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Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 582 Cape Town 12 December 2013 **No. 37158**

THE PRESIDENCY

No. 1001

12 December 2013

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No.31 of 2013: Taxation Laws Amendment Act, 2013



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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(English text signed by the President)
(Assented to 11 December 2013)

ACT

To—

- amend the Transfer Duty Act, 1949, so as to amend provisions;
 - amend the Estate Duty Act, 1955, so as to amend a provision;
 - amend the Income Tax Act, 1962, so as to amend, delete and insert certain definitions; to effect technical corrections; to repeal certain provisions; to amend certain provisions; to make new provision; and to effect textual and consequential amendments;
 - amend the Customs and Excise Act, 1964, so as to amend provisions; and to make provision for continuations;
 - amend the Value-Added Tax Act, 1991, so as to amend certain provisions;
 - repeal the Demutualisation Levy Act, 1998;
 - amend the Securities Transfer Tax Act, 2007, so as to amend a provision;
 - amend the Mineral and Petroleum Resources Royalty Act, 2008, so as to amend certain provisions; and to amend Schedules;
 - amend the Taxation Laws Amendment Act, 2011, so as to amend certain provisions;
 - amend the Taxation Laws Amendment Act, 2012, so as to amend certain provisions; and to effect technical corrections;
 - make provision for special zero-rating in respect of goods and services supplied in certain circumstances;
- and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 40 of 1949, as amended by section 11 of Act 80 of 1959, section 1 of Act 77 of 1964, section 5 of Act 103 of 1969, section 4 of Act 106 of 1980, section 1 of Act 86 of 1987, section 2 of Act 87 of 1988, Proclamation R.11 of 1994, section 8 of Act 37 of 1996, section 34 of Act 34 of 1997, section 1 of Act 5 of 2001, section 2 of Act 74 of 2002, section 1 of Act 45 of 2003, section 1 of Act 17 of 2009, section 1 of Act 7 of 2010 and section 1 of Act 24 of 2011 5

1. Section 1 of the Transfer Duty Act, 1949 (Act No. 40 of 1949), is hereby amended by the substitution in the definition of “residential property company” for the words preceding paragraph (a) of the following words:

“‘**residential property company**’ means any company, other than a REIT as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), that holds property that constitutes—” 10

Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 4 of Act 126 of 1998, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000, section 2 of Act 5 of 2001, section 8 of Act 60 of 2001, section 3 of Act 30 of 2002, section 4 of Act 74 of 2002, section 3 of Act 45 of 2003, section 2 of Act 16 of 2004, section 2 of Act 32 of 2004, section 2 of Act 31 of 2005, section 16 of Act 9 of 2006, section 1 of Act 20 of 2006, section 2 of Act 35 of 2007, section 1 of Act 60 of 2008, section 3 of Act 17 of 2009, section 3 of Act 7 of 2010, section 5 of Act 24 of 2011 and section 1 of Act 22 of 2012 15 20 25

2. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for paragraph (l) of the following paragraph: 30

“(l) any company in terms of—

- (i) **[an amalgamation transaction contemplated in section 44]** an asset-for-share transaction as defined in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);
- (iA) **[an asset-for-share transaction contemplated in section 42 of that Act]** a substitutive share-for-share transaction as defined in section 43 of the Income Tax Act, 1962 (Act No. 58 of 1962); 35
- (iB) an amalgamation transaction as defined in section 44 of the Income Tax Act, 1962 (Act No. 58 of 1962);
- (ii) an intra-group transaction [contemplated] as defined in section 45 of [that Act] the Income Tax Act, 1962 (Act No. 58 of 1962); 40
- (iii) a liquidation distribution [contemplated] as defined in section 47 of [that Act] the Income Tax Act, 1962 (Act No. 58 of 1962); or
- (iv) a transaction which would have constituted a transaction or distribution contemplated in subparagraphs (i) to (iii) regardless of[— 45
(bb)] whether that person acquired that property as a capital asset or as trading stock,

where the public officer of that company has made a sworn affidavit or solemn declaration that such acquisition of property complies with the provisions of this paragraph;” 50

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

Amendment of section 4 of Act 45 of 1955, as amended by section 2 of Act 59 of 1957, section 3 of Act 65 of 1960, section 9 of Act 71 of 1961, section 9 of Act 77 of 1964, section 3 of Act 81 of 1965, section 2 of Act 94 of 1967, section 5 of Act 92 of 1971, section 2 of Act 70 of 1975, section 1 of Act 104 of 1976, section 4 of Act 102 of 1979, section 11 of Act 106 of 1980, section 3 of Act 99 of 1981, section 5 of Act 81 of 1985, section 6 of Act 86 of 1987, section 10 of Act 87 of 1988, section 8 of Act 97 of 1993, section 3 of Act 20 of 1994, section 7 of Act 27 of 1997, section 14 of Act 30 of 1998, section 8 of Act 30 of 2000, section 4 of Act 30 of 2002, section 5 of Act 74 of 2002 and section 6 of Act 31 of 2005

3. Section 4 of the Estate Duty Act, 1955 (Act No. 45 of 1955), is hereby amended by the substitution in paragraph (o) for the words following subparagraph (ii) of the following words:

“if such books, pictures, statuary or other objects of art have been lent under a notarial deed to the [State or any local authority within the Republic or to any institution referred to in subparagraph (ii) of paragraph (h)] government of the Republic in the national, provincial or local sphere for a period of not less than thirty years, and the deceased died during such period;”.

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 23 of Schedule 1 to that Act and section 2 of Act 22 of 2012

4. (1) Section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), is hereby amended—

(a) by the insertion in subsection (1) after the definition of “average exchange rate” of the following definition:

“‘Banks Act’ means the Banks Act, 1990 (Act No. 94 of 1990);”;

(b) by the substitution in subsection (1) for paragraph (b) of the definition of “benefit fund” of the following paragraph:

“(b) any medical scheme registered under the provisions of the Medical Schemes Act, 1998 (Act No. 131 of 1998);”;

- (c) by the insertion in subsection (1) after the definition of “close corporation” of the following definition:
“**‘Collective Investment Schemes Control Act’** means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002)”;
- (d) by the insertion in subsection (1) after the definition of “Commissioner” of the following definition: 5
“**‘Companies Act’** means the Companies Act, 2008 (Act No. 71 of 2008)”;
- (e) by the substitution in subsection (1) in paragraph (e) of the definition of “company” for subparagraph (ii) of the following subparagraph: 10
“(ii) portfolio comprised in any investment scheme carried on outside the Republic that is comparable to a portfolio of a collective investment scheme in participation bonds or a portfolio of a collective investment scheme in securities in pursuance of any arrangement in terms of which members of the public (as defined 15
in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002)),] are invited or permitted to contribute to and hold participatory interests in that portfolio through shares, units or any other form of participatory interest; or”;
- (f) by the substitution in subsection (1) in paragraph (e) of the definition of “company” for subparagraph (iii) of the following subparagraph: 20
“(iii) portfolio of a collective investment scheme in property that qualifies as a REIT; or”;
- (g) by the substitution in subsection (1) in the definition of “connected person” 25
for paragraph (c) of the following paragraph:
“(c) in relation to a member of any partnership or foreign partnership—
(i) any other member; and
(ii) any connected person in relation to any member of such 30
partnership or foreign partnership”;

- (h) by the substitution in subsection (1) in paragraph (d) of the definition of “connected person” for subparagraph (i) of the following subparagraph:
 “(i) any other company that would be part of the same group of companies as that company if the expression ‘at least 70 per cent of the equity shares **[of]** in’ in paragraphs (a) and (b) of the definition of ‘group of companies’ in this section were replaced by the expression ‘more than 50 per cent of the equity shares **[of]** or voting rights in’;”;
- (i) by the substitution in subsection (1) in paragraph (d)(iv) of the definition of “connected person” for the words preceding item (aa) of the following words:
 “any person, other than a company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008), who] that individually or jointly with any connected person in relation to **[himself]** that person, holds, directly or indirectly, at least 20 per cent of—”;
- (j) by the substitution in subsection (1) in paragraph (d) of the definition of “connected person” for subparagraph (v) of the following subparagraph:
 “(v) any other company if at least 20 per cent of the equity shares **[of]** or voting rights in the company are held by that other company, and no shareholder holds the majority voting rights in the company;”;
- (k) by the substitution in subsection (1) in paragraph (d) of the definition of “connected person” for subparagraph (v) of the following subparagraph:
 “(v) any other company if at least 20 per cent of the equity shares or voting rights in the company are held by that other company, and no **[shareholder]** holder of shares holds the majority voting rights in the company;”;
- (l) by the substitution in subsection (1) in paragraph (a) of the definition of “contributed tax capital” for the words preceding subparagraph (i) of the following words:
 “in the case of a foreign company **[that is not a resident and]** that becomes a resident on or after 1 January 2011, an amount equal to the sum of—”;
- (m) by the insertion in subsection (1) after the definition of “co-operative” of the following definition:
 “**‘Copyright Act’** means the Copyright Act, 1978 (Act No. 98 of 1978);”;
- (n) by the insertion in subsection (1) after the definition of “depreciable asset” of the following definition:
 “**‘Designs Act’** means the Designs Act, 1993 (Act No. 195 of 1993);”;
- (o) by the insertion in subsection (1) after the definition of “dividend” of the following definition:
 “**‘domestic treasury management company’** means a company—
 (a) incorporated or deemed to be incorporated by or under any law in force in the Republic;
 (b) that has its place of effective management in the Republic; and
 (c) that is not subject to exchange control restrictions by virtue of being registered with the financial surveillance department of the South African Reserve Bank;”;
- (p) by the insertion in subsection (1) after the definition of “financial instrument” of the following definition:
 “**‘Financial Markets Act’** means the Financial Markets Act, 2012 (Act No. 19 of 2012);”;
- (q) by the deletion in subsection (1) of the definition of “foreign equity instrument”;
- (r) by the substitution in subsection (1) in paragraph (g) of the definition of “gross income” for subparagraph (iii) of the following subparagraph:
 “(iii) for the use or right of use of any patent as defined in the Patents Act, 1978 (Act No. 57 of 1978),] or any design as defined in the Designs Act, 1993 (Act No. 195 of 1993),] or any trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993),] or any copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978),] or any model, pattern, plan, formula or process or any other property or right of a similar nature;”;

- (s) by the substitution in subsection (1) in the definition of “gross income” for the proviso of the following proviso:
- “: Provided that where during any year of assessment [**the taxpayer**] a person has become entitled to any amount which is payable on a date or dates falling after the last day of such year, [**there**] that amount shall be deemed to have accrued to [**him**] the person during such year[—
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- (a) if the taxpayer has on or before 23 May 1990 submitted a return of income drawn on the basis that the present value of such amount has accrued to him during such year, the present value
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- (b) in any other case, such amount;”;
- (t) by the deletion in subsection (1) in the definition of “gross income” of the further proviso;
- (u) by the substitution in subsection (1) for the definition of “JSE Limited Listings Requirements” of the following definition:
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- “**‘JSE Limited Listings Requirements’** means the JSE Limited Listings Requirements, 2003, made by the JSE Limited in terms of section [12] 11 of the [**Securities Services Act, 2004 (Act No. 36 of 2004)**] Financial Markets Act”;
- (v) by the insertion in subsection (1) after the definition of “JSE Limited Listings Requirements” of the following definition:
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- “**‘linked unit’** means a unit comprising a share and a debenture in a company, where that share and that debenture are linked and are traded together as a single unit;”;
- (w) by the substitution in subsection (1) for paragraph (a) of the definition of “listed company” of the following paragraph:
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- “(a) an exchange as defined in section 1 of the [**Securities Services Act, 2004 (Act No. 36 of 2004)**,] Financial Markets Act and licensed under section [10] 9 of that Act; or”;
- (x) by the substitution in subsection (1) for the definition of “listed share” of the following definition:
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- “**‘listed share’** means a share that is listed on an exchange as defined in section 1 of the [**Securities Services Act, 2004 (Act No. 36 of 2004)**,] Financial Markets Act and licensed under section [10] 9 of that Act;”;
- (y) by the insertion in subsection (1) before the definition of “low-cost residential unit” of the following definition:
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- “**‘Long-term Insurance Act’** means the Long-term Insurance Act, 1998 (Act No. 52 of 1998);”;
- (z) by the insertion in subsection (1) before the definition of “mining for gold” of the following definitions:
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- “**‘Medical Schemes Act’** means the Medical Schemes Act, 1998 (Act No. 131 of 1998);
- ‘Mineral and Petroleum Resources Development Act’** means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);”;
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- (zA) by the insertion in subsection (1) after the definition of “municipality” of the following definition:
 “**‘municipal value’** means an amount determined in terms of section 46 of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);”;
- (zB) by the insertion in subsection (1) after the definition of “officer” of the following definition:
 “**‘Patents Act’** means the Patents Act, 1978 (Act No. 57 of 1978);”;
- (zC) by the substitution in subsection (1) in the definition of “pension fund” for the words in paragraph (c) preceding the proviso of the following words:
 “the Municipal Councillors Pension Fund provisionally registered under the Pension Funds Act[, 1956 (Act No. 24 of 1956),] on 23 May 1988, or any fund (other than a retirement annuity fund, a pension preservation fund or a fund contemplated in paragraph (a) or (b)) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of [the said] that Act”;
- (zD) by the substitution in subsection (1) in paragraph (c) of the definition of “pension fund” for paragraph (i) of the proviso of the following paragraph:
 “(i) that the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement from employment or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act[, 1956 (Act No. 24 of 1956)]; and”;
- (zE) by the substitution in subsection (1) in paragraph (ii) of the proviso to paragraph (c) of the definition of “pension fund” for subparagraph (dd) of the following subparagraph:
 “(dd) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed [R50 000] R100 000 or where the employee is deceased: Provided that in determining the value of the retirement interest the aggregate of the value of—
 (A) any contributions made to a provident fund prior to 1 March 2015;

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- (B) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2015, any contributions made after 1 March 2015 to the provident fund of which that person is a member on 1 March 2015; and
- (C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in items (A) and (B),
must not be taken into account;”;
- (zF) by the insertion in subsection (1) after the definition of “pension fund” of the following definition: 10
 “ **‘Pension Funds Act’** means the Pension Funds Act, 1956 (Act No. 24 of 1956);”;
- (zG) by the substitution in subsection (1) in the definition of “pension preservation fund” for the words preceding the proviso of the following words: 15
 “ **‘pension preservation fund’** means a pension fund organisation which is registered under the Pension Funds Act[, 1956 (Act No. 24 of 1956),] and which is approved by the Commissioner in respect of the year of assessment in question”;
- (zH) by the substitution in subsection (1) in the definition of “pension preservation fund” in paragraph (a) of the proviso for subparagraph (iii) of the following subparagraph: 20
 “(iii) former members of a pension fund or nominees or dependants of that former member in respect of whom an ‘unclaimed benefit’ as defined in the Pension Funds Act[, 1956 (Act No. 24 of 1956),] is due or payable by that fund; or”;
- (zI) by the substitution in subsection (1) in the definition of “pension preservation fund” in paragraph (b) of the proviso for subparagraph (ii) of the following subparagraph: 25
 “(ii) a pension fund or pension preservation fund of which such member’s former spouse is or was previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D(4)(b)(ii) of the Pension Funds Act[, 1956 (Act No. 24 of 1956)];”;
- (zJ) by the substitution in subsection (1) in the definition of “pension preservation fund” for paragraph (e) of the proviso of the following paragraph: 35
 “(e) not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed [R50 000] R100 000 or where the member is deceased: Provided 40
 that in determining the value of the retirement interest the aggregate of the value of—
 (A) any contributions made to a provident fund prior to 1 March 2015;
 (B) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2015, any contributions made after 1 March 2015 to the provident fund of which that person is a member on 1 March 2015; and 45
 (C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in items (A) and (B),
must not be taken into account;”;
- (zK) by the substitution in subsection (1) for the definitions of “portfolio of a collective investment scheme in participation bonds”, “portfolio of a collective investment scheme in property”, “portfolio of a collective investment scheme in securities” and “portfolio of a declared collective investment scheme” of the following definitions, respectively: 55
 “ **‘portfolio of a collective investment scheme in participation bonds’** means any portfolio comprised in any collective investment scheme in participation bonds contemplated in Part VI of the Collective Investment Schemes Control Act[, 2002 (Act No. 45 of 2002),] managed or carried 60
 on by any company registered as a manager under and for the purposes of that Part;

‘portfolio of a collective investment scheme in property’ means any portfolio comprised in any collective investment scheme in property contemplated in Part V of the Collective Investment Schemes Control Act[, 2002 (Act No. 45 of 2002),] managed or carried on by any company registered as a manager under section 51 of that Act for the purposes of that Part;

‘portfolio of a collective investment scheme in securities’ means any portfolio comprised in any collective investment scheme in securities contemplated in Part IV of the Collective Investment Schemes Control Act[, 2002 (Act No. 45 of 2002),] managed or carried on by any company registered as a manager under section 42 of that Act for the purposes of that Part;

‘portfolio of a declared collective investment scheme’ means any portfolio comprised in any declared collective investment scheme contemplated in Part VII of the Collective Investment Schemes Control Act[, 2002 (Act No. 45 of 2002),] managed or carried on by any company registered as a manager under section 64 of that Act for the purposes of that Part;”;

(zL) by the insertion in subsection (1) after the definition of “portfolio of a declared collective investment scheme” of the following definition:

“‘portfolio of a hedge fund collective investment scheme’ means any portfolio held by any hedge fund business that qualifies as a declared collective investment scheme in terms of section 63 of the Collective Investment Schemes Control Act;”;

(zM) by the substitution in subsection (1) in the definition of “provident fund” for the words preceding the proviso of the following words:

“‘provident fund’ means any fund (other than a pension fund, pension preservation fund, provident preservation fund, benefit fund or retirement annuity fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act[, 1956 (Act No. 24 of 1956)]”;

(zN) by the substitution in subsection (1) in the definition of “provident fund” for paragraph (a) of the proviso of the following paragraph:

“(a) that the fund is a permanent fund *bona fide* established solely for the purpose of providing benefits for employees on retirement from employment or solely for the purpose of providing benefits for the dependants or nominees of deceased employees or deceased former employees or solely for a combination of such purposes or mainly for the said purpose and also for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act[, 1956 (Act No. 24 of 1956)]; and”;

(zO) by the substitution in subsection (1) in the definition of “provident fund” for paragraphs (a) and (b) of the proviso of the following paragraphs, respectively:

“(a) that the fund is a permanent fund *bona fide* established [solely] for the purpose of providing [benefits] annuities for employees on retirement from employment or [solely for the purpose of providing benefits] for the dependants or nominees of deceased employees [or deceased former employees or solely for a combination of such purposes], or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act; and

(b) that the rules of the fund contain provisions similar in all respects to those required to be contained in the rules of a pension fund in terms of [subparagraphs (aa), (bb), (cc), (ee) and (ff) of] paragraph (ii) of the proviso to paragraph (c) of the definition of ‘pension fund’; and”;

- (zP) by the substitution in subsection (1) in the definition of “provident preservation fund” for the words preceding the proviso of the following words:
 “**‘provident preservation fund’** means a pension fund organisation which is registered under the Pension Funds Act[, 1956 (Act No. 24 of 1956),] and which is approved by the Commissioner in respect of the year of assessment in question”;
- (zQ) by the substitution in subsection (1) in the definition of “provident preservation fund” in paragraph (a) of the proviso for subparagraph (iii) of the following subparagraph:
 “(iii) former members of a provident fund or nominees or dependants of that former member in respect of whom an ‘unclaimed benefit’ as defined in the Pension Funds Act[, 1956 (Act No. 24 of 1956),] is due or payable by that fund; or”;
- (zR) by the substitution in subsection (1) in the definition of “provident preservation fund” in paragraph (b) of the proviso for the words preceding subparagraph (i) of the following words:
 “payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph 2(1)(a)(ii) or (b) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act[, 1956 (Act No. 24 of 1956),] that is paid or transferred to the fund by—”;
- (zS) by the substitution in subsection (1) in the definition of “provident preservation fund” in paragraph (b) of the proviso for subparagraph (ii) of the following subparagraph:
 “(ii) a provident fund or provident preservation fund of which such member’s former spouse is or was previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D(4)(b)(ii) of the Pension Funds Act[, 1956 (Act No. 24 of 1956)];”;
- (zT) by the deletion in subsection (1) in the definition of “provident preservation fund” of the word “and” at the end of paragraph (c) of the proviso;
- (zU) by the substitution in subsection (1) in the definition of “provident preservation fund” at the end of paragraph (d) of the proviso for the colon of the expression “; and”;
- (zV) by the addition in subsection (1) to the definition of “provident preservation fund” after paragraph (d) of the proviso of the following paragraph:
 “(e) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R100 000 or where the employee is deceased: Provided that in determining the value of the retirement interest the aggregate of the value of—
 (A) any contributions made to a provident fund prior to 1 March 2015;
 (B) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2015, any contributions made after 1 March 2015 to the provident fund of which that person is a member on 1 March 2015; and
 (C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in items (A) and (B), must not be taken into account.”;
- (zW) by the insertion in subsection (1) after the definition of “provident preservation fund” of the following definition:
 “**‘Public Finance Management Act’** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;

- (zX) by the substitution in subsection (1) for the definition of “Public Private Partnership” of the following definition:
“**Public Private Partnership**” means a Public Private Partnership as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;
- (zY) by the substitution in subsection (1) in the definition of “regional electricity distributor” for paragraph (a) of the following paragraph:
“(a) a public entity regulated under the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;
- (zZ) by the substitution in subsection (1) in paragraph (b) of the definition of “REIT” for subparagraph (i) of the following subparagraph:
“(i) on an exchange (as defined in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004),] Financial Markets Act and licensed under section [10] 9 of that Act); and”;
- (zZa) by the insertion in subsection (1) after the definition of “relative” of the following definition:
“**remuneration proxy**”, in relation to a year of assessment, means the remuneration, as defined in paragraph 1 of the Fourth Schedule, derived by an employee from an employer during the year of assessment immediately preceding that year of assessment: Provided that—
(a) where during a portion of such preceding year the employee was not in the employment of the employer or of any associated institution in relation to the employer, the remuneration proxy as respects that employee must be deemed to be an amount which bears to the amount of the employee’s remuneration for the portion of such preceding year during which the employee was in such employment the same ratio as the period of 365 days bears to the number of days in such last-mentioned portion;
(b) where during the whole of such preceding year, the employee was not in the employment of the employer or of any associated institution in relation to the employer, the remuneration proxy as respects that employee must be deemed to be an amount which bears to the employee’s remuneration during the first month during which the employee was in the employment of the employer the same ratio as 365 days bears to the number of days during which the employee was in such employment;”;
- (zZb) by the substitution in subsection (1) in the definition of “retirement annuity fund” for the words preceding the proviso of the following words:
“**retirement annuity fund**” means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act, 1956 (Act No. 24 of 1956)”;;
- (zZc) by the substitution in subsection (1) in paragraph (b) of the proviso to the definition of “retirement annuity fund” for paragraph (ii) of the following paragraph:
“(ii) that not more than one-third of the total value of the retirement interest may be commuted for a single payment and that the remainder must be taken in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed [R50 000] R100 000 or where the member is deceased: Provided that in determining the value of the retirement interest the aggregate of the value of—
(A) any contributions made to a provident fund prior to 1 March 2015;
(B) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2015, any contributions made after 1 March 2015 to the provident fund of which that person is a member on 1 March 2015; and

- (C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in items (A) and (B),
must not be taken into account;”;
- (zZd) by the substitution in subsection (1) in the definition of “retirement annuity fund” in paragraph (b)(xii) of the proviso for item (dd) of the following item:
“(dd) as is contemplated in Part V of the Policyholder Protection Rules promulgated in terms of section 62 of the **[Long-Term] Long-term Insurance Act, 1998 (Act No. 52 of 1998)**]; or”;
- (zZe) by the deletion in subsection (1) of the definition of “retirement-funding employment”;
- (zZf) by the insertion in subsection (1) after the definition of “share” of the following definition:
“**‘Short-term Insurance Act’** means the Short-term Insurance Act, 1998 (Act No. 53 of 1998);”;
- (zZg) by the insertion in subsection (1) before the definition of “South African Revenue Service” of the following definition:
“**‘South African Reserve Bank’** means the central bank of the Republic regulated in terms of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);”;
- (zZh) by the substitution in subsection (1) in the definition of “special trust” for the words in paragraph (a) preceding the proviso of the following words:
“solely for the benefit of one or more persons who is or are persons with a disability as defined in section **[18(3)] 6B(1)** where such disability incapacitates such person or persons from earning sufficient income for their maintenance, or from managing their own financial affairs”;
- (zZi) by the substitution in subsection (1) for the definition of “Tax Administration Act” of the following definition:
“**‘Tax Administration Act’** means the Tax Administration Act, 2011 (Act No. 28 of 2011);”;
- (zZj) by the substitution in subsection (1) for the definition of “trade” of the following definition:
“**‘trade’** includes every profession, trade, business, employment, calling, occupation or venture, including the letting of any property and the use of or the grant of permission to use any patent as defined in the Patents Act, 1978 (Act No. 57 of 1978),] or any design as defined in the Designs Act, 1993 (Act No. 195 of 1993),] or any trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993),] or any copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978),] or any other property which is of a similar nature;”;
- (zZk) by the insertion in subsection (1) after the definition of “trade” of the following definition:
“**‘Trade Marks Act’** means the Trade Marks Act, 1993 (Act No. 194 of 1993);”;
- (zZl) by the insertion in subsection (1) after the definition of “trustee” of the following definition:
“**‘Value-Added Tax Act’** means the Value-Added Tax Act, 1991 (Act No. 89 of 1991);”;
- (zZm) by the substitution in subsection (1) for paragraph (a) of the definition of “water services provider” of the following paragraph:
“(a) a public entity regulated under the Public Finance Management Act, 1999 (Act No. 1 of 1999)];”.
- (2) Paragraphs (a), (b), (c), (d) and (e) of subsection (1) come into operation on 1 January 2014.
- (3) Paragraph (f) of subsection (1) comes into operation on 1 January 2015 and applies in respect of years of assessment commencing on or after that date.
- (4) Paragraphs (h) and (j) of subsection (1) are deemed to have come into operation on 1 January 2012.
- (5) Paragraph (l) of subsection (1) is deemed to have come into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.
- (6) Paragraph (o) of subsection (1) is deemed to have come into operation on 27 February 2013 and applies in respect of years of assessment commencing on or after that date.

(7) Paragraphs (*p*), (*u*), (*w*), (*x*) and (*zZ*) of subsection (1) are deemed to have come into operation on 3 June 2013.

(8) Paragraph (*v*) of subsection (1) is deemed to have come into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.

(9) Paragraph (*zA*) of subsection (1) comes into operation on 1 March 2014 and applies in respect of amounts paid or transferred during years of assessment commencing on or after that date. 5

(10) Paragraphs (*zE*), (*zJ*), (*zO*), (*zT*), (*zU*), (*zV*) and (*zZc*) of subsection (1) come into operation on 1 March 2015.

(11) Paragraph (*zL*) of subsection (1) comes into operation on the date on which the Minister, in accordance with section 63 of the Collective Investment Schemes Control Act, declares a hedge fund business, in which a portfolio is held, to be a collective investment scheme. 10

(12) Paragraph (*zZa*) of subsection (1) is deemed to have come into operation on 1 March 2013 and applies in respect of years of assessment commencing on or after that date. 15

(13) Paragraph (*zZe*) of subsection (1) comes into operation on 1 March 2015 and applies in respect of contributions made on or after that date.

(14) Paragraph (*zZh*) of subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date. 20

Amendment of section 5 of Act 58 of 1962, as substituted by section 2 of Act 6 of 1963 and amended by section 5 of Act 90 of 1964, section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 5 of Act 113 of 1977, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 3 of Act 90 of 1988, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 10 of Act 30 of 2002, section 15 of Act 45 of 2003, section 4 of Act 20 of 2006, section 4 of Act 8 of 2007, section 3 of Act 3 of 2008, section 6 of Act 60 of 2008, section 8 of Act 17 of 2009, section 7 of Act 7 of 2010, section 8 of Act 24 of 2011 and section 271 of Act 28 of 2011, read with item 28 of Schedule 1 to that Act 25

5. (1) Section 5 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (10) for paragraph (*e*) of the formula of the following paragraph:

“(e) ‘D’ represents an amount equal to so much of any current contribution to a pension fund, provident fund or retirement annuity fund as is allowable as a deduction in terms of section [11(n)(i)(aa)(A)] 11(k) solely by reason of the inclusion in the taxpayer’s income of any amount contemplated in paragraph (d)(i), (ii), (iii) or (iv).” 35

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of contributions made on or after that date. 40

Amendment of section 6A of Act 58 of 1962, as inserted by section 10 of Act 24 of 2011 and amended by section 3 of Act 13 of 2012, section 6 of Act 22 of 2012 and section 5 of Rates and Monetary Amounts and Amendment of Revenue Laws Act of 2013

6. Section 6A of the Income Tax Act, 1962, is hereby amended— 45

(a) by the substitution in subsection (2)(a) for subparagraph (i) of the following subparagraph:

“(i) a medical scheme registered under the Medical Schemes Act[, 1998 (Act No. 131 of 1998)]; or”; and

(b) by the substitution for subsection (4) of the following subsection: 50

“(4) For the purposes of this section a ‘dependant’ in relation to a taxpayer means a ‘dependant’ as defined in section 1 of the Medical Schemes Act[, 1998 (Act No. 131 of 1998)].”.

Substitution of section 6A of Act 58 of 1962

7. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 6A of the following section:

“Medical scheme fees tax credit

6A. (1) A rebate, to be known as the medical scheme fees tax credit, must be deducted from the normal tax payable by a **[taxpayer] person** who is a natural person. 5

(2) (a) The medical scheme fees tax credit applies in respect of fees paid by the **[taxpayer] person** to—

(i) a medical scheme registered under the Medical Schemes Act; or 10
(ii) a fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered.

(b) The amount of the medical scheme fees tax credit must be—

(i) R242, in respect of benefits to the **[taxpayer] person**; 15
(ii) R484, in respect of benefits to the **[taxpayer] person** and one dependant; or

(iii) R484, in respect of benefits to the **[taxpayer] person** and one dependant, plus R162 in respect of benefits to each additional dependant, 20
for each month in that year of assessment in respect of which those fees are paid.

(3) For the purposes of this section, any amount contemplated in subsection (2) that has been paid by—

(a) the estate of a deceased **[taxpayer] person** is deemed to have been paid by the **[taxpayer] person** on the day before his or her death; or 25

(b) an employer of the **[taxpayer] person** is, to the extent that the amount has been included in the income of that **[taxpayer] person** as a taxable benefit in terms of the Seventh Schedule, deemed to have been paid by that **[taxpayer] person**.

(4) For the purposes of this section a ‘**dependant**’ in relation to a **[taxpayer] person** means a ‘dependant’ as defined in section 1 of the Medical Schemes Act.” 30

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 5 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991, section 5 of Act 141 of 1992, section 6 of Act 21 of 1995, section 23 of Act 30 of 1998, section 13 of Act 53 of 1999, section 5 of Act 59 of 2000, section 10 of Act 74 of 2002, section 17 of Act 45 of 2003, section 5 of Act 32 of 2004, section 9 of Act 31 of 2005, section 8 of Act 35 of 2007, section 4 of Act 3 of 2008, section 8 of Act 60 of 2008, section 10 of Act 17 of 2009 and section 15 of Act 24 of 2011 35 40

8. Section 7 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph: 45

“(ii) from the donor or any partnership of which the donor was at the time of such receipt or accrual a member or any private company of which the donor was at such time the sole or main **[shareholder] holder of shares** or one of the principal **[shareholders] holders of shares,**” 50

- (b) by the substitution in subsection (2C)(c) for subparagraphs (i) and (ii) of the following subparagraphs:
 - “(i) registered holder of a patent as defined in the Patents Act[, 1978 (Act No. 57 of 1978),] or any design as defined in the Designs Act[, 1993 (Act No. 195 of 1993),] or any trade mark as defined in the Trade Marks Act[, 1993 (Act No. 194 of 1993)]; or
 - (ii) author of a work on which copyright has been conferred in terms of the Copyright Act[, 1978 (Act No. 98 of 1978),] or the owner of such a copyright by reason of assignment, testamentary disposition or operation of law; or”;
- (c) by the substitution in subsection (11) for paragraphs (a) and (b) of the following paragraphs:
 - “(a) section 37D(1)(d)(iA) of the Pension Funds Act[, 1956 (Act No. 24 of 1956)]; or
 - (b) section 37D(1)(d)(ii) of the Pension Funds Act[, 1956 (Act No. 24 of 1956),] to the extent that the deduction is a result of a deduction contemplated in paragraph (a),”.

Amendment of section 8 of Act 58 of 1962 as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000, section 7 of Act 19 of 2001, section 21 of Act 60 of 2001, section 12 of Act 30 of 2002, section 11 of Act 74 of 2002, section 18 of Act 45 of 2003, section 6 of Act 32 of 2004, section 4 of Act 9 of 2005, section 21 of Act 9 of 2006, section 5 of Act 20 of 2006, section 6 of Act 8 of 2007, section 9 of Act 35 of 2007, sections 1 and 5 of Act 3 of 2008, section 9 of Act 60 of 2008, section 11 of Act 17 of 2009, section 10 of Act 7 of 2010, section 16 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 30 of Schedule 1 to that Act, and section 9 of Act 22 of 2012

9. (1) Section 8 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (4)(a) for the words preceding the proviso of the following words:
 - “There shall be included in the taxpayer’s income all amounts allowed to be deducted or set off under the provisions of sections 11 to 20, inclusive, section 24D, section 24F, section 24G, section 24I, section 24J, section 27(2)(b) and section 37B(2) of this Act, except section 11(k), (p) and (q), [section 11D(1),] section 12(2) or section 12(2) as applied by section 12(3), section 12A(3), section 13(5), or section 13(5) as applied by section 13(8), or section 13bis(7), section 15(a) or section 15A, or under the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment which have been recovered or recouped during the current year of assessment”;
 - (b) by the deletion in subsection (4)(a) of the word “or” at end of paragraph (i) of the proviso;
 - (c) by the addition to subsection (4)(a) of the word “or” at the end of paragraph (ii) of the proviso;
 - (d) by the addition to subsection (4)(a) after paragraph (ii) of the proviso of the following paragraph:
 - “(iii) previously taken into account as an amount that is deemed to have been recovered or recouped in terms of section 19(4), (5) or (6).”;

- (e) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
“*(b)* For the purposes of paragraph (a), where during any year of assessment any actuarial surplus is paid to a taxpayer pursuant to the provisions of section 15E(1)(f) or (g) of the Pension Funds Act, **1956 (Act No. 24 of 1956),** the taxpayer must be deemed to have recovered or recouped an amount equal to the amount of that actuarial surplus less any expenditure incurred by that taxpayer in respect of that actuarial surplus that was not allowed as a deduction during any year of assessment.”;
- (f) by the deletion in subsection (4) of paragraph (dB);
- (g) by the substitution in subsection (4)(k) for subparagraph (ii) of the following subparagraph:
“(ii) in the case of a company, transferred in whatever manner or form any asset to any **[shareholder of]** holder of a share in that company; or”;
- (h) by the substitution in subsection (5) for paragraph (bA) of the following paragraph:
“(bA) If after the termination **[on or after 1 September 1983]** by the effluxion of time or otherwise of a lease of property consisting of corporeal movable goods or of any machinery or plant in respect of which the lessor under such lease was entitled to any allowance under the provisions of this Act, the person who was the lessee under such lease (hereinafter referred to as the former lessee) is, with the express or implied consent or acquiescence of the person who was the lessor under such lease (hereinafter referred to as the former lessor) or of the owner of the property, allowed to use, enjoy or deal with the property as the former lessee may deem fit—
(i) without the payment of any consideration; or
(ii) in the case of a lease **[entered into on or after 1 September 1983,]** without the payment of any rental or other consideration or subject to the payment of any consideration which is nominal in relation to the fair market value of the property,
the former lessee shall be deemed for the purposes of paragraph (b) to have acquired the property for no consideration and, if the property was owned by the former lessor, the fair market value thereof shall, unless and until that value is otherwise determined to the satisfaction of the Commissioner, be deemed for the said purposes to be the cost to the former lessor of the property (or, where the said lease was a financial lease **[as defined in section 1 of the Sales Tax Act, 1978 (Act No. 103 of 1978)]** contemplated in paragraph (b) of the definition of ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act, the cash value as defined in that Act of the property **[contemplated in paragraph 2 of Schedule 4 to the said Act]**), less a depreciation allowance calculated in accordance with paragraph (bB)(i) for the period from the commencement to the termination of the lease.”;
- (i) by the deletion in subsection (5)(bB) of the proviso to subparagraph (ii);
- (j) by the substitution in subsection (5)(bB) for the semi-colon at the end of subparagraph (iv) of a full stop; and
- (k) by the deletion in subsection (5)(bB) of subparagraph (v).

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 October 2012 and applies in respect of amounts in respect of expenditure incurred in respect of research and development that are recovered or recouped on or after that date.

