Review the Minister of Finance announced the Government's policy framework as regards environmentally friendly fuels.

The Minister announced that biofuels would—

- Enjoy a tax concession in respect of the general fuel levy;
- Enjoy the same concessions (i.e. rebates and drawbacks) as other fuels when used for certain purposes specified in any item to Schedule No. 4,5 and 6 to the Customs and Excise Act, 1964;
- Attract the same rate of excise duty applicable to other fuels;
- Be subject to Road Accident Fund (RAF) levy if used in vehicles operated on public roads.

The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, in respect of the references used for certain fuel levy goods. The proposed amendment is also due to the supply of leaded petrol no longer being permitted as from 1 January 2006. The supply of certain fuel levy goods, which now also includes biodiesel, will be subject to VAT Act at the zero rate.

Subclause (1)*(b):* Goods which consist of anti-knock preparations, which are based on lead compounds, are currently zero-rated for VAT purposes. However, the proposed amendment to delete the zero-rating of these goods is due to the supply of leaded petrol no longer being permitted as from 1 January 2006. Also see subclause (1)*(a)*.

Subclause (1)*(c):* The proposed amendments aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, in respect of illuminating kerosene.

Subclause (1)*(g):* The proposed amendment zero rates the deemed supply of services by the municipality to the owner of the rateable property.

CLAUSE 55

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

Subclause (1)*(a):* The proposed amendment is due to the deletion of paragraph *(c)* of the definition of "enterprise" in section 1 of the VAT Act. The proposed amendment will result in a hostel or boarding establishment which was operated at a loss by a "municipality" now being taxable at the standard rate, for VAT purposes as "commercial accommodation" as defined in section 1 of the VAT Act.

Subclause (1)*(b):* The proposed amendment refers to the appropriate reference in the Income Tax Act.

CLAUSE 56

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

The proposed amendment is due to the term "local authority" being replaced by "municipality". Only a "municipality" as defined in section 1 of the VAT Act is allowed to account for VAT on the payments basis. All other persons who previously fell within the definition of a "local authority", but do not now fall within the definition of a "municipality" will be required to change to the invoice basis.

CLAUSE 57

Value-Added Tax: Amendment of section 16 of the Value-Added Tax Act, 1991

The proposed amendment ensures that the municipality does not claim input tax in respect of assets on which an adjustment in terms of section 18(4) of the VAT Act was blocked in terms of proviso (v) to that section. Therefore where a municipality supplies any assets to which the proviso (v) to section 18(4) of the VAT Act applies, the municipality will be liable to account for output tax on that supply, but will not be entitled to claim input tax in terms of section 16(3)*(h)* of the VAT Act. The same rule applies where a complete change in use of those goods or services occurs on or after 1 July 2006 in terms of section 18(1) of the VAT Act (from taxable to exempt purposes).

CLAUSE 58

Value-Added Tax: Amendment of section 17 of the Value-Added Tax Act, 1991

The proposed amendment is due to the term "local authority" being replaced by "municipality". It is therefore proposed that the reference to section 8(6)*(a)* of the VAT Act be deleted. This provision allows a municipality to claim the input tax on goods or services that are acquired for the purposes of providing sporting or recreational facilities or public amenities to the public.

CLAUSE 59

Value-Added Tax: Amendment of section 18 of the Value-Added Tax Act, 1991

Sections 18(2) and 18(5) of the VAT Act provide that a municipality is required to make an annual input tax or output tax adjustment in the case of capital goods or services used only partially for taxable supplies. The provisions are aimed at ensuring that where capital goods and services are used for mixed purposes, the input tax which may be claimed must be in proportion to the extent to which those assets are applied for taxable use in the municipality's enterprise over the lifetime of the assets. The adjustments are required where the input tax apportionment percentage applied by the municipality during the year varies by more than 10% from the percentage applied in the previous year.

The proposed amendments provide that the adjustments under sections 18(2) and 18(5) of the VAT Act will not apply in the case of a municipality where:

- the capital goods or services were acquired prior to 1 July 2006; or
- the capital assets were acquired after 1 July 2006, but input tax thereon was denied under proviso (v) to section 18(4) of the VAT Act.

Furthermore, proviso (v) to section 18(4) of the VAT Act was inserted to deny input tax where a municipality is required to return those same assets to a taxable environment in the future. The reasoning behind this is that the municipality would have previously enjoyed the benefit of an input tax credit on those assets (or the equivalent thereof, as the VAT cost would have been taken into account in the budget appropriation to that municipality), and therefore a further input tax credit would not be allowed on those assets if they are subsequently applied for taxable use.

The effect of the proposed amendment is therefore to treat the capital goods and services used partially for taxable supplies after 1 July 2006 in such a way that the annual variation in the extent of taxable use will not create an output tax or input tax adjustment event in respect of the assets mentioned above. An output tax liability will only arise when the asset is eventually sold, donated, exchanged (which also includes a transfer to an exempt division in terms of section 18(1) of the VAT Act, e.g. public transport division).

CLAUSE 60

Value-Added Tax: Amendment of section 23 of the Value-Added Tax Act, 1991

The proposed amendment is consequential upon the deletion of paragraph *(c)* of the definition of "enterprise" in section 1. Furthermore the proposed amendment to paragraph (b) is also consequential upon the amendments in the Revenue Laws Amendment Act, 2005, in which the foreign donor projects was catered for.

CLAUSE 61

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

In light of government's efforts to ease small businesses' administrative burden, it is proposed to increase the annual turnover limited to qualify as a small scale farmer falling within Category D or a small vendor falling within Category F from R1 million to R1,2 million.

CLAUSE 62

Value-Added Tax: Insertion of section 40B in the Value-Added Tax Act, 1991

As a result of uncertainty in the past as to what constitutes a “transfer payment”, some municipalities applied the zero rate of tax to the deemed supply which arose in terms of section 8(5) of the VAT Act upon receipt of certain payments. For example, where a municipality received an “equitable share” payment under the annual Division of Revenue Act, the payment gives rise to a deemed supply under section 8(5) of the VAT Act, which does not qualify for zero-rating in terms of section 11(2)(p) of the VAT Act prior to its deletion in 2005. As the municipality does not make an actual supply of goods or services in terms of section 7(1)(a) of the VAT Act in return for that payment, it is proposed that the VAT assessed on such payments qualifies to be reduced under this provision. In some of these cases, the incorrect application of the law has been corrected by the Commissioner by the issuing of assessments and the amounts due on these assessments are wholly or partly outstanding. If the tax due is to be paid by the Department which made the incorrectly treated “transfer payment” to the municipality, additional funds would have to be made available to the municipality to pay the tax, which would result in a circular flow of funds in the Government sphere.

In order to address this situation, section 40B of the VAT Act proposes that upon written application, the Commissioner must issue a reduced assessment in respect of certain amounts of tax, additional tax, penalty and interest which have been assessed and which are payable by a municipality. The reduced assessment only applies where, and to the extent that, the amount payable arose as a result of the incorrect application of the zero-rate in terms of sections 8(5) and 11(2)*(p)* of the VAT Act on an actual supply of goods or services made on or before 31 March 2005, and the amount is still outstanding on that date. This is where the municipality failed to charge VAT at the standard rate in terms of section 7(1)(a) of the VAT Act because it assumed that the payment in respect of those supplies qualified as a “transfer payment” as defined in section 1.

The amount of the reduced assessment may not exceed the net balance of VAT which remains payable on 31 March 2005 by the municipality so that where any amount due to that municipality arose in any tax period subsequent to the tax period in which the assessment was raised and has been set off against the outstanding debt, or if any part of that amount has otherwise been recovered by SARS, that amount will not be taken into account. The reduced assessment may therefore not give rise to a refund of any tax, additional tax, penalty or interest paid in respect of the outstanding amount for any period prior to 1 April 2005.

In order to prevent the Commissioner from issuing assessments where no assessments have been raised before 1 April 2005 on the municipality, in regard to the incorrect application of the zero rate in terms of sections 8(5) and 11(2)*(p)* of the VAT Act for the period prior to 1 April 2005, it is proposed that the Commissioner may not raise any assessment to recover those amounts.

On the other hand, to prevent the claiming of refunds where the municipality has incorrectly paid output tax in terms of section 7(1)(a) of the VAT Act at the standard rate instead of the zero rate in terms of sections 8(5) and 11(2)*(p)* of the VAT Act on a "transfer payment", it is proposed that the Commissioner may not refund any amount of tax, penalty or interest incorrectly paid in respect of any period prior to 1 April 2005.

Example 1

A municipality (vendor) supplies management services to the Department of Tourism. VAT should have been charged at 14% in respect of the actual services supplied in terms of section 7(1)*(a)* of the VAT Act, but both parties were under the mistaken impression that the payment received by the municipality was a zero-rated "transfer payment." SARS raised an assessment against the municipality in the amount of R50 000 in March 2003. Since that date, SARS has recovered R35 000 of that amount by offsetting VAT refunds which were due to that municipality. The municipality still has a VAT liability of R15 000 plus penalty and interest thereon as at 31 March 2005. In terms of section 40B(2) of the VAT Act, the remaining tax liability of R15 000, plus the penalty and interest thereon must be reduced to nil by the issuing of a reduced assessment by the Commissioner, if written application is made by the municipality in this regard. This is because the entire liability to tax relates to the incorrect application of the law referred to in that section.

Example 2

If in the case of the municipality in example 1, SARS had not raised an assessment, in respect of the VAT payable on the consideration paid for the management services supplied, which should have been levied, in terms of section 7(1)*(a)* of the VAT Act, by 31 March 2005, the Commissioner may not make any assessment to correct the previously incorrect application of the zero rate (section 40B(3) of the VAT Act).