(3) Paragraphs (b), (c) and (d) of subsection (1) are deemed to have come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date. 5

Amendment of section 8C of Act 58 of 1962, as inserted by section 8 of Act 32 of 2004 and amended by section 12 of Act 31 of 2005, section 7 of Act 20 of 2006, section 11 of Act 35 of 2007, section 11 of Act 60 of 2008, section 12 of Act 7 of 2010 and section 19 of Act 24 of 2011 10

10. (1) Section 8C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (7) in paragraph (a) of the definition of “market value” for the words preceding subparagraph (i) of the following words:

“of a private company [**contemplated in section 20 of**] as defined in the Companies Act[, 1973 (Act No. 61 of 1973),] or a company that would be regarded as a private company if it were incorporated under that Act, means an amount determined as its value in terms of a method of valuation—”. 15

(2) Subsection (1) is deemed to have come into operation on 1 May 2011 and applies in respect of equity instruments acquired on or after that date. 20

Amendment of section 8EA of Act 58 of 1962, as inserted by section 12 of Act 22 of 2012

11. (1) Section 8EA of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) in the definition of “preference share” for paragraph (b) of the following paragraph: 25

“(b) that is an equity share, if [**the**] an amount of any dividend or foreign dividend in respect of that share is based on or determined with reference to a specified rate of interest or the time value of money;”;

(b) by the substitution in subsection (1) of the definition of “qualifying purpose” for the following definition: 30

“**‘qualifying purpose’**, in relation to the funds derived from the issue of a preference share, means one or more of the following purposes:

(a) [**the**] The direct or indirect acquisition of an equity share by any person in an operating company, other than a direct or indirect acquisition of an equity share from a company that, immediately before that acquisition, formed part of the same group of companies as the person acquiring that equity share; 35

(b) the partial or full settlement by any person of any—

(i) debt incurred for one or more of the following purposes:

(aa) The direct or indirect acquisition of an equity share by any person in an operating company, other than a direct or indirect acquisition of an equity share from a company that, immediately before that acquisition, formed part of the same group of companies as the person acquiring that equity share; 40

(bb) a direct or indirect acquisition or a redemption contemplated in paragraph (c); 45

(cc) the payment of any dividend or foreign dividend as contemplated in paragraph (d); or

(dd) the partial or full settlement, directly or indirectly, of any debt incurred as contemplated in item (aa), (bb) or (cc); or 50

(ii) interest accrued on any debt contemplated in subparagraph (i);

- (c) the direct or indirect acquisition by any person or a redemption by any person of any other preference share if—
 - (i) that other preference share was issued for any purpose contemplated in **[paragraph (a), (b), this paragraph or paragraph (d)]** this definition; and
 - (ii) the amount received by or accrued to the issuer of that preference share as consideration for the issue of that preference share does not exceed the amount outstanding in respect of that other preference share being acquired or redeemed, being the sum of—
 - (aa) that amount; and
 - (bb) any amount of dividends, foreign dividends or interest accrued in respect of that other preference share; or
- (d) the payment by any person of any dividend or foreign dividend in respect of **[a]** the other preference share contemplated in paragraph (c);”;
- (c) by the deletion in subsection (1) of the proviso to the definition of “third-party backed share”; and
- (d) by the addition after subsection (2) of the following subsection:
 - “(3) (a) Where the funds derived from the issue of a preference share were applied for a qualifying purpose, in determining whether—
 - (i) an enforcement right is exercisable in respect of that share, no regard must be had to any arrangement in terms of which the holder of that share has an enforcement right in respect of that share and that right is exercisable; or
 - (ii) an enforcement obligation is enforceable in respect of that share, no regard must be had to any arrangement in terms of which that obligation is enforceable,against the persons contemplated in paragraph (b).
 - (b) For the purposes of the determination contemplated in paragraph (a) no regard must be had to the following persons:
 - (i) The operating company to which that qualifying purpose relates;
 - (ii) any issuer of a preference share if that preference share was issued for the purpose of the direct or indirect acquisition by any person of an equity share in an operating company to which that qualifying purpose relates;
 - (iii) any other person that directly or indirectly holds at least 20 per cent of the equity shares in—
 - (aa) the operating company contemplated in subparagraph (i); or
 - (bb) the issuer contemplated in subparagraph (ii);
 - (iv) any company that forms part of the same group of companies as—
 - (aa) the operating company contemplated in subparagraph (i);
 - (bb) the issuer contemplated in subparagraph (ii); or
 - (cc) the other person that directly or indirectly holds at least 20 per cent of the equity shares in the operating company contemplated in subparagraph (i) or the issuer contemplated in subparagraph (ii);
 - (v) any natural person; or
 - (vi) any organisation—
 - (aa) which is—
 - (A) a non-profit company as defined in section 1 of the Companies Act; or
 - (B) a trust or association of persons; and
 - (bb) if—
 - (A) all the activities of that organisation are carried on in a non-profit manner; and

- (B) none of the activities of that organisation are intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of that organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.” 5
- (2) Subsection (1) is deemed to have come into operation—
- (a) in the case of dividends or foreign dividends received in cash by any person during any year of assessment of that person that commences on or after 1 January 2013, on 1 April 2012 and applies in respect of any dividend or foreign dividend so received if that dividend or foreign dividend— 10
- (i) accrued to that person on or after 1 April 2012; and
- (ii) is received by that person on or after a date three months after the date on which that dividend or foreign dividend accrued to that person; or
- (b) in the case of dividends or foreign dividends— 15
- (i) received by or accrued to any person; and
- (ii) that are not received by and accrued to that person as contemplated in paragraph (a), 20
- on 1 January 2013 and applies in respect of any dividend or foreign dividend so received and accrued during years of assessment of that person that commence on or after that date.

Substitution of section 8F of Act 58 of 1962, as inserted by section 10 of Act 32 of 2004

12. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 8F of the following section:

“Interest on hybrid debt instruments deemed to be dividends *in specie* 25

- 8F.** (1) For the purposes of this section—
- ‘hybrid debt instrument’** means any instrument in respect of which a company owes an amount during a year of assessment if in terms of any arrangement as defined in section 80L—
- (a) that company is in that year of assessment entitled or obliged to— 30
- (i) convert that instrument (or any part thereof) in any year of assessment to; or
- (ii) exchange that instrument (or any part thereof) in any year of assessment for, 35
- shares unless the market value of those shares is equal to the amount owed in terms of the instrument at the time of conversion or exchange;
- (b) the obligation to pay an amount in respect of that instrument is conditional upon the market value of the assets of that company not being less than the market value of the liabilities of that company; or
- (c) that company owes the amount to a connected person in relation to that company and is not obliged to redeem the instrument, excluding any 40
- instrument payable on demand, within 30 years—
- (i) from the date of issue of the instrument; or
- (ii) from the end of that year of assessment: 45
- Provided that, for the purposes of this paragraph, where the company has the right to—
- (aa) convert that instrument to; or
- (bb) exchange that instrument for, 50
- a financial instrument other than a share—

- (A) that conversion or exchange must be deemed to be an arrangement in respect of that instrument; and
- (B) that instrument and that financial instrument must be deemed to be one and the same instrument for the purposes of determining the period within which the company is obliged to redeem that instrument;

‘instrument’ means any form of interest-bearing arrangement or debt;
‘issue’, in relation to an instrument, means the creation of a liability to pay an amount in terms of that instrument;
‘interest’ means interest as defined in section 24J;
‘redeem’, in relation to an instrument, means the discharge of all liability to pay all amounts in terms of that instrument.

(2) Any amount of interest that during a year of assessment—
(a) is incurred by a company in respect of a hybrid debt instrument is, on or after the date that the instrument becomes a hybrid debt instrument—

- (i) deemed for the purposes of this Act to be a dividend *in specie* declared and paid by that company on the last day of the year of assessment of that company; and
 - (ii) not deductible in terms of this Act; and
- (b) accrues to a person to whom an amount is owed in respect of a hybrid debt instrument is deemed for the purposes of this Act to be a dividend *in specie* that accrues to that person on the last day of the year of assessment of the company contemplated in paragraph (a).

(3) This section does not apply to any instrument—

- (a) in respect of which all amounts are owed by a small business corporation as defined in section 12E(4);
- (b) that constitutes a tier 1 or tier 2 capital instrument referred to in the regulations issued in terms of section 90 of the Banks Act (contained in Government Notice No. R.1029 published in *Government Gazette* No. 35950 of 12 December 2012) issued—

- (i) by a bank as defined in section 1 of that Act; or
 - (ii) by a controlling company in relation to that bank;
- (c) of any class that is subject to approval as contemplated in the—
- (i) Short-term Insurance Act in accordance with the conditions determined in terms of section 23(a)(i) of that Act by the Registrar defined in that Act, where an amount is owed in respect of that instrument by a short-term insurer as defined in that Act; or
 - (ii) Long-term Insurance Act in accordance with the conditions determined in terms of section 24(a)(i) of that Act by the Registrar defined in that Act, where an amount is owed in respect of that instrument by a long-term insurer as defined in that Act; or

(d) that constitutes a linked unit in a company where the linked unit is held by a long-term insurer as defined in the Long-term Insurance Act, a pension fund, a provident fund, a REIT or a short-term insurer as defined in the Short-term Insurance Act, if—

- (i) the long-term insurer, pension fund, provident fund, REIT or short-term insurer holds at least 20 per cent of the linked units in that company;
- (ii) the long-term insurer, pension fund, provident fund, REIT or short-term insurer acquired those linked units before 1 January 2013; and
- (iii) at the end of the previous year of assessment 80 per cent or more of the value of the assets of that company, reflected in the annual financial statements prepared in accordance with the Companies Act for the previous year of assessment, is directly or indirectly attributable to immovable property.”

(2) Subsection (1) comes into operation on 1 April 2014 and applies in respect of amounts incurred on or after that date.

Amendment of section 8F in Act 58 of 1962, as substituted by section 12 of this Act

13. (1) Section 8F of the Income Tax Act, 1962, is hereby amended—

- (a) by the addition in subsection (3) of the word “or” to the end of paragraph (b);
- (b) by the substitution in subsection (3) for the expression “; or” at the end of paragraph (c) of a full stop; and
- (c) by the deletion in subsection (3) of paragraph (d).

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(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of amounts incurred on or after that date.

Insertion of section 8FA in Act 58 of 1962

14. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 8F:

“Hybrid interest deemed to be dividends *in specie*”

8FA. (1) For the purposes of this section—

‘hybrid interest’, in relation to any debt owed by a company in terms of an instrument, means—

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- (a) any interest where the amount of that interest is—
 - (i) not determined with reference to a specified rate of interest; or
 - (ii) not determined with reference to the time value of money; or
- (b) if the rate of interest has in terms of that instrument been raised by reason of an increase in the profits of the company, so much of the amount of interest as has been determined with reference to the raised rate of interest as exceeds the amount of interest that would have been determined with reference to the lowest rate of interest in terms of that instrument during the current year of assessment and the previous five years of assessment;

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‘instrument’ means any form of interest-bearing arrangement or debt;

‘issue’, in relation to an instrument, means the creation of a liability to pay or a right to receive an amount in terms of that instrument.

‘interest’ means interest as defined in section 24J;

(2) Any amount of interest which during a year of assessment—

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- (a) is incurred by a company in respect of hybrid interest must, on or after the date that the interest becomes hybrid interest—
 - (i) be deemed for the purposes of this Act to be a dividend *in specie* declared and paid by that company on the last day of that year of assessment; and
 - (ii) not be deductible in terms of this Act; and

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- (b) accrues to a person to which an amount is owed in respect of the hybrid interest must be deemed for the purposes of this Act to be a dividend *in specie* that accrues to that person on the last day of that year of assessment.

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(3) This section does not apply to any interest owed in respect of—

- (a) a debt owed by a small business corporation as defined in section 12E(4);

- (b) an instrument that constitutes a tier 1 or tier 2 capital instrument referred to in the regulations issued in terms of section 90 of the Banks Act (contained in Government Notice No. R.1029 published in *Government Gazette* No. 35950 of 12 December 2012) issued—

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- (i) by a bank as defined in section 1 of that Act; or
- (ii) by a controlling company in relation to that bank;

- (c) an instrument of any class that is subject to approval as contemplated—
 - (i) in the Short-term Insurance Act in accordance with the conditions determined in terms of section 23(a)(i) of that Act by the Registrar defined in that Act, where an amount is owed in respect of that instrument by a short-term insurer as defined in that Act; or
 - (ii) in the Long-term Insurance Act in accordance with the conditions determined in terms of section 24(a)(i) of that Act by the Registrar defined in that Act, where an amount is owed in respect of that instrument by a long-term insurer as defined in that Act; or
- (d) an instrument that constitutes a linked unit in a company where the linked unit is held by a long-term insurer as defined in the Long-term Insurance Act, a pension fund, a provident fund, a REIT or a short-term insurer as defined in the Short-term Insurance Act, if—
 - (i) the long-term insurer, pension fund, provident fund, REIT or short-term insurer holds at least 20 per cent of the linked units in that company;
 - (ii) the long-term insurer, pension fund, provident fund, REIT or short-term insurer acquired those linked units before 1 January 2013; and
 - (iii) at the end of the previous year of assessment 80 per cent or more of the value of the assets of that company, reflected in the annual financial statements prepared in accordance with the Companies Act for the previous year of assessment, is directly or indirectly attributable to immovable property.”

(2) Subsection (1) comes into operation on 1 April 2014 and applies in respect of amounts incurred on or after that date.

Amendment of section 8FA in Act 58 of 1962, as inserted by section 14 of this Act

15. (1) Section 8FA of the Income Tax Act, 1962, is hereby amended—

- (a) by the addition in subsection (3) of the word “or” to the end of paragraph (b);
- (b) by the substitution in subsection (3) for the expression “; or” at the end of paragraph (c) of a full stop; and
- (c) by the deletion in subsection (3) of paragraph (d).

(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of amounts incurred on or after that date.

Amendment of section 9 of Act 58 of 1962, as substituted by section 22 of Act 24 of 2011

16. (1) Section 9 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words:

“constitutes interest as defined in section 24J [**or deemed interest as contemplated in section 8E(2)**] where that interest—”;

- (b) by the substitution in subsection (2)(h) for subparagraph (ii) of the following subparagraph:

“(ii) that is a constitutional institution listed in Schedule 1 to the Public Finance Management Act[, 1999 (Act No. 1 of 1999)];”;

- (c) by the substitution in subsection (2) for paragraph (j) of the following paragraph:

“(j) constitutes an amount received or accrued in respect of the disposal of an asset that constitutes immovable property held by that person or any interest or right of whatever nature of that person to or in immovable property contemplated in paragraph 2 of the Eighth Schedule and that property is situated in the Republic;”;

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(d) by the substitution for subsection (3) of the following subsection:

“(3) For the purposes of—

- (a) paragraph (i) of subsection (2), any amount granted to a person by way of pension or annuity must be deemed to have been received by or to have accrued to that person in respect of services rendered by that person]; and 5
- (b) paragraph (j) of subsection (2), an interest in immovable property held by a person includes any equity shares in a company or ownership or the right to ownership of any other entity or a vested interest in any assets of any trust, if— 10
 - (i) 80 per cent or more of the market value of those equity shares, ownership or right to ownership or vested interest, as the case may be, at the time of disposal thereof, is attributable directly or indirectly to immovable property held otherwise than as trading stock; and 15
 - (ii) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person) directly or indirectly holds at least 20 per cent of the equity shares in that company or ownership or right to ownership of that other entity].” 20

(2) Paragraph (a) of subsection (1) is deemed to have come into operation—

- (a) in the case of dividends or foreign dividends received in cash by any person during any year of assessment of that person that commences on or after 1 January 2013, on 1 April 2012 and applies in respect of any dividend or foreign dividend so received if that dividend or foreign dividend— 25
 - (i) accrued to that person on or after 1 April 2012; and
 - (ii) is received by that person on or after a date three months after the date on which that dividend or foreign dividend accrued to that person; or
- (b) in the case of dividends or foreign dividends— 30
 - (i) received by or accrued to any person; and
 - (ii) that are not received by and accrued to that person as contemplated in paragraph (a), 35on 1 January 2013 and applies in respect of any dividend or foreign dividend so received and accrued during years of assessment of that person that commence on or after that date.

(3) Paragraphs (c) and (d) of subsection (1) are deemed to have come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

Repeal of section 9B of Act 58 of 1962

17. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 9B. 40

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 9C of Act 58 of 1962, as inserted by section 14 of Act 35 of 2007 and amended by section 7 of Act 3 of 2008, section 12 of Act 60 of 2008, section 15 of Act 7 of 2010, section 24 of Act 24 of 2011 and section 13 of Act 22 of 2012 45

18. Section 9C of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for the definition of “connected person” of the following definition:

“ ‘**connected person**’ means a connected person as defined in section 1, provided that the expression ‘and no **[shareholder]** holder of shares 50

- holds the majority voting rights **[of such]** in the company' in paragraph (d)(v) of that definition shall be disregarded;"; and
- (b) by the substitution in subsection (1) for the definition of "equity share" of the following definition:
- "**'equity share'** includes a participatory interest in a portfolio of a collective investment scheme in securities and a portfolio of a hedge fund collective investment scheme;"

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001, section 22 of Act 60 of 2001, section 14 of Act 74 of 2002, section 22 of Act 45 of 2003, section 13 of Act 32 of 2004, section 14 of Act 31 of 2005, section 9 of Act 20 of 2006, sections 9 and 96 of Act 8 of 2007, section 15 of Act 35 of 2007, section 8 of Act 3 of 2008, section 13 of Act 60 of 2008, section 12 of Act 17 of 2009, sections 16 and 146 of Act 7 of 2010, section 25 of Act 24 of 2011 and sections 14 and 156 of Act 22 of 2012

19. (1) Section 9D of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in subsection (1) in the definition of "foreign business establishment" of the word "or" at the end of paragraph (d);
- (b) by the addition in subsection (1) to the definition of "foreign business establishment" after paragraph (e) of the following paragraphs:
- "(f) a South African ship as defined in section 12Q engaged in international shipping as defined in that section; or
- (g) a ship engaged in international traffic used mainly outside the Republic;"
- (c) by the substitution in paragraph (C)(i) of the proviso to subsection (2) for items (aa) and (bb) of the following items:
- "(aa) a linked policy as defined in section 1 of the **[Long-Term Long-term Insurance Act]**, 1998 (Act No. 52 of 1998); or
- (bb) a policy as defined in section 29A, other than a policy contemplated in item (aa), of which the amount of the policy benefits as defined in the **[Long-Term Long-term Insurance Act]**, 1998 (Act No. 52 of 1998), is not guaranteed by the insurer and is to be determined wholly by reference to the value of particular assets or categories of assets; and"
- (d) by the substitution in subsection (2A) in paragraph (c) of the proviso for subparagraph (i) of the following subparagraph:
- "(i) interest, royalties, rental, insurance premium or income of a similar nature which is paid or payable or deemed to be paid or payable by that company to any other controlled foreign company (including any similar amount adjusted in terms of section 31);"
- (e) by the substitution in subsection (2A) in paragraph (c) of the proviso for the words following subparagraph (iv) of the following words:
- "where that controlled foreign company and that other controlled foreign company form part of the same group of companies, unless that interest, rental, royalty, insurance premium, other income, adjusted amount, exchange difference, reduction or discharge is taken into account to determine the net income of that other controlled foreign company;"
- (f) by the substitution in subsection (6) for the proviso of the following proviso:
- ": Provided that any exchange item denominated in any currency other than the functional currency of that controlled foreign company shall be deemed not to be attributable to any permanent establishment of the controlled foreign company if the functional currency is the currency of a country which has an official rate of inflation of 100 per cent or more for that foreign tax year;"

- (g) by the substitution in subsection (9) for paragraph (c) of the following paragraph:
“(c) is attributable to any policyholder that is not a resident or a controlled foreign company in relation to a resident in respect of any policy issued by a company licensed to issue any long-term policy as defined in the Long-term Insurance Act, 1998 (Act No. 53 of 1998),] in its country of residence;”;
- (h) by the substitution in subsection (9)(d) for subparagraph (i) of the following subparagraph:
“(i) the withholding tax on interest in terms of [Part IA] Part IVB; [or]”;
- (i) by the insertion in subsection (9)(d) after subparagraph (ii) of the following subparagraph:
“(iii) the withholding tax on service fees in terms of Part IVC,”;
- (j) by the substitution in subsection (9)(fA) for subparagraph (i) of the following subparagraph:
“(i) any interest, royalties, rental, insurance premium or income of a similar nature which is paid or payable or deemed to be paid or payable to that company by any other controlled foreign company (including any similar amount adjusted in terms of section 31);”;
- (k) by the substitution in subsection (9A)(a)(iii)(cc) for the words following subitem (B) of the following words:
“other than amounts in respect of which paragraphs [(e)] (c) to (fB) of subsection (9) apply or amounts derived from the activities of a treasury operation or a captive insurer, exceeds five per cent of the total of all amounts received by or accrued to the controlled foreign company that are attributable to that foreign business establishment, other than amounts in respect of which paragraphs (c) to (fB) of subsection (9) apply or amounts derived from the activities of a treasury operation or a captive insurer;”.
- (2) Paragraphs (a), (b), (d), (e), (f), (j) and (k) of subsection (1) come into operation on 1 April 2014 and apply in respect of years of assessment commencing on or after that date.
- (3) Paragraph (h) of subsection (1) comes into operation on 1 January 2015 and applies in respect of amounts that are paid or become due and payable on or after that date.
- (4) Paragraph (i) of subsection (1) comes into operation on 1 January 2016 and applies in respect of amounts that are paid or become due and payable on or after that date.

Repeal of section 9G of Act 58 of 1962

20. The Income Tax Act, 1962, is hereby amended by the repeal of section 9G.

Amendment of section 9H of Act 58 of 1962, as substituted by section 17 of Act 22 of 2012

21. (1) Section 9H of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (4) of paragraph (b).
- (2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of any person that—
- (a) ceases to be a resident;
 - (b) becomes a headquarter company;
 - (c) ceases to be a controlled foreign company in relation to that resident,
- on or after that date.

Amendment of section 9I of Act 58 of 1962, as inserted by section 27 of Act 24 of 2011 and amended by section 18 of Act 22 of 2012

22. Section 9I of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)(a) for the words preceding the proviso of the following words:

“for the duration of that year of assessment, each [shareholder] holder of shares in the company (whether alone or together with any other company forming part of the same group of companies as that [shareholder] holder) held 10 per cent or more of the equity shares and voting rights in that company”.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 1 of Act 49 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, sections 8 and 62 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, sections 10 and 101 of Act 20 of 2006, sections 2, 10, 88 and 97 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, sections 1 and 9 of Act 3 of 2008, section 2 of Act 4 of 2008, section 16 of Act 60 of 2008, sections 13 and 95 of Act 17 of 2009, section 18 of Act 7 of 2010, sections 28 and 160 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 31 of Schedule 1 to that Act, and sections 19, 144, 157 and 166 of Act 22 of 2012

23. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1)(cA)(i) for the words preceding item (aa) of the following words:

“any institution, board or body (other than a company [registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), or] as defined in the Companies Act[, 2008 (Act No. 71 of 2008)], any co-operative, close corporation, trust or water services provider, and any Black tribal authority, community authority, Black regional authority or Black territorial authority contemplated in section 2 of the Black Authorities Act, 1951 (Act No. 68 of 1951)) established by or under any law and which, in the furtherance of its sole or principal object—”;

(b) by the substitution in subsection (1)(cA)(i) for the words preceding item (aa) of the following words:

“any institution, board or body (other than a company as defined in the Companies Act, any co-operative, close corporation, trust or water services provider[, and any Black tribal authority, community authority, Black regional authority or Black territorial authority contemplated in section 2 of the Black Authorities Act, 1951 (Act No. 68 of 1951)]) established by or under any law and which, in the furtherance of its sole or principal object—”;

(c) by the substitution in paragraph (b) of the proviso to subsection (1)(cA) for subparagraph (i) of the following subparagraph:

“(i) not permitted to distribute any of its profits or gains to any person, other than, in the case of such company, to [its shareholders] the holders of shares in that company;”;

- (d) by the substitution in subsection (1)(d) for subparagraph (i) of the following subparagraph:
“(i) pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, or a beneficiary fund defined in section 1 of the Pension Funds Act[, 1956 (Act No. 24 of 1956)];”;
- (e) by the substitution in subsection (1)(e)(i) for item (bb) of the following item:
“(bb) a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980), from [its shareholders] the holders of shares in that share block company; or”;
- (f) by the substitution in subsection (1)(e)(i)(cc) for the words preceding subitem (A) of the following words:
“any other association of persons (other than a company [**registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), or**] as defined in the Companies Act[, 2008 (Act No. 71 of 2008)], any co-operative, close corporation and trust, but including [**a company contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), and**] a non-profit company as defined in [**section 1 of the Companies Act, 2008 (Act No. 71 of 2008)**] that Act) from its members, where the Commissioner is satisfied that, subject to such conditions as he or she may deem necessary, such association of persons—”;
- (g) by the substitution in subsection (1) for paragraph (gE) of the following paragraph:
“(gE) any amount awarded to a person by a beneficiary fund as defined in the Pension Funds Act[, 1956 (Act No. 24 of 1956)];”;
- (h) by the substitution in subsection (1)(gG) for subparagraph (i) of the following subparagraph:
“(i) in the case of a policy that is a risk policy with no cash value or surrender value, if the amount of premiums paid in respect of that policy by the employer of the person has been deemed to be a taxable benefit of the person in terms of the Seventh Schedule since the later of—
(aa) the date on which the employer or company contemplated in those subparagraphs became the policyholder of that policy; or
(bb) 1 March 2012[,
unless the amount of the premiums paid was deductible by the person in terms of section 11(a)];”;
- (i) by the insertion in subsection (1) after paragraph (gH) of the following paragraph:
“(gI) any amount received or accrued in respect of a policy of insurance relating to the death, disablement, severe illness or unemployment of a person who is the policyholder in respect of that policy of insurance;”;
- (j) by the substitution in subsection (1) for paragraph (h) of the following paragraph:
“(h) any amount of interest [**as defined in section 37I**] which is received or [**accrued**] accrues by or to any person that is not a resident, unless [**that person**]—
(i) that person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the interest is received or [**accrued**] accrues by or to that person; or
(ii) [**at any time during the twelve-month period preceding the date on which the interest is received or accrued by or to that person carried on business through**] the debt from which the interest arises is effectively connected to a permanent establishment of that person in the Republic;”;

- (k) by the insertion in subsection (1) after paragraph (hA) of the following paragraph:
 “(hB) the amount of any service fee as defined in section 51A which is received or accrues by or to any person that is not a resident, to the extent that the person is subject to the withholding tax on service fees under Part IVC of this Chapter;”;
- (l) by the substitution in subsection (1) for paragraph (iB) of the following paragraph:
 “(iB) any amount received by or accrued to a holder of a participatory interest in a portfolio of a collective investment scheme in securities by way of a distribution from that portfolio if that amount is deemed to have accrued to that portfolio in terms of section 25BA(b) and that amount is subject to normal tax at the time that the amount is deemed to accrue to that portfolio of a collective investment scheme in securities;”;
- (m) by the substitution in subsection (1)(k)(i) for paragraph (aa) of the proviso of the following paragraph:
 “(aa) to dividends (other than those received by or accrued to or in favour of a person that is not a resident or a dividend contemplated in paragraph (b) of the definition of ‘dividend’) distributed by a company that is a REIT, or [by] a controlled [property] company as defined in section 25BB;”;
- (n) by the substitution in subsection (1)(k)(i) in paragraph (ee) of the proviso for the words following subparagraph (B) of the following words:
 “unless that cession or exercise [is part of the disposal] results in the holding by that company of all of the rights attaching to a share;”;
- (o) by the addition in subsection (1)(k)(i) to the proviso after paragraph (gg) of the following paragraph:
 “(hh) to any dividends received by or accrued to a company other than dividends taken into account for purposes of paragraph (gg) to the extent that the aggregate of those dividends does not exceed an amount equal to the aggregate of any deductible expenditure incurred by that company, if the amount of that expenditure is determined wholly or partly with reference to those dividends received by or accrued to that company;”;
- (p) by the addition in subsection (1)(k)(i) to the proviso after paragraph (hh) of the following paragraph:
 “(ii) to any dividend received by or accrued to a person in respect of services rendered or to be rendered or in respect of or by virtue of employment or the holding of any office, other than a dividend received or accrued in respect of a restricted equity instrument as defined in section 8C held by that person or in respect of a share held by that person;”;
- (q) by the deletion in subsection (1) of paragraph (m);
- (r) by the deletion in subsection (1)(o) of the word “or” at the end of subparagraph (i);
- (s) by the insertion in subsection (1)(o) after subparagraph (i) of the following subparagraph:
 “(iA) as defined in paragraph 1 of the Fourth Schedule, derived by any person as an officer or crew member of a South African ship as defined in section 12Q(1) mainly engaged—
 (aa) in international shipping as defined in section 12Q(1); or
 (bb) in fishing outside the Republic; or”;

- (t) by the substitution in subsection (1)(q) for subparagraphs (aa) and (bb) of paragraph (ii) of the proviso of the following subparagraphs:
- “(aa) if the remuneration proxy derived by the employee **[during the in relation to a year of assessment exceeded [R100 000] R250 000;** and 5
- (bb) to so much of any scholarship or bursary contemplated in this subparagraph as in the case of any such relative, during the year of assessment, exceeds—
- (A) R10 000 **[during the year of assessment]** in respect of a qualification to which an NQF level from 1 up to and including 4 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); and 10
- (B) R30 000 in respect of a qualification to which an NQF level from 5 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);” and 15
- (u) by the substitution in subsection (1)(t) for subparagraph (v) of the following subparagraph:
- “(v) of the Armaments **[Development and Production]** Corporation of South Africa Limited, **[established under]** contemplated in section 2(1) of the **[Armaments Development and Production Act, 1968 (Act No. 57 of 1968)]** Armaments Corporation of South Africa, Limited Act, 2003 (Act No. 51 of 2003);” 20
- (2) Paragraphs (a) and (f) of subsection (1) are deemed to have come into operation on 1 May 2011. 25
- (3) Paragraph (h) of subsection (1) comes into operation on 1 March 2015 and applies in respect of premiums paid or amounts received or accrued on or after that date.
- (4) Paragraph (i) of subsection (1) comes into operation on 1 March 2015 and applies in respect of amounts received or accrued on or after that date. 30
- (5) Paragraph (j) of subsection (1) comes into operation on 1 January 2015 and applies in respect of amounts received or accrued on or after that date.
- (6) Paragraph (k) of subsection (1) comes into operation on 1 January 2016 and applies in respect of amounts received on or after that date.
- (7) Paragraph (l) of subsection (1) comes into operation on 1 March 2015 and applies in respect of amounts received or accrued on or after that date. 35
- (8) Paragraph (m) of subsection (1) is deemed to have come into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.
- (9) Paragraph (n) of subsection (1) is deemed to have come into operation on 25 October 2012 and applies in respect of dividends received or accrued on or after that date. 40
- (10) Paragraph (o) of subsection (1) comes into operation on 1 April 2014 and applies in respect of amounts received or accrued during any year of assessment commencing on or after that date.
- (11) Paragraph (p) of subsection (1) comes into operation on 1 March 2014 and applies in respect of amounts received or accrued on or after that date. 45
- (12) Paragraph (q) of subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.
- (13) Paragraphs (r) and (s) of subsection (1) come into operation on 1 April 2014 and apply in respect of years of assessment commencing on or after that date. 50
- (14) Paragraph (t) of subsection (1) is deemed to have come into operation on 1 March 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 10A of Act 58 of 1962, as inserted by section 8 of Act 65 of 1973 and amended by section 11 of Act 85 of 1974, section 8 of Act 113 of 1993, section 11 of Act 21 of 1995, section 11 of Act 28 of 1997, section 19 of Act 53 of 1999, section 14 of Act 59 of 2000, section 11 of Act 5 of 2001, section 15 of Act 32 of 2004, section 17 of Act 31 of 2005, section 17 of Act 60 of 2008 and section 271 of Act 28 of 2011, read with item 32 of Schedule 1 to that Act 5

24. Section 10A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definition of “statutory actuary” of the following definition:
 “‘**statutory actuary**’[,] means an actuary appointed in accordance with section 20(1) or 21(1)(b) of the [**Long-Term**] Long-term Insurance Act[, 1998 (**Act No. 52 of 1998**)];” 10

Amendment of section 10B of Act 58 of 1962, as inserted by section 29 of Act 24 of 2011 and amended by section 4 of Act 13 of 2012 and section 20 of Act 22 of 2012

25. (1) Section 10B of the Income Tax Act, 1962, is hereby amended— 15

(a) by the deletion in subsection (2) after paragraph (c) of the word “or”;

(b) by the substitution in subsection (2) after paragraph (d) for the colon of the expression “; or”;

(c) by the addition to subsection (2) after paragraph (d) of the following paragraph:
 “(e) to the extent that the foreign dividend is received by or accrues to a 20
company that is a resident in respect of a listed share and consists of the distribution of an asset in specie”;

(d) by the addition to subsection (2) after the proviso of the following further proviso:
 “: Provided further that paragraph (a) must not apply to any foreign 25
 dividend received by or accrued to that person in respect of a share other than an equity share”; and

(e) by the addition after subsection (5) of the following subsection:
 “(6) Subsections (2) and (3) do not apply to any foreign dividend 30
 received by or accrued to a person in respect of services rendered or to be rendered or in respect of or by virtue of employment or the holding of any office, other than a foreign dividend received or accrued in respect of a restricted equity instrument as defined in section 8C held by that person or in respect of a share held by that person.”.

(2) Paragraphs (a), (b), (c) and (e) of subsection (1) come into operation on 1 March 2014 and apply in respect of foreign dividends received or accrued on or after that date. 35

(3) Paragraph (d) of subsection (1) comes into operation on 1 April 2014 and applies in respect of foreign dividends received or accrued on or after that date.

Amendment of section 10C of Act 58 of 1962, as inserted by section 21 of Act 22 of 2012 40

26. (1) Section 10C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “There shall be exempt from normal tax in respect of the aggregate of compulsory 45
 annuities payable to a person an amount equal to so much of the person’s own contributions to any pension fund, provident fund and retirement annuity fund that did not rank for a deduction against the person’s income in terms of section 11(k) [or (n)] as has not previously been—”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of contributions made during years of assessment commencing on or after that date. 50

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, section 9 of Act 16 of 2004, section 16 of Act 32 of 2004, section 6 of Act 9 of 2005, section 18 of Act 31 of 2005, section 11 of Act 20 of 2006, section 11 of Act 8 of 2007, section 17 of Act 35 of 2007, sections 1 and 10 of Act 3 of 2008, section 18 of Act 60 of 2008, section 14 of Act 17 of 2009, section 19 of Act 7 of 2010, sections 30 and 161 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 33 of Schedule 1 to that Act, and section 22 of Act 22 of 2012

27. (1) Section 11 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in paragraph (e) for the words preceding the proviso of the following words:

“save as provided in paragraph 12(2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B, 12C, 12DA, 12E(1) or 37B) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and used by the taxpayer for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment”;

(b) by the substitution in paragraph (e) for paragraph (iA) of the proviso of the following paragraph:

“(iA) no allowance may be made in respect of any machinery, plant, implement, utensil or article the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph (a) of [an] the definition of ‘instalment credit agreement’ [as defined] in section 1 of the Value-Added Tax Act[, 1991];”;

(c) by the substitution in paragraph (f) for subparagraph (iii) of the following subparagraph:

“(iii) the right of use of any patent as defined in the Patents Act[, 1978 (Act No. 57 of 1978),] or any design as defined in the Designs Act[, 1993 (Act No. 195 of 1993),] or any trade mark as defined in the Trade Marks Act[, 1993 (Act No. 194 of 1993),] or any copyright as defined in the Copyright Act[, 1978 (Act No. 98 of 1978),] or of any other property which is of a similar nature, if such patent, design, trade mark, copyright or other property is used for the production of income or income is derived therefrom; or”;

- (d) by the substitution in paragraph (gA) for subparagraphs (i) and (ii) of the following subparagraphs:
- “(i) in devising or developing any invention as defined in the Patents Act[, 1978 (Act No. 57 of 1978),] or in creating or producing any design as defined in the Designs Act[, 1993 (Act No. 195 of 1993),] or any trade mark as defined in the Trade Marks Act[, 1993 (Act No. 194 of 1993),] or any copyright as defined in the Copyright Act[, 1978 (Act No. 98 of 1978),] or any other property which is of a similar nature; [or]
 - (ii) in obtaining any patent or the restoration of any patent under the Patents Act[, 1978,] or the registration of any design under the Designs Act[, 1993,] or the registration of any trade mark under the Trade Marks Act[, 1993,] or under similar laws of any other country; or”;
- (e) by the substitution in paragraph (gA) in paragraph (cc) of the proviso for subparagraphs (A) and (B) of the following subparagraphs:
- “(A) the taxpayer or such other person is a company and such other person or the taxpayer, as the case may be, is interested in more than 50 per cent of any class of shares issued by such company, whether directly as a [shareholder] holder of shares in that company or indirectly as a [shareholder] holder of shares in any other company; or
 - (B) both the taxpayer and such other person are companies and any third person is interested in more than 50 per cent of any class of shares issued by one of those companies and in more than 50 per cent of any class of shares issued by the other company, whether directly as [shareholder] a holder of shares in the company by which the shares in question were issued or indirectly as a [shareholder] holder of shares in any other company;”;
- (f) by the substitution for paragraph (gB) of the following paragraph:
- “(gB) expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section) actually incurred by the taxpayer during the year of assessment in obtaining the grant of any patent or the restoration of any patent, or the extension of the term of any patent under the Patents Act[, 1978 (Act No. 57 of 1978),] or the registration of any design, or extension of the registration period of any design under the Designs Act[, 1993 (Act No. 195 of 1993),] or the registration of any trade mark, or the renewal of the registration of any trade mark under the Trade Marks Act[, 1993 (Act No. 194 of 1993),] or under similar laws of any other country, if such patent, design or trade mark is used by the taxpayer in the production of his or her income;”;
- (g) by the substitution in paragraph (gC) for subparagraphs (i), (ii), (iii) and (iv) of the following subparagraphs:
- “(i) invention or patent as defined in the Patents Act[, 1978 (Act No. 57 of 1978)];
 - (ii) design as defined in the Designs Act[, 1993 (Act No. 195 of 1993)];
 - (iii) copyright as defined in the Copyright Act[, 1978 (Act No. 98 of 1978)];
 - (iv) other property which is of a similar nature (other than [Trade Marks] trade marks as defined in the Trade Marks Act[, 1993 (Act No. 194 of 1993)]); or”;
- (h) by the substitution for paragraph (gD) of the following paragraph:
- “(gD) where that trade constitutes the provision of telecommunication services, the exploration, production or distribution of petroleum

- or the provision of gambling facilities, any expenditure (other than in respect of infrastructure) incurred to acquire a licence from the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a), or an institution or entity contemplated in Schedule 1 or Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), where that expenditure is incurred in terms of the licence and the licence is required to carry on that trade, which deduction must not exceed for any one year such portion of the expenditure as is equal to the amount of the expenditure divided by the number of years for which the taxpayer has the right to the licence after the date on which the expenditure was incurred, or 30, whichever is the lesser;”;
- (i) by the substitution in paragraph (h) for subparagraphs (i) and (ii) of the following subparagraphs:
- “(i) the taxpayer or such other person is a company and such other person or the taxpayer, as the case may be, is interested in more than **[fifty]** 50 per cent of any class of shares issued by such company, whether directly as a **[shareholder]** holder of shares in that company or indirectly as a **[shareholder]** holder of shares in any other company; or
- (ii) both the taxpayer and such other person are companies and any third person is interested in more than **[fifty]** 50 per cent of any class of shares issued by one of those companies and in more than **[fifty]** 50 per cent of any class of shares issued by the other company, whether directly as a **[shareholder]** holder of shares in the company by which the shares in question were issued or indirectly as a **[shareholder]** holder of shares in any other company;”;
- (j) by the substitution in paragraph (k)(ii) for item (dd) of the following item:
- “(dd) no deduction shall be made under this paragraph in respect of so much of any amount carried forward in terms of paragraph (bb) of this proviso as has been accounted for under paragraph **[5(1) or 6(1)(b) or (3)]** 5(1)(a) or 6(1)(b)(i) of the Second Schedule;”;
- (k) by the substitution for paragraph (k) of the following paragraph:
- “(k) any amount contributed during a year of assessment to any pension fund, provident fund or retirement annuity fund in terms of the rules of that fund by a person that is a member of that fund: Provided that—
- (i) the total deduction to be allowed in terms of this paragraph must not in the year of assessment exceed the lesser of—
- (aa) R350 000; or
- (bb) 27,5 per cent of the higher of the person’s—
- (A) remuneration (other than in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as defined in paragraph 1 of the Fourth Schedule; or
- (B) taxable income (other than in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction under this paragraph;
- (ii) for the purposes of this paragraph, any amount so contributed in any previous year of assessment which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of that year of assessment is deemed to be an amount so contributed in the

- current year of assessment, except to the extent that the amount so contributed has been—
- (aa) allowed as a deduction against income in any year of assessment;
 - (bb) accounted for under paragraph 5(1)(a) or 6(1)(b)(i) of the Second Schedule; or
 - (cc) exempted under section 10C;
- (iii) for the purposes of this paragraph, any amount so contributed by an employer of the person for the benefit of the person must, to the extent that the amount has been included in the income of the person as a taxable benefit in terms of the Seventh Schedule, be deemed to have been contributed by the person; and
- (iv) for the purposes of this paragraph, a partner in a partnership must be deemed to be an employee of the partnership and a partnership must be deemed to be the employer of the partners in that partnership;”;
- (l) by the substitution for paragraph (l) of the following paragraph:
“(l) any amount contributed by a person that is an employer during the year of assessment for the benefit of any employee or former employee of the employer or for any dependant or nominee of a deceased employee or former employee of that employer to any pension fund, provident fund or retirement annuity fund in terms of the rules of that fund: Provided that for the purposes of this paragraph a partner in a partnership must be deemed to be an employee of the partnership and a partnership must be deemed to be the employer of the partners in that partnership;”;
- (m) by the deletion of paragraph (n).
- (2) Paragraph (j) of subsection (1) is deemed to have come into operation on 1 March 2013 and applies in respect of amounts received or accrued on or after that date.
- (3) Paragraphs (k), (l) and (m) of subsection (1) come into operation on 1 March 2015 and apply in respect of amounts contributed on or after that date.

Repeal of section 11B of Act 58 of 1962

28. The Income Tax Act, 1962, is hereby amended by the repeal of section 11B.

Amendment of section 11D of Act 58 of 1962, as inserted by section 13 of Act 20 of 2006 and amended by sections 13 and 99 of Act 8 of 2007, section 3 of Act 9 of 2007, section 19 of Act 35 of 2007, section 11 of Act 3 of 2008, section 19 of Act 60 of 2008, section 16 of Act 17 of 2009, section 20 of Act 7 of 2010, section 32 of Act 24 of 2011, section 1 of Act 25 of 2011, section 271 of Act 28 of 2011, read with item 34 of Schedule 1 to that Act, sections 5 and 35 of Act 21 of 2012 and section 68 of Act 22 of 2012

29. (1) Section 11D of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for subsections (1) and (2) of the following subsections:
- “(1) For the purposes of this section ‘**research and development**’ means[—
- (a)] systematic investigative or systematic experimental activities of which the result is uncertain for the purpose of—
 - [(i)](a) discovering non-obvious scientific or technological knowledge; [or]
 - [(ii)](b) creating or developing—
 - [(aa)] (i) an invention as defined in section 2 of the Patents Act[, 1978 (Act No. 57 of 1978),];

[(bb)] (ii) a functional design as defined in section 1 of the Designs Act[, 1993 (Act No. 195 of 1993), that **qualifies**] capable of qualifying for registration under section 14 of that Act;

[(cc)](iii) a computer program as defined in section 1 of the Copyright Act[, 1978 (Act No. 98 of 1978),] which is of an innovative nature; or

[(dd)](iv) knowledge essential to the use of such invention, functional design or computer program other than creating or developing operating manuals or instruction manuals or documents of a similar nature intended to be utilised in respect of that invention, functional design or computer program subsequent to the research and development being completed; or

[(b)](c) **[developing or significantly improving]** making a significant and innovative improvement to any invention, functional design, computer program or knowledge contemplated in paragraph (a) or (b) **[if that development or improvement relates to any]** for the purposes of—

- (i) new or improved function;
- (ii) improvement of performance;
- (iii) improvement of reliability; or
- (iv) improvement of quality,

of that invention, functional design, computer program or knowledge:

Provided that for the purposes of this definition, research and development does not include activities for the purpose of—

- (a) routine testing, analysis, collection of information or quality control in the normal course of business;
- (b) development of internal business processes unless those internal business processes are mainly intended for sale or for granting the use or right of use or permission to use thereof to persons who are not connected parties in relation to the person carrying on that research and development;
- (c) market research, market testing or sales promotion;
- (d) social science research, including the arts and humanities;
- (e) oil and gas or mineral exploration or prospecting except research and development carried on to develop technology used for that exploration or prospecting;
- (f) the creation or development of financial instruments or financial products;
- (g) the creation or enhancement of trademarks or goodwill; or
- (h) any expenditure contemplated in section 11(gB) or (gC).

(2) (a) For the purposes of determining the taxable income of a taxpayer in respect of any year of assessment there shall be allowed as a deduction from the income of that taxpayer an amount equal to 150 per cent of so much of any expenditure actually incurred by that taxpayer directly and solely in respect of research and development undertaken in the Republic if **[that expenditure is incurred]**—

[(a)] (i) that expenditure is incurred in the production of income; **[and]** **[(b)]**(ii) that expenditure is incurred in the carrying on of any trade;

(iii) that research and development is approved in terms of subsection (9); and

- (iv) that expenditure is incurred on or after the date of receipt of the application by the Department of Science and Technology for approval of that research and development in terms of subsection (9).
- (b) No deduction may be allowed under this subsection in respect of expenditure incurred in respect of—
- (i) immovable property, machinery, plant, implements, utensils or articles excluding any prototype or pilot plant created solely for the purpose of the process of research and development and that prototype or pilot plant is not intended to be utilised or is not utilised for production purposes after that research and development is completed;
- (ii) financing, administration, compliance and similar costs.”;
- (b) by the deletion of subsection (3);
- (c) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
“**[In addition to the deduction allowable in terms of subsection (2), where] Where** any amount of expenditure is incurred by a taxpayer to fund expenditure of another person carrying on research and development on behalf of that taxpayer, the taxpayer may deduct an amount **[equal to 50 per cent of the expenditure]** contemplated in subsection (2)—”;
- (d) by the substitution in subsection (4)(c) for subparagraph (ii) of the following subparagraph:
“(ii) a company forming part of the same group of companies, as defined in section 41, if the company that carries on the research and development does not claim a deduction under subsection **[(3)](2)**; and”;
- (e) by the substitution for subsection (6) of the following subsection:
“(6) For the purposes of subsections **[(3)] (2)** and (4)—
- (a) a person carries on research and development if that person may determine or alter the methodology of the research;
- (b) notwithstanding paragraph (a), certain categories of research and development designated by the Minister of Science and Technology by notice in the *Gazette* are deemed to constitute the carrying on of research and development.”;
- (f) by the substitution for subsection (7) of the following subsection:
“(7) Where any **[government grant] amount** is received by or accrues to a taxpayer from—
- (a) a department of the Government of the Republic in the national, provincial or local sphere;
- (b) a public entity that is listed in Schedule 2 or 3 to the Public Finance Management Act; or
- (c) a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), to fund expenditure in respect of any research and development, an amount equal to the amount that is funded must not be taken into account for purposes of the deduction under subsection **[(3)] 2** or (4).”;
- (g) by the deletion of subsection (8);
- (h) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words:
“The Minister of Science and Technology or a person appointed by the Minister of Science and Technology must approve any research and development being carried on or funded for the purposes of subsections **[(3)] (2)** and (4) having regard to—”;
- (i) by the substitution in subsection (9) for paragraph (a) of the following paragraph:
“(a) whether the taxpayer has proved to the committee that the research and development in respect of which the approval is sought complies with the criteria contemplated in the definition of ‘research and development’ in subsection (1); and”;

- (j) by the deletion in subsection (9) of paragraph (b);
- (k) by the substitution in subsection (9) for paragraph (c) of the following paragraph:
“(c) such other criteria as the Minister of [Science and Technology] Finance in consultation with the Minister of [Finance] Science and Technology may prescribe by regulation.”;
- (l) by the deletion in subsection (10) after paragraph (a) of the word “or”;
- (m) by the substitution in subsection (10) for the comma after paragraph (b) of the expression “; or”;
- (n) by the addition in subsection (10) after paragraph (b) of the following paragraph:
“(c) the taxpayer carrying on that research and development is guilty of fraud, or misrepresentation or non-disclosure of material facts which would have had the effect that approval under subsection (9) would not have been granted.”;
- (o) by the substitution for subsection (13) of the following subsection:
“(13) A taxpayer carrying on research and development approved under subsection (9) must report to the committee annually with respect to—
(a) the progress of that research and development; and
(b) the extent to which that research and development requires specialised skills,
within 12 months after the close of each year of assessment, starting with the year following the year in which approval is granted under subsection (9) in the form and in the manner that the Minister of Science and Technology may prescribe.”;
- (p) by the substitution for subsection (14) of the following subsection:
“(14) (a) Notwithstanding Chapter 6 of the Tax Administration Act, the Commissioner may disclose to the Minister of Science and Technology information in relation to research and development—
(a) as may be required by that Minister for the purposes of submitting a report to Parliament in terms of subsection (17); and
(b) if that information is material in respect of the granting of approval under subsection (9) or a withdrawal of that approval in terms of subsection (10).”;
- (q) by the substitution in subsection (16) for the words preceding paragraph (a) of the following words:
“The Minister of Science and Technology or the person appointed by the Minister of Science and Technology contemplated in subsection (9) must—”;
- (r) by the substitution in subsection (16) for paragraph (b) of the following paragraph:
“(b) inform the Commissioner of the approval of any research and development under subsection (9), setting out such particulars as are required by the Commissioner to determine the amount of the [additional] deduction in terms of subsection [(3)] (2) or (4); and”;
and
- (s) by the substitution in subsection (18) for paragraph (b) of the following paragraph:
“(b) [and] may not communicate any such matter to any person whatsoever other than to the taxpayer concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of the Department of Science and Technology or committee, except in terms of the law or an order of court.”.
- (2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of expenditure incurred in respect of research and development on or after that date, but before 1 October 2022.

Amendment of section 11E of Act 58 of 1962, as inserted by section 20 of Act 35 of 2007 and amended by section 17 of Act 17 of 2009 and section 21 of Act 7 of 2010

30. (1) Section 11E of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) any [company contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or a] non-profit company as defined in the Companies Act[, 2008 (Act No. 71 of 2008)]; or”.

(2) Subsection (1) is deemed to have come into operation on 1 May 2011.

Amendment of section 12B of Act 58 of 1962, as inserted by section 11 of Act 90 of 1988 and amended by section 13 of Act 101 of 1990, section 10 of Act 113 of 1993, section 6 of Act 140 of 1993, section 13 of Act 28 of 1997, section 17 of Act 59 of 2000, section 11 of Act 16 of 2004, section 7 of Act 9 of 2005, section 19 of Act 31 of 2005, section 21 of Act 35 of 2007, section 18 of Act 17 of 2009 and section 23 of Act 22 of 2012

31. Section 12B of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (f), (g) and (h) of the following paragraphs:

“(f) machinery, implement, utensil or article (other than livestock) which is owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of [an] the definition of ‘instalment credit agreement’ [as defined] in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and brought into use for the first time by that taxpayer and used by him or her in the carrying on of his or her farming operations, except any motor vehicle the sole or primary function of which is the conveyance of persons or any caravan or any aircraft (other than an aircraft used solely or mainly for the purpose of crop-spraying) or any office furniture or equipment; [or]

(g) machinery, plant, implement, utensil or article owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of [an] the definition of ‘instalment credit agreement’ [as defined] in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is brought into use for the first time by the taxpayer for the purpose of his or her trade to be used for the production of bio-diesel or bio-ethanol;

(h) machinery, plant, implement, utensil or article owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of [an] the definition of ‘instalment credit agreement’ [as defined] in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is brought into use for the first time by that taxpayer for the purpose of his or her trade to be used by that taxpayer in the generation of electricity from—

- (i) wind power;
- (ii) solar energy;
- (iii) hydropower to produce electricity of not more than 30 megawatts; and
- (iv) biomass comprising organic wastes, landfill gas or plant material; or”;

(b) by the deletion in subsection (4) of paragraph (b); and

(c) by the substitution in subsection (4) for paragraph (g) of the following paragraph:

“(g) any asset the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph (a) of

[an] the definition of ‘instalment credit agreement’ [as defined] in section 1 of the Value-Added Tax Act[, 1991].”.

Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990 and amended by section 11 of Act 113 of 1993, section 7 of Act 140 of 1993, section 11 of Act 21 of 1994, section 13 of Act 21 of 1995, section 10 of Act 46 of 1996, section 18 of Act 59 of 2000, section 11 of Act 19 of 2001, section 15 of Act 30 of 2002, section 30 of Act 45 of 2003, section 8 of Act 9 of 2005, section 20 of Act 31 of 2005, section 14 of Act 8 of 2007, section 22 of Act 35 of 2007, section 20 of Act 60 of 2008, section 19 of Act 17 of 2009, section 33 of Act 24 of 2011 and section 24 of Act 22 of 2012

32. (1) Section 12C of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a), (b), (c), (d), (e), (f), (g) and (gA) of the following paragraphs:

“(a) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (b)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of [an] the definition of ‘instalment credit agreement’ [as defined] in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is brought into use for the first time by the taxpayer for the purposes of [his] the taxpayer’s trade (other than mining or farming) and is used by [him] the taxpayer directly in a process of manufacture carried on by [him] the taxpayer or any other process carried on by [him] the taxpayer which in the opinion of the Commissioner is of a similar nature; [or]

(b) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (a)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of [an] the definition of ‘instalment credit agreement’ [as defined] in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is let by the taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee’s trade (other than mining or farming) and is used by the lessee directly in a process of manufacture carried on by [him] the lessee or any other process carried on by [him] the lessee which in the opinion of the Commissioner is of a similar nature; [or]

(c) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (a)) owned by the taxpayer or acquired by the taxpayer as a purchaser in terms of an agreement contemplated in paragraph (a) of [an] the definition of ‘instalment credit agreement’ [as defined] in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is brought into use for the first time by any agricultural co-operative registered or deemed to be incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), or registered under the Co-operatives Act, 2005 (Act No. 14 of 2005) and is used by it directly for storing or packing pastoral, agricultural or other farm products of its members (including any person who is a member of another agricultural co-operative which is itself a member of such agricultural co-operative) or for subjecting such products to a primary process as defined in section 27(9); [or]

(d) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (e)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an

- agreement contemplated in paragraph (a) of **[an] the definition of** ‘instalment credit agreement’ **[as defined]** in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is brought into use for the first time by the taxpayer for the purposes of **[his] the taxpayer’s** trade as hotelkeeper and is used by **[him] the taxpayer** in a hotel, except any vehicle or equipment for offices or managers’ or servants’ rooms; **[or]**
- (e) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (d)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of** ‘instalment credit agreement’ **[as defined]** in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is let by the taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee’s trade as hotelkeeper and used by **[him] the lessee** in a hotel, except any vehicle or equipment for offices or managers’ or servants’ rooms; **[or]**
- (f) aircraft owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of** ‘instalment credit agreement’ **[as defined]** in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is brought into use for the first time by the taxpayer for the purposes of his or her trade (other than an aircraft in respect of which an allowance has been granted to the taxpayer under section 12B or 14bis); **[or]**
- (g) ship owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of** ‘instalment credit agreement’ **[as defined]** in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is brought into use for the first time by the taxpayer for the purposes of his or her trade (other than a ship in respect of which an allowance has been granted to the taxpayer in terms of section 14(1)(a) or (b));
- (gA) new or unused machinery or plant, which is owned by a taxpayer, or acquired by a taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and is first brought into use by that taxpayer for purposes of research and development as defined in section 11D; **or**”;
- (b) by the substitution in subsection (1) for paragraphs (f) and (g) of the following paragraphs:
- “(f) aircraft owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act and which was or is brought into use for the first time by the taxpayer for the purposes of his or her trade (other than an aircraft in respect of which an allowance has been granted to the taxpayer under section 12B **[or 14bis]**);
- (g) ship owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act and which was or is brought into use for the first time by the taxpayer for the purposes of his or her trade (other than a South African ship **[in respect of which an allowance has**

been granted to the taxpayer in terms of section 14(1)(a) or (b) contemplated in section 12Q(1);”;

(c) by the deletion in subsection (1) of paragraph (a) of the proviso;

(d) by the substitution in subsection (1) for paragraph (d) of the proviso of the following paragraph:

“(d) any new or unused machinery or plant referred to in paragraph (gA) of this subsection or improvement referred to in paragraph (h) of this subsection, is or was—

(i) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement on or after 1 January 2012; and

(ii) brought into use by the taxpayer on or after that date for the purpose of research and development as defined in section 11D,

the deduction under this subsection shall be—

(aa) increased to 50 per cent of the cost to that taxpayer of that machinery, plant or improvement in respect of the year of assessment during which the plant, machinery or improvement is or was so brought into use for the first time;

(bb) 30 per cent of that cost in the year of assessment immediately succeeding the year of assessment contemplated in item (aa); and

(cc) 20 per cent of that cost in the year of assessment immediately succeeding the year of assessment contemplated in item (bb);”;

(e) by the deletion in subsection (3) of paragraph (b);

(f) by the deletion in subsection (3) after paragraph (c) of the word “or”;

(g) by the insertion in subsection (3) after paragraph (d) of the word “or”; and

(h) by the substitution in subsection (3) for paragraph (e) of the following paragraph:

“(e) any asset the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph (a) of [an] the definition of ‘instalment credit agreement’ [as defined] in section 1 of the Value-Added Tax Act[, 1991].”.

(2) Paragraph (b) of subsection (1) comes into operation on 1 April 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 12D of Act 58 of 1962, as amended by section 23 of Act 30 of 2000, section 19 of Act 59 of 2000, section 28 of Act 60 of 2001, section 16 of Act 30 of 2002, section 23 of Act 35 of 2007, section 12 of Act 3 of 2008, section 21 of Act 60 of 2008, section 20 of Act 17 of 2009 and section 22 of Act 7 of 2010

33. (1) Section 12D of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) in the definition of “affected asset” for the words following paragraph (d) of the following words:

“and includes any earthworks or supporting structures and equipment forming part of or ancillary to such pipeline, transmission line or cable or railway line and any improvement to such pipeline, transmission line or cable or railway line;”.

(2) Subsection (1) comes into operation on 1 April 2014 and applies in respect of any pipeline, transmission line or cable or railway line first brought into use on or after that date.

Amendment of section 12DA of Act 58 of 1962, as inserted by section 24 of Act 35 of 2007 and amended by section 22 of Act 60 of 2008

34. Section 12DA of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) There shall be allowed to be deducted from the income of the taxpayer an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition or improvement of any rolling stock which is owned by the taxpayer, or

acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of [an] the definition of ‘instalment credit agreement’ [as defined] in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and is used directly by the taxpayer wholly or mainly for the transportation of persons, goods or things to the extent that such rolling stock is used in the production of that taxpayer’s income.” 5

Amendment of section 12E of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 17 of Act 30 of 2002, section 21 of Act 74 of 2002, section 37 of Act 12 of 2003, section 31 of Act 45 of 2003, section 9 of Act 9 of 2005, section 21 of Act 31 of 2005, section 24 of Act 9 of 2006, section 14 of Act 20 of 2006, section 15 of Act 8 of 2007, section 25 of Act 35 of 2007, section 13 of Act 3 of 2008, section 23 of Act 60 of 2008, section 21 of Act 17 of 2009, section 23 of Act 7 of 2010, section 34 of Act 24 of 2011 and section 25 of Act 22 of 2012 10

35. Section 12E of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 15

“Where any plant or machinery (hereinafter referred to as an asset) owned by a taxpayer which qualifies as a small business corporation or acquired by such a taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of [an] the definition of ‘instalment credit agreement’ [as defined] in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),]—”; 20

(b) by the substitution in subsection (4)(a) for the words preceding subparagraph (i) of the following words:

“‘**small business corporation**’ means any close corporation or co-operative or any private company as defined in section 1 of the Companies Act[, 2008 (Act No. 71 of 2008), **all the shareholders of which are**] if at all times during the year of assessment all the holders of shares in that company, co-operative or close corporation are natural persons, where—”; and 25 30

(c) by the substitution in subsection (4)(d) for subparagraph (ii) of the following subparagraph:

“(ii) that company, or co-operative or close corporation does not throughout the year of assessment employ three or more full-time employees (other than any employee who is a [shareholder of] holder of a share in the company or a member of the co-operative or close corporation, as the case may be, or who is a connected person in relation to a [shareholder] holder of a share in the company or a member), who are on a full-time basis engaged in the business of that company, co-operative or close corporation of rendering that service.” 35 40

Amendment of section 12J of Act 58 of 1962, as inserted by section 27 of Act 60 of 2008 and amended by section 25 of Act 17 of 2009 and section 38 of Act 24 of 2011 and section 271 of Act 28 of 2011, read with item 37 of Schedule 1 to that Act

36. Section 12J of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (b) of the definition of “impermissible trade” of the following paragraph: 45

“(b) any trade carried on by a bank as defined in the Banks Act, [1990 (Act No. 94 of 1990),] a long-term insurer as defined in the [Long-Term] Long-term Insurance Act, [1998 (Act No. 52 of 1998),] a short-term insurer as defined in the [Short-Term] Short-term Insurance Act[, 1998 (Act No. 53 of 1998),] and any trade carried on in respect of money-lending or hire-purchase financing.” 50

Amendment of section 12K of Act 58 of 1962, as inserted by section 26 of Act 17 of 2009

37. (1) Section 12K of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) in the definition of “qualifying CDM project” for paragraph (b) of the following paragraph: 5

“(b) that has been registered as contemplated in paragraph 36 of the Modalities on or before 31 December [2012] 2020;”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

Amendment of section 12L of Act 58 of 1962, as substituted by section 29 of Act 22 of 2012

38. (1) Section 12L of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) The amount of the deduction contemplated in subsection [(3)] (1) must be calculated at 45 cents per kilowatt hour or kilowatt hour 15 equivalent of energy efficiency savings.”; and

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“A person claiming the deduction allowed in terms of subsection [(2)] (1) during any year of assessment must obtain a certificate issued by an 20 institution, board or body prescribed by the regulations contemplated in subsection (5) in respect of the energy efficiency savings for which a deduction is claimed in respect of that year of assessment containing—”.

(2) Subsection (1) comes into operation on the date on which section 29 of the Taxation Laws Amendment Act, 2012 (Act No. 22 of 2012), comes into operation. 25

Amendment of section 12M of Act 58 of 1962, as inserted by section 28 of Act 17 of 2009 and amended by section 28 of Act 7 of 2010 and section 30 of Act 22 of 2012

39. Section 12M of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definition of “dependant” of the following definition:

“‘**dependant**’, in relation to a former employee, means a spouse or any dependant 30 (as defined in section 1 of the Medical Schemes Act], 1998 (Act No. 131 of 1998)]);”.

Amendment of section 12N of Act 58 of 1962, as inserted by section 29 of Act 7 of 2010 and amended by section 31 of Act 22 of 2012

40. (1) Section 12N of the Income Tax Act, 1962, is hereby amended— 35

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) [incurs an obligation to effect] effects an improvement on the land or to the building in terms of—”;

(b) by the addition to subsection (1) at the end of paragraph (c) of the word 40 “and”;

(c) by the deletion in subsection (1) of paragraph (d); and

(d) by the substitution in subsection (1) for the words following paragraph (e) of the following words:

“the taxpayer must, for the purposes of any deduction contemplated in 45 section 11D, 12B, 12D, 12F, 12I, 12S, 13, 13bis, 13ter, 13quat, 13quin, 13sex or 36, and for the purposes of the Eighth Schedule, be deemed to be the owner of the improvement so completed.”.

(2) Subsection (1) is deemed to have come into operation on 4 July 2013 and applies in respect of improvements completed on or after that date. 50

Insertion of section 12Q in Act 58 of 1962

41. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 12P:

“Exemption of income in respect of ships used in international shipping

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12Q. (1) For the purposes of this section—

‘international shipping’ means the conveyance for compensation of passengers or goods by means of the operation of a South African ship mainly engaged in international traffic;

‘international shipping company’ means a company that is a resident that holds a share or shares in one or more South African ships that are utilised in international shipping;

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‘international shipping income’ means the receipts and accruals of a person derived from international shipping;

‘South African ship’ means a ship which is registered in the Republic in accordance with section 15 of the Ship Registration Act, 1998 (Act No. 58 of 1998).

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(2) (a) There must be exempt from normal tax any international shipping income of any international shipping company.

(b) Any capital gain or capital loss in respect of any year of assessment of any international shipping company determined in respect of a South African ship engaged in international shipping must be disregarded in determining the aggregate capital gain or aggregate capital loss of that international shipping company.

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(3) The rate of dividends tax contemplated in section 64E that is paid by an international shipping company on the amount of any dividend derived from international shipping income must not exceed zero per cent of the amount of that dividend.”.

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(2) Subsection (1) comes into operation on 1 April 2014 and applies in respect of years of assessment commencing on or after that date.

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Amendment of section 12Q of Act 58 of 1962, as inserted by section 41 of this Act

42. (1) Section 12Q of the Income Tax Act, 1962, is hereby amended by the addition after subsection (3) of the following subsection:

“(4) There must be exempt from the withholding tax on interest any amount of interest if that amount is paid to any foreign person, as defined in section 50A, by an international shipping company in respect of debt utilised to fund the acquisition, construction or improvement of a South African ship utilised for international shipping.”.

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(2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of interest received or accrued on or after that date.

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Insertion of section 12R in Act 58 of 1962

43. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 12Q:

“Special economic zones

12R. (1) For the purposes of this section—

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‘qualifying company’ means a company—

(a) (i) incorporated by or under any law in force in the Republic or in any part thereof; or

(ii) that has its place of effective management in the Republic;

- (b) (i) that carries on business in a category of a special economic zone designated by the Minister of Trade and Industry in terms of the Special Economic Zones Act and approved by the Minister of Finance after consultation with the Minister of Trade and Industry for the purposes of subsection (2); or 5
- (ii) that carries on a type of business or provision of services that may be located in a special economic zone prescribed by the Minister of Trade and Industry in terms of the Special Economic Zones Act and approved by the Minister of Finance after consultation with the Minister of Trade and Industry for the purposes of this section in terms of subsection (2); 10
- (c) if the business or services contemplated in paragraph (b) are carried on or provided from a fixed place of business situated within a special economic zone; and
- (d) if not less than 90 per cent of the income of that company is derived from the carrying on of business or provision of services within that special economic zone; 15

‘special economic zone’ means a special economic zone as defined in the Special Economic Zones Act that is approved for the purposes of this section by the Minister of Finance under subsection (3); 20

‘Special Economic Zones Act’ means an Act of Parliament that makes provision for special economic zones.

(2) The rate of tax on taxable income attributable to income derived by a qualifying company within a special economic zone must be 15 cents on each rand of taxable income derived in respect of business activities within that special economic zone. 25

(3) The Minister of Finance must approve a special economic zone for purposes of this section after taking into account the financial implications for the State should a special economic zone be approved under this section.

(4) Notwithstanding a qualifying company being located in a special economic zone— 30

(a) subsection (2) and section 12S do not apply to any qualifying company in respect of the following activities classified under ‘Major Division 3: Manufacturing’ in the most recent Standard Industrial Classification Code (referred to as the ‘SIC Code’) issued by Statistics South Africa: 35

- (i) Spirits and ethyl alcohol from fermented products and wine (SIC Code 3051);
- (ii) beer and other malt liquors and malt (SIC Code 3052);
- (iii) tobacco products (SIC Code 3060); 40
- (iv) arms and ammunition (SIC Code 3577);
- (v) bio-fuels if that manufacture negatively impacts on food security in the Republic; and

(b) subsection (2) does not apply to any qualifying company in respect of activities classified in the most recent SIC Code issued by Statistics South Africa, which the Minister of Finance may designate by notice in the *Gazette*. 45

(5) This provision ceases to apply in respect of any year of assessment commencing on or after 1 January 2024.”

(2) Subsection (1) comes into operation on the date that the Special Economic Zones Act referred to in section 12R of the Income Tax Act, 1962, comes into operation and applies in respect of years of assessment commencing on or after that date. 50

Insertion of section 12S in Act 58 of 1962

44. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 12R:

“Deduction in respect of buildings in special economic zones

12S. (1) For the purposes of this section, ‘**qualifying company**’ means a 5
qualifying company as defined in section 12R.

(2) A qualifying company may deduct from the income of that qualifying 10
company an allowance equal to ten per cent of the cost to the qualifying
company of any new and unused building owned by the qualifying
company, or any new and unused improvement to any building owned by
the qualifying company, if that building or improvement is wholly or
mainly used by the qualifying company during the year of assessment for
purposes of producing income within a special economic zone in the course
of the taxpayer’s trade, other than the provision of residential accommo- 15
dation.

(3) If a qualifying company completes an improvement as contemplated 20
in section 12N, the expenditure incurred by the qualifying company to
complete the improvement must be deemed to be the cost to the qualifying
company of any new and unused building or of any new and unused
improvement to a building contemplated in subsection (2).

(4) For the purposes of this section the cost to a qualifying company of 25
any building or improvement must be deemed to be the lesser of the actual
cost to the qualifying company or the cost which a person would, if that
person had acquired, erected or improved the building under a cash
transaction concluded at arm’s length on the date on which the transaction 30
for the acquisition, erection or improvement of the building was in fact
concluded, have incurred in respect of the direct cost of the acquisition,
erection or improvement of the building.

(5) No deduction may be allowed under this subsection in respect of any 35
building that has been disposed of by the qualifying company during any
previous year of assessment.

(6) A deduction may not be allowed under any other section of this Act in 40
respect of the cost of a building or improvement if any of that cost has
qualified or will qualify for deduction from the qualifying company’s
income as a deduction of expenditure or an allowance in respect of
expenditure under this section.

(7) The deductions which may be allowed or deemed to have been 45
allowed in terms of this section and any other provision of this Act in
respect of the cost of any building or improvement may not in the aggregate
exceed the amount of such cost.

(8) The Commissioner may, notwithstanding the provisions of Chapter 6 50
of the Tax Administration Act disallow all deductions otherwise provided
for under this section if a qualifying company is guilty of fraud or
misrepresentation or non-disclosure of material facts with regard to any tax,
duty or levy administered by the Commissioner.

(9) The Commissioner may, notwithstanding the provisions of sections
99 and 100 of the Tax Administration Act, raise an additional assessment
for any year of assessment where a deduction that has been allowed in any
previous year must be disallowed in terms of subsection (8).

(10) This provision ceases to apply in respect of any year of assessment 55
commencing on or after 1 January 2024.”

(2) Subsection (1) comes into operation on the date that the Special Economic Zones
Act referred to in section 12R of the Income Tax Act, 1962, comes into operation and
applies in respect of years of assessment commencing on or after that date.

Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962, section 5 of Act 6 of 1963, section 11 of Act 72 of 1963, section 12 of Act 90 of 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971, section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974, section 13 of Act 69 of 1975, section 7 of Act 101 of 1978, section 10 of Act 104 of 1980, section 14 of Act 96 of 1981, section 10 of Act 96 of 1985, section 12 of Act 85 of 1987, section 12 of Act 90 of 1988, section 12 of Act 113 of 1993, section 11 of Act 46 of 1996, section 22 of Act 53 of 1999, section 20 of Act 59 of 2000, section 13 of Act 19 of 2001, section 30 of Act 60 of 2001, section 3 of Act 4 of 2008, section 30 of Act 7 of 2010 and section 40 of Act 24 of 2011

45. Section 13 of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subsection (1) of paragraphs (a) and (c); and
- (b) by the deletion in subsection (1) of paragraph (c) of the proviso.

Amendment of section 13bis of Act 58 of 1962, as inserted by section 15 of Act 88 of 1965 and amended by section 18 of Act 55 of 1966, section 14 of Act 95 of 1967, section 14 of Act 88 of 1971, section 14 of Act 69 of 1975, section 13 of Act 94 of 1983, section 46 of Act 97 of 1986, section 13 of Act 90 of 1988, section 13 of Act 113 of 1993, section 12 of Act 21 of 1994, section 21 of Act 59 of 2000, section 4 of Act 4 of 2008 and section 31 of Act 7 of 2010

46. (1) Section 13bis of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subsection (1) of paragraphs (a) and (b); and
- (b) by the deletion in subsection (1) after paragraph (c) of the word “or”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 13ter of Act 58 of 1962, as inserted by section 13 of Act 91 of 1982 and amended by section 14 of Act 94 of 1983, section 22 of Act 59 of 2000, section 28 of Act 60 of 2008 and section 32 of Act 7 of 2010

47. Section 13ter of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (11) of the following subsection:

“(11) Where any company is mainly engaged in the provision of housing facilities for the employees of [its] the sole or principal [shareholder] holder of shares in that company or for the employees of any other company the shares in which are held wholly by the sole or principal [shareholder] holder of shares in such first-mentioned company, the employees of such [shareholder] holder of shares or such other company, as the case may be, shall for the purposes of this section be deemed to be the employees also of such first-mentioned company.”.

Amendment of section 13quat of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004, section 19 of Act 32 of 2004, section 23 of Act 31 of 2005, section 16 of Act 8 of 2007, section 5 of Act 4 of 2008, section 29 of Act 60 of 2008, sections 29 and 106 of Act 17 of 2009, section 33 of Act 7 of 2010, section 41 of Act 24 of 2011 and section 34 of Act 22 of 2012

48. Section 13quat of the Income Tax Act, 1962, is hereby amended—

- (a) by the insertion in subsection (2) after paragraph (c) of the word “and”; and
- (b) by the substitution in subsection (2) after paragraph (d) for the expression “; and” of a full stop.

Repeal of section 14 of Act 58 of 1962

49. The Income Tax Act, 1962, is hereby amended by the repeal of section 14.

Repeal of section 14bis of Act 58 of 1962

50. The Income Tax Act, 1962, is hereby amended by the repeal of section 14bis.

Repeal of section 18 of Act 58 of 1962

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51. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 18.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 18A of Act 58 of 1962, as substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007, section 31 of Act 35 of 2007, section 1 of Act 3 of 2008, section 6 of Act 4 of 2008, section 34 of Act 60 of 2008, section 37 of Act 7 of 2010, section 44 of Act 24 of 2011 and section 7 of Act 21 of 2012

52. (1) Section 18A of the Income Tax Act, 1962, is hereby amended— 15

(a) by the substitution in subsection (1) for subitem (B) of the words following paragraph (c) of the following subitem:

“(B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit **[and]**, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section or section 18.”; 20

(b) by the substitution in subsection (1) for subitem (B) of the words following paragraph (c) of the following subitem:

“(B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section **[or section 18]**.”; 25

(c) by the addition in subsection (1) to subitem (B) of the words following paragraph (c) of the following proviso: 30

“: Provided that any amount of a donation made as contemplated in this subsection and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment shall be carried forward and shall, for the purposes of this section, be deemed to be a donation actually paid or transferred in the next succeeding year of assessment”; 35

(d) by the substitution for subsection (2C) of the following subsection:

“(2C) The Accounting Authority contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), for the department which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).”; 40 45

(e) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of property in kind, other than immovable property of a capital nature where the lower of market value or municipal value exceeds cost, the amount of such deduction shall be deemed to be an amount equal to—”; 50

- (f) by the renumbering of the present subsection (3A) to subsection (3B);
- (g) by the insertion after subsection (3) of the following subsection:
- “(3A) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of immovable property of a capital nature where the lower of market value or municipal value exceeds cost, the amount of such deduction shall be determined in accordance with the formula:
- $$A = B + (C \times D)$$
- in which formula:
- (a) ‘A’ represents the amount deductible in respect of subsection (1);
- (b) ‘B’ represents the cost of the immovable property being donated;
- (c) ‘C’ represents the amount of a capital gain (if any), that would have been determined in terms of the Eighth Schedule had it been disposed of for an amount equal to the lower of market value or municipal value on the day the donation is made; and
- (d) ‘D’ represents 66,6 per cent in the case of a natural person or special trust or 33,3 per cent in any other case.”;
- (h) by the substitution in subsection (5B) for the words preceding paragraph (a) of the following words:
- “If the Commissioner has reasonable grounds for believing that any accounting officer or accounting authority contemplated in the Public Finance Management Act[, 1999 (Act No. 1 of 1999),] or an accounting officer contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies, has issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection, the Commissioner—”;
- and
- (i) by the substitution in subsection (7) for paragraph (ii) of the following paragraph:
- “(ii) the accounting officer or accounting authority contemplated in the Public Finance Management Act[, 1999 (Act 1 of 1999),] or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies.”.
- (2) Paragraph (b) of subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.
- (3) Paragraph (c) of subsection (1) comes into operation on 1 March 2014 and applies in respect of donations paid or transferred during years of assessment commencing on or after that date.
- (4) Paragraphs (e), (f) and (g) of subsection (1) come into operation on 1 March 2014 and apply in respect of amounts paid or transferred during years of assessment commencing on or after that date.