CLAUSE 63

Value-added Tax: Amendment of section 46 of the Value-Added Tax Act, 1991

See notes under AMENDMENTS RELATING TO MUNICIPALITIES FOR PURPOSES OF VALUE-ADDED TAX.

CLAUSE 64

Value-added Tax: Amendment of section 48 of the Value-Added Tax Act, 1991

See notes under AMENDMENTS RELATING TO MUNICIPALITIES FOR PURPOSES OF VALUE-ADDED TAX.

CLAUSE 65

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

The proposed amendment refers to the appropriate reference in the Income Tax Act.

CLAUSE 66

Value-Added Tax: Amendment of paragraph 5 of Schedule 1 to the Value-Added Tax Act, 1991

See notes under AMENDMENTS RELATING TO MUNICIPALITIES FOR PURPOSES OF VALUE-ADDED TAX.

CLAUSE 67

Value-Added Tax: Amendment of paragraph 7 of Schedule 1 to the Value-Added Tax Act, 1991

Subclause (1)*(a):* See discussion on clause 54(1)*(a)* above.
The proposed amendment to paragraph 7 of Schedule 1 to the Value-Added Tax Act, 1991, aligns the Value-Added Tax Act with the provisions of the Customs and Excise Act in respect of the importation of fuel levy goods which now also includes biodiesel, and which are exempt from VAT on importation.

Subclause (1)*(b):* Goods which consist of anti-knock preparations, which are based on lead compounds, are currently zero-rated for VAT purposes. However, the proposed amendment to delete the zero-rating of these goods is due to the supply of leaded petrol no longer being permitted as from 1 January 2006. Also see subclause 54(1)*(a)*.

Subclause (1)*(c):* The proposed amendment aligns the VAT Act to the provisions of the Customs and Excise Act, 1964, where applicable in respect of goods consisting of illuminating kerosene.

CLAUSE 68

Tax on Retirement Funds: Amendment of section 2 of the Tax on Retirement Funds Act, 1996

As the Minister of Finance announced in the 2006 Budget Review, changes to the taxation of retirement funds are under consideration and a discussion document will be released for public comment. However, to help South Africans accumulate adequate savings for retirement, the Minister proposed that the rate of tax on retirement funds will be reduced from 18 per cent to 9 per cent with effect from 1 March 2006. The amendment gives effect to this proposal.

CLAUSE 69

Uncertificated Securities Tax: Amendment of section 1 of the Uncertificated Securities Tax Act, 1998

The proposed amendment is to clarify that a change in the beneficial ownership of a security occurs when a company acquires or redeems its own securities.

CLAUSE 70

Uncertificated Securities Tax: Amendment of section 5 of the Uncertificated Securities Tax Act, 1998

The proposed amendment to section 5A of the Uncertificated Securities Tax Act (UST) is in recognistion of the fact that dividends and rights are on occasion ceded separately from the title of the full security.

The taxable amount on which UST is payable where the full beneficial ownership in securities is acquired will be the greater of—

- the amount declared by the person acquiring such security; or
- if no amount is so declared, or if the amount so declared is less than the lowest price of the securities on the date of the relevant transaction, the closing price of those securities on the date of the relevant transaction.

Where any of the rights or entitlements in the beneficial ownership of securities, as contemplated in paragraphs (a) or (b) of the definition of “beneficial ownership” are acquired, the amount on which UST will be payable by the person who acquires such rights or entitlements, will be the greater of—

- the amount of the consideration declared by the person who acquires those rights or entitlements; or
- the fair market value of those rights or entitlements on the date of acquisition thereof.

The proposed amendment will apply to every change in beneficial ownership on or after 1 January 2006.

CLAUSE 71

Uncertificated Securities Tax: Amendment of section 6 of the Uncertificated Securities Tax Act, 1998

The proposed amendment is to exempt changes in beneficial ownership in participatory interest in all listed collective investment schemes regulated in terms of the Collective Investment Schemes Control Act, 2002; which potentially faces double tax of Uncertificated Securities Tax/Transfer Duty. The first one being at the collective investment scheme level, and the other at the level of the holders of participatory interests (unit holders). This potential double charge is inconsistent with the treatment of unlisted collective investment schemes, which are not companies, which are subject to only one level of tax at the collective investment scheme level.

This result should be that participatory interests in all Collective Investment Schemes (Unit Trusts and Open Ended Investment Companies) will be exempt from uncertificated securities tax. This exemption will apply to collective investment schemes in securities, property, participation bonds or declared schemes.

CLAUSE 72

Regional Services Levies: Amendment of section 93 of the Local Government: Municipal Structures Act, 1998

See notes on REGIONAL SERVICES LEVIES AND REGIONAL ESTABLISHMENT LEVIES**.**

CLAUSE 73

Short title, commencement and savings

This clause provides the short title and commencement date of the Bill.