Amendment of section 19 of Act 58 of 1962, as inserted by section 36 of Act 22 of 2012

53. (1) Section 19 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the heading of the following heading:
- “**Reduction [or cancellation] of debt**”;
- (b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
- “(b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund expenditure incurred in **[the acquisition]** respect of trading stock that is held and not disposed of by that person at the time of the reduction of the debt.”;
- (c) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
- “(b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund expenditure incurred in **[the acquisition]** respect of trading stock that is held and not disposed of by that person at the time of the reduction of the debt; and”;

- (d) by the substitution in subsection (4) for the words following paragraph (c) of the following words:
“the reduction amount in respect of that debt[, **less any amount of that reduction amount that has been applied to reduce an amount as contemplated in subsection (3),**] must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure, be deemed, for the purposes of section 8(4)(a), to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt is reduced less any amount of that reduction amount that has been applied to reduce an amount as contemplated in subsection (3).”;
- (e) by the substitution in subsection (5)(b) for subparagraphs (i) and (ii) of the following subparagraphs:
“(i) in **[the acquisition]** respect of trading stock that is held and not disposed of by that person at the time of the reduction of the debt; or
(ii) in **[the acquisition, creation or improvement]** respect of an allowance asset.”;
- (f) by the substitution in subsection (5)(b) for the words following subparagraph (ii) of the following words:
“the reduction amount in respect of that debt must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure, be deemed, for the purposes of section 8(4)(a), to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt is reduced.”;
- (g) by the substitution in subsection (6) for paragraph (b) of the following paragraph:
“(b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund expenditure incurred in **[the acquisition, creation or improvement]** respect of an allowance asset.”; and
- (h) by the substitution in subsection (6) for subparagraph (ii) of the following subparagraph:
“(ii) paragraph 12A of the Eighth Schedule has not been applied to reduce the amount of expenditure **[for the purposes of]** as contemplated in paragraph 20 of that Schedule in respect of that allowance asset to the full extent of that expenditure.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 20 of Act 58 of 1962, as amended by section 13 of Act 90 of 1964, section 18 of Act 88 of 1965, section 13 of Act 76 of 1968, section 18 of Act 89 of 1969, section 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 19 of Act 101 of 1990, section 16 of Act 113 of 1993, section 17 of Act 21 of 1995, section 15 of Act 28 of 1997, section 26 of Act 30 of 2000, section 27 of Act 59 of 2000, section 23 of Act 74 of 2002, section 35 of Act 45 of 2003, section 19 of Act 8 of 2007, section 32 of Act 35 of 2007, section 15 of Act 3 of 2008, section 35 of Act 60 of 2008, section 32 of Act 17 of 2009 and section 37 of Act 22 of 2012

54. (1) Section 20 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) in paragraph (b) of the proviso for the words preceding subparagraph (i) of the following words:
“derived by any person from **[the carrying on]** a source within the Republic **[of any trade]**, any—”; and
- (b) by the substitution in subsection (1) in paragraph (c) of the proviso for the words preceding subparagraph (i) of the following words:
“that is a retirement fund lump sum benefit, **[or]** retirement fund lump sum withdrawal benefit or severance benefit included in taxable income, any—”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990, section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000, section 12 of Act 5 of 2001, section 24 of Act 74 of 2002, section 37 of Act 45 of 2003, section 16 of Act 3 of 2008, section 36 of Act 60 of 2008, section 39 of Act 7 of 2010, section 45 of Act 24 of 2011 and section 40 of Act 22 of 2012

55. Section 22 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (1A) of the following subsection:

“(1A) Where in respect of any year of assessment ending after the commencement date defined in section 1 of the Value-Added Tax Act, 1991,] any amount of sales tax referred to in section 23C(2) which was included in the cost price to the taxpayer of any trading stock is deemed by that section to have been recovered or recouped for the purposes of section 8(4)(a), the cost of such trading stock held and not disposed of by the taxpayer at the end of such year shall be deemed to have been reduced by the said amount.”;

(b) by the deletion of subsection (3B); and

(c) by the substitution in subsection (8)(b) for subparagraph (iii) of the following subparagraph:

“(iii) trading stock of any company has on or after 21 June 1993 been distributed *in specie* to any **[shareholder of]** holder of shares in that company.”;

Amendment of section 23 of Act 58 of 1962, as amended by section 18 of Act 65 of 1973, section 20 of Act 121 of 1984, section 23 of Act 129 of 1991, section 20 of Act 141 of 1992, section 18 of Act 113 of 1993, section 15 of Act 21 of 1994, section 28 of Act 30 of 2000, section 21 of Act 30 of 2002, section 38 of Act 45 of 2003, section 13 of Act 16 of 2004, section 28 of Act 31 of 2005, section 17 of Act 20 of 2006, section 20 of Act 8 of 2007, section 37 of Act 60 of 2008, section 41 of Act 7 of 2010, sections 47 and 162 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 38 of Schedule 1 to that Act and section 42 of Act 22 of 2012

56. (1) Section 23 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in paragraph (m) for subparagraph (i) of the following subparagraph:

“(i) any contributions to a pension fund, provident fund or retirement annuity fund as may be deducted from the income of that person in terms of section 11(k) **[or (n)]**”;

(b) by the addition to paragraph (m) after subparagraph (iiA) of the word “and”;

(c) by the deletion in paragraph (m) of subparagraph (iii);

(d) by the substitution for the full stop after paragraph (q) of the expression “; or”; and

(e) by the addition after paragraph (q) of the following paragraph:

“(r) any deduction contemplated in section 11 in respect of any premium paid by a person in terms of an insurance policy, to the extent that the policy covers that person against death, disablement, severe illness or unemployment.”

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2015 and applies in respect of amounts contributed on or after that date.

(3) Paragraphs (b), (c), (d) and (e) of subsection (1) come into operation on 1 March 2015 and apply in respect of premiums paid on or after that date.

Amendment of section 23C of Act 58 of 1962, as amended by section 25 of Act 129 of 1991, section 21 of Act 141 of 1992 and section 33 of Act 60 of 2001

57. Section 23C of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) the taxpayer is a vendor as defined in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991)]; and”;

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“Where a taxpayer (being a vendor as defined in section 1 of the Value-Added Tax Act[, 1991]) has in respect of any tax period applicable to **[him]** the vendor under that Act which has ended during **[his]** the vendor’s year of assessment, included in input tax deducted by **[him]** the vendor under section 16(3) of that Act an amount of sales tax, as permitted by section 78 of that Act so to be included—”.

Amendment of section 23I of Act 58 of 1962, as substituted by section 38 of Act 60 of 2008 and amended by section 36 of Act 17 of 2009, section 44 of Act 7 of 2010 and section 47 of Act 22 of 2012

58. Section 23I of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a), (b), (c) and (d) of the definition of “intellectual property” of the following paragraphs:

“(a) patent as defined in the Patents Act[, 1978 (Act No. 57 of 1978),] including any application for a patent in terms of that Act;

(b) design as defined in the Designs Act[, 1993 (Act No. 195 of 1993)];

(c) trade mark as defined in the Trade Marks Act[, 1993 (Act No. 194 of 1993)];

(d) copyright as defined in the Copyright Act[, 1978 (Act No. 98 of 1978)];”;

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) any amount of expenditure incurred for the **[use, right of use]** use or right of use of or permission to use tainted intellectual property; or”.

Amendment of section 23K of Act 58 of 1962, as inserted by section 49 of Act 24 of 2011 and amended by section 50 of Act 24 of 2011 and sections 49 and 171 of Act 22 of 2012

59. (1) Section 23K of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“Subject to subsections (3) **[and]**₂ (9) and (10), no deduction is allowed in respect of interest incurred by an acquiring company in terms of—”;

(b) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words:

“**[an instrument as defined in section 24J(1) that constitutes]** a debt if that debt was issued, assumed or used—”;

(c) by the insertion after subsection (9) of the following subsection:

“(10) Subsection (2) does not apply in respect of any amount of interest incurred by an acquiring company—

(a) in terms of a debt if that debt was issued, assumed or used directly or indirectly for the purpose of—

- (i) procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction entered into on or after 1 April 2014; or
- (ii) redeeming, refinancing, substituting or settling, on or after 1 April 2014, a debt issued, assumed or used directly or indirectly for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction entered into on or after 3 June 2011 and on or before 31 March 2014;
- (b) in terms of a debt—
- (i) issued, assumed or used in terms of an acquisition transaction entered into on or after 1 April 2014; or
- (ii) issued, assumed or used, on or after 1 April 2014, directly or indirectly for the purpose of redeeming, refinancing, substituting or settling a debt that was issued, assumed or used in terms of an acquisition transaction entered into on or after 1 January 2013 and on or before 31 March 2014; or
- (c) if a directive contemplated in subsection (3) has been issued by the Commissioner in respect of that amount of interest.”.
- (2) Paragraphs (a) and (c) of subsection (1) come into operation on 1 April 2014.
- (3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of acquisition transactions entered into on or after that date.

Amendment of section 23L of Act 58 of 1962, as inserted by section 50 of Act 22 of 2012

- 60.** (1) Section 23L of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the heading of the following heading:
“Limitation of deductions in respect of certain short-term insurance policies”;
- (b) by the deletion in subsection (1) of the definition of “investment policy”;
- (c) by the substitution for the definition of “policy” of the following definition:
“ ‘policy’ means a policy of insurance or reinsurance other than a long-term policy as defined in section 1 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998);”; and
- (d) by the substitution for subsections (2) and (3) of the following subsections:
“(2) No deduction is allowed in respect of any premium incurred by a person in terms of [an investment] a policy to the extent that the premium is not taken into account as an expense for the purposes of financial reporting pursuant to IFRS in either the current year of assessment or a future year of assessment.
(3) Where policy benefits are received by or accrue to a person in terms of [an investment] a policy during a year of assessment, there must be included in the gross income of that person an amount equal to the aggregate amount of all policy benefits received by or accrued to that person during that year of assessment and previous years of assessment in respect of that [investment] policy, less—
- (a) the aggregate amount of premiums incurred in terms of that [investment] policy that were not deductible in terms of subsection (2); and
- (b) the aggregate amount of policy benefits in respect of that [investment] policy that were included in the gross income of that person during previous years of assessment.”.
- (2) Paragraphs (a), (b) and (d) of subsection (1) come into operation on 1 April 2014 and apply in respect of premiums incurred on or after that date.

Insertion of section 23M in Act 58 of 1962

61. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 23L:

“Limitation of interest deductions in respect of debts owed to persons not subject to tax under this Chapter 5

23M. (1) For the purposes of this section—

‘adjusted taxable income’ means taxable income—

(a) reduced by—

- (i) any amount of interest received or accrued;
- (ii) any amount included in the income of a person as contemplated in section 9D(2);
- (iii) any amount recovered or recouped in respect of an allowance contemplated in this Act in respect of a capital asset as defined in section 19; and

(b) with the addition of—

- (i) any amount of interest incurred; and
- (ii) any amount allowed as a deduction in terms of this Act in respect of a capital asset as defined in section 19 for purposes other than the determination of any capital gain or capital loss;

‘average repo rate’ in relation to a year of assessment means the average of all ruling repo rates determined by using the daily repo rates during that year of assessment;

‘controlling relationship’ means a relationship between a company and any connected person in relation to that company;

‘debtor’ means a debtor that is a resident;

‘interest’ means interest as defined in section 24J;

‘issue’, in relation to a debt, means the creation of a liability to pay or of a right to receive an amount in terms of that debt;

‘lending institution’ means a foreign bank which is comparable to a bank contemplated in the Banks Act;

‘repo rate’ means the interest rate at which the South African Reserve Bank enters into a repurchase agreement contemplated in section 10(1)(j) of the South African Reserve Bank Act.

(2) Where an amount of interest is incurred by a debtor during a year of assessment in respect of a debt owed to—

(a) a creditor that is in a controlling relationship with that debtor; or

(b) a creditor that is not in a controlling relationship with that debtor, if—

- (i) that creditor obtained the funding for the debt advanced to the debtor from a person that is in a controlling relationship with that debtor; or

(ii) the debt advanced by that creditor to that debtor is guaranteed by a person that is in a controlling relationship with the debtor, and the amount of interest so incurred is not during that year of assessment—

(aa) subject to tax in the hands of the person to which the interest accrues; or

(bb) included in the net income of a controlled foreign company as contemplated in section 9D in the foreign tax year of the controlled foreign company commencing or ending within that year of assessment,

the amount of interest allowed to be deducted may not exceed the amount determined in subsection (3).

(3) The amount of interest allowed to be deducted in respect of all debts owed as contemplated in subsection (2), in respect of any year of assessment must not exceed the sum of—

- (a) the amount of interest received by or accrued to the debtor; and
- (b) subject to subsection (5), 40 per cent of the adjusted taxable income of that debtor,

reduced by any amount of interest incurred by the debtor in respect of debts not contemplated in subsection (2).

(4) So much of any amount of interest as exceeds the amount determined in terms of subsection (3) may be carried forward to the immediately succeeding year of assessment and, subject to subsection (2), must be deemed to be an amount of interest incurred in that succeeding year of assessment.

(5) Where the average repo rate in respect of a year of assessment in which the amount of interest must be determined in terms of subsection (3) exceeds 10 per cent, the percentage contemplated in subsection (3)(b) must be substituted with a percentage to be determined in accordance with the formula—

$$A = B \times \frac{C}{D}$$

in which formula—

- (a) ‘A’ represents the percentage to be applied;
- (b) ‘B’ represents 40;
- (c) ‘C’ represents the average repo rate; and
- (d) ‘D’ represents 10.

(6) This section does not apply—

- (a) to so much of the interest as is incurred by a debtor in respect of a debt owed to a creditor as contemplated in subsection (2) where—
 - (i) that creditor funded that debt amount advanced to that debtor with funding granted by a lending institution that is not in a controlling relationship with that debtor; and
 - (ii) that interest is determined with reference to a rate of interest that does not exceed the official rate of interest as defined in paragraph 1 of the Seventh Schedule plus 100 basis points; or
- (b) to any interest incurred by a debtor in respect of any linked unit that is held by a creditor as contemplated in subsection (2) where that creditor is a long-term insurer as defined in the Long-term Insurance Act, a pension fund or a provident fund, if—
 - (i) the long-term insurer, pension fund or provident fund holds at least 20 per cent of the linked units in that debtor;
 - (ii) the long-term insurer, pension fund or provident fund acquired those linked units before 1 January 2013; and
 - (iii) at the end of the previous year of assessment 80 per cent or more of the value of the assets of that debtor, reflected in the annual financial statements prepared in accordance with the Companies Act for the previous year of assessment, is directly or indirectly attributable to immovable property.”.

(2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of amounts of interest incurred on or after that date.

Amendment of section 23M of Act 58 of 1962, as inserted by section 61 of this Act 50

62. (1) Section 23M of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) This section does not apply[—

- (a)] to so much of the interest incurred by a debtor in respect of a debt owed to a creditor as contemplated in subsection (2) where—

- (i) that creditor funded that debt amount advanced to that debtor with funding granted by a lending institution that is not in a controlling relationship with that debtor; and
 - (ii) that interest is determined with reference to a rate of interest that does not exceed the official rate of interest as defined in paragraph 1 of the Seventh Schedule plus 100 basis points; or
- (b) to any interest incurred by a debtor in respect of any linked unit that is held by a creditor as contemplated in subsection (2) where that creditor is a long-term insurer as defined in the Long-term Insurance Act, a pension fund or a provident fund, if—
- (i) the long-term insurer, pension fund or provident fund holds at least 20 per cent of the linked units in that debtor;
 - (ii) the long-term insurer, pension fund or provident fund acquired those linked units before 1 January 2013; and
 - (iii) at the end of the previous year of assessment 80 per cent or more of the value of the assets of that debtor, reflected in the annual financial statements prepared in accordance with the Companies Act for the previous year of assessment, is directly or indirectly attributable to immovable property.”.

(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of amounts of interest incurred on or after that date.

Insertion of section 23N in Act 58 of 1962

63. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 23M:

“Limitation of interest deductions in respect of reorganisation and acquisition transactions

23N. (1) For the purposes of this section—

‘acquired company’ means—

- (a) a transferor company or a liquidating company that disposes of assets pursuant to a reorganisation transaction; or
- (b) a company in which equity shares are acquired by another company in terms of an acquisition transaction;

‘acquiring company’ means—

- (a) a transferee company contemplated in the definition of ‘intra-group transaction’ in section 45(1);
- (b) a holding company contemplated in the definition of ‘liquidation distribution’ in section 47(1); or
- (c) a company that acquires an equity share in another company in terms of an acquisition transaction;

‘acquisition transaction’ means any transaction—

- (a) in terms of which an acquiring company acquires an equity share in an acquired company that is an operating company as defined in section 24O; and
- (b) as a result of which that acquiring company, as at the close of the day of that transaction, becomes a controlling group company in relation to that operating company;

‘adjusted taxable income’ means taxable income—

- (a) reduced by—
 - (i) any amount of interest received or accrued;
 - (ii) any amount included in the income of a person as contemplated in section 9D(2);
 - (iii) any amount recovered or recouped in respect of an allowance contemplated in this Act in respect of a capital asset as defined in section 19; and

- (b) with the addition of—
- (i) any amount of interest incurred;
 - (ii) any amount allowed as a deduction in terms of this Act in respect of a capital asset as defined in section 19 for purposes other than the determination of any capital gain or capital loss; and
 - (iii) 75 per cent of the receipts or accruals derived from the letting of any immovable property;

‘average repo rate’ in relation to a year of assessment means the average of all ruling repo rates determined by using the daily repo rates during that year of assessment;

‘interest’ means interest as defined in section 24J;

‘issue’ in relation to a debt, means the creation of a liability to pay or of a right to receive an amount in terms of that debt;

‘reorganisation transaction’ means—

- (a) an intra-group transaction as defined in section 45(1) to which section 45 applies; or
- (b) a liquidation distribution as defined in section 47(1) to which section 47 applies;

‘repo rate’ means the interest rate at which the South African Reserve Bank enters into a repurchase agreement contemplated in section 10(1)(j) of the South African Reserve Bank Act.

(2) Subject to section 23M, where an amount of interest is incurred by an acquiring company in terms of a debt—

- (a) directly or indirectly assumed or applied for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction;
- (b) used directly or indirectly for the purpose of redeeming, refinancing or settling the debt contemplated in paragraph (a);
- (c) issued, assumed or used in terms of an acquisition transaction; or
- (d) used directly or indirectly for the purpose of redeeming, refinancing or settling the debt contemplated in paragraph (c),

the amount of interest allowed to be deducted must not exceed the amount determined in terms of subsection (3).

(3) The amount of interest allowed to be deducted in terms of all debts owed as contemplated in subsection (2), in respect of any year of assessment in which the acquisition transaction or reorganisation transaction is entered into and in respect of five years of assessment immediately following that year of assessment, must not exceed the sum of—

- (a) the amount of interest received by or accrued to the acquiring company; and
- (b) subject to subsection (4), 40 per cent of the amount of the adjusted taxable income of that acquiring company determined in the year of assessment in which—
 - (i) the acquisition transaction or reorganisation transaction is entered into; or
 - (ii) the amount of interest is incurred by that acquiring company, whichever is the highest,

reduced by any amount of interest incurred by the acquiring company in respect of debts not contemplated in subsection (2).

(4) Where the average repo rate in respect of a year of assessment in which the amount of interest must be determined in terms of subsection (3) exceeds 10 per cent, the percentage contemplated in subsection (3)(b) must be substituted with a percentage to be determined in accordance with the formula—

$$A = B \times \frac{C}{D}$$

in which formula—

- (a) ‘A’ represents the percentage to be applied;
- (b) ‘B’ represents 40;

- (c) 'C' represents the average repo rate; and
- (d) 'D' represents 10.
- (5) This section does not apply to any interest incurred by an acquiring company in respect of any debt contemplated in subsection (2)—
- (a) where that interest is incurred in respect of a linked unit in the acquiring company and that interest accrues to a long-term insurer as defined in the Long-term Insurance Act, a pension fund, a provident fund, a REIT or a short-term insurer as defined in the Short-term Insurance Act, if—
- (i) the long-term insurer, pension fund, provident fund, REIT or short-term insurer holds at least 20 per cent of the linked units in that acquiring company;
- (ii) the long-term insurer, pension fund, provident fund, REIT or short-term insurer acquired those linked units before 1 January 2013; and
- (iii) at the end of the previous year of assessment 80 per cent or more of the value of the assets of that acquiring company, reflected in the annual financial statements prepared in accordance with the Companies Act for the previous year of assessment, is directly or indirectly attributable to immovable property; or
- (b) if a directive has been issued by the Commissioner in terms of section 23K in respect of that interest.”
- (2) Subsection (1) comes into operation on 1 April 2014 and applies in respect of any amount of interest incurred by an acquiring company in terms of—
- (a) a debt if that debt was issued, assumed or used directly or indirectly for the purpose of—
- (i) procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction entered into on or after 1 April 2014;
- (ii) redeeming, refinancing or settling any debt issued, assumed or used as contemplated in subparagraph (i); or
- (iii) redeeming, refinancing or settling, on or after 1 April 2014, a debt issued, assumed or used directly or indirectly for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction entered into on or after 3 June 2011 and on or before 31 March 2014; or
- (b) a debt—
- (i) issued, assumed or used in terms of an acquisition transaction entered into on or after 1 April 2014;
- (ii) redeeming, refinancing or settling a debt contemplated in subparagraph (i); or
- (iii) issued, assumed or used, on or after 1 April 2014, directly or indirectly for the purpose of redeeming, refinancing or settling a debt that was issued, assumed or used in terms of an acquisition transaction entered into on or after 1 January 2013 and on or before 31 March 2014.

Amendment of section 23N of Act 58 of 1962, as inserted by section 63 of this Act

64. (1) Section 23N of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (5).

(2) Subsection (1) comes into operation on 31 December 2015 and applies in respect of amounts of interest incurred on or after that date.

Repeal of section 24B of Act 58 of 1962

65. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 24B.

(2) Subsection (1) is deemed to have come into operation on 1 April 2013 and applies in respect of shares acquired, issued or disposed of on or after that date.

Amendment of section 24BA of Act 58 of 1962, as inserted by section 52 of Act 22 of 2012

66. (1) Section 24BA of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“Notwithstanding paragraph 11(2)(b) of the Eighth Schedule [**and subject to section 24B**], where a company acquires an asset from a person in exchange for the issue by that company to that person of shares in that company as contemplated in subsection (2) and the market value of—”; and

(b) by the substitution for subsection (4) of the following subsection:

“(4) This section must not apply where a company acquires an asset from a person as contemplated in subsection (2)(a) if—

(a) (i) that company and that person form part of the same group of companies immediately after that company acquires that asset; or

(ii) that person holds all the shares in that company immediately after that company acquires that asset; or

(b) paragraph 38 of the Eighth Schedule applies.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014 and applies in respect of assets acquired or disposed of on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

Repeal of section 24F of Act 58 of 1962

67. The Income Tax Act, 1962, is hereby amended by the repeal of section 24F.

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993 and amended by section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998, section 26 of Act 53 of 1999, section 31 of Act 59 of 2000, section 36 of Act 60 of 2001, section 27 of Act 74 of 2002, section 42 of Act 45 of 2003, section 23 of Act 32 of 2004, section 33 of Act 31 of 2005, section 26 of Act 9 of 2006, section 19 of Act 20 of 2006, section 23 of Act 8 of 2007, section 40 of Act 35 of 2007, section 20 of Act 3 of 2008, section 38 of Act 17 of 2009, section 47 of Act 7 of 2010, section 52 of Act 24 of 2011 and section 53 of Act 22 of 2012

68. (1) Section 24I of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subsection (1) in the definition of “local currency” of the word “or” at the end of paragraph (c);

(b) by the addition in subsection (1) to the definition of “local currency” after paragraph (d) of the following paragraph:

“(e) any domestic treasury management company in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, the functional currency of that domestic treasury management company;”;

(c) by the addition in subsection (1) to the definition of “local currency” after paragraph (e) of the following paragraph:

“(f) any international shipping company defined in section 12Q, in respect of an amount which is not attributable to a permanent establishment outside the Republic, the functional currency of that international shipping company;”;

(d) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) any exchange difference in respect of an exchange item of or in relation to that person, subject to subsections (10) and (10A); and”;

- (e) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
 “(a) any exchange difference in respect of an exchange item of or in relation to that person, subject to **[subsections (10) and] subsection (10A); and**”;
- (f) by the addition to subsection (7A) after paragraph (f) of the following proviso:
 “: Provided that any qualifying exchange item contemplated in this subsection that is held and not realised before the last day of the last year of assessment of a person (that is the holder or issuer of that qualifying exchange item) ending before the year of assessment of that person commencing on or after 1 January 2014 shall be deemed to have been realised on that last day”;
- (g) by the deletion of subsection (7A);
- (h) by the deletion of subsection (10);
- (i) by the substitution in subsection (10A)(b)(ii) for the words following item (bb) of the following words:
 “an amount in respect of that exchange item must be included in or deducted from the income of that person in that subsequent year of assessment or in the year of assessment during which the exchange item is realised (other than a deemed realisation contemplated in the proviso to subsection (7A) and the further proviso to subsection (10)), which amount shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the last day of the year of assessment immediately preceding that subsequent year of assessment and the ruling exchange rate on transaction date, less any amount of the exchange differences included in or deducted from the income of that person in terms of this section in respect of that exchange item for all years of assessment preceding that subsequent year of assessment during which the person was a party to the contractual provisions of the exchange item.”;
- (j) by the substitution in subsection (10A)(b)(ii) for the words following item (bb) of the following words:
 “an amount in respect of that exchange item must be included in or deducted from the income of that person in that subsequent year of assessment or in the year of assessment during which the exchange item is realised **[other than a deemed realisation contemplated in the proviso to subsection (7A) and the further proviso to subsection (10)],** which amount shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the last day of the year of assessment immediately preceding that subsequent year of assessment and the ruling exchange rate on transaction date, less any amount of the exchange differences included in or deducted from the income of that person in terms of this section in respect of that exchange item for all years of assessment preceding that subsequent year of assessment during which the person was a party to the contractual provisions of the exchange item.”; and
- (k) by the deletion of subsection (11A).
- (2) Paragraphs (a) and (b) of subsection (1) are deemed to have come into operation on 27 February 2013 and apply in respect of years of assessment commencing on or after that date.
- (3) Paragraph (c) of subsection (1) comes into operation on 1 April 2014 and applies in respect of years of assessment commencing on or after that date.
- (4) Paragraphs (e), (g), (h), (j) and (k) of subsection (1) come into operation on 1 January 2014 and apply in respect of years of assessment commencing on or after that date.
- (5) Paragraph (f) of subsection (1) comes into operation on 31 December 2013.
- (6) Paragraph (i) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 24J of Act 58 of 1962, as inserted by section 21 of Act 21 of 1995 and amended by section 14 of Act 36 of 1996, section 19 of Act 28 of 1997, section 27 of Act 53 of 1999, section 24 of Act 32 of 2004, section 10 of Act 9 of 2005, section 20 of Act 20 of 2006, section 53 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 40 of Schedule 1 to that Act, and section 54 of Act 22 of 2012 5

69. (1) Section 24J of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (c) of the definition of “instrument” of the following paragraph:
 “(c) any [**form of**] interest-bearing arrangement or [**any**] debt;”;
- (b) by the substitution in subsection (1) for paragraph (c) of the proviso to the definition of “yield to maturity” of the following paragraph:
 “(c) any variation in the terms or conditions of such instrument takes place or any variation in any amount payable or receivable in terms of such instrument takes place which will result in a change in such rate of compound interest in relation to such instrument, the rate of compound interest shall be redetermined in relation to such instrument with reference to the appropriate adjusted initial amount in relation to such instrument determined before such variation; [**or**]”;
- (c) by the substitution in subsection (1) in the definition of “yield to maturity” at the end of paragraph (d) of the proviso for the colon of the expression “; or”;
- (d) by the addition in subsection (1) after paragraph (d) to the proviso to the definition of “yield to maturity” of the following paragraph:
 “(e) in the case of an instrument of which the date of redemption is subject to change during a year of assessment, the rate of compound interest shall be redetermined in relation to such instrument with reference to—
 (i) the appropriate adjusted initial amount in relation to such instrument; and
 (ii) the changed date of redemption;”;
- (e) by the addition to subsection (9) after paragraph (f) of the following paragraph:
 “(g) This subsection shall not apply—
 (i) in respect of a company that is a covered person as defined in section 24JB, during any year of assessment ending on or after 1 April 2014; and
 (ii) in respect of any other company, during any year of assessment commencing on or after 1 April 2014.”;
- (f) by the addition after subsection (9) of the following subsection:
 “(9A) (a) Any company that made an election contemplated in subsection (9) and in respect of which the Commissioner granted an approval as contemplated in that subsection is deemed to have—
 (i) disposed of all instruments, interest rate agreements or option contracts contemplated in subsection (9); and
 (ii) reacquired the instruments, interest rate agreements or option contracts, held and not disposed of at the end of the year of assessment for an amount equal to the market value, as contemplated in subsection (9)(c), on the last day of that year of assessment.
 (b) Paragraph (a) applies—
 (i) in the case of a company that is a covered person as defined in section 24JB, in respect of the year of assessment of that covered person immediately preceding the year of assessment ending on or after 1 April 2014; and
 (ii) in the case of any other company, in respect of the year of assessment of the company immediately preceding the year of assessment commencing on or after 1 April 2014.”.

(2) Paragraphs (a), (b), (c) and (d) of subsection (1) are deemed to have come into operation on 1 April 2013 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraphs (e) and (f) of subsection (1) come into operation on 1 April 2014.

Amendment of section 24JA of Act 58 of 1962, as inserted by section 48 of Act 7 of 2010 and amended by sections 54, 159 and 172 of Act 24 of 2011 and section 55 of Act 22 of 2012 5

70. Section 24JA of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “bank” of the following paragraph: 10

“(a) bank as defined in section 1 of the Banks Act[, 1990 (Act No. 94 of 1990)];”.

Substitution of section 24JB of Act 58 of 1962

71. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 24JB of the following section:

“Fair value taxation in respect of financial instruments 15

24JB. (1) For the purposes of this section—

‘covered person’ means—

- (a) any authorised user as defined in section 1 of the Financial Markets Act that is a company;
- (b) the South African Reserve Bank;
- (c) any—
 - (i) bank;
 - (ii) branch;
 - (iii) branch of a bank; or
 - (iv) controlling company,
 as defined in section 1 of the Banks Act;
- (d) any company or trust that forms part of a banking group as defined in section 1 of the Banks Act, excluding—
 - (i) a company that is a long-term insurer as defined in section 1 of the Long-term Insurance Act;
 - (ii) a company that is a short-term insurer as defined in section 1 of the Short-term Insurance Act;
 - (iii) a company of which more than 50 per cent of the shares are directly or indirectly held by a company contemplated in subparagraph (i) or (ii) if that company does not form part of the same group of companies as a bank;

‘derivative’ means a derivative as defined in and within the scope of International Accounting Standard 39 of IFRS or any other International Accounting Standard that replaces International Accounting Standard 39;

‘financial asset’ means—

- (a) a financial asset defined in and within the scope of International Accounting Standard 32 of IFRS or any other International Accounting Standard that replaces International Accounting Standard 32; and
- (b) a commodity taken into account in terms of IFRS at fair value less cost to sell in profit or loss in the statement of comprehensive income;

‘financial instrument’ means any financial asset or financial liability;

‘financial liability’ means a financial liability defined in and within the scope of International Accounting Standard 32 of IFRS or any International Accounting Standard that replaces International Accounting Standard 32;

‘financial reporting value’, in relation to a financial asset or a financial liability, means the value, as determined for the purposes of financial reporting pursuant to IFRS, of that financial asset or financial liability;

‘post-realisation years’, in relation to a covered person, means—

- (a) the year of assessment immediately succeeding the realisation year;
- (b) the year of assessment immediately succeeding the year of assessment contemplated in paragraph (a); and

- (c) the year of assessment immediately succeeding the year of assessment contemplated in paragraph (b);
- ‘realisation year’**, in relation to a person, means—
- (a) where that person is a covered person, the year of assessment of that person immediately preceding the year of assessment ending on or after 1 January 2014; or
- (b) where that person becomes a covered person during any year of assessment ending after 1 January 2014, the year of assessment of that person that precedes the first year of assessment of that person in which that person becomes a covered person;
- ‘tax base’** means tax base as defined in International Accounting Standard 12 of IFRS or any International Accounting Standard replacing International Accounting Standard 12.
- (2) Subject to subsection (4), there must be included in or deducted from the income, as the case may be, of any covered person for any year of assessment all amounts in respect of financial assets and financial liabilities of that covered person that are recognised in profit or loss in the statement of comprehensive income in respect of financial assets and financial liabilities of that covered person that are recognised at fair value in profit or loss in terms of International Accounting Standard 39 of IFRS or any other standard that replaces that standard or, in the case of commodities, at fair value less cost to sell in profit or loss in terms of IFRS for that year of assessment, excluding any amount in respect of—
- (a) a financial asset that is—
- (i) a share;
 - (ii) an endowment policy;
 - (iii) an interest held in a portfolio of a collective investment scheme; or
 - (iv) an interest in a trust,
- if that financial asset was upon initial recognition designated in terms of International Accounting Standard 39 of IFRS or any other standard that replaces that standard by the covered person at fair value through profit or loss because that financial asset is managed and its performance is evaluated on a fair value basis; or
- (b) a dividend or foreign dividend received by or accrued to a covered person.
- (3) Any amount to be taken into account in determining the taxable income or assessed capital loss of a covered person in respect of a financial asset or a financial liability contemplated in subsection (2) must only be taken into account in terms of that subsection.
- (4) Subsection (2) does not apply to any amount in respect of a financial asset or a financial liability of a covered person where—
- (a) a covered person and another person that is not a covered person, are parties to an agreement in respect of a financial instrument; and
- (b) the agreement contemplated in paragraph (a) was entered into solely or mainly for the purpose of a reduction, postponement or avoidance of liability for tax, which, but for that agreement, would have been or would become payable by the covered person.
- (5) In addition to any amount included in or deducted from the income of any person in terms of subsection (2), there must be included in or deducted from the income, as the case may be, of any person for the post-realisation years of that person an amount determined in terms of subsection (6).

- (6) For the purposes of subsection (5)—
- (a) if—
- (i) the financial reporting values of all financial assets taken into account under subsection (2) held by that person as at the end of the realisation year of that person exceed the tax base amount attributed to those financial assets as at the end of the realisation year of that person; or
 - (ii) the tax base amount attributed to all financial liabilities taken into account under subsection (2) held by that person as at the end of the realisation year of that person exceeds the financial reporting values of those financial liabilities as at the end of the realisation year of that person,
- one-third of the excess must be included in the income of that person;
- (b) if—
- (i) the tax base amount attributed to all financial assets taken into account under subsection (2) held by that person as at the end of the realisation year of that person exceeds the financial reporting values of those financial assets as at the end of the realisation year of that person; or
 - (ii) the financial reporting values of all financial liabilities taken into account under subsection (2) held by that person as at the end of the realisation year of that person exceed the tax base amount attributed to those financial liabilities as at the end of the realisation year of that person,
- one-third of the excess must be deducted from the income of that person.
- (7) If a person ceases to be a covered person before the expiry of the post-realisation years of that person, the amounts determined in terms of subsection (6) which have not been included in or deducted from, as the case may be, the income of that person, must be included in or deducted from the income of that person in the year of assessment that it ceases to be a covered person.
- (8) Where a person ceases to be a covered person, that person is deemed to have—
- (a) disposed of its financial assets and redeemed its financial liabilities that were subject to tax in terms of subsection (2); and
 - (b) immediately reacquired those financial assets and incurred those financial liabilities,
- at an amount equal to the market value of those financial assets on the last day of the year of assessment of that person before that person ceased to be a covered person.”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment ending on or after that date.

Amendment of section 24O of Act 58 of 1962, as inserted by section 57 of Act 22 of 2012

72. (1) Section 24O of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in subsection (1) of the definition of “instrument”;
 - (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“Subject to subsection (3), where during any year of assessment [an instrument] a debt is issued, assumed or used by a company—”;

(c) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) in substitution for **[an instrument]** a debt issued, assumed or used as contemplated in paragraph (a),”; and

(d) by the substitution in subsection (2) for the words following paragraph (b) and preceding subparagraph (i) of the following words: 5

“any interest incurred by that company in terms of that **[instrument]** debt must be deemed to have been—”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of acquisition transactions entered into on or after that date. 10

Amendment of section 25BA of Act 58 of 1962, as inserted by section 39 of Act 17 of 2009 and amended by section 49 of Act 7 of 2010, section 55 of Act 24 of 2011 and section 58 of Act 22 of 2012

73. (1) Section 25BA of the Income Tax Act, 1962 is hereby amended—

(a) by the renumbering of the present section to subsection (1); 15

(b) by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:

“(ii) not later than 12 months after its accrual to or, in the case of interest, its receipt by that portfolio;”;

(c) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 20

“(b) to the extent that the amount is not distributed as contemplated in paragraph (a) **[not later than]** within 12 months after its accrual to, or in the case of interest, its receipt by that portfolio—

(i) be deemed to have accrued to that portfolio on the last day of the period of 12 months commencing on the date of its accrual to or receipt by that portfolio; and 25

(ii) to the extent that the amount is attributable to a dividend received by or accrued to that portfolio, be deemed to be income of that portfolio.”; and 30

(d) by the addition after subsection (1) of the following subsection:

“(2) Where a portfolio of a hedge fund collective investment scheme is constituted as a partnership any amount allocated by that portfolio to the partners in that partnership must for the purposes of subsection (1)(a) be treated as having been distributed by that portfolio to the partners in that partnership by virtue of those partners being holders of participatory interests in that portfolio.”. 35

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 25BB of Act 58 of 1962, as inserted by section 59 of Act 22 of 2012 40

74. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 25BB of the following section:

“Taxation of REITs

25BB. (1) For the purposes of this section— 45

‘**controlled company**’ means a company that is a subsidiary, as defined in IFRS, of a REIT;

‘**property company**’ means a company—

(a) in which 20 per cent or more of the equity shares or linked units are held by a REIT or a controlled company (whether alone or together with any other company forming part of the same group of companies as that REIT or that controlled company); and 50

(b) of which at the end of the previous year of assessment 80 per cent or more of the value of the assets, reflected in the annual financial statements prepared in accordance with the Companies Act for the 55

- previous year of assessment, is directly or indirectly attributable to immovable property;
- ‘qualifying distribution’**, in respect of a year of assessment of a company that is a REIT or a controlled company as at the end of a year of assessment, means any dividend (other than a dividend contemplated in paragraph (b) of the definition of ‘dividend’) paid or payable, or interest incurred in respect of a debenture forming part of a linked unit in that company if the amount thereof is determined with reference to the financial results of that company as reflected in the financial statements prepared for that year of assessment if—
- (a) at least 75 per cent of the gross income received by or accrued to a REIT or a controlled company until the date of the declaration of that dividend consists of rental income where a REIT or a controlled company is incorporated, formed or established during that year of assessment; or
 - (b) in any other case, at least 75 per cent of the gross income received by or accrued to a REIT or a controlled company in the preceding year of assessment consists of rental income:
- Provided that any amount that must be included in the income of the REIT or controlled company in terms of section 9D(2) must not be included in the gross income of the REIT or controlled company in respect of that year of assessment for the purposes of this definition;
- ‘rental income’** means any amount received or accrued—
- (a) in respect of the use of immovable property, including a penalty or interest in respect of late payment of any such amount;
 - (b) as a dividend (other than a dividend contemplated in paragraph (b) of the definition of ‘dividend’) from a company that is a REIT at the time of the distribution of that dividend;
 - (c) as a qualifying distribution from a company that is a controlled company at the time of that distribution; or
 - (d) as a dividend or foreign dividend from a company that is a property company at the time of that distribution.
- (2) (a) There must be deducted from the income for a year of assessment of—
- (i) a REIT; or
 - (ii) a controlled company that is a resident,
- the amount of any qualifying distribution made by that REIT or that controlled company in respect of that year of assessment if that company is a REIT or a controlled company on the last day of that year of assessment.
- (b) The aggregate amount of the deductions contemplated in paragraph (a) may not exceed the taxable income for that year of assessment of that REIT or that controlled company, before taking into account—
- (i) any deduction in terms of this subsection;
 - (ii) any assessed loss brought forward in terms of section 20; and
 - (iii) the amount of taxable capital gain included in taxable income in terms of section 26A.
- (3) (a) Any amount received by or accrued to a company that is a REIT or a controlled company on the last day of a year of assessment in respect of a financial instrument must be included in the income of that company.
- (b) Paragraph (a) does not apply to the disposal of a share or a linked unit in a company that is a REIT, a controlled company or a property company on the date of that disposal.
- (4) A company that is a REIT or a controlled company on the last day of a year of assessment may not deduct by way of an allowance any amount in respect of immovable property in terms of section 11(g), 13, 13bis, 13ter, 13quat, 13quin or 13sex.
- (5) In determining the aggregate capital gain or capital loss of a company that is a REIT or a controlled company on the last day of a year of

assessment for purposes of the Eighth Schedule, any capital gain or capital loss determined in respect of the disposal of—

- (a) immovable property;
 - (b) a share or a linked unit in a company that is a REIT at the time of that disposal; or
 - (c) a share or a linked unit in a company that is a property company at the time of that disposal,
- must be disregarded.

(6) (a) Any amount of interest received by or accrued to a person during a year of assessment in respect of a debenture forming part of a linked unit held by that person in a company must be deemed to be a dividend received by or accrued to that person during that year of assessment.

(b) Any amount of interest received by or accrued to a company that is a REIT or a controlled company during a year of assessment in respect of a debenture forming part of a linked unit held by that company in a property company must be deemed to be a dividend received by or accrued to that company during that year of assessment if that company is a REIT or a controlled company at the time of that receipt or accrual.

(c) Any amount of interest paid in respect of a linked unit in a REIT or a controlled company must be deemed—

- (i) to be a dividend paid by that REIT or that controlled company for the purposes of the dividends tax contemplated in Part VIII of this Chapter; and
- (ii) not to be an amount of interest paid by that REIT or that controlled company for the purposes of the withholding tax on interest contemplated in Part IVB of this Chapter.

(7) If during any year of assessment a company that is a REIT ceases to be a REIT and that company does not qualify as a controlled company or a company that is a controlled company ceases to be a controlled company and that company does not qualify as a REIT—

- (a) that year of assessment of that REIT or controlled company is deemed to end on the day that the company ceases to be either a REIT or a controlled company; and
- (b) the following year of assessment of that company is deemed to commence on the day immediately after that company ceased to be either a REIT or a controlled company.

(8) If a REIT or a controlled company cancels the debenture part of a linked unit and capitalises the issue price of the debenture to stated capital for the purposes of financial reporting in accordance with IFRS—

- (a) the cancellation of the debenture must be disregarded in determining the taxable income of the holder of the debenture and of the REIT or controlled company;
- (b) expenditure incurred by the shareholder of the REIT or controlled company in respect of the shares is deemed to be equal to the amount of the expenditure incurred in respect of the acquisition of that linked unit; and
- (c) the issue price of the cancelled debenture must be added to the contributed tax capital of the class of shares that forms part of the linked unit.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 25D of Act 58 of 1962, as substituted by section 35 of Act 31 of 2005, section 41 of Act 35 of 2007 and section 50 of Act 7 of 2010

75. (1) Section 25D of the Income Tax Act, 1962, is hereby amended—

- (a) by the addition after subsection (4) of the following subsection:

“(5) Where, during any year of assessment—

- (a) any amount—
 - (i) is received by or accrues to; or

- (ii) of expenditure is incurred by, a domestic treasury management company in any currency other than the functional currency of the domestic treasury management company; and
 - (b) the functional currency of that domestic treasury management company is a currency other than the currency of the Republic, that amount must be determined in the functional currency of the domestic treasury management company and must be translated to the currency of the Republic by applying the average exchange rate for that year of assessment.”; and
 - (b) by the addition after subsection (5) of the following subsection:
 - “(6) Where, during any year of assessment any amount is received by or accrues to, or of expenditure is incurred by, an international shipping company in any currency other than that of the Republic, that amount must be—
 - (a) determined in the functional currency of the international shipping company; and
 - (b) translated to the currency of the Republic by applying the average exchange rate for that year of assessment.”.
- (2) Paragraph (a) of subsection (1) is deemed to have come into operation on 27 February 2013 and applies in respect of years of assessment commencing on or after that date.
- (3) Paragraph (b) of subsection (1) comes into operation on 1 April 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 28 of Act 58 of 1962, as amended by section 17 of Act 90 of 1962, section 22 of Act 55 of 1966, section 24 of Act 89 of 1969, section 21 of Act 88 of 1971, section 19 of Act 65 of 1973, section 19 of Act 91 of 1982, section 22 of Act 94 of 1983, section 17 of Act 65 of 1986, section 23 of Act 90 of 1988, section 13 of Act 70 of 1989, section 25 of Act 101 of 1990, section 29 of Act 129 of 1991, section 24 of Act 113 of 1993, section 19 of Act 21 of 1994, section 33 of Act 30 of 2000, section 42 of Act 35 of 2007, section 40 of Act 60 of 2008, section 40 of Act 17 of 2009, section 51 of Act 7 of 2010 and section 61 of Act 22 of 2012

76. (1) Section 28 of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in subsection (1) of the definition of “Short-term Insurance Act”;
 - (b) by the substitution in subsection (1) for the definition of “short-term policy” of the following definition:
 - “ **‘short-term policy’** means a short-term policy as defined in the Short-term Insurance Act, **which is issued by a short-term insurer**.”;
 - and
 - (c) by the substitution for subsections (2), (3), (4) and (5) of the following subsections:
 - “(2) For the purpose of determining the taxable income derived during a year of assessment by any **[person] short-term insurer** that is a resident from carrying on short-term insurance business—
 - (a) a premium received by or accrued to that person in respect of a short-term policy issued by that **[person] short-term insurer** prior to the date of commencement of the risk cover under that policy shall be deemed to have been received by or accrued to that **[person] short-term insurer** on the date of commencement of the risk cover under that policy;
 - (b) an amount of expenditure actually incurred by that **[person] short-term insurer** in respect of a refund of a premium in respect of a short-term policy issued by that short-term insurer may only be deducted in terms of section 11(a) to the extent that the amount of the premium was included in the gross income of that **[person] short-term insurer**;
 - (c) **[i] sections 23(c) and 23H shall not apply to expenditure incurred in respect of a short-term policy issued by that person; and**

(ii) section 23H shall not apply to expenditure incurred in respect of a reinsurance policy entered into by that person;]

an amount of expenditure payable by that short-term insurer in respect of any claim in terms of a short-term policy—

- (i) may be deducted in terms of section 11(a) to the extent that the amount has been paid by that short-term insurer; and
- (ii) to the extent that the amount has been paid by the short-term insurer, sections 23(c) and 23H shall not apply to that expenditure;

(d) [an amount of expenditure payable by that person in respect of any claim in terms of a short-term policy may only be deducted in terms of section 11(a) on the date that the amount is paid by that person;]

section 23H shall not apply to expenditure (other than expenditure contemplated in paragraph (c)) incurred in respect of—

- (i) a short-term policy issued by that short-term insurer; or
- (ii) a policy of reinsurance if that short-term insurer is the holder of that policy; and

(e) an amount recoverable by that [person] short-term insurer in respect of a claim incurred under a short-term policy issued by that short-term insurer shall only be included in the income of that [person] short-term insurer when the amount is received by that [person] short-term insurer.

(3) Notwithstanding the provisions of section 23(e), for the purpose of determining the taxable income derived during a year of assessment by any [person] short-term insurer that is a resident from carrying on short-term insurance business, there shall be allowed as a deduction from the income of that [person] short-term insurer—

(a) the amount [estimated to become payable] which the short-term insurer estimates will become payable in respect of claims incurred under short-term insurance policies as contemplated in section 32(1)(a) of the Short-term Insurance Act that are—

- (i) reported but not yet paid, reduced by the amount which the short-term insurer estimates will be paid in respect of those claims under policies of reinsurance; and
- (ii) not yet reported, reduced by the amount which the short-term insurer estimates will be paid in respect of those claims under policies of reinsurance, being an amount not less than the amount calculated in accordance with Part II of Schedule 2 to the Short-term Insurance Act,

in respect of that year of assessment;] Provided that the amount to be taken into account shall be the amount which that person estimates will be recoverable by that person in respect of all reinsurance policies entered into by that person;] and

(b) the amount of [the] an unearned premium provision [contemplated in] calculated in accordance with section 32(1)(b) of the Short-term Insurance Act, being an amount not less than the amount calculated in accordance with Part II of Schedule 2 of that Act in respect of that year of assessment: Provided that[—

(i) consideration payable in respect of all reinsurance policies entered into by that person shall be taken into account; and

(ii) a reserve for a cash-back bonus contemplated in paragraph 4.1.1 of Board Notice 169 of 2011, published in Gazette No. 34715 of 28 October 2011, may only be taken into account if the reserve is determined in accordance with a method

comprising a best estimate of the liability plus a risk margin,
and **[such]** that method is approved by the Financial Services
Board.

(4) The total of all amounts deducted from the income of a **[person]**
short-term insurer in respect of a year of assessment in terms of 5
subsection (3) shall be included in the income of that **[person]** short-term
insurer in the following year of assessment.

(5) The sum of all amounts contemplated in section 32(1)(a) and (b) of
the Short-term Insurance Act and deducted from the sum of all premiums 10
and other amounts received by or accrued to a **[person]** short-term
insurer in respect of any year of assessment **[in terms of subsection**
(2)(cA)] shall be included in the income of that **[person]** short-term
insurer in the following year of assessment.”

(2) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation 15
on 1 January 2013 and apply in respect of years of assessment commencing on or after
that date.

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of
1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001,
section 15 of Act 19 of 2001, section 39 of Act 60 of 2001, section 30 of Act 74 of 2002,
section 16 of Act 16 of 2004, section 23 of Act 20 of 2006, section 21 of Act 3 of 2008, 20
section 52 of Act 7 of 2010 and section 62 of Act 22 of 2012

77. (1) Section 29A of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subsection (1) of the definition of “Long-term Insurance
Act”;

(b) by the substitution in subsection (11)(a) for the words preceding subparagraph 25
(i) of the following words:

“the amount of any expenses, allowances and transfers to be allowed as
a deduction in the policyholder funds in terms of this Act shall, **subject**
to subsections (11A), (11B) and (11C), be limited to the total of—”;

(c) by the deletion in subsection (11)(a)(ii)(B) after subsubitem (AA) of the word 30
“and”;

(d) by the addition to subsection (11)(a)(ii)(B) after subsubitem (BB) of the
following subsubitems:

“(CC) any losses carried forward from previous years of assessment;
(DD) the amount determined under subsubitem (DD) of symbol Z 35
multiplied by 0,333 in the case of the individual policyholder
fund and 0,666 in the case of the company policyholder fund,
reduced by the amount determined in terms of this subsubitem for
the immediately preceding year of assessment: Provided that if
the resultant amount is negative the amount shall be deemed to be 40
nil; and”;

(e) by the deletion in subsection (11)(a)(ii)(C) after subsubitem (BB) of the word
“and”;

(f) by the addition to subsection (11)(a)(ii)(C) after subsubitem (CC) of the 45
following subsubitem:

“(DD) the difference between the market value as defined in section 29B
and the expenditure incurred in respect of any asset held at the
end of the year of assessment, reduced by the amount determined
in terms of this subsubitem for the immediately preceding year of
assessment: Provided that if the resultant amount is negative the 50
amount shall be deemed to be nil; and”;

(g) by the substitution in subsection (11) for paragraph (h) of the following
paragraph:

“(h) no amount may be deducted by way of an allowance in respect of an
asset as defined in the Eighth Schedule other than a financial
instrument.”; and 55

(h) by the deletion of subsections (11A), (11B) and (11C).

(2) Paragraphs (b), (c), (d), (e), (f), (g) and (h) of subsection (1) are deemed to have
come into operation on 1 January 2013 and apply in respect of years of assessment
commencing on or after that date. 60

Amendment of section 29B of Act 58 of 1962, as inserted by section 63 of Act 22 of 2012

78. (1) Section 29B of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) in paragraph (a) of the definition of “market value” for subparagraph (i) of the following subparagraph: 5

“(i) an exchange as defined in section 1 of the [**Securities Services Act, 2004 (Act No. 36 of 2004),**] Financial Markets Act and licensed under section [10] 9 of that Act; or”;

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 10

“An insurer must[, **on 29 February 2012,**] be deemed to have disposed of each asset held by that insurer on 29 February 2012, at the close of the day, in respect of all its policyholder funds, other than an asset that constitutes—”;

(c) by the substitution in subsection (5) for paragraph (b) of the following paragraph: 15

“(b) The amount to be determined for the purposes of paragraph (a) is an amount equal to the aggregate of all capital gains and capital losses determined in respect of the disposal[, **on 29 February 2012,**] of any asset as contemplated in subsection (2).”;

(d) by the addition to subsection (5) after paragraph (b) of the following paragraph: 20

“(c) Where a person ceases to conduct the business of an insurer prior to the expiration of the three years of assessment contemplated in paragraph (a), any amount determined in terms of paragraph (b) must, to the extent that the amount has not been included as contemplated in paragraph (a), be so included in the year of assessment during which the person ceases to conduct the business of an insurer.”;

(e) by the substitution for subsection (6) of the following subsection: 30

“(6) This section does not apply to any asset held by an insurer if [**that insurer**] the asset is administered by a Category III Financial Services Provider and that asset is held by that insurer [**in its capacity as a Category III Financial Services Provider**] solely for the purpose of providing a linked policy as defined in the Long-term Insurance Act, 1998 (Act No. 52 of 1998).”;

(f) by the substitution for subsection (6) of the following subsection: 35

“(6) This section does not apply to any asset held by an insurer if the asset is administered by a Category III Financial Services Provider and that asset is held by that insurer solely for the purpose of providing a linked policy as defined in the Long-term Insurance Act[, **1998 (Act No. 52 of 1998).**”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 3 June 2013.

(3) Paragraphs (b), (c), (d) and (e) of subsection (1) are deemed to have come into operation on 29 February 2012. 45

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by sections 36 and 73 of Act 59 of 2000, section 16 of Act 19 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002, section 45 of Act 45 of 2003, section 16 of Act 16 of 2004, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007, section 22 of Act 3 of 2008, section 41 of Act 60 of 2008, section 41 of Act 17 of 2009, section 53 of Act 7 of 2010 and section 8 of Act 21 of 2012 50

79. Section 30 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) in paragraph (a) of the definition of “public benefit organisation” for subparagraph (i) of the following subparagraph: 55

“(i) a non-profit company as defined in section 1 of the Companies Act[, **2008 (Act No. 71 of 2008),**] or a trust or an association of persons that has been incorporated, formed or established in the Republic; or”.

Amendment of section 30A of Act 58 of 1962, as inserted by section 25 of Act 20 of 2006 and amended by section 26 of Act 8 of 2007, section 42 of Act 60 of 2008, section 42 of Act 17 of 2009, section 54 of Act 7 of 2010 and section 9 of Act 21 of 2012

80. Section 30A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection: 5

“(1) For purposes of this Act, ‘**recreational club**’ means any non-profit company as defined in section 1 of the Companies Act[, **2008 (Act No. 71 of 2008)**], society or other association of which the sole or principal object is to provide social and recreational amenities or facilities for the members of that company, society or other association.”. 10

Amendment of section 30B of Act 58 of 1962, as inserted by section 55 of Act 7 of 2010 and amended by section 56 of Act 24 of 2011 and section 10 of Act 21 of 2012

81. Section 30B of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) in paragraph (b) of the definition of “entity” for subparagraph (i) of the following subparagraph: 15

“(i) non-profit company as defined in section 1 of the Companies Act[, **2008 (Act No. 71 of 2008)**];” and

(b) by the substitution for subsection (4) of the following subsection: 20

“(4) Where the constitution or written instrument of an entity does not comply with subsection (2)(b), the Commissioner may deem it to so comply if the [persons] person who [have] has accepted fiduciary responsibility for the funds and assets of that entity [furnish] furnishes the Commissioner with a written undertaking that the entity will be administered in compliance with that subsection.”. 25

Amendment of section 31 of Act 58 of 1962, as substituted by section 57 of Act 24 of 2011 and amended by section 64 of Act 22 of 2012

82. (1) Section 31 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) in the definition of “financial assistance” of the words preceding paragraph (a) of the following words: 30

“includes [the provision of] any—”;

(b) by the substitution in subsection (4) for the proviso to the definition of “connected person” of the following proviso: 35

“: Provided that the expression ‘and no [shareholder] holder of shares holds the majority voting rights in the company’ in paragraph (d)(v) of that definition must be disregarded”;

(c) by the substitution in subsection (6) of the words preceding subparagraph (i) of the following words: 40

“by a person that is a resident (other than a headquarter company) to a controlled foreign company in relation to that resident or in relation to a company that forms part of the same group of companies as that resident, this section must not be applied in calculating the taxable income or tax payable by that resident in respect of any amount received by or accrued to that resident in terms of that transaction, operation, scheme, agreement or understanding if—”;

(d) by the deletion in subsection (6) of subparagraph (i); and 45

(e) by the addition after subsection (6) of the following subsection: 50

“(7) Where—

(a) any transaction, operation, scheme, agreement or understanding has been entered into between a company that is a resident (for purposes of this subsection referred to as ‘resident company’) or any company that forms part of the same group of companies as that resident company and any foreign company in which that resident company (whether alone or together with any other company that forms part of the same group of companies as that resident 55

company) directly or indirectly holds in aggregate at least 10 per cent of the equity shares and voting rights and that transaction, operation, scheme, agreement or understanding comprises the granting of financial assistance that constitutes a debt owed by that foreign company to that resident company or any company that forms part of the same group of companies as that resident company;

- (b) that foreign company is not obliged to redeem that debt in full within 30 years from the date the debt is incurred; and
- (c) the redemption of the debt in full by the foreign company is conditional upon the market value of the assets of the foreign company not being less than the market value of the liabilities of the foreign company,

this section must not apply to that debt.”

(2) Paragraphs (a), (c), (d) and (e) of subsection (1) come into operation on 1 April 2014 and apply in respect of years of assessment commencing on or after that date.

Amendment of section 36 of Act 58 of 1962, as amended by section 12 of Act 72 of 1963, section 15 of Act 90 of 1964, section 20 of Act 88 of 1965, section 23 of Act 55 of 1966, section 16 of Act 95 of 1967, section 14 of Act 76 of 1968, section 26 of Act 89 of 1969, section 21 of Act 65 of 1973, section 28 of Act 85 of 1974, section 20 of Act 104 of 1980, section 25 of Act 94 of 1983, section 16 of Act 96 of 1985, section 14 of Act 70 of 1989, section 26 of Act 101 of 1990, section 30 of Act 129 of 1991, section 24 of Act 141 of 1992, section 29 of Act 113 of 1993, section 17 of Act 36 of 1996, section 41 of Act 60 of 2001, section 31 of Act 32 of 2004, section 26 of Act 20 of 2006, section 46 of Act 35 of 2007, section 23 of Act 3 of 2008, section 44 of Act 60 of 2008, section 43 of Act 17 of 2009, section 57 of Act 7 of 2010 and section 60 of Act 24 of 2011

83. Section 36 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (7F) for the words preceding the proviso of the following words:

“The aggregate of the amounts of capital expenditure determined under subsection (7C) in respect of any year of assessment in relation to any one mine shall, unless the Minister [of Finance], after consultation with the [Minister of Mineral and Energy Affairs] Cabinet member responsible for mineral resources and having regard to any relevant fiscal, financial or technical implications, otherwise directs, not exceed the taxable income (as determined before the deduction of any amount allowable under section 15(a), but after the set-off of any balance of assessed loss incurred by the taxpayer in relation to that mine in any previous year which has been carried forward from the preceding year of assessment) derived by the taxpayer from mining on that mine, and any amount by which the said aggregate would, but for the provisions of this subsection, have exceeded such taxable income as so determined, shall be carried forward and be deemed to be an amount of capital expenditure incurred during the next succeeding year of assessment in respect of that mine”;

- (b) by the substitution in subsection (11) in paragraph (aa) of the proviso to paragraph (c) of the definition of “capital expenditure” for subparagraph (B) of the following subparagraph:

“(B) prospecting right, mining right, exploration right or production right, mining permit or retention permit issued in terms of the Mineral and Petroleum Resources Development Act[, 2002 (Act No. 28 of 2002)];”;

- (c) by the substitution in subsection (11) for paragraph (e) of the definition of “capital expenditure” of the following paragraph:

“(e) where that trade constitutes mining, any expenditure incurred in terms of a mining right pursuant to the Mineral and Petroleum

Resources Development Act[, 2002 (Act No. 28 of 2002),] other than in respect of infrastructure or environmental rehabilitation;”.

Amendment of section 37A of Act 58 of 1962, as inserted by section 27 of Act 20 of 2006 and amended by section 28 of Act 8 of 2007 and section 47 of Act 35 of 2007

84. Section 37A of the Income Tax Act, 1962, is hereby amended— 5
- (a) by the substitution in subsection (1)(d)(i) for item (aa) of the following item:
“*(aa)* holds a permit or right in respect of prospecting, exploration, mining or production, an old order right or OP26 right as defined in item 1 of Schedule II or any reservation or permission for or right to the use of the surface of land as contemplated in item 9 of Schedule II to the Mineral and Petroleum Resources Development Act[, 2002 (Act No. 28 of 2002)]; or”;
10
 - (b) by the substitution in subsection (2)(a) for subparagraphs (i), (ii) and (iii) of the following subparagraphs:
“*(i)* collective investment scheme as regulated in terms of the Collective Investment Schemes Control Act[, 2002 (Act No. 45 of 2002)];
15
“*(ii)* long-term insurer as regulated in terms of the [Long-Term Long-term Insurance Act[, 1998 (Act No. 52 of 1998)];
“*(iii)* bank as regulated in terms of the Banks Act[, 1990 (Act No. 94 of 1990)]; or”;
20
 - (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
“To the extent that the [Minister of Minerals and Energy] Cabinet member responsible for mineral resources is satisfied that all of the areas in terms of any permit, right, reservation or permission contemplated in subsection (1)(d)(i)(aa) that have been rehabilitated as contemplated in subsection (1)(a), the company or trust in respect of those areas must be wound-up or liquidated and its assets remaining after the satisfaction of its liabilities must be transferred to—”;
25
 - (d) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
“*(b)* if no such company or trust has been established, to an account or trust prescribed by the [Minister of Minerals and Energy] Cabinet member responsible for mineral resources as approved of by the Commissioner if the Commissioner is satisfied that such company or trust satisfies the objects of subsection (1)(a).”;
30
35
 - (e) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
“If the [Minister of Minerals and Energy] Cabinet member responsible for mineral resources is satisfied that a company or trust as contemplated in subsection (1)(a)—”.
40

Amendment of section 37B of Act 58 of 1962, as inserted by section 48 of Act 35 of 2007 and amended by section 45 of Act 60 of 2008, section 44 of Act 17 of 2009 and section 66 of Act 22 of 2012

85. Section 37B of the Income Tax Act, 1962, is hereby amended by the substitution 45
in subsection (2) for paragraphs (a) and (b) of the following paragraphs:
“*(a)* in the case of a new and unused environmental treatment and recycling asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of an ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991)], 40 per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and 50
20 per cent in each succeeding year of assessment; and

- (b) in the case of a new and unused environmental waste disposal asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of an ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), five per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and five per cent in each succeeding year of assessment.” 5

Amendment of section 37C of Act 58 of 1962, as inserted by section 46 of Act 60 of 2008

86. (1) Section 37C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for the words following paragraph (b) of the following words:

“[an amount equal to 10 per cent of the lesser of the cost or market value of the declaration of the land without regard to any right of use retained by any taxpayer is deemed to be a donation of immovable property for purposes of section 18A and paragraph 62 of the Eighth Schedule [deemed to be a donation paid or transferred] to the Government for which a receipt has been issued in terms of section 18A(2), in the year of assessment in which the land is so declared [and each of the succeeding nine years of assessment].” 15

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of declarations made during years of assessment commencing on or after that date. 20

Substitution of section 40C of Act 58 of 1962, as substituted by section 70 of Act 22 of 2012

87. The following section is hereby substituted for section 40C of the Income Tax Act, 1962: 25

“Distribution of shares and issue of shares or options for no consideration

40C. [(1)] Where a company—

- (a) distributes a share in that company; or
 (b) issues a share in that company or an option or other right to the issue of a share in that company, to a person for no consideration, the expenditure actually incurred by the person to acquire the share, option or right must be deemed to be nil.” 30

Substitution of section 40CA of Act 58 of 1962, as inserted by section 71 of Act 22 of 2012 35

88. The following section is hereby substituted for section 40CA of the Income Tax Act, 1962:

“Acquisitions of assets in exchange for shares or debt issued

40CA. [(1)] Subject to section 24B, if a company acquires any asset, as defined in paragraph 1 of the Eighth Schedule, from any person in exchange for— 40

- (a) shares issued by that company, that company must be deemed to have actually incurred an amount of expenditure in respect of the acquisition of that asset which is equal to the market value of the shares immediately after the acquisition; or
 (b) any amount of debt issued by that company, that company must be deemed to have actually incurred an amount of expenditure in respect of the acquisition of that asset which is equal to that amount of debt.” 45

Amendment of section 40CA of Act 58 of 1962, as substituted by section 88 of this Act

89. (1) Section 40CA of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“**[Subject to section 24B, if]** If a company acquires any asset, as defined in paragraph 1 of the Eighth Schedule, from any person in exchange for—” 5

(2) Subsection (1) is deemed to have come into operation on 1 April 2013 and applies in respect of acquisitions made on or after that date.

Amendment of section 41 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 49 of Act 45 of 2003, section 32 of Act 32 of 2004, section 37 of Act 31 of 2005, section 28 of Act 20 of 2006, sections 32 and 103 of Act 8 of 2007, section 52 of Act 35 of 2007, section 25 of Act 3 of 2008, sections 48 and 128 of Act 60 of 2008, section 47 of Act 17 of 2009, section 61 of Act 7 of 2010, section 67 of Act 24 of 2011 and section 73 of Act 22 of 2012 10

90. (1) Section 41 of the Income Tax Act, 1962, is hereby amended— 15

(a) by the substitution in subsection (1) in paragraph (b) of the definition of “domestic financial instrument holding company” for subparagraphs (i), (ii), (iii), (iv) and (vi) of the following subparagraphs:

“(i) a bank regulated in terms of the Banks Act[, 1990 (Act No. 94 of 1990)]; 20

(ii) an authorised user as defined in the Financial Markets Act;

(iii) an insurer regulated in terms of the **[Long Term] Long-term Insurance Act[, 1998 (Act No. 52 of 1998)];**

(iv) an insurer regulated in terms of the **[Short Term] Short-term Insurance Act[, 1998 (Act No. 53 of 1998)];** or 25

(vi) a collective investment scheme regulated in terms of the Collective Investment Schemes Control Act[, 2002 (Act No. 45 of 2002)]; or”;

(b) by the substitution in subsection (1) in paragraph (i) of the proviso to the definition of “group of companies” for subparagraph (bb) of the following subparagraph: 30

“(bb) that company is a non-profit company as defined in section 1 of the Companies Act[, 2008 (Act No. 71 of 2008)];”;

(c) by the deletion in subsection (1) after paragraph (i)(dd) of the proviso to the definition of “group of companies” of the word “or”;

(d) by the substitution in subsection (1) after paragraph (i)(ee) of the proviso to the definition of “group of companies” for the word “and” of the word “or”; 35

(e) by the addition in subsection (1) to paragraph (i) of the proviso to the definition of “group of companies” after subparagraph (ee) of the following subparagraph:

“(ff) that company has its place of effective management outside the Republic; and” 40

(f) by the substitution in subsection (1) for the definition of “shareholder” of the following definition:

“‘**shareholder**’ in relation to an equity share, means—

(a) the registered shareholder of that equity share, unless a person other than that registered shareholder is entitled to all or part of the benefit of the rights of participation in the profits, income or capital attaching to that equity share, in which case that person must, to the extent of that entitlement to that benefit, be deemed to be the shareholder; or 45

(b) the holder of a participatory interest in a portfolio of a collective investment scheme in property; and” 50

- (g) by the substitution for subsection (2) of the following subsection: 5
“(2) The provisions of this Part must, subject to subsection (3), apply in respect of an asset-for-share transaction, a substitutive share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections 24B(2), 24BA and 103 [and], Part IIA of Chapter III and paragraph 11(1)(g) of the Eighth Schedule.”;
- (h) by the substitution for subsection (2) of the following subsection: 10
“(2) The provisions of this Part must, subject to subsection (3), apply in respect of an asset-for-share transaction, a substitutive share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections [24B(2),] 24BA and 103, Part IIA of Chapter III and paragraph 11(1)(g) of the Eighth Schedule.”;
- (i) by the substitution in subsection (4)(a)(i) for item (aa) of the following item: 20
“(aa) section 80(2) of the Companies Act[, 2008 (Act No. 71 of 2008),] in the case of a company to which that section applies;”;
- (j) by the addition in subsection (4)(a) after subparagraph (ii) of the following subparagraph: 25
“(iii) the manager, trustee or custodian of the portfolio of the collective investment scheme in property has in terms of section 102(1) or (2) of the Collective Investment Schemes Control Act applied for the winding up of that portfolio;”;
- (k) by the substitution in subsection (4)(b) for subparagraph (i) of the following subparagraph: 30
“(i) to the Companies and Intellectual Property Commission in terms of section 82(3)(b)(ii) of the Companies Act[, 2008,] in the case of a company to which that section applies; or”;
- (l) by the deletion of subsection (8). 35
- (2) Paragraphs (c), (d), (e), (g) and (l) of subsection (1) are deemed to have come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.
- (3) Paragraphs (f) and (j) of subsection (1) are deemed to have come into operation on 24 October 2013.
- (4) Paragraph (h) of subsection (1) is deemed to have come into operation on 1 April 2013 and applies in respect of transactions entered into on or after that date. 40

Amendment of section 42 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 33 of Act 8 of 2007, section 53 of Act 35 of 2007, section 26 of Act 3 of 2008, section 49 of Act 60 of 2008, section 48 of Act 17 of 2009, section 62 of Act 7 of 2010, section 68 of Act 24 of 2011 and section 74 of Act 22 of 2012 45

- 91.** (1) Section 42 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)(a)(i) for item (bb) of the following item: 50
“(bb) in the case of an asset-for-share transaction contemplated in paragraph (b) of the definition of ‘asset-for-share transaction’, for an amount equal to the [amount contemplated in subparagraph (i) or (ii) of that paragraph, as the case may be] base cost of that asset on the date of that disposal; and”.
- (2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

Amendment of section 43 of Act 58 of 1962, as inserted by section 75 of Act 22 of 2012

92. (1) Section 43 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the definition of “equity share” of the following definition: 5
 “**‘equity share’** includes a **[property]** linked unit;”;
- (b) by the deletion in subsection (1) of the definition of “equity share interest”;
- (c) by the deletion in subsection (1) of the definition of “non-equity share”;
- (d) by the deletion in subsection (1) of the definition of “non-equity share interest”; 10
- (e) by the deletion in subsection (1) of the definition of “property linked unit”;
- (f) by the deletion in subsection (1) of the definition of “share interest”;
- (g) by the substitution in subsection (1) for the definition of “substitutive share-for-share transaction” of the following definition: 15
 “**‘substitutive share-for-share transaction’** means a transaction between a person and a company in terms of which that person disposes of an equity share in the form of a linked unit in that company and acquires an equity share other than a linked unit in that company.”;
- (h) by the addition after subsection (1) of the following subsection: 20
 “(1A) Where a person disposes of an equity share in a company that constitutes a pre-valuation date asset and acquires another equity share in that company in terms of a substitutive share-for-share transaction, for the purposes of determining the date of acquisition of that equity share and the expenditure in respect of the cost of acquisition of that equity share, that person must be treated as having— 25
 (a) disposed of that equity share at the time immediately before that substitutive share-for-share transaction, for an amount equal to the market value of that equity share at that time; and
 (b) immediately reacquired that equity share at that time at an expenditure equal to that market value— 30
 (i) less any capital gain, and
 (ii) increased by any capital loss,
 that would have been determined had that equity share been disposed of at market value at that time,
 which expenditure must be treated as an amount of expenditure actually 35
 incurred at that time for the purposes of paragraph 20(1)(a) of the Eighth Schedule.”;
- (i) by the substitution in subsection (2)(c) for subparagraph (i) of the following subparagraph: 40
 “(i) an expenditure actually incurred **[and paid]** by that person in respect of the share interest so acquired for the purposes of paragraph 20 of the Eighth Schedule, if the share interest so acquired is acquired as a capital asset; or”;
- (j) by the substitution for subsection (2) of the following subsection: 45
 “(2) Subject to subsection (4), where a person disposes of **[a]** an equity share **[interest]** in a company and acquires another equity share **[interest]** in that company in terms of a substitutive share-for-share transaction, that person must be deemed to have— 50
 (a) disposed of that equity share **[interest]** so disposed of for an amount equal to the expenditure incurred by that person in respect of that equity share **[interest]** so disposed of which is or was allowable in terms of paragraph 20 of the Eighth Schedule or taken into account in terms of section 11(a) or 22(1) or (2), as the case may be;
 (b) acquired that other equity share **[interest]** so acquired on the latest date on which that person acquired any share comprising the equity 55

- share **[interest]** so disposed of for a cost equal to the expenditure incurred by that person as contemplated in paragraph (a); and
- (c) incurred the cost contemplated in paragraph (b) on the date contemplated in that paragraph, which cost must **[be treated as]**—
- (i) if the equity share so acquired is acquired as a capital asset, be treated for the purposes of paragraph 20 of the Eighth Schedule as an expenditure actually incurred by that person in respect of the equity share **[interest]** so acquired **[for the purposes of paragraph 20 of the Eighth Schedule, if the share interest so acquired is acquired as a capital asset]**; or
- (ii) if the equity share so acquired is acquired as trading stock, be treated for the purposes of section 11(a) or 22(1) or (2) as the amount to be taken into account by that person in respect of the equity share **[interest]** so acquired **[for the purposes of section 11(a) or 22(1) or (2), if the share interest so acquired is acquired as trading stock]**.”;
- (k) by the deletion of subsection (3);
- (l) by the substitution for subsection (4) of the following subsection:
- “(4) (a) This subsection applies where—
- (i) a person disposes of **[a]** an equity share **[interest]** in a company in terms of a substitutive share-for-share transaction; and
- (ii) that person becomes entitled, in exchange for that equity share **[interest]**, to any consideration other than a dividend, foreign dividend or another equity share **[interest]** that is acquired by that person in terms of that substitutive share-for-share transaction.
- (b) Where a person disposes of **[a]** an equity share **[interest]** in terms of a substitutive share-for-share transaction and becomes entitled to consideration other than another equity share **[interest]** as contemplated in paragraph (a)(ii)—
- (i) subsections (2) and (3) must not apply to the part of the equity share **[interest]** so disposed of that relates to that consideration; and
- (ii) either—
- (aa) where that equity share **[interest]** is so disposed of as a capital asset, the base cost at the time of that disposal of the part of the equity share **[interest]** contemplated in subparagraph (i) must be deemed to be equal to an amount which bears to the base cost of the equity share **[interest]** so disposed of the same ratio as the market value of that consideration bears to the sum of the market value of that consideration and the market value of the equity share **[interest]** acquired by that person in terms of that substitutive share-for-share transaction; or
- (bb) where that interest is so disposed of as trading stock, the amount to be taken into account in terms of section 11(a) or 22(1) or (2) in respect of the part of the equity share **[interest]** contemplated in subparagraph (i) must be deemed to be equal to an amount which bears to the total amount taken into account in terms of section 11(a) or 22(1) or (2) in respect of the equity share **[interest]** so disposed of the same ratio as the market value of that consideration bears to the sum of the market value of that consideration and the market value of the equity share

[interest] acquired by that person in terms of that substitutive share-for-share transaction.”; and

(m) by the addition after subsection (4) of the following subsection:

“(4A) If an equity share is issued in terms of a substitutive share-for-share transaction, the issue price of the linked unit disposed of in terms of that transaction is deemed to be contributed tax capital in respect of the class to which the equity share so acquired relates.”.

(2) Paragraphs (a), (e) and (i) of subsection (1) are deemed to have come into operation on 1 April 2013 and apply in respect of transactions entered into on or after that date.

(3) Paragraphs (b), (c), (d), (f), (g), (h), (j), (k), (l) and (m) of subsection (1) are deemed to have come into operation on 4 July 2013 and apply in respect of transactions entered into on or after that date.

Amendment of section 44 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 52 of Act 45 of 2003, section 40 of Act 31 of 2005, section 34 of Act 8 of 2007, section 55 of Act 35 of 2007, section 27 of Act 3 of 2008, sections 50 and 129 of Act 60 of 2008, section 49 of Act 17 of 2009, section 63 of Act 7 of 2010, section 69 of Act 24 of 2011 and section 76 of Act 22 of 2012

93. (1) Section 44 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) in paragraph (b) of the definition of “amalgamation transaction” for subparagraph (ii) of the following subparagraph:

“(ii) if, immediately before that transaction, any shares in that amalgamated company [that are directly or indirectly held by that resultant company] are held as capital assets; and”;

(b) by the substitution for subsection (4A) of the following subsection:

“(4A) For purposes of the definition of ‘contributed tax capital’, if the resultant company issues shares in exchange for the disposal of an asset in terms of an amalgamation transaction, the amount received by or accrued to the resultant company as consideration for the issue of shares is deemed to be equal to an amount which bears to the contributed tax capital of the amalgamated company at the time of termination contemplated in paragraph [(b)] (a)(ii) of the definition of ‘amalgamation transaction’ in subsection (1) the same ratio as the value of the shares held in the amalgamated company at that time by shareholders other than the resultant company bears to the value of all shares held in the amalgamated company at that time.”;

(c) by the addition to subsection (4A) of the following proviso:

“: Provided that where the amalgamated company is a portfolio of a collective investment scheme in property, the price at which the participatory interests were issued shall be added to the contributed tax capital in respect of the class of shares issued by the resultant company.”;

(d) by the substitution for subsection (6) of the following subsection:

“(6) (a) This subsection applies where any person that holds an equity share in an amalgamated company acquires an equity share in the resultant company by virtue of that shareholding and pursuant to an amalgamation transaction in respect of which subsection (2) or (3) applied—

(i) as either a capital asset or trading stock, in the case where that equity share in the amalgamated company is held as a capital asset; or

(ii) as trading stock in the case where that equity share in the amalgamated company is held as trading stock.

(b) The person contemplated in paragraph (a) is deemed, subject to paragraphs (d) and (e), to have—

- (i) disposed of the equity share in that amalgamated company for an amount equal to the expenditure incurred by that person in respect of that equity share which is or was allowable in terms of paragraph 20 of the Eighth Schedule or taken into account in terms of section 11(a) or 22(1) or (2), as the case may be; 5
- (ii) acquired the equity share in the resultant company on the date on which that person acquired the equity share in the amalgamated company for a cost equal to the expenditure incurred by that person as contemplated in subparagraph (i); 10
- (iii) incurred the cost contemplated in subparagraph (ii) on the date on which that person incurred the expenditure in respect of the equity share in the amalgamated company, which cost must be treated as— 15
 - (aa) an expenditure actually incurred by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule, if those equity shares in the resultant company are acquired as capital assets; or
 - (bb) the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11(a) or 22(1) or (2), if those equity shares in the resultant company are acquired as trading stock; and 20
- (iv) done any valuation of the equity share in the amalgamated company which was done by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule, in respect of the equity share in the resultant company. 25

(c) An equity share in the resultant company that is acquired by the person contemplated in paragraph (a) is deemed not to be an amount transferred or applied by the amalgamated company for the benefit or on behalf of that person in respect of the share held by that person in that amalgamated company. 30

(d) Where the person contemplated in paragraph (a) becomes entitled to any consideration other than any equity share in the resultant company, the provisions of paragraph (b) must not apply in respect of the part of the equity share held by that person in the amalgamated company which bears the same ratio to that share as the amount of that other consideration bears to the amount of the full consideration in respect of that share. 35

(e) Where the person contemplated in paragraph (a) becomes entitled, by virtue of the equity share held by that person in the amalgamated company, to any consideration other than any equity share in the resultant company, so much of the amount of that other consideration as does not exceed the market value of all the assets of the amalgamated company immediately before the amalgamation, conversion or merger less— 40

- (i) the liabilities; and 45
- (ii) the sum of the contributed tax capital of all the classes of shares, of the amalgamated company immediately before the amalgamation, conversion or merger must, for the purposes of the definitions of 'dividend', 'foreign dividend', 'foreign return of capital' and 'return of capital' in section 1, be deemed to be an amount transferred or applied by 50

that amalgamated company for the benefit or on behalf of that person in respect of the share held by that person in the amalgamated company.”;

- (e) by the deletion of subsection (7);
- (f) by the deletion in subsection (9) of paragraph (a);
- (g) by the deletion of subsection (10); and
- (h) by the substitution in subsection (14) for subparagraph (c) of the following paragraph:

“(c) in respect of any transaction if the resultant company is a non-profit company as defined in section 1 of the Companies Act[, 2008 (Act No. 71 of 2008)];”.

(2) Paragraphs (a) and (b) of subsection (1) are deemed to have come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.

(3) Paragraphs (c) and (f) of subsection (1) are deemed to have come into operation on 24 October 2013.

(4) Paragraphs (d), (e) and (g) of subsection (1) are deemed to have come into operation on 4 July 2013 and apply in respect of transactions entered into on or after that date.

Amendment of section 45 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 53 of Act 45 of 2003, section 35 of Act 32 of 2004, section 41 of Act 31 of 2005, section 35 of Act 8 of 2007, section 56 of Act 35 of 2007, section 28 of Act 3 of 2008, section 51 of Act 60 of 2008, section 64 of Act 7 of 2010, section 70 of Act 24 of 2011 and section 77 of Act 22 of 2012

94. (1) Section 45 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) in paragraph (a) of the definition of “intra-group transaction” for subparagraph (i) of the following subparagraph:

“(i) in terms of which any asset is disposed of by one company (hereinafter referred to as the ‘transferor company’) to another company that is a resident (hereinafter referred to as the ‘transferee company’) and both companies form part of the same group of companies as at the end of the day of that transaction; and”;

- (b) by the substitution in subsection (1) in paragraph (b)(iii) of the definition of “intra-group transaction” for items (bb) and (cc) of the following items:

“(bb) that transferor company is a resident or is a controlled foreign company in relation to one or more residents that form part of that group of companies; and

(cc) that transferee company is a resident or is a controlled foreign company in relation to one or more residents that form part of that group of companies.”;

- (c) by the substitution in subsection (2)(a) for paragraph (B) of the proviso of the following paragraph:

“(B) that transferee company is a resident; and”;

- (d) by the substitution in subsection (3A)(a) for the words preceding subparagraph (i) of the following words:

“This subsection applies where an asset is acquired by a transferee company from a transferor company in terms of an intra-group transaction [contemplated in paragraph (a) of the definition of ‘intragroup transaction’] and—”; and

- (e) by the substitution in subsection (4)(bA) for subparagraph (ii) of the following subparagraph:

“(ii) [at the time of so ceasing, that transferee company] has not disposed of that equity share at the time of so ceasing.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

Amendment of section 46 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 54 of Act 45 of 2003, section 36 of Act 32 of 2004, section 42 of Act 31 of 2005, section 36 of Act 8 of 2007, section 57 of Act 35 of 2007, section 29 of Act 3 of 2008, section 52 of Act 60 of 2008, section 65 of Act 7 of 2010, section 71 of Act 24 of 2011 and section 78 of Act 22 of 2012

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95. (1) Section 46 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1)(a) for subparagraph (i) of the following subparagraph:

“(i) in terms of which **[all]** the equity shares **[of]** in a company (hereinafter referred to as the ‘unbundled company’)₂ which is a resident that are held by a company (hereinafter referred to as the ‘unbundling company’)₂ which is a resident, are all distributed by that unbundling company to any shareholder of that unbundling company in accordance with the effective interest of **[that shareholder]** the shareholders in the shares of that unbundling company, **[but only to the extent to which those equity shares are so distributed]** and if—

(aa) **[where that unbundling company is a listed company and]** all of the equity shares of the unbundled company are listed shares or will become listed shares within 12 months after that distribution~~], to the shareholders of that unbundling company~~];

(bb) **[where that unbundling company is an unlisted company, to any]** that shareholder to which that distribution is made [of] by that unbundling company **[that]** forms part of the same group of companies as that unbundling company; or

(cc) that distribution is made pursuant to an order in terms of the Competition Act, 1998 (Act No. 89 of 1998), made by the Competition Tribunal or the Competition Appeal Court~~], to the shareholders of that unbundling company~~]; and”

(b) by the substitution in subsection (1)(b) for subparagraph (i) of the following subparagraph:

“(i) in terms of which all the equity shares **[of]** in an unbundled company which is a foreign company that are held by an unbundling company which is a resident or a controlled foreign company are all distributed by that unbundling company to any shareholder of that unbundling company in accordance with the effective interest of that shareholder in the shares of that unbundling company~~], but only to the extent to which those equity shares are so distributed to any shareholder of that unbundling company which~~—

(aa) if that shareholder is a resident~~], and that shareholder forms part of the same group of companies (as defined in section 1);~~ or

(bb) if that shareholder is not a resident~~], and that shareholder is a controlled foreign company in relation to any resident that forms part of the same group of companies (as defined in section 1),~~

as that unbundling company;”;

(c) by the addition in subsection (1)(b)(ii) at the end of item (aa) of the word “and”;

(d) by the substitution in subsection (1)(b)(ii) at the end of item (bb) for a semi-colon of a full stop;

(e) by the deletion in subsection (1)(b)(ii) of item (cc);

(f) by the deletion in subsection (1)(b) of subparagraph (iii);

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- (g) by the addition after subsection (5) of the following subsection:
“(5A) Where shares are distributed by an unbundling company to a shareholder in terms of an unbundling transaction, paragraph 76B of the Eighth Schedule does not apply to that distribution.”;
- (h) by the substitution in subsection (7) for paragraph (a) of the following paragraph: 5
“(7) (a) [This] In the case of an unbundling transaction contemplated in subsection (1)(a)(i), this section does not apply if[,] immediately after any distribution of shares in terms of an unbundling transaction[,] 20 per cent or more of the shares in the unbundled company are held by a disqualified person either alone or together with any connected person (who is a disqualified person) in relation to that disqualified person.”;
and 10
- (i) by the substitution in subsection (7)(b) for subparagraph (i) of the following subparagraph: 15
“(i) a person that is not a resident[, **unless that person is a controlled foreign company and more than 50 per cent of the equity shares in that controlled foreign company are directly or indirectly held by a resident (whether alone or together with any other resident that forms part of the same group of companies as that resident)**];” 20
- (2) Paragraphs (a), (b), (c), (d), (e), (f), (h) and (i) of subsection (1) are deemed to have come into operation on 4 July 2013 and apply in respect of unbundling transactions entered into on or after that date.
- (3) Paragraph (g) of subsection (1) is deemed to have come into operation on 1 April 25
2012 and applies in respect of distributions made on or after that date.

Amendment of section 47 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 55 of Act 45 of 2003, section 37 of Act 32 of 2004, section 43 of Act 31 of 2005, section 31 of Act 20 of 2006, section 37 of Act 8 of 2007, section 58 of Act 35 of 2007, section 31 of Act 3 of 2008, section 53 of Act 60 of 2008, section 50 of Act 17 of 2009, section 66 of Act 7 of 2010, section 72 of Act 24 of 2011 and section 79 of Act 22 of 2012 30

- 96.** (1) Section 47 of the Income Tax Act, 1962, is hereby amended—
(a) by the addition in subsection (6) to paragraph (b) of the word “or”; and
(b) by the deletion in subsection (6) of paragraph (bA). 35
- (2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

Amendment of section 49B of Act 58 of 1962, as inserted by section 80 of Act 22 of 2012

- 97.** (1) Section 49B of the Income Tax Act, 1962, is hereby amended— 40
(a) by the substitution for subsection (1) of the following subsection:
“(1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on royalties, calculated at the rate of **[15] 12** per cent of the amount of any royalty that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(c), (d), (e) or (f).”;
(b) by the substitution for subsection (1) of the following subsection: 45
“(1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on royalties, calculated at the rate of **[12] 15** per cent of the amount of any royalty that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(c), (d), (e) or (f).” 50
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(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of royalties that are paid or that become due and payable on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2015 and applies in respect of royalties that are paid or that become due and payable on or after that date. 5

Insertion of Part IVB in Chapter II of Act 58 of 1962

98. (1) The following Part is hereby inserted in Chapter II of the Income Tax Act, 1962, after Part IVA:

“Part IVB 10

Withholding tax on interest

Definitions

50A. (1) In this Part—

‘bank’ means any—

- (a) bank as defined in section 1 of the Banks Act; 15
- (b) mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993); or
- (c) co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007); 20

‘Development Bank of Southern Africa’ means the Development Bank of Southern Africa Limited, incorporated in terms of the Development Bank of Southern Africa Act, 1997 (Act No. 13 of 1997); 20

‘foreign person’ means any person that is not a resident;

‘Industrial Development Corporation’ means the Industrial Development Corporation of South Africa Limited, registered in terms of the Industrial Development Corporation Act, 1940 (Act No. 22 of 1940); 25

‘listed debt’ means any debt that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule.

Levy of withholding tax on interest

50B. (1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on interest, calculated at the rate of 15 per cent of the amount of any interest that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received or accrued from a source within the Republic in terms of section 9(2)(b). 30 35

(2) For the purposes of this Part, interest is deemed to be paid on the earlier of the date on which the interest is paid or becomes due and payable.

(3) The withholding tax on interest is a final tax.

(4) Where a person making payment of any amount of interest to or for the benefit of a foreign person has withheld an amount as contemplated in section 50E(1), that person must, for the purposes of this Part, be deemed to have paid the amount so withheld to that foreign person. 40

Liability for tax

50C. (1) A foreign person to which an amount of interest is paid is liable for the withholding tax on interest to the extent that the interest is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(b). 45

(2) Where any amount of withholding tax on interest is—

- (a) withheld as contemplated in section 50E(1); and
- (b) paid as contemplated in section 50F(2), 50

that amount of withholding tax on interest must be regarded as an amount that is paid in respect of that foreign person's liability under subsection (1).

Exemption from withholding tax on interest

- 50D.** (1) Subject to subsection (2), there must be exempt from the withholding tax on interest any amount of interest—
- (a) if that amount of interest is paid to any foreign person—
 - (i) by—
 - (aa) the government of the Republic in the national, provincial or local sphere;
 - (bb) any bank, the South African Reserve Bank, the Development Bank of Southern Africa or the Industrial Development Corporation; or
 - (cc) a headquarter company in respect of the granting of financial assistance as defined in section 31(1) to which section 31 does not apply as a result of the exclusions contained in section 31(5)(a); or
 - (ii) in respect of any listed debt; or
 - (b) payable as contemplated in section 21(6) of the Financial Markets Act to any foreign person that is a client as defined in section 1 of that Act.
- (2) Interest paid to a foreign person in respect of any amount advanced by the foreign person to a bank is not exempt from the withholding tax on interest if the amount is advanced in the course of any arrangement, transaction, operation or scheme to which the foreign person and any other person are parties and in terms of which the bank advances any amount to that other person on the strength of the amount advanced by the foreign person to the bank.
- (3) A foreign person is exempt from the withholding tax on interest if—
- (a) that foreign person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the interest is paid; or
 - (b) the debt claim in respect of which that interest is paid is effectively connected with a permanent establishment of that foreign person in the Republic if that foreign person is registered as a taxpayer in terms of Chapter 3 of the Tax Administration Act.

Withholding of withholding tax on interest by payers of interest

- 50E.** (1) Subject to subsections (2) and (3), any person who makes payment of any amount of interest to or for the benefit of a foreign person must withhold an amount of withholding tax on interest from that payment.
- (2) A person must not withhold any amount from any payment contemplated in subsection (1)—
- (a) to the extent that the interest is exempt from the withholding tax on interest in terms of section 50D(1); or
 - (b) if the foreign person to or for the benefit of which that payment is to be made has—
 - (i) by a date determined by the person making the payment; or
 - (ii) if the person making the payment did not determine a date as contemplated in subparagraph (i), by the date of the payment,

submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 50D(3), exempt from the withholding tax on interest in respect of that payment.

- (3) The rate referred to in subsection (1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has—
- (a) by a date determined by the person making the payment; or
 - (b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment, submitted to the person making the payment—
 - (i) a declaration in such form as may be prescribed by the Commissioner that the interest is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation; and
 - (ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing should the circumstances affecting the application of the agreement referred to in subparagraph (i) change.

Payment and recovery of tax

50F. (1) If, in terms of section 50C, a foreign person is liable for any amount of withholding tax on interest in respect of any amount of interest that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax by the last day of the month following the month during which the interest is paid, unless the tax has been paid by any other person.

(2) Any person that withholds any withholding tax on interest in terms of section 50E must submit a return and pay the tax to the Commissioner by the last day of the month following the month during which the interest is paid.

Refund of withholding tax on interest

50G. Notwithstanding Chapter 13 of the Tax Administration Act, if—

- (a) an amount is withheld from a payment of an amount of interest as contemplated in section 50E(1);
 - (b) a declaration contemplated in section 50E(2)(b) or (3) in respect of that interest is not submitted to the person paying that interest by the date of the payment of that interest; and
 - (c) a declaration contemplated in section 50E(2)(b) or (3) is submitted to the Commissioner within three years after the payment of the interest in respect of which the declaration is made,
- so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable by the Commissioner to the person to which the interest was paid.

Currency of payments made to Commissioner

50H. If an amount withheld by a person in terms of section 50E(1) is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner in terms of section 50F(2), be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.”

(2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of interest that is paid or that becomes due and payable on or after that date.

Insertion of Part IVC in Chapter II of Act 58 of 1962

99. (1) The following Part is hereby inserted in Chapter II of the Income Tax Act, 1962, after Part IVB:

PART IVC**Withholding tax on service fees**

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Definitions

51A. In this Part—

‘foreign person’ means any person that is not a resident;

‘service fees’ means any amount that is received or accrued in respect of technical services, managerial services and consultancy services but does not include services incidental to the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the rendering of or the undertaking to render any assistance or service in connection with the application or utilisation of such knowledge or information.

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Levy of withholding tax on service fees

51B. (1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on service fees, calculated at the rate of 15 per cent of the amount of any service fee that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received by or accrued to that foreign person from a source within the Republic.

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(2) For the purposes of this Part, a service fee is deemed to be paid on the earlier of the date on which the service fee is paid or becomes due and payable.

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(3) The withholding tax on service fees is a final tax.

(4) Where a person making payment of a service fee to or for the benefit of a foreign person has withheld an amount of withholding tax on service fees, that person must, for the purposes of this Part, be deemed to have paid the amount so withheld to that foreign person.

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Liability for tax

51C. (1) A foreign person to which a service fee is paid is liable for the withholding tax on service fees to the extent that the service fee is regarded as having been received by or accrued to that foreign person from a source within the Republic.

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(2) Any amount of withholding tax on service fees that is—

(a) withheld as contemplated in section 51E(1); and

(b) paid as contemplated in section 51F(1),

is a payment made on behalf of the foreign person to which the service fee is paid in respect of that foreign person’s liability under subsection (1).

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Exemption from withholding tax on service fees

51D. (1) A foreign person is exempt from the withholding tax on service fees if—

(a) that foreign person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the service fee is paid;

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- (b) the service in respect of which that service fee is paid is effectively connected with a permanent establishment of that foreign person in the Republic if that foreign person is registered as a taxpayer in terms of Chapter 3 of the Tax Administration Act; or
- (c) that service fee constitutes remuneration paid by an employer to an employee. 5

(2) For the purposes of this section—

‘**employee**’ means an employee as defined in paragraph 1 of the Fourth Schedule;

‘**employer**’ means an employer as defined in paragraph 1 of the Fourth Schedule; 10

‘**remuneration**’ means remuneration as defined in paragraph 1 of the Fourth Schedule.

Withholding of withholding tax on service fees by payers of service fees

51E. (1) Subject to subsections (2) and (3), any person making payment of any service fee to or for the benefit of a foreign person must withhold an amount as contemplated in section 51B from that payment. 15

(2) A person must not withhold any amount from any payment contemplated in subsection (1) if the foreign person to or for the benefit of which that payment is to be made has— 20

(a) by a date determined by the person making the payment; or

(b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment, submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 51D, exempt from the withholding tax on service fees in respect of that payment. 25

(3) The rate referred to in section 51B(1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has— 30

(a) by a date determined by the person making the payment; or

(b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment, submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the service fee is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation. 35

Payment and recovery of tax

51F. (1) If, in terms of section 51C, a foreign person is liable for any amount of withholding tax on service fees in respect of any service fee that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax by the last day of the month following the month during which the service fee is paid, unless the tax has been paid by any other person. 40

(2) Any person that withholds any withholding tax on service fees in terms of section 51E must submit a return and pay the tax to the Commissioner by the last day of the month following the month during which the service fee is paid. 45

Refund of withholding tax on service fees

51G. Notwithstanding Chapter 13 of the Tax Administration Act, if— 50

(a) an amount is withheld from a payment of a service fee as contemplated in section 51E(1);

- (b) a declaration contemplated in section 51E(2) or (3) in respect of that service fee is not submitted to the person paying that service fee by the date of the payment of that service fee; and
- (c) a declaration contemplated in section 51E(2) or (3) is submitted to the Commissioner within three years after the payment of the service fee in respect of which the declaration is made,
- so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable by the Commissioner to the person to which the service fee was paid.

Currency of payments made to Commissioner

51H. If an amount withheld by a person in terms of section 51E is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner in terms of section 51F(2), be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.”

(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of service fees that are paid or become due and payable on or after that date.

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001, section 25 of Act 30 of 2002, section 36 of Act 74 of 2002, sections 58 and 215 of Act 45 of 2003, section 40 of Act 32 of 2004, section 47 of Act 31 of 2005, section 32 of Act 20 of 2006, section 39 of Act 8 of 2007, section 59 of Act 35 of 2007, section 32 of Act 3 of 2008, section 55 of Act 60 of 2008, sections 51 and 107 of Act 17 of 2009, sections 68 and 147 of Act 7 of 2010 and section 81 of Act 22 of 2012

100. (1) Section 64B of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (12).

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000, section 37 of Act 74 of 2002, section 38 of Act 12 of 2003, section 59 of Act 45 of 2003, section 41 of Act 32 of 2004, section 48 of Act 31 of 2005, section 60 of Act 35 of 2007, section 33 of Act 3 of 2008, section 52 of Act 17 of 2009, section 69 of Act 7 of 2010, section 74 of Act 24 of 2011 and section 82 of Act 22 of 2012

101. Section 64C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (b) of the definition of “share incentive scheme” of the following paragraph:

“(b) held by a trustee for the benefit of such directors and employees under an employee share scheme as defined in section 95(1)(c) of the Companies Act, 2008 (Act No. 71 of 2008)]; or”.

Amendment of section 64D of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 70 of Act 7 of 2010 and section 75 of Act 24 of 2011

102. (1) Section 64D of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in paragraph (b) of the definition of “dividend” for the words preceding subparagraph (i) of the following words: 5
 “paid by a foreign company [that is not a resident]—”; and
- (b) by the substitution in the definition of “regulated intermediary” for paragraphs (a), (b) and (c) of the following paragraphs:
 “(a) central securities depository participant contemplated in section [34] 32 of the [Securities Services Act, 2004 (Act No. 36 of 2004)] Financial Markets Act; 10
 (b) authorised user as defined in section 1 of the [Securities Services Act, 2004] Financial Markets Act;
 (c) approved nominee contemplated in section [36(2)] 76(3) of the [Securities Services Act, 2004] Financial Markets Act;” 15

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 3 June 2013.

Amendment of section 64EB of Act 58 of 1962, as inserted by section 85 of Act 22 of 2012

103. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 64EB of the following section: 20

“Deemed [dividends] beneficial owners of dividends

64EB. (1) For the purposes of this Part, where—

- (a) a person that is [a **beneficial owner**] contemplated in section 64F(1) acquires the right to a dividend by way of cession; and 25
 (b) that dividend is either announced or declared before that acquisition, [that dividend is deemed to be a dividend paid for the benefit of] the person ceding that right is deemed to be the beneficial owner of that dividend: Provided that this subsection does not apply to any cession in respect of a share if [the right to that dividend is ceded together with all of the rights attaching to that share] the person to whom those rights are ceded holds all the rights attaching to the share after the cession. 30

(2) For the purposes of this Part, where—

- (a) a person that is [a **beneficial owner contemplated in section 64F**]— 35
 (i) a company which is a resident;
 (ii) the Government, a provincial administration or a municipality;
 (iii) a public benefit organisation approved by the Commissioner in terms of section 30(3);
 (iv) a trust contemplated in section 37A;
 (v) an institution, board or body contemplated in section 10(1)(cA); 40
 (vi) a fund contemplated in section 10(1)(d)(i) or (ii);
 (vii) a person contemplated in section 10(1)(t);
 (viii) a shareholder in a registered micro business, as defined in the Sixth Schedule, paying that dividend, to the extent that the aggregate amount of dividends paid by that registered micro business to its shareholders during the year of assessment in which that dividend is paid does not exceed the amount of R200 000; 45
 (ix) a person that is not a resident and the dividend is a dividend contemplated in paragraph (b) of the definition of ‘dividend’ in section 64D; 50

- (x) a portfolio of a collective investment scheme in securities;
- (xi) any person to the extent that the dividend constitutes income of that person;
- (xii) any person to the extent that the dividend was subject to the secondary tax on companies; or
- (xiii) any fidelity or indemnity fund contemplated in section 10(1)(d)(iii),
- borrows a share in a listed company from another person; and
- (b) a dividend is either announced or declared before that share is borrowed,
- [so much of any amount paid by the person in respect of that borrowed share as does not exceed the amount of the dividend is deemed to be a dividend paid for the benefit of that other person] that dividend is deemed to have been paid by that person to that other person and that other person is deemed to have received a dividend equal to the amount paid by the borrower to the lender.**
- (3) For the purposes of this Part, where—
- (a) a person that is **[a beneficial owner]** contemplated in section 64F(1) acquires a share in a listed company (or any right in respect of that share) from another person after a dividend is announced or declared in respect of that share; and
- (b) that acquisition is part of **[an arrangement in terms of which that share or a share of the same kind or of the same or equivalent quality must be disposed of to]** a resale agreement between the person acquiring that share and that other person or any other company forming part of the same group of companies as that other person, **[that dividend is deemed to be a dividend paid to that other person]** that other person or other company is deemed to be the beneficial owner of that dividend.
- (4) For the purposes of this section, ‘**resale agreement**’ means the acquisition of a share by any person subject to an agreement in terms of which that person undertakes to dispose of that share or any other share of the same kind and of the same or equivalent quality at a future date.”
- (2) Subsection (1) is deemed to have come into operation on 4 July 2013 and applies in respect of amounts paid on or after that date.

Amendment of section 64F of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by sections 72 and 148 of Act 7 of 2010, section 78 of Act 24 of 2011 and section 86 of Act 22 of 2012

- 104.** (1) Section 64F of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (h) of the following paragraph:
- “(h) a **[shareholder]** holder of shares in a registered micro business, as defined in the Sixth Schedule, paying that dividend, to the extent that the aggregate amount of dividends paid by that registered micro business to **[its shareholders]** all holders of shares in that registered micro business during the year of assessment in which that dividend is paid does not exceed the amount of R200 000;”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) Any dividend paid by a REIT or a controlled **[property]** company, as defined in section 25BB, and received or accrued before 1 January 2014 is exempt from the dividends tax to the extent that the dividend does not consist of a dividend *in specie*.”
- (2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 64FA of Act 58 of 1962, as inserted by section 79 of Act 24 of 2011 and amended by section 87 of Act 22 of 2012

105. (1) Section 64FA of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) the dividend constitutes a disposal as contemplated in paragraph 67B[(1)](2) of the Eighth Schedule.” 5

(2) Subsection (1) is deemed to have come into operation on 1 January 2013.

Amendment of section 64G of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by sections 73 and 148 of Act 7 of 2010, section 80 of Act 24 of 2011 and section 88 of Act 22 of 2012 10

106. (1) Section 64G of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsections (2) and (3), a company that declares and pays a dividend must[,] withhold an amount of dividends tax from that payment calculated as contemplated in section 64E except to the extent that— 15

(a) the dividend [**does not consist**] consists of a distribution of an asset *in specie*; [**and**] or

(b) the dividend is not subject to the dividends tax by virtue of any STC credit contemplated in section 64J having been applied],

withhold an amount of dividends tax from that payment calculated as contemplated in section 64E.”. 20

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

Amendment of section 64H of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by sections 74 and 148 of Act 7 of 2010, section 81 of Act 24 of 2011 and section 89 of Act 22 of 2012 25

107. (1) Section 64H of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsections (2) and (3), a regulated intermediary that pays a dividend that was declared by any other person must[,] withhold an amount of dividends tax from that payment calculated as contemplated in section 64E except to the extent that— 30

(a) the dividend [**does not consist**] consists of a distribution of an asset *in specie*; [**and**] or

(b) the dividend is not subject to the dividends tax by virtue of any STC credit contemplated in section 64J having been applied], 35

withhold an amount of dividends tax from that payment calculated as contemplated in section 64E.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

Amendment of section 64J of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 83 of Act 24 of 2011 and section 90 of Act 22 of 2012 40

108. (1) Section 64J of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) the dividends accrued to that company on or after the effective date— 45

(i) [**to the extent that**] in respect of which the company received a notification from the person paying the dividend of the amount by which the dividend reduces the STC credit of the company that paid and declared that dividend; and

(ii) if the notification contemplated in subparagraph (i) was received no later than the date that the dividend is paid, reduced by the dividends declared and paid by the company on or after the effective date.”; and 50

(b) by the substitution for subsection (3) of the following subsection:

“(3) For purposes of subsections (1)(b) and (2)(b), the amount by which the STC credit of a company is reduced is deemed to be equal to 55

an amount which bears to the dividend paid by that company to the person or company contemplated in those subsections the same ratio as the amount by which the STC credit of that company is reduced as a result of the payment of that dividend to all **[shareholders]** holders of shares in that company bears to the total dividend paid to all **[shareholders]** holders of shares.” 5

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2012.

Amendment of paragraph 11 of First Schedule to Act 58 of 1962, as substituted by section 32 of Act 36 of 1996 and amended by section 41 of Act 53 of 1999 and section 78 of Act 7 of 2010 10

109. Paragraph 11 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (c) for item (iii) of the following item:

“(iii) where the farmer is a company, has on or after 21 June 1993 been distributed *in specie* to a **[shareholder of]** holder of a share in such company; or” 15

Amendment of paragraph 12 of First Schedule to Act 58 of 1962, as amended by section 27 of Act 55 of 1966, section 42 of Act 89 of 1969, section 24 of Act 113 of 1977, section 24 of Act 104 of 1980, section 27 of Act 96 of 1981, section 28 of Act 91 of 1982, section 39 of Act 90 of 1988, section 45 of Act 113 of 1993, section 80 of Act 45 of 2003, section 2 of Act 8 of 2007, section 1 of Act 3 of 2008 and section 57 of Act 60 of 2008 20

110. Paragraph 12 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (4) of the following subparagraph:

“(4) (a) For the purposes of this paragraph ‘employees’, in relation to any farmer, means persons employed by that farmer in connection with his or her farming operations, but does not include his or her relatives or, where the farmer is a company, the **[shareholders]** holders of shares (or the relatives of **[shareholders]** holders of shares) in that company or in any company which is associated with it by virtue of **[shareholding]** the holding of shares. 25

(b) For the purposes of item (a) [**‘shareholders’**] **‘holders of shares’** in relation to any company does not include persons who hold all their shares in that company solely because they are employed by that company and who will, in terms of the articles of association of that company, not be entitled to hold those shares after they cease to be so employed.” 30

Amendment of paragraph 2C of Second Schedule to Act 58 of 1962, as inserted by section 49 of Act 8 of 2007 and amended by section 39 of Act 3 of 2008, section 61 of Act 60 of 2008 and section 90 of Act 24 of 2011 35

111. The Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 2C of the following paragraph:

“2C. Any lump sum benefit, or part thereof, received by or accrued to a person subsequent to the person’s retirement or death, or withdrawal or resignation from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or the winding up of any such fund, and in consequence of or following upon an event that is prescribed by the Minister by notice in the *Gazette* and contemplated by the rules of any such fund or the approval of a scheme in terms of section 15B of the Pension Funds Act, 1956 (Act No. 24 of 1956),] or paragraph 5.3(1)(b) of the Schedule which amends regulation 30 of the Regulations under the **[Long-Term]** Long-term Insurance Act, 1998 (Act No. 52 of 1998),] shall not constitute gross income of that person.” 40 45

Amendment of paragraph 5 of Second Schedule to Act 58 of 1962, as substituted by section 61 of Act 17 of 2009 and amended by section 98 of Act 22 of 2012

112. (1) Paragraph 5 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (a) of the following item:

“(a) the person’s own contributions that did not rank for a deduction against the person’s income in terms of section 11(k) [or (n)] to any pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund of which he or she is or previously was a member;”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of amounts received or accrued on or after that date.

Amendment of paragraph 6 of Second Schedule to Act 58 of 1962, as substituted by section 62 of Act 17 of 2009 and amended by section 84 of Act 7 of 2010, section 92 of Act 24 of 2011 and section 99 of Act 22 of 2012

113. (1) Paragraph 6 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for item (a) of the following item:

“(a) in the case of[—

(i) a lump sum benefit contemplated in paragraph 2(1)(b)(iA) and (iB), so much of the benefit as is paid or transferred for the benefit of the person from a—

[(aa)] (i) pension fund, pension preservation fund, provident fund or provident preservation fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or

[(bb) **pension preservation fund into any pension fund, pension preservation fund or retirement annuity fund;**

(cc) **provident fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;**

(dd) **provident preservation fund into any pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and**

[(ee)](ii) retirement annuity fund into any retirement annuity fund; and

[(ii) a lump sum benefit contemplated in paragraph 2(1)(b)(iB), so much of the benefit as is paid or transferred for the benefit of the person from a—

(aa) **pension fund into any pension fund, pension preservation fund or retirement annuity fund;**

(bb) **pension preservation fund into any pension fund, pension preservation fund or retirement annuity fund;**

(cc) **provident fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;**

(dd) **provident preservation fund into any pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and**

(ee) **retirement annuity fund into any retirement annuity fund; and]”;**

(b) by the substitution in subparagraph (1)(b) for subitem (i) of the following subitem:

“(i) the person’s own contributions that did not rank for a deduction against the person’s income in terms of section 11(k) [or (n)] to any pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds of which he or she is or previously was a member;”;

(c) by the substitution for subparagraph (3) of the following subparagraph:

“(3) For the purposes of this paragraph, the surrender value of any policy of insurance ceded or otherwise made over to the [taxpayer] person by any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund and ceded or otherwise made over by the person to any other such fund, or any amount paid by the person into the latter fund *in lieu* of or as representing such surrender value or a portion thereof, shall be deemed to be an amount paid into the latter fund by the former fund for the benefit of the person.”.

(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 March 2015 and apply in respect of amounts received or accrued on or after that date.

Amendment of paragraph 3 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 63 of Act 17 of 2009, section 86 of Act 7 of 2010 and section 97 of Act 24 of 2011

114. Paragraph 3 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (f) for item (ii) of the following item:

“(ii) at any time during its year of assessment, any holder of [its shareholders] shares in that micro business is a person other than a natural person (or the deceased or insolvent estate of a natural person);”;

(b) by the substitution in subparagraph (f)(iii) for the words preceding the proviso of the following words:

“at any time during its year of assessment, any holder of [its shareholders] shares in that micro business holds any shares or has any interest in the equity of any other company other than a share or interest described in paragraph 4”.

Amendment of paragraph 7 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 89 of Act 7 of 2010

115. (1) Paragraph 7 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (b) of the following subparagraph:

“(b) any amount exempt from normal tax in terms of section [10(1)(y), 10(1)(zA), 10(1)(zG), and 10(1)(zH)] 12P;”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 10 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 100 of Act 24 of 2011

116. Paragraph 10 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

“(2) The Commissioner must, subject to subparagraph (3), deregister a registered micro business with effect from the beginning of the month following the month during which the event as described in subparagraph (1)(a)[,] or (1)(b) [or (4)] occurred.”.

Amendment of paragraph 1 of Seventh Schedule to Act 58 of 1962, as amended by section 26 of Act 96 of 1985, section 33 of Act 65 of 1986, section 28 of Act 85 of 1987, section 24 of Act 70 of 1989, section 55 of Act 101 of 1990, section 49 of Act 129 of 1991, section 35 of Act 141 of 1992, section 52 of Act 113 of 1993, section 30 of Act 21 of 1994, section 40 of Act 36 of 1996, section 54 of Act 30 of 2000, section 59 of Act 59 of 2000, section 62 of Act 74 of 2002, section 47 of Act 3 of 2008, section 90 of Act 7 of 2010 and section 101 of Act 24 of 2011 5

117. (1) Paragraph 1 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after the definition of “consideration” of the following definitions: 10

“**defined benefit component**” means a component of a pension fund, provident fund or retirement annuity fund other than a defined contribution component of a fund;

“**defined contribution component**” means a component of a pension fund, provident fund or retirement annuity fund in respect of which the benefit on retirement to an employee as a member of the fund has a value equal to the value of— 15

(a) the contributions paid by the member and by the employer in terms of the rules of the fund that determine the rates of both their contributions at a fixed rate; 20

(b) less such expenses as the board of that fund determines should be deducted from the contributions paid;

(c) plus any amount credited to the member’s individual account upon— 25

(i) the commencement of the member’s membership of the fund;

(ii) the conversion of the component of the fund to which the member belongs from a defined benefit component to a defined contribution component; or

(iii) the amalgamation of that fund with any other fund, if any, other than amounts taken into account in terms of subparagraph (d); 30

(d) plus any other amounts lawfully permitted, credited to or debited from the member’s individual account, if any,

as increased or decreased by fund return: Provided that the board may elect to smooth the fund return;” 35

(b) by the substitution for the definition of “employee” of the following definition:

“**employee**”, in relation to any employer, means a person who is an employee in relation to such employer for the purposes of the Fourth 40

Schedule, excluding any person who prior to 1 March 1992 by reason of superannuation, ill-health or other infirmity retired from the employ of such employer, but including, in relation to any company, any director of such company and any person who was previously employed by, or was a director of, such company if such person is or was the sole 45

[shareholder] holder of shares in or one of the controlling [shareholders] holders of shares in such company and, for the purposes of paragraphs 2(h) and 13, including any person who has retired as aforesaid and who, after [his] the employee’s retirement, is released by [his] the employee’s employer from an obligation which arose before the employee’s retirement to reimburse the employer for an amount paid by 50

the employer on behalf of the employee or to pay any amount which became owing by the employee to the employer before the employee’s retirement;” and

(c) by the insertion after the definition of “official rate of interest” of the following definition: 55

“**retirement-funding income**” means—

(a) in relation to any employee or the holder of an office (including a member of a body of persons whether or not established by or in terms of any law) who in respect of his or her employment derives

any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule and who is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived, that part of the employee's said income as is taken into account in the determination of the contributions made by the employer for the benefit of the employee to such pension fund or provident fund in terms of the rules of the fund; or

- (b) in relation to a partner in a partnership (other than a partner contemplated in paragraph (a)) that part of the partner's income from the partnership in the form of the partner's share of profits as is taken into account in the determination of the contributions made by the partnership for the benefit of the partner to a pension fund or provident fund in terms of the rules of the fund: Provided that for the purposes of this definition a partner in a partnership must be deemed to be an employee of the partnership and a partnership must be deemed to be the employer of the partners in that partnership.”

(2) Paragraphs (a) and (c) of subsection (1) come into operation on 1 March 2015 and apply in respect of contributions made on or after that date.

Amendment of paragraph 2 of Seventh Schedule to Act 58 of 1962, as inserted by section 46 of Act 121 of 1984 and amended by section 27 of Act 96 of 1985, section 56 of Act 101 of 1990, section 49 of Act 28 of 1997, section 54 of Act 30 of 1998, section 50 of Act 32 of 2004, section 55 of Act 31 of 2005, section 64 of Act 17 of 2009, section 102 of Act 24 of 2011 and section 100 of Act 22 of 2012

118. (1) Paragraph 2 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (f) for the words preceding item (i) of the following words:

“a debt (other than a debt for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act[, 2008 (Act No. 71 of 2008),] or the payment of any securities transfer tax payable in respect of that share, or a debt in respect of which a subsidy is payable as contemplated in subparagraph (gA)) has been incurred by the employee, whether in favour of the employer or in favour of any other person by arrangement with the employer or any associated institution in relation to the employer, and either—”;

- (b) by the substitution for subparagraph (k) of the following subparagraph:

“(k) the employer has [during any period] made any payment to any insurer under an insurance policy directly or indirectly for the benefit of the employee or his or her spouse, child, dependant or nominee: Provided that this paragraph shall not apply in respect of an insurance policy that relates to an event arising solely out of and in the course of employment of the employee.”;

- (c) by the substitution for the full stop at the end of subparagraph (k) of the expression “; or”; and

- (d) by the addition after subparagraph (k) of the following subparagraph:

“(l) the employer has made any contribution for the benefit of any employee to any pension fund, provident fund or retirement annuity fund.”.

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2013 and applies in respect of payments made during years of assessment commencing on or after that date.

(3) Paragraphs (c) and (d) of subsection (1) come into operation on 1 March 2015 and apply in respect of contributions made on or after that date.

Amendment of paragraph 5 of Seventh Schedule to Act 58 of 1962, as amended by section 28 of Act 96 of 1985, section 57 of Act 101 of 1990, by section 31 of Act 21 of 1994, section 46 of Act 21 of 1995 and section 35 of Act 30 of 2002

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119. (1) Paragraph 5 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the addition after subparagraph (3) of the following subparagraph:

“(3A) No value shall be placed under this paragraph on any immovable property acquired by an employee as contemplated in paragraph 2(a): Provided that this subparagraph must not apply if—

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- (a) the remuneration proxy of the employee exceeds R250 000 in relation to the year of assessment during which the immovable property is so acquired;
- (b) the market value of the immovable property on the date of that acquisition exceeds R450 000; and

(c) the employee is a connected person in relation to the employer.”

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(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of acquisitions made on or after that date.

Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 30 of Act 96 of 1985, section 10 of Act 108 of 1986, Government Notice 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice R.764 of 29 March 1990, section 58 of Act 101 of 1990, section 50 of Act 129 of 1991, section 36 of Act 141 of 1992, section 32 of Act 21 of 1994, section 47 of Act 21 of 1995, section 50 of Act 28 of 1997, section 45 of Act 53 of 1999, section 56 of Act 31 of 2005, section 91 of Act 7 of 2010, section 103 of Act 24 of 2011 and section 101 of Act 22 of 2012

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120. Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)(b) for the words following subitem (ii) of the following words:

“the retail market value thereof at the time the employer first obtained the right of use of the vehicle or, where at such time such lease was a lease contemplated in paragraph (b) of the definition of ‘instalment credit agreement’ in section 1 of the [Value-added] Value-Added Tax Act[, 1991 (Act No. 89 of 1991)], the cash value thereof as contemplated in the definition of ‘cash value’ in the said section; or”.

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Amendment of paragraph 9 of Seventh Schedule to Act 58 of 1962, as amended by section 31 of Act 96 of 1985, section 34 of Act 65 of 1986, section 29 of Act 85 of 1987, section 59 of Act 101 of 1990, section 53 of Act 113 of 1993, section 33 of Act 21 of 1994, section 51 of Act 28 of 1997, section 55 of Act 30 of 1998, section 55 of Act 30 of 2000, section 57 of Act 31 of 2005, section 29 of Act 9 of 2006, section 2 of Act 8 of 2007, section 68 of Act 35 of 2007, sections 1 and 48 of Act 3 of 2008, section 65 of Act 17 of 2009, section 104 of Act 24 of 2011 and section 7 of Act 13 of 2012

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121. (1) Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (b) of the definition of “remuneration” of the following item:

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“(b) the amount of any remuneration derived by any employee who is not the controlling [shareholder] holder of shares or one of the controlling [shareholders] holders of shares of the employer company, from an associated institution in relation to the employer if it is shown to the satisfaction of the Commissioner that the

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employee's employment with the employer is not and was not in any way connected with the employee's employment with such associated institution (any decision of the Commissioner under this paragraph being subject to objection and appeal)]; **and**];";

(b) by the deletion in subparagraph (1) of the definition of "remuneration factor"; 5
and

(c) by the substitution in subparagraph (3)(a) for item (i) of the following item:
“(i) ‘A’ represents the remuneration **[factor]** proxy as determined in relation to the year of assessment;”.

(2) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation 10
on 1 March 2013 and apply in respect of years of assessment commencing on or after that date.

Amendment of paragraph 12A of the Seventh Schedule to Act 58 of 1962, as inserted by section 56 of Act 30 of 1998 and amended by section 59 of Act 31 of 2005, sections 2 and 59 of Act 8 of 2007, section 1 of Act 3 of 2008, section 66 of Act 17 of 2009, section 105 of Act 24 of 2011 and section 271 of Act 28 of 2011, read with item 103 of Schedule 1 to that Act 15

122. Paragraph 12A of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2(i) is the amount of any contribution or payment made by the employer in respect of a year of assessment, directly or indirectly, to any medical scheme registered under the Medical Schemes Act[, 1998 (Act No. 131 of 1998),] or to any fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered, for the benefit of any employee or dependants, as defined in that Act, of that employee.”. 20 25

Amendment of paragraph 12B of Seventh Schedule to Act 58 of 1962, as inserted by section 60 of Act 31 of 2005 and amended by section 31 of Act 9 of 2006 and section 70 of Act 35 of 2007

123. Paragraph 12B of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended— 30

(a) by the substitution in subparagraph (3)(a) for the words preceding subitem (i) of the following words:

“resulting from the provision of medical treatment listed in any category of the prescribed minimum benefits determined by the Minister of Health in terms of section 67(1)(g) of the Medical Schemes Act[, 1998 (Act No. 131 of 1998),] which is provided to the employee or his or her spouse or children in terms of a scheme or programme of that employer—”; and 35

(b) by the substitution in subparagraph (3)(a)(ii) for subsubitem (aa) of the following subsubitem: 40

“(aa) are not beneficiaries of a medical scheme registered under the Medical Schemes Act[, 1998 (Act No. 131 of 1998)]; or”.

Amendment of paragraph 12C of Seventh Schedule to Act 58 of 1962, as inserted by section 106 of Act 24 of 2011

124. (1) Paragraph 12C of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (2). 45

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of premiums paid on or after that date.

Insertion of paragraph 12D in Seventh Schedule to Act 58 of 1962

125. (1) The Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 12C of the following paragraph:

“VALUATION OF CONTRIBUTIONS MADE BY EMPLOYERS TO CERTAIN
RETIREMENT FUNDS

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12D. (1) Where a fund consists solely of defined contribution components the cash equivalent of the value of the benefit contemplated in paragraph 2(l) is the value of the amount contributed by the employer for the benefit of an employee that is a member of that fund.

(2) In any other case, the cash equivalent of the value of the benefit contemplated in paragraph 2(l) is the aggregate of the value of—

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(a) the amount contributed by the employer in respect of the defined contribution component of the fund for the benefit of an employee that is a member of that fund, as determined by the fund in the manner prescribed by the Minister in terms of subparagraph (3); and

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(b) the amount contributed by the employer in respect of the defined benefit component of the fund for the benefit of an employee that is a member of that fund determined in accordance with the following formula:

$$X = Y \times ((A \times AF) + (L \times LF)) - V,$$

in which formula—

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- (i) ‘X’ represents the amount to be determined;
‘Y’ represents the retirement-funding income of the employee;
‘A’ represents the annuity accrual rate of the employee;
‘AF’ represents the annuity fund factor;
‘L’ represents the lump sum accrual rate of the employee; and
‘LF’ represents the lump sum fund factor,
determined by the fund in the manner prescribed by the Minister in terms of subparagraph (3); and

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- (ii) ‘V’ represents the value of the benefit determined in terms of item (a).

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(3) The Minister may prescribe by regulation the manner in which a fund must determine—

(a) the defined contribution component of the fund contemplated in subparagraph (2)(a);

(b) the defined benefit component of a fund contemplated in subparagraph (2)(b);

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(c) the annuity accrual rate of the fund contemplated in symbol ‘A’ of the formula in subparagraph (2);

(d) the annuity fund factor contemplated in symbol ‘AF’ of the formula in subparagraph (2);

(e) the lump sum accrual rate contemplated in symbol ‘L’ of the formula in subparagraph (2); and

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(f) the lump sum fund factor contemplated in symbol ‘LF’ of the formula in subparagraph (2).

(4) For the purposes of this paragraph any contribution or payment made by an employer to a fund in respect of risk benefits provided by the fund directly or indirectly for the benefit of a member of the fund is deemed to be a contribution made in respect of a defined contribution component of that fund.

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(5) No value must be placed in terms of this paragraph on the taxable benefit derived from any contribution made by an employer to a fund—

(a) for the benefit of a member of that fund that has retired from that fund; or

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(b) in respect of the dependants or nominees of a deceased member of that fund.”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of contributions made on or after that date.

Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as amended by section 71 of Act 60 of 2001, section 67 of Act 74 of 2002, section 92 of Act 45 of 2003, section 55 of Act 32 of 2004, section 66 of Act 31 of 2005, section 44 of Act 20 of 2006, section 74 of Act 60 of 2008 and section 106 of Act 22 of 2012

126. (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (e) of the following item:
“(e) the distribution of an asset by a company to a **[shareholder]** holder of shares;”;
- (b) by the substitution in subparagraph (2)(b) for subitems (i) and (ii) of the following subitems:
“(i) the issue or cancellation of a share **[or member’s interest]** in the company; or
(ii) the granting of an option to acquire a share **[or member’s interest]** in or certificate acknowledging or creating a debt owed by that company;”;
- (c) by the substitution in subparagraph (2) for item (b) of the following item:
“(b) by a company in respect of—
(i) the issue **[or]**₂ cancellation or extinction of a share in the company; or
(ii) the granting of an option to acquire a share in or certificate acknowledging or creating a debt owed by that company, other than a share, option or certificate issued to any person by a company that is a resident in exchange, directly or indirectly, for shares in a foreign company;”;
- (d) by the substitution in subparagraph (2) at the end of item (k) for the full stop of a semi-colon; and
- (e) by the insertion in subparagraph (2) after item (k) of the following item:
“(l) by a person of shares held in a company where that company—
(i) subdivides or consolidates those shares;
(ii) converts shares of par value to no par value or of no par value to par value; or
(iii) converts shares in terms of section 40A or 40B, solely in substitution of the shares held by that person, and—
(aa) the proportionate participation rights and interests of that person in that company remain unaltered; and
(bb) no other consideration whatsoever passes directly or indirectly in consequence of that subdivision, consolidation or conversion.”

(2) Paragraph (c) of subsection (1) comes into operation on 1 April 2014 and applies in respect of shares issued on or after that date.

(3) Paragraphs (d) and (e) of subsection (1) are deemed to have come into operation on 4 July 2013 and apply in respect of transactions entered into on or after that date.

Amendment of paragraph 12A of Eighth Schedule to Act 58 of 1962, as inserted by section 108 of Act 22 of 2012

127. (1) Paragraph 12A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the heading of the following heading:
“**Reduction [or cancellation] of debt**”;
- (b) by the substitution in subparagraph (2)(a) for subitem (ii) of the following subitem:
“(ii) incurred in **[the acquisition, creation or improvement]** respect of an allowance asset; and”;
- (c) by the substitution in subparagraph (3) for item (b) of the following item:
“(b) the amount of that debt was used as contemplated in item (a) of that subparagraph to fund expenditure incurred in **[the acquisition,**

- creation or improvement] respect** of an asset that is held by that person at the time of the reduction of the debt,”;
- (d) by the substitution in subparagraph (4)(b) for subitems (i) and (ii) of the following subitems:
- “(i) expenditure incurred in **[the acquisition, creation or improvement] respect** of an asset (other than an allowance asset) that is held by that person at the time of the reduction of the debt, and subparagraph (3) has been applied to reduce any expenditure in respect of that asset to the full extent of that expenditure; or
 - (ii) expenditure incurred in **[the acquisition, creation or improvement] respect** of an asset (other than an allowance asset) that is no longer held by that person at the time of the reduction of that debt,”;
- and
- (e) by the substitution in subparagraph (5) for the words preceding item (a) of the following words:
- “Where subparagraph (3) or (4) applies in respect of a debt that was used to fund expenditure **[incurred]** in respect of a pre-valuation date asset of a person, for the purposes of determining the date of acquisition of that asset and the expenditure incurred in respect of **[the cost of acquisition, creation or improvement of]** that asset, that person must be treated as having—”.
- (2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 13 of Eighth Schedule to Act 58 of 1962, as amended by section 69 of Act 74 of 2002, section 57 of Act 32 of 2004, section 51 of Act 3 of 2008, section 76 of Act 60 of 2008, section 68 of Act 17 of 2009 and section 109 of Act 22 of 2012

128. Paragraph 13 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (e) of the following item:

“(e) the distribution of an asset by a company to a **[shareholder]** holder of shares, is the date on which that asset is so distributed as contemplated in paragraph 75;”.

Amendment of paragraph 16 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

129. Paragraph 16 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (b) of the following item:

“(b) any patent as defined in the Patents Act[, 1978 (Act No. 57 of 1978),] or any design as defined in the Designs Act[, 1993 (Act No. 195 of 1993),] or any trade mark as defined in the Trade Marks Act[, 1993 (Act No. 194 of 1993),] or any copyright as defined in the Copyright Act[, 1978 (Act No. 98 of 1978),] or any rights recognised under the Plant Breeders’ Rights Act, [1996] 1976 (Act No. 15 of [1996] 1976), or any model, pattern, plan, formula or process or any other property or right of a similar nature;”.

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as amended by section 26 of Act 19 of 2001, section 75 of Act 60 of 2001, section 71 of Act 74 of 2002, section 95 of Act 45 of 2003, section 58 of Act 32 of 2004, section 68 of Act 31 of 2005, section 45 of Act 20 of 2006, section 60 of Act 8 of 2007, section 73 of Act 35 of 2007, section 52 of Act 3 of 2008, section 77 of Act 60 of 2008, section 95 of Act 7 of 2010, section 110 of Act 24 of 2011 and section 111 of Act 22 of 2012

130. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for item (g) of the following item:

“(g) one-third of the interest as contemplated in section 24J excluding

any interest contemplated in section 24O on money borrowed to finance the expenditure contemplated in items (a) or (e) in respect of a share listed on a recognised exchange or a participatory interest in a portfolio of a collective investment scheme (including money borrowed to refinance those borrowings);” and

(b) by the deletion of subparagraph (4).

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014 and applies in respect of disposals made on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 April 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 31 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 83 of Act 60 of 2001, section 78 of Act 74 of 2002, section 49 of Act 20 of 2006, section 62 of Act 8 of 2007 and section 97 of Act 7 of 2010

131. Paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1)(b) for the words preceding subitem (i) of the following words:

“an asset which is a long-term insurance policy, being a policy as defined in section 1 of the Long-term Insurance Act[, 1998 (Act No. 52 of 1998),] the greater of—”; and

(b) by the substitution in subparagraph (3) for item (b) of the following item:

“(b) if upon the winding-up of the company that person would have been entitled to share in the assets of the company to [a greater] an extent [pro rata to shareholding than other shareholders] that is not in proportion to that person’s holding of shares, the value of the shares held by that [shareholder] holder of shares must not be less than the amount to which that [shareholder] holder of shares would have been so entitled if the company had been in the course of winding-up and the said amount had been determined as at valuation date.”.

Amendment of paragraph 32 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 28 of Act 19 of 2001, section 84 of Act 60 of 2001, section 39 of Act 30 of 2002, section 79 of Act 74 of 2002 and section 113 of Act 22 of 2012

132. Paragraph 32 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3A)(b) for subitems (ii) and (iii) of the following subitems:

“(ii) in any portfolio comprised in any collective investment scheme managed or carried on by a company registered as a manager under section 42 of the Collective Investment Schemes Control Act[, 2002,] for purposes of Parts IV and V of that Act; or

(iii) in any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’ in section 1 of the Act, which is approved in terms of section 65 of the Collective Investment Schemes Control Act[, 2002,] by the Registrar as defined in section 1 of the latter Act;”.

Amendment of paragraph 35 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 86 of Act 60 of 2001

133. (1) Paragraph 35 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (1) of the following subparagraph:

“(1A) The amount of proceeds from the disposal of a share, option or certificate issued to any person by a resident company in exchange, directly or indirectly, for shares in a foreign company as contemplated in paragraph 11(2)(b) must be treated as an amount equal to the fair market value of the shares in the foreign company.”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of shares issued on or after that date.

Amendment of paragraph 38 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 87 of Act 60 of 2001, section 81 of Act 74 of 2002, section 63 of Act 32 of 2004, section 72 of Act 31 of 2005, section 98 of Act 7 of 2010 and section 114 of Act 22 of 2012 5

134. (1) Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (2) after item (a) of the word “or”;
- (b) by the addition in subparagraph (2) after item (c) of the word “or”; and 10
- (c) by the substitution in subparagraph (2) for item (e) of the following item:
“(e) any asset in respect of which section [24B] 40CA applies.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2013 and applies in respect of shares acquired or disposed of on or after that date.

Repeal of paragraph 42A of Eighth Schedule to Act 58 of 1962 15

135. Paragraph 42A of the Eighth Schedule to the Income Tax Act, 1962, is hereby repealed.

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 91 of Act 60 of 2001, section 84 of Act 74 of 2002, section 101 of Act 45 of 2003, section 75 of Act 31 of 2005, section 51 of Act 20 of 2006, section 76 of Act 35 of 2007, section 100 of Act 7 of 2010, section 111 of Act 24 of 2011 and section 117 of Act 22 of 2012 20

136. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph: 25

“(1) Where, during any year of assessment, a person that is a natural person or a trust that is not carrying on a trade disposes of an asset for proceeds in a foreign currency [other than the currency of the Republic] after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal in that currency and that capital gain or capital loss must be translated to the local currency [of the Republic] by applying the average exchange rate for the year of assessment in which that asset was disposed of or by applying the spot rate on the date of disposal of that asset.”; 30

- (b) by the substitution for subparagraph (1A) of the following subparagraph: 35

“(1A) Where, during any year of assessment, a person [that is a company or a trust carrying on a trade] disposes of an asset (other than a disposal contemplated in subparagraph (1)) for proceeds in a foreign currency [other than the currency of the Republic] or after having incurred expenditure in respect of that asset in [the same] a foreign currency, that person must, for the purposes of determining the capital gain or capital loss on the disposal of that asset, translate— 40

- (a) the proceeds into the local currency [of the Republic] at the average exchange rate for the year of assessment in which that asset was disposed of or at the spot rate on the date of disposal of that asset; and 45

- (b) the expenditure incurred in respect of that asset into the local currency [of the Republic] at the average exchange rate for the year of assessment during which that expenditure was incurred or at the spot rate on the date on which that expenditure was incurred.”; 50

- (c) by the deletion of subparagraph (2);
- (d) by the deletion of subparagraph (5A);
- (e) by the substitution for subparagraph (6) of the following subparagraph:
- “(6) Where a person has adopted the market value as the valuation date value of any asset contemplated in this paragraph, that market value must be determined in the currency of expenditure of that asset and, **in the case of an asset—**
- (a) **contemplated in subparagraph (2)(b) and (4), must be translated to the local currency by applying the spot rate on valuation date; or**
- (b) **contemplated in subparagraph (2)(c), must be** translated to the local currency **[of disposal at the ruling exchange] by applying the spot rate on valuation date.”;**
- (f) by the substitution in subparagraph (6A) for the words preceding item (a) of the following words:
- “**[This paragraph]** Subparagraph (1A) must not apply in respect of the disposal by a person of—”;
- (g) by the deletion in subparagraph (6A) of item (a);
- (h) by the substitution in subparagraph (6A) for item (b) of the following item:
- “(b) any amount **[in any currency owing to that person in respect]** of a debt owed to that person **denominated in a foreign currency; or”;**
- (i) by the substitution in subparagraph (6A)(c) for subitem (ii) of the following subitem:
- “(ii) the value of that right and the amount of that obligation are determined directly or indirectly with reference to **[an asset contemplated in item (a) or]** an amount contemplated in item (b).”;
- (j) by the substitution in subparagraph (7) for item (b) of the definition of “local currency” of the following item:
- “(b) in relation to a headquarter company, in respect of amounts which are not attributable to a permanent establishment outside the Republic, the functional currency of that headquarter company; or”;
- (k) by the deletion in subparagraph (7) of the definition of “local currency” at the end of item (b) of the word “or”; and
- (l) by the substitution in subparagraph (7) for item (c) of the definition of “local currency” of the following items:
- “(c) in relation to a domestic treasury management company, in respect of amounts which are not attributable to a permanent establishment outside the Republic, the functional currency of that domestic treasury management company;
- (d) in relation to an international shipping company defined in section 12Q, in respect of amounts which are not attributable to a permanent establishment outside the Republic, the functional currency of that international shipping company; or
- (e) in any other case, the currency of the Republic.”.
- (2) Paragraph (a) comes into operation on 1 March 2014 and applies in respect of disposals made on or after that date.
- (3) Paragraphs (b), (c), (d), (e), (f), (g), (h) and (i) of subsection (1) come into operation on the date of promulgation of this Act and apply in respect of disposals made on or after that date.
- (4) Paragraph (j) of subsection (1) is deemed to have come into operation on 27 February 2013 and applies in respect of years of assessment commencing on or after that date.
- (5) Paragraphs (k) and (l) of subsection (1) come into operation on 1 April 2014 and apply in respect of years of assessment commencing on or after that date.

Amendment of paragraph 53 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 97 of Act 60 of 2001 and section 86 of Act 74 of 2002

137. Paragraph 53 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3) for items (g) and (h) of the following items: 5

- “(g) any contract in terms of which a person, in return for payment of a premium, is entitled to policy benefits upon the happening of a certain event and includes a reinsurance policy in respect of such a contract, but excludes any short-term policy contemplated in the [Short-Term] Short-term Insurance Act[, 1998 (Act No. 53 of 1998)]; 10
- (h) any short-term policy contemplated in the [Short-Term] Short-term Insurance Act[, 1998,] to the extent that it relates to any asset which is not a personal-use asset; and”.

Amendment of paragraph 56 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, substituted by section 99 of Act 60 of 2001 and amended by section 88 of Act 74 of 2002, section 65 of Act 32 of 2004 and section 119 of Act 22 of 2012 15

138. (1) Paragraph 56 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 20

- (a) by the substitution in subparagraph (2)(a) for subitems (i) and (ii) of the following subitems:
- “(i) the [base cost] expenditure in respect of an asset of the debtor in terms of paragraph 12A; or 25
- (ii) any [aggregate] assessed capital loss of the debtor in terms of paragraph 12A;” and
- (b) by the substitution in subparagraph (2) for item (c) of the following item:
- “(c) an amount that must be or was included in the gross income or income of the debtor or taken into account in the determination of the balance of assessed loss of the debtor in terms of section 20(1)(a)[(ii)]; or” 30

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 57 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 89 of Act 74 of 2002, section 34 of Act 9 of 2006, section 115 of Act 24 of 2011 and section 11 of Act 13 of 2012 35

139. (1) Paragraph 57 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subsection (6) of the following subsection:

- “(6) The provisions of this paragraph do not apply where a person owns more than one business either by way of a sole proprietorship, a partnership interest or a direct interest in the equity of a company consisting of at least 10 per cent, and the total market value of all assets in respect of all those businesses exceeds [R5 million] R10 million.” 40

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of years of assessment commencing on or after that date. 45

Amendment of paragraph 57A of Eighth Schedule to Act 58 of 1962, as inserted by section 80 of Act 60 of 2008

140. (1) Paragraph 57A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (a) of the following subparagraph:

- “(a) any asset which constitutes immovable property[, to the extent that it was] 50
mainly used for business purposes; and”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 61 of Eighth Schedule to Act 58 of 1962, as amended by section 102 of Act 60 of 2001, section 90 of Act 74 of 2002, section 75 of Act 17 of 2009, section 106 of Act 7 of 2010 and section 120 of Act 22 of 2012

141. (1) Paragraph 61 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 5

(a) by the substitution for the heading of the following heading:
“**Collective investment schemes in securities** **Portfolios of collective investment schemes other than portfolios of collective investment schemes in property**”;

(b) by the substitution subparagraph (1) of the following subparagraph: 10

“(1) A holder of a participatory interest in a portfolio of a collective investment scheme in securities, other than a portfolio of a collective investment scheme in property, must determine a capital gain or capital loss in respect of the participatory interest only upon the disposal of that participatory interest.”; and 15

(c) by the substitution for subparagraph (3) of the following subparagraph:

“(3) Any capital gain or capital loss in respect of a disposal by a portfolio of a collective investment scheme, other than a portfolio of a collective investment scheme in property, must be disregarded.”.

(2) Subsection (1) comes into operation on 1 April 2014 and applies in respect of disposals made on or after that date. 20

Amendment of paragraph 62 of Eighth Schedule to Act 58 of 1962, as substituted by section 103 of Act 45 of 2003 and amended by section 52 of Act 20 of 2006 and section 107 of Act 7 of 2010

142. Paragraph 62 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (c) of the following subparagraph: 25

“(c) a person **approved by the Commissioner in terms of** contemplated in section 10(1)(cA) or (d)(iv)”.

Amendment of paragraph 64 of Eighth Schedule to Act 58 of 1962, as substituted by section 78 of Act 31 of 2005 and amended by section 54 of Act 20 of 2006 and section 76 of Act 17 of 2009 30

143. (1) Paragraph 64 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (a) of the following subparagraph:

“(a) section 10, other than receipts or accruals contemplated in paragraphs (cN), (cO), (i)**[(xv)]**, (k) and (m) of subsection (1) thereof; or”;

(b) by the substitution for subparagraph (a) of the following subparagraph:

“(a) section 10, other than receipts and accruals contemplated in paragraphs (cN), (cO), (i)**], and (k) [and (m)]** of subsection (1) thereof; or”.

(2) Paragraph (b) of subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962, as substituted by section 123 of Act 22 of 2012 45

144. Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (3)(c)(ii) for subsubitem (bb) of the following subsubitem:

“(bb) the full amount of that distribution was included in the income of a **shareholder** holder of shares in that foreign company or would, but for the provisions of section 10B(2)(a) or (b), have been so included; or”;

(b) by the substitution in subparagraph (3)(c)(iii)(bb) for unit (B) of the following unit:

“(B) was included in the income of a **[shareholder]** holder of shares in that company or would, but for the provisions of section 10B(2)(a) or (b), have been so included; and”.

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Amendment of paragraph 67C of Eighth Schedule to Act 58 of 1962, as inserted by section 111 of Act 45 of 2003 and amended by section 28 of Act 16 of 2004

145. Paragraph 67C of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraphs (a) and (b) of the following subparagraphs:

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“(a) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act [(Act No. 28 of 2002),] wholly or partially continues in force or is wholly or partially converted into a new right pursuant to the same Schedule; or

(b) any prospecting right, mining right, exploration right, production right, mining permit, retention permit or reconnaissance permit[,] as defined in section 1 of the Mineral and Petroleum Resources Development Act[, 2002 (Act No. 28 of 2002),] is wholly or partially renewed in terms of that Act.”.

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Amendment of paragraph 68 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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146. Paragraph 68 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (b) of the following item:

“(b) that person’s spouse or any partnership or private company at a time when that spouse was a member of that partnership or the sole, main or one of the principal **[shareholders of]** holders of shares in that company.”.

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Amendment of paragraph 75 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 114 of Act 45 of 2003, section 29 of Act 16 of 2004, section 79 of Act 17 of 2009, sections 118 and 159 of Act 24 of 2011 and section 131 of Act 22 of 2012

147. Paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (a) of the following item:

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“(a) that company must be treated as having disposed of that asset to that **[shareholder]** person on the date of distribution for an amount received or accrued equal to the market value of that asset on that date; and”.

Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962, as amended by section 107 of Act 60 of 2001, section 96 of Act 74 of 2002, section 115 of Act 45 of 2003, section 30 of Act 16 of 2004, section 81 of Act 31 of 2005, section 84 of Act 35 of 2007, section 60 of Act 3 of 2008, section 84 of Act 60 of 2008, section 119 of Act 24 of 2011 and sections 132 and 176 of Act 22 of 2012

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148. Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph:

“(1) Subject to subparagraph (2), where a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a **[shareholder]** holder of a share in respect of [a] that share, that **[shareholder]** holder must where the date of distribution of that cash or asset occurs—

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- (a) before valuation date, reduce the expenditure contemplated in paragraph 20 actually incurred before valuation date in respect of that share by the amount of that cash or the market value of that asset;
 - (b) on or after valuation date but before 1 October 2007 and that share is disposed of by the **[shareholder]** holder of that share on or before 31 March 2012, treat the amount of that cash or the market value of that asset as proceeds when that share is disposed of;
 - (c) on or after 1 October 2007 but before 1 April 2012, treat the amount of that cash or the market value of that asset as proceeds when that share is partly disposed of in terms of paragraph 76A.”; and
- (b) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:
- “Where a **[shareholder]** holder of shares uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32(3A)(a) and a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to that **[shareholder]** holder of shares in respect of those shares on or after valuation date but before 1 October 2007, the weighted average base cost of those shares must be determined by—”.

Amendment of paragraph 77 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 122 of Act 24 of 2011

149. Paragraph 77 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph:

“(1) A **[shareholder of]** holder of shares in a company that is being wound up, liquidated or deregistered must be treated as having disposed of all the shares held by that **[shareholder]** holder in that company at the earlier of—

 - (a) the date of dissolution or deregistration; or
 - (b) in the case of a liquidation or winding-up, the date when the liquidator declares in writing that no reasonable grounds exist to believe that the **[shareholder of]** holder of shares in the company (or **[shareholders]** holders of shares holding the same class of shares) will receive any further distributions in the course of the liquidation or winding-up of that company.”; and
- (b) by the substitution for subparagraph (2) of the following subparagraph:

“(2) Where—

 - (a) a return of capital or foreign return of capital by way of a distribution of cash or assets *in specie* is received by or accrues to a **[shareholder]** holder of shares contemplated in subparagraph (1) in respect of a share that is treated as having been disposed of in terms of that subparagraph; and
 - (b) that return of capital or foreign return of capital is received by or accrues to that **[shareholder]** holder after the date contemplated in subparagraph (1)(a) or (b),

the return of capital or foreign return of capital must be treated as a capital gain in determining that **[shareholder’s]** holder’s aggregate capital gain or aggregate capital loss for that year of assessment.”.

Amendment of paragraph 80 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 108 of Act 60 of 2001, section 58 of Act 20 of 2006, section 62 of Act 3 of 2008, section 86 of Act 60 of 2008 and section 80 of Act 17 of 2009

150. Paragraph 80 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 5

(a) by the substitution in subparagraph (1) for the words preceding paragraph (a) of the following words:

“Subject to paragraphs 68, 69, 71 and 72, where a capital gain is determined in respect of the vesting by a trust of an asset in a trust beneficiary (other than [the Government, a provincial administration, organisation, person or club] any person contemplated in paragraph 62(a) to (e)) who is a resident, that gain—”; and 10

(b) by the substitution in subparagraph (2) for the words preceding paragraph (a) of the following words: 15

“Subject to paragraphs 68, 69, 71 and 72, where a capital gain is determined in respect of the disposal of an asset by a trust in a year of assessment during which a trust beneficiary (other than [a person, organisation, entity or club] any person contemplated in paragraph 62(a) to (e)) who is a resident has a vested interest or acquires a vested interest (including an interest caused by the exercise of a discretion) in that capital gain but not in the asset, the disposal of which gave rise to the capital gain, the whole or the portion of the capital gain so vested—”. 20

Amendment of paragraph 4 of Part I of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002 and amended by section 125 of Act 45 of 2003, section 82 of Act 31 of 2005, section 60 of Act 20 of 2006, section 63 of Act 3 of 2008, section 87 of Act 60 of 2008, section 82 of Act 17 of 2009 and section 12 of Act 13 of 2012 25

151. Paragraph 4 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (p) of the following subparagraph: 30

“(p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act[, 1999 (Act No. 1 of 1999)].”.

Amendment of paragraph 10 of Part I of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002 and amended by section 83 of Act 31 of 2005 35

152. Paragraph 10 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (iv) of the following item:

“(iv) department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) [or (b)].”.

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Amendment of paragraph 3 of Part II of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002 and amended by section 129 of Act 45 of 2003, section 84 of Act 31 of 2005, section 62 of Act 20 of 2006, section 64 of Act 3 of 2008, section 89 of Act 60 of 2008, section 83 of Act 17 of 2009 and section 13 of Act 13 of 2012 45

153. Paragraph 3 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (p) of the following subparagraph:

“(p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act[, 1999 (Act No. 1 of 1999)].”.

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Amendment of paragraph 1 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 70 of Act 8 of 2007, section 87 of Act 35 of 2007, section 65 of Act 3 of 2008, section 84 of Act 17 of 2009 and section 113 of Act 7 of 2010

154. (1) Paragraph 1 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended— 5

(a) by the substitution for the definition of “exploration” of the following definition:

“**‘exploration’** means the acquisition, processing and analysis of geological and geophysical data or [**other related activity for purposes of defining a trap to be tested by drilling together with well drilling, logging and testing (including extended well testing) up to and including the field appraisal stage**] the undertaking of activities in verifying the presence or absence of hydrocarbons (up to and including the appraisal phase) conducted for the purpose of determining whether a reservoir is economically feasible to develop;” 10 15

(b) by the substitution in the definition of “oil and gas company” for subparagraph (ii) of the following subparagraph:

“(ii) engages in exploration or [**production**] post-exploration in terms of any oil and gas right;” 20

(c) by the substitution in the definition of “oil and gas income” for paragraph (b) of the following paragraph:

“(b) [**production**] post-exploration in [**terms**] respect of any oil and gas right; or”;

(d) by the substitution in the definition of “oil and gas right” for paragraphs (a), (b) and (c) of the following paragraphs: 25

“(a) any reconnaissance permit, technical co-operation permit, exploration right, or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002),**] or any right or interest therein; 30

(b) any exploration right acquired by virtue of a conversion contemplated in item 4 of Schedule II to the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002),**] or any interest therein; or

(c) any production right acquired by virtue of a conversion contemplated in item 5 of Schedule II to the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002),**] or any interest therein;” 35

(e) by the substitution in the definition of “oil and gas right” for paragraph (a) of the following paragraph: 40

“(a) any reconnaissance permit, technical co-operation permit, exploration right, or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act [**or any right**] or any interest therein;” and

(f) by the substitution in the definition of “production” for the words preceding paragraph (a) of the following words: 45

“[**‘production’ includes**] **‘post-exploration’** means any activity carried out after the completion of the appraisal phase, including—”.

(2) Paragraphs (a), (b), (c), (e) and (f) of subsection (1) come into operation on 1 April 2014 and apply in respect of years of assessment commencing on or after that date. 50

Amendment of paragraph 2 of Tenth Schedule to Act 58 of 1962, as substituted by section 137 of Act 22 of 2012

155. The Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 2 of the following paragraph: 55

“RATE

2. The rate of tax on taxable income attributable to oil and gas income of any oil and gas company [**will**] must not exceed 28 cents on each rand of taxable income.”.

Amendment of paragraph 3 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 72 of Act 8 of 2007, section 85 of Act 17 of 2009 and section 138 of Act 22 of 2012

156. (1) Paragraph 3 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended— 5

(a) by the substitution for the heading of the following heading:

“WITHHOLDING TAXES”;

(b) by the substitution for subparagraph (1) of the following subparagraph:

“(1) The rate of dividends tax contemplated in section 64E that is paid by an oil and gas company on the amount of any dividend derived from oil and gas income must not exceed zero per cent of the amount of that dividend.”; and 10

(c) by the substitution for subparagraph (2) of the following subparagraph:

“(2) Notwithstanding Part IVB of Chapter II, the rate of withholding tax on interest contemplated in that Part may not exceed zero per cent of the amount of any interest that is paid by an oil and gas company in respect of loans applied to fund expenditure contemplated in paragraph 5(2).”. 15

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of amounts paid on or after that date. 20

(3) Paragraph (c) of subsection (1) comes into operation on 1 January 2015 and applies in respect of interest that is paid or that becomes due and payable on or after that date.

Amendment of paragraph 5 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 73 of Act 8 of 2007, section 86 of Act 17 of 2009 and section 115 of Act 7 of 2010 25

157. (1) Paragraph 5 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph:

“(1) For purposes of determining the taxable income of an oil and gas company during any year of assessment, there **[will]** must be allowed as deductions from the oil and gas income of that company all expenditure and losses actually incurred (other than any expenditure or loss actually incurred in respect of the acquisition of any oil and gas right, except as allowed in paragraph 7(3)) in that year in respect of exploration, or **[production]** post-exploration.”; 30 35

(b) by the substitution for subparagraph (2) of the following subparagraph:

“(2) In addition to any other deductions (as contemplated in subparagraph (1) other than any expenditure or loss actually incurred in respect of the acquisition of any oil and gas right) allowable in terms of this paragraph, for purposes of determining the taxable income of an oil and gas company during any year of assessment, there **[will]** must be allowed as deductions from the oil **[or]** and gas income of that company derived in that year of assessment— 40

(a) 100 per cent of all expenditure of a capital nature actually incurred in that year of assessment in respect of exploration in terms of an oil and gas right; and 45

(b) 50 per cent of all expenditure of a capital nature actually incurred in that year of assessment in respect of **[production]** post-exploration in **[terms]** respect of an oil and gas right.”; 50

(c) by the substitution in subparagraph (3) for the words preceding item (a) of the following words:

“For purposes of determining the taxable income of an oil and gas company during any year of assessment, any assessed losses (as defined in section 20) in respect of exploration or **[production]** post-exploration may only be set off against—”; 55

(d) by the substitution in subparagraph (3) for the words following item (b) of the following words:

“to the extent that those assessed losses do not exceed that income.”;

(e) by the substitution for subparagraph (4) of the following subparagraph: 60

“(4) To the extent that any assessed losses remain after the set-off contemplated in subparagraph (3), an amount equal to 10 per cent of those remaining assessed losses may be **[set-off]** set off against any other income derived by that company.”; and

(f) by the substitution for subparagraph (5) of the following subparagraph: 5

“(5) To the extent that any assessed loss remains after the **[set offs]** set-offs contemplated in subparagraphs (3) and (4), those losses **[will]** may be carried forward to the succeeding year of assessment of that oil and gas company.”.

(2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on 1 April 2014 and apply in respect of years of assessment commencing on or after that date. 10

Amendment of paragraph 6 of Tenth Schedule to Act 58 of 1962, as substituted by section 139 of Act 22 of 2012

158. (1) The Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 6 of the following paragraph: 15

“EXPLORATION AND POST-EXPLORATION EXPENSES

6. If a company holds an oil and gas right contemplated in paragraph (a) or (b) of the definition of ‘oil and gas right’ during any year of assessment— 20

(a) that company is deemed to be carrying on a trade in respect of that oil and gas right; and

(b) expenditure and losses incurred by that company in respect of that oil and gas right are deemed to be incurred in the production of income of that company.”. 25

(2) Subsection (1) comes into operation on 1 April 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 7 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 75 of Act 8 of 2007 and section 88 of Act 35 of 2007 30

159. Paragraph 7 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph:

“(1) If an oil **[or]** and gas company disposes of any oil and gas right to another company, that oil and gas company and that other company may **[elect in the form and manner determined by the Commissioner (in lieu)]** (instead of any other provision of this Act) agree in writing that [either] rollover treatment as contemplated in subparagraph (2) or participation treatment as contemplated in subparagraph (3) applies in respect of that right.”;

(b) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

“If an oil **[or]** and gas company disposes of any oil and gas right to another **[oil and gas]** company pursuant to an **[election for]** agreement that rollover treatment as contemplated in subparagraph (1) applies, and the market value of [which] that oil and gas right is equal to or exceeds—”;

(c) by the substitution in subparagraph (3)(a) for the words preceding subitem (i) of the following words:

“If an oil **[or]** and gas company disposes of any oil and gas right to another company pursuant to an **[election for]** agreement that participation treatment as contemplated in subparagraph (1) applies and—”;

(d) by the substitution in subparagraph (3)(b) for the words preceding subitem (i) of the following words:

“If an oil **[or]** and gas company disposes of any oil and gas right to another **[oil and gas]** company pursuant to an **[election for]** agreement

that participation treatment as contemplated in subparagraph (1) applies and—”.

Amendment of paragraph 8 of Tenth Schedule to Act 58 of 1962, as substituted by section 89 of Act 35 of 2007 and amended by section 125 of Act 24 of 2011

160. Paragraph 8 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended— 5

(a) by the substitution for subparagraph (1) of the following subparagraph:

“(1) (a) The Minister may enter into a binding agreement with any oil and gas company in respect of an oil and gas right held by that company, and that agreement so entered into [will] must guarantee that the provisions of this Schedule (as at the date on which the agreement was concluded) [will] apply in respect of that right as long as the right is held by the oil and gas company. 10

(b) **[In lieu of]** Notwithstanding subparagraph (a), the Minister may enter into a binding agreement with any company in anticipation of an oil and gas right to be acquired by that company, and that agreement [will] must guarantee that the provisions of this Schedule (as at the date on which the oil and gas right is granted) [will] apply in respect of that right as long as that right is held by the oil and gas company: Provided that this binding agreement [will have] has no force and effect if the oil and gas right is not granted within one year after the agreement is concluded.”; 15 20

(b) by the substitution for subparagraph (2) of following subparagraph:

“(2) (a) In the case of a disposal of an exploration right, as defined in section 1 of the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**], an oil and gas company that has concluded an agreement as contemplated in subparagraph (1) in respect of that right may, as part of that disposal, assign all of its fiscal stability rights in terms of that agreement relating to the exploration right disposed of to any other oil and gas company. 25

(b) In the case of a disposal of a production right, as defined in section 1 of the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**], an oil and gas company that has concluded an agreement as contemplated in subparagraph (1) in respect of that right disposed of may, as part of that disposal, assign all its fiscal stability rights in terms of that agreement relating to the production right disposed of to another **[oil and gas]** company if that other company is a company within the same group of companies as the oil and gas company transferring the fiscal stability rights at the time the agreement is concluded.”; and 30 35

(c) by the substitution in subparagraph (7)(a) for subitems (i), (ii) and (iii) of the following subitems: 40

“(i) exploration right or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**,] or any right or interest therein;

(ii) exploration right acquired by virtue of a conversion contemplated in item 4 of Schedule II to the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**,] or any interest therein; or 45

(iii) production right acquired by virtue of a conversion contemplated in item 5 of Schedule II to the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**,] or any interest therein; and” 50

Amendment of Eleventh Schedule to Act 58 of 1962, as inserted by section 140 of Act 22 of 2012

161. (1) The Eleventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the grant “Capital Restructuring Grant received or accrued from the Department of Housing” of the grant “Capital Restructuring Grant received or accrued from the Department of Human Settlements”. 5

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 72 of Act 91 of 1964, as amended by section 11 of Act 105 of 1976, section 11 of Act 98 of 1980 and section 26 of Act 34 of 2004 10

162. (1) Section 72 of the Customs and Excise Act, 1964 (Act No. 91 of 1964), is hereby amended by the addition of the following paragraph:

“(d) If any payment made or to be made in connection with goods or any other amount taken or to be taken into account in determining the value of goods exported is expressed in a foreign currency, that payment or other amount must be converted into South African Rand in accordance with section 73.” 15

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Amendment of section 73 of Act 91 of 1964

163. (1) The Customs and Excise Act, 1964, is hereby amended by the substitution for section 73 of the following section: 20

“Currency conversion

73. (1) Despite section 65(3), for the purposes of this section, a reference to customs value must be regarded as referring, according to the context, to the value of imported goods and the value of goods exported, or the value of imported goods or the value of goods exported as respectively contemplated in section 65(3) and section 72. 25

(2) For the purposes of calculating the customs value of goods, any payment or amount expressed in a foreign currency as contemplated in subsection (4) must be converted into South African Rand in accordance with this section. 30

(3) The Commissioner must for the purposes of subsection (2) publish on the SARS website in respect of each Wednesday the selling and buying rates of each of the major currencies for conversion into South African Rand, as provided to the Commissioner by the South African Reserve Bank for that Wednesday. 35

(4) If any payment made or to be made in connection with goods or any amount taken or to be taken into account in determining any customs value is expressed in a foreign currency published in terms of subsection (3), that payment or other amount must be converted into South African Rand by using the conversion rate applicable for that currency in terms of subsection (5). 40

(5) The conversion rate for a foreign currency as published in respect of that currency for a Wednesday in terms of subsection (3) must be used as the rate for converting the relevant currency into South African Rand if the applicable date falls within any of the following periods— 45

- (a) the week commencing the following Wednesday;
- (b) if that following Wednesday is a public holiday, the two week period commencing that Wednesday; or
- (c) if that following Wednesday is a public holiday and also the last Wednesday of a calendar year, the three week period commencing that Wednesday. 50

(6) (a) The applicable date for a currency conversion in respect of goods imported or to be imported into or exported or to be exported from the Republic is the date of entry of the goods for any purpose in terms of this Act and that date shall apply irrespective of any substitution, in whole or in part, or amendment of that entry. 5

(b) If goods have not been entered, the applicable date for currency conversion in respect of such goods shall be—

(i) the date on which—

(aa) the applicable period for submission of a bill of entry specified in section 38(1) for imported goods has expired; or 10

(bb) the goods were exported as contemplated in section 38(3); or

(ii) if for any reason the date cannot be determined, a date determined by the Commissioner.

(7) (a) If any payment made or to be made in connection with any specific goods, or any amount taken or to be taken into account in determining the customs value for those goods, is expressed in a foreign currency not published in terms of subsection (3), the Commissioner must for purpose of valuing those goods, and on request by a person submitting a bill of entry in respect of the goods, determine the conversion rate of that foreign currency into the South African Rand for the date applicable to those goods, taking into account the average selling and buying rates of that foreign currency quoted for the applicable date by at least two major banks operating in the Republic. 15 20

(b) The applicable date for a currency conversion referred to in paragraph (a) in respect of goods imported into or exported from the Republic is the date of the last day prior to the day on which the goods were cleared for any purpose in terms of this Act. 25

(8) Where an importer has negotiated a fixed conversion rate with a financial institution and a forward exchange contract has been issued, this rate will apply to all transactions which fall within the negotiated time period, provided that the invoice reflects the number and date of the contract as well as the rate used. 30

(9) The conversions of foreign currency into South African Rand, at fixed rates of exchange, negotiated between sellers and buyers related within the meaning of section 66(2) may not be accepted unless it is proved that the relationship did not affect the rate so fixed in terms of the contract. 35

(10) When the amendment to this section comes into operation, the Commissioner may, despite that amendment continue to publish selling rates as contemplated in substituted subsection (1), until the first Tuesday after the first Wednesday for which buying and selling rates are published in terms of subsection (3).” 40

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Continuation of certain amendments of Schedules to Act 91 of 1964

164. Every amendment or withdrawal of or insertion in Schedule No. 1 to 6, 8 and 10 of the Customs and Excise Act, 1964, made under section 48, 49, 56, 56A, 57, 60 or 75(15) of that Act during the period 1 August 2012 up to and including 31 August 2013, shall not lapse by virtue of section 48(6), 49(5A), 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act. 45

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006, sections 81 and 108 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008, section 104 of Act 60 of 2008, section 33 of Act 18 of 2009, section 119 of Act 7 of 2010, section 26 of Act 8 of 2010, section 129 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 196 of Schedule 1 to that Act and section 145 of Act 22 of 2012

165. (1) Section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), is hereby amended—

- (a) by the substitution in subsection (1) in the definition of “cash value” for the words preceding paragraph (a) of the following words:
“**‘cash value’**, in relation to the supply of goods supplied under an instalment credit agreement or by a surrender of goods as defined in this section, means—”;
- (b) by the substitution in subsection (1) in paragraph (d) of the definition of “connected person” for subparagraph (i) of the following subparagraph:
“(i) any person (other than a company) where that person, his spouse or minor child or any trust fund in respect of which that person, his spouse or minor child is or may be a beneficiary, is separately interested or two or more of them are in the aggregate interested in 10 per cent or more of the company’s paid-up capital or 10 per cent or more of the company’s equity [**share capital**] shares (as defined in section 1 of the Income Tax Act) or 10 per cent or more of the voting rights of the shareholders of the company, whether directly or indirectly; or”;
- (c) by the substitution in subsection (1) for the definitions of “customs controlled area” and “customs controlled area enterprise” of the following definitions:
“**‘customs controlled area’** has the meaning assigned thereto in section 21A(1A) or (1) of the Customs and Excise Act;
‘customs controlled area enterprise’ has the meaning assigned thereto in section 21A(1A) or (1) of the Customs and Excise Act, 1964”;
- (d) by the insertion in subsection (1) after the definition of “dwelling” of the following definition:
“**‘electronic services’** means those electronic services prescribed by the Minister by regulation in terms of this Act”;
- (e) by the addition in subsection (1) to paragraph (b) of the definition of “enterprise” after subparagraph (v) of the following subparagraph:
“(vi) the supply of electronic services by a person from a place in an export country—
(aa) to a recipient that is a resident of the Republic; or
(bb) where any payment to that person in respect of such electronic services originates from a bank registered or authorised in terms of the Banks Act, 1990 (Act No. 94 of 1990)”;
- (f) by the substitution in subsection (1) for paragraph (d) of the definition of “exported” of the following paragraph:
“(d) removed from the Republic by the recipient or recipient’s agent for conveyance to an export country in accordance with [**the provisions of an export incentive scheme approved**] any regulation made by the Minister in terms of this Act”;

- (g) by the substitution in subsection (1) for the definitions of “Industrial Development Zone” and “Industrial Development Zone (IDZ) operator” of the following definitions:
- “**Industrial Development Zone (IDZ)**’ has the meaning assigned thereto in section 21A(1A) or (1) of the Customs and Excise Act; 5
Industrial Development Zone (IDZ) operator’ has the meaning assigned thereto in terms of section 21A(1A) or (1) of the Customs and Excise Act;”;
- (h) by the substitution in subsection (1) in paragraph (c) of the definition of “input tax” for the words preceding the proviso of the following words: 10
“an amount equal to the tax fraction of the consideration in money deemed by section 10(16) to be for the supply (not being a taxable supply) by a debtor to the vendor of goods repossessed under an instalment credit agreement or a surrender of goods”;
- (i) by the deletion in subsection (1) of the definition of “service enterprise”; and 15
(j) by the insertion in subsection (1) after the definition of “supply” of the following definition:
“**surrender of goods**’ means the termination of any instalment credit agreement by the debtor and subsequent obligation on the creditor, to that agreement, to take possession of any goods previously supplied under that agreement.” 20

(2) Paragraphs (a), (h) and (j) of subsection (1) come into operation on 1 April 2014 and apply in respect of goods surrendered on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2012. 25

(4) Paragraphs (c) and (g) of subsection (1) come into operation on the date on which the Special Economic Zones Act referred to in section 12R of the Income Tax Act, 1962, comes into operation.

(5) Paragraphs (d) and (e) of subsection (1) come into operation on 1 April 2014 and apply in respect of electronic services supplied on or after that date. 30

(6) Paragraphs (f) and (i) of subsection (1) come into operation on 1 April 2014.

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001, section 151 of Act 60 of 2001, section 166 of Act 45 of 2003, section 95 of Act 32 of 2004, section 102 of Act 31 of 2005, section 172 of Act 34 of 2005, section 42 of Act 9 of 2006, section 79 of Act 20 of 2006, section 27 of Act 36 of 2007, section 106 of Act 60 of 2008, section 91 of Act 17 of 2009, section 120 of Act 7 of 2010, section 131 of Act 24 of 2011 and section 146 of Act 22 of 2012 40

166. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended by—

- (a) by the insertion of the following subsection:
“(2G) Subject to section 24(3), where a supply is deemed to have been made by a vendor in terms of subsection (2) and that vendor ceases to be a vendor on 1 April 2014 for the sole reason of the exemption contemplated in section 12(f)(iv), the tax payable in respect of the deemed supply shall be paid in six equal monthly instalments or in so many monthly instalments as the Commissioner may allow.”; 45
- (b) by the substitution for subsection (10) of the following subsection:
“(10) For the purposes of this Act,]— 50
(a) where any goods are repossessed; or

- (b) where there is a surrender of goods, under an instalment credit agreement, a supply of such goods shall be deemed to be made by the debtor under such instalment credit agreement to the person exercising **[his]** the person's right or obligation of possession under such instalment credit agreement, and where such debtor is a vendor the supply shall be deemed to be made in the course or furtherance of **[his]** the vendor's enterprise unless such goods did not form part of the assets held or used by **[him]** the vendor for the purposes of **[his]** the vendor's enterprise."; and
- (c) by the substitution in subsection (19) for the words following paragraph (b)(ii) of the following words:
 "such supply shall be deemed to have been made **[otherwise than]** in the course or furtherance of an enterprise."
- (2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 April 2014 and apply in respect of goods surrendered on or after that date.
- (3) Paragraph (c) of subsection (1) comes into operation on 1 April 2014 and applies in respect of goods or services supplied on or after that date.

Amendment of section 9 of Act 89 of 1991, as amended by section 25 of Act 136 of 1991, section 25 of Act 97 of 1993, section 21 of Act 46 of 1996, section 26 of Act 27 of 1997, section 167 of Act 45 of 2003, section 96 of Act 32 of 2004, section 103 of Act 31 of 2005, section 172 of Act 34 of 2005, section 28 of Act 36 of 2007 and section 27 of Act 8 of 2010

167. (1) Section 9 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for subsection (4) of the following subsection:
 "(4) Subject to the provisions of subsections (2)(a) and (6)—
 (a) where goods are supplied under an agreement, other than an instalment credit agreement or rental agreement, and the goods or part of them are appropriated under that agreement by the recipient in circumstances where the whole of the consideration is not determined at the time they are appropriated, that supply shall be deemed to take place when and to the extent that any payment in terms of the agreement is due or is received or an invoice relating to the supply is issued by the supplier or the recipient, whichever is the earliest; and
 (b) where services are supplied under an agreement and the consideration for such services supplied is not determined at the time that such services are rendered or performed, that supply shall be deemed to take place when and to the extent that any payment in terms of the agreement is due or is received or an invoice relating to the supply is issued by the supplier or the recipient, whichever is the earliest."; and
- (b) by the substitution for subsection (8) of the following subsection:
 "(8) Where a supply of **[repossessed]** goods is deemed by section 8(10) to be made by a debtor **[under an instalment credit agreement]**, the time of that supply shall be deemed to be the day on which the goods are repossessed or surrendered or, where the debtor may under any law be reinstated in **[his]** the debtor's rights and obligations under such agreement, the day after the last day of any period during which the debtor may under such law be so reinstated."
- (2) Paragraph (a) of subsection (1) comes into operation on 1 April 2014 and applies in respect of services supplied on or after that date.
- (3) Paragraph (b) of subsection (1) comes into operation on 1 April 2014 and applies in respect of goods surrendered on or after that date.

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, paragraph 5 of Government Notice 2695 of 8 November 1991, section 16 of Act 136 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994, section 21 of Act 37 of 1996, section 22 of Act 46 of 1996, section 27 of Act 27 of 1997, section 84 of Act 53 of 1999, section 68 of Act 19 of 2001, section 152 of Act 60 of 2001, section 168 of Act 45 of 2003, section 97 of Act 32 of 2004, section 104 of Act 31 of 2005, section 43 of Act 9 of 2006, section 80 of Act 20 of 2006, section 82 of Act 8 of 2007, section 107 of Act 60 of 2008, section 122 of Act 7 of 2010 and section 133 of Act 24 of 2011

168. (1) Section 10 of the Value-Added Tax Act, 1991, is hereby amended— 10

(a) by the substitution in subsection (16) for the words preceding the proviso of the following words:

“Where **[by reason of the repossession of goods from a debtor under an instalment credit agreement]** a supply of **[such]** goods is deemed by section 8(10) to be made by **[that]** a debtor, the consideration in money for that supply shall be deemed to be an amount equal to the balance of the cash value of the goods (being the cash value thereof applied under subsection (6) in respect of the supply of the goods to the debtor under the said agreement) which has not been recovered on the date on which the supply of the goods by the debtor is deemed by section 9(8) to be made”; and 15 20

(b) by the addition of the following subsection:

“(27) Where any supply of goods or services is deemed to be made in terms of section 8(19), the value of such supply shall be deemed to be nil.” 25

(2) Paragraph (a) of subsection (1) comes into operation on 1 April 2014 and applies in respect of goods surrendered on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 April 2014 and applies in respect of goods or services supplied on or after that date.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003, section 46 of Act 16 of 2004, section 98 of Act 32 of 2004, section 21 of Act 9 of 2005, section 105 of Act 31 of 2005, section 44 of Act 9 of 2006, section 81 of Act 20 of 2006, section 105 of Act 35 of 2007, section 29 of Act 36 of 2007, Government Notice R.1024 in *Government Gazette* 32664 of 30 October 2009 and section 134 of Act 24 of 2011 30 35

169. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (s) of the following paragraph: 40

“(s) the goods (being fixed property) are supplied to the **[Minister of Land Affairs]** Cabinet member responsible for land reform who acquired those goods in terms of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993), or section 42E of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); or” 45

(2) Subsection (1) comes into operation on 1 April 2014.

Amendment of section 12 of Act 89 of 1991, as amended by section 18 of Act 136 of 1992, section 14 of Act 20 of 1994, section 22 of Act 37 of 1996, section 69 of Act 19 of 2001 section 154 of Act 60 of 2001, section 117 of Act 74 of 2002, section 99 of Act 32 of 2004, section 45 of Act 9 of 2006, section 82 of Act 20 of 2006, section 109 of Act 60 of 2008 and section 147 of Act 22 of 2012

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170. (1) Section 12 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the deletion in paragraph (f) of the word “or” at the end of subparagraphs (i) and (ii);
- (b) by the substitution in paragraph (f) for the comma at the end of subparagraph (iii) of the expression “; or”;
- (c) by the addition to paragraph (f) of the following subparagraph after subparagraph (iii):

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“(iv) any association of persons (other than a company registered or deemed to be registered under the Companies Act, 2008 (Act No. 71 of 2008), any co-operative, close corporation or trust, but including a non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008)) where the Commissioner is satisfied that, subject to such conditions as he or she may deem necessary, such association of persons—

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- (A) has been formed solely for purposes of managing the collective interests of residential property use or ownership of all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable; and
- (B) is not permitted to distribute any of its funds to any person other than a similar association of persons.”; and

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- (d) by the substitution in paragraph (f) for the words following subparagraph (iv) of the following words:

“where the cost of supplying such services is met out of contributions levied by such body corporate, **[or]** share block company or under such housing development scheme or association, as the case may be: Provided that this paragraph shall not apply or shall apply to a limited extent where such body corporate, **[or]** share block company, scheme or association applies in writing to the Commissioner, and the Commissioner, having regard to the circumstances of the case, directs with effect from a future date that the provisions of this paragraph shall not apply to that body corporate, **[or]** share block company, scheme or association or that the provisions of this paragraph shall apply only to a limited extent specified by him: Provided further that this paragraph shall not apply to the services supplied by any body corporate, **[or]** share block company, scheme or association which manages a property time-sharing scheme as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act No. 75 of 1983);”.

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(2) Subsection (1) comes into operation on 1 April 2014 and applies in respect of services supplied on or after that date.

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Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 34 of Act 34 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001, section 155 of Act 60 of 2001, section 170 of Act 45 of 2003, section 100 of Act 32 of 2004, section 106 of Act 31 of 2005, section 110 of Act 60 of 2008, section 135 of Act 24 of 2011 and section 271 of Act 28 of 2011, read with item 112 of Schedule 1 to that Act 5

171. (1) Section 13 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (2B) of the following subsection:

“(2B) Notwithstanding subsection (2), the value to be placed on the importation of goods into the Republic where— 10

(a) Note 1A of Item No. 412.07 of Schedule 1 to this Act is applicable; or

(b) Note 5(a)(ii)(aa) of Item No. 470.03/00.00/02.00 of Schedule 1 to this Act is applicable; 15

shall be the value determined under section 10(3).”.

(2) Subsection (1) comes into operation on 1 April 2014.

Amendment of section 15 of Act 89 of 1991, as amended by paragraph 8 of Government Notice 2695 of 8 November 1991, section 20 of Act 136 of 1992, section 31 of Act 27 of 1997, section 90 of Act 30 of 1998, section 46 of Act 9 of 2006, section 37 of Act 21 of 2006, section 13 of Act 9 of 2007 and section 271 of Act 28 of 2011 read with paragraph 114 of Schedule 1 to that Act 20

172. (1) Section 15 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the deletion in subsection (2)(a) of the word “or” at the end of subparagraph (v) ;

(b) by the addition in subsection (2)(a) after subparagraph (vi) of the following subparagraph: 25

“(vii) carrying on an enterprise as contemplated in paragraph (b)(vi) of the definition of ‘enterprise’ in section 1; or”; and

(c) by the insertion of the following subsection:

“(2B) Any vendor registered in terms of section 23(3)(b)(ii) shall account for tax payable on a payment basis for the purposes of section 16 with effect from the date of the vendor’s registration: Provided that the vendor, subject to subsection (2)(b), must account for tax payable on an invoice basis from the commencement of the tax period immediately following the tax period when the total value of taxable supplies of that enterprise has exceeded R50 000.”. 30 35

(2) Subsection (1) comes into operation on 1 April 2014.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007, section 29 of Act 8 of 2010, section 137 of Act 24 of 2011 and section 148 of Act 22 of 2012 40 45

173. (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (2)(f) for the words preceding the proviso of the following words:

“the vendor, in any other case, except as provided for in paragraphs (a) to (e) is in possession of documentary proof, as is acceptable to the 50

- Commissioner, substantiating the vendor's entitlement to the deduction at the time a return in respect of the deduction is furnished";
- (b) by the substitution in subsection (3)(a) for subparagraphs (iii) and (iv) of the following subparagraphs:
- “(iii) charged in terms of section 7(1)(b) in respect of goods imported into the Republic by the vendor and **[invoiced or] paid[, whichever is the earlier,]** during that tax period; 5
- (iv) charged in terms of section 7(3)(a) in respect of goods subject to excise duty or environmental levy as contemplated in that section and **[invoiced or] paid[, whichever is the earlier,]** during that tax period;” 10
- (c) by the substitution in subsection (3) for paragraph (l) of the following paragraph:
- “(l) an amount as determined by the Commissioner in lieu of a refund in respect of the purchase and use of diesel paid by a vendor to a supplier of pastoral, agricultural or other farming products who is not a vendor, in terms of a scheme operated by the controlling body of an industry for the development of small-scale farmers approved by the Minister with the concurrence of the **[Minister of Agriculture and Land Affairs]** Cabinet member responsible for agriculture to compensate that supplier for an amount refundable in the production of such goods;” 15 20
- (d) by the substitution in subsection (3) in paragraph (i) of the proviso for subparagraph (cc) of the following subparagraph:
- “(cc) second-hand goods were acquired or goods as contemplated in section 8(10) were repossessed or surrendered;” 25
- (2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on 1 April 2014.
- (3) Paragraph (d) of subsection (1) comes into operation on 1 April 2014 and applies in respect of goods surrendered on or after that date.

Amendment of section 17 of Act 89 of 1991, as amended by section 31 of Act 136 of 1991, paragraph 9 of Government Notice 2695 of 8 November 1991, section 22 of Act 136 of 1992, section 31 of Act 97 of 1993, section 17 of Act 20 of 1994, section 33 of Act 27 of 1997, section 92 of Act 30 of 1998, section 88 of Act 53 of 1999, section 173 of Act 45 of 2003, section 102 of Act 32 of 2004, section 108 of Act 31 of 2005, section 48 of Act 9 of 2006, section 84 of Act 20 of 2006, section 84 of Act 8 of 2007 and section 31 of Act 36 of 2007 30 35

174. (1) Section 17 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2)(a) for paragraph (iii) of the proviso of the following paragraph:

- “(iii) such goods or services consist of **[a meal or refreshment]** entertainment supplied by the vendor as operator of any conveyance to a passenger or crew member, in such conveyance during a journey, where such **[meal or refreshment]** entertainment is supplied as part of or in conjunction with the transport service supplied by the vendor, where the supply of such transport service is a taxable supply;” 40 45

(2) Subsection (1) comes into operation on 1 April 2014 and applies in respect of services supplied on or after that date.

Amendment of section 18B of Act 89 of 1991, as inserted by section 139 of Act 24 of 2011

175. (1) Section 18B of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (4). 50

(2) Subsection (1) is deemed to have come into operation on 10 January 2012 and applies in respect of goods being fixed property supplied on or after that date.

Amendment of section 20 of Act 89 of 1991, as amended by section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999, section 157 of Act 60 of 2001, section 175 of Act 45 of 2003, section 47 of Act 16 of 2004, section 104 of Act 32 of 2004, section 38 of Act 21 of 2006, section 14 of Act 9 of 2007, section 1 of Act 3 of 2008, section 35 of Act 18 of 2009, section 30 of Act 8 of 2010 and section 29 of Act 21 of 2012 5

176. (1) Section 20 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the insertion after subsection (5A) of the following subsection:

“(5B) Notwithstanding any other provision of this Act, if the supply by a vendor relates to any enterprise contemplated in paragraph (b)(vi) of the definition of ‘enterprise’ in section 1, the vendor shall be required to provide a tax invoice as contemplated in subsection (5).”; and 10

(b) by the substitution in subsection (8) for paragraph (b) of the following paragraph:

“(b) the date upon which the second-hand goods were acquired or the goods were repossessed or surrendered, as the case may be;” 15

(2) Paragraph (a) of subsection (1) comes into operation on 1 April 2014 and applies in respect of electronic services supplied on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 April 2014 and applies in respect of goods surrendered on or after that date. 20

Amendment of section 22 of Act 89 of 1991, as amended by section 33 of Act 136 of 1991, paragraph 13 of Government Notice 2695 of 8 November 1991, section 27 of Act 136 of 1992, section 25 of Act 37 of 1996, section 36 of Act 27 of 1997, section 95 of Act 30 of 1998, section 177 of Act 45 of 2003, section 110 of Act 31 of 2005, section 86 of Act 20 of 2006 and section 140 of Act 24 of 2011 25

177. (1) Section 22 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (i) of the further proviso of the following paragraph:

“(i) in respect of any amount which has become irrecoverable in respect of an instalment credit agreement, if the vendor has repossessed or is obliged to take possession of the goods supplied in terms of that agreement; or”; and 30

(b) by the substitution in subsection (3) in paragraph (ii) of the proviso for subparagraph (cc) of the following subparagraph:

“(cc) the vendor has entered into a compromise [or an arrangement] in terms of section [311] 155 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), or a similar arrangement with creditors; or”. 35

(2) Paragraph (a) of subsection (1) comes into operation on 1 April 2014 and applies in respect of goods surrendered on or after that date. 40

(3) Paragraph (b) of subsection (1) comes into operation on 1 April 2014.

Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005, section 14 of Act 10 of 2006, section 24 of Act 4 of 2008, section 113 of Act 60 of 2008, section 93 of Act 17 of 2009, section 23 of Act 7 of 2010 and section 141 of Act 24 of 2011 45

178. (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) at the commencement of any month where [there are reasonable grounds for believing that] the total value of the taxable supplies in terms of a contractual obligation in writing to be made by that 50

person in the period of 12 months reckoned from the commencement of the said month will exceed the above-mentioned amount.”;

(b) by the insertion after subsection (1) of the following subsection:

“(1A) Every person who carries on any enterprise as contemplated in paragraph (b)(vi) of the definition of ‘enterprise’ in section 1 and is not registered becomes liable to be registered at the end of any month where the total value of taxable supplies made by that person has exceeded R50 000.”;

(c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) that person—

(i) is carrying on any enterprise and the total value of taxable supplies made by that person in the course of carrying on all enterprises in the preceding period of 12 months has exceeded R50 000; or

(ii) subject to the provisions of section 15(2B) and any regulation made by the Minister in terms of this Act, is carrying on any enterprise where the total value of taxable supplies made or to be made by that person has not exceeded R50 000 but can reasonably be expected to exceed that amount within 12 months from the date of registration,

other than any enterprise—

(AA) as contemplated in paragraph (b)(ii) or (iii) of the definition of ‘enterprise’ in section 1; or

(BB) that is a ‘municipality’ as defined in section 1;”;

(d) by the substitution in subsection (3) for paragraph (d) of the following paragraph:

“(d) that person is continuously and regularly carrying on an activity **[which,] of a nature set out in any regulation made by the Minister in terms of this Act and in consequence of the nature of that activity[, can reasonably be expected to result in] is likely to make taxable supplies [being made for a consideration] only after a period of time [and where the total value of taxable supplies to be made can reasonably be expected to exceed R50 000 in a period of 12 months].**”

(2) Paragraphs (a), (c) and (d) of subsection (1) come into operation on 1 April 2014.

(3) Paragraph (b) of subsection (1) comes into operation on 1 April 2014 and applies in respect of electronic services supplied on or after that date.

Amendment of section 24 of Act 89 of 1991, as amended by section 21 of Act 20 of 1994 and section 93 of Act 53 of 1999

179. (1) Section 24 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Where the Commissioner is satisfied that a vendor—

(a) no longer complies with the requirements for registration as contemplated in section 23(1) and (3); or

(b) has failed to furnish the Commissioner with a return reflecting such information as may be required for the purposes of the calculation of tax in terms of section 14 or 16,

the Commissioner may cancel such vendor’s registration with effect from the last day of the tax period during which the Commissioner is so satisfied, or from such other date as may be determined by the Commissioner: Provided that where such person lodges an objection against the Commissioner’s decision under this subsection the cancellation of that person’s registration shall not take effect until such time as the Commissioner’s decision becomes final and conclusive.”

(2) Subsection (1) comes into operation on 1 April 2014.

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996, section 42 of Act 27 of 1997, section 100 of Act 30 of 1998, section 98 of Act 53 of 1999, section 168 of Act 60 of 2001, section 88 of Act 20 of 2006, section 36 of Act 36 of 2007, section 43 of Act 61 of 2008 and section 271 of Act 28 of 2011, read with item 133 of Schedule 1 to that Act

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180. (1) Section 44 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the deletion in subsection (3) of the word “or” at the end of paragraph (c); and

(b) by the substitution in subsection (3)(d) for paragraph (ii) of the proviso of the following paragraph:

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“(ii) (aa) a subsidiary company, as defined in section 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), of a holding company, as defined in section 1 of [the Companies Act, 1973 (Act No. 61 of 1973)] that Act, requests that a refund or other amount be transferred to the bank account or the account with a similar institution in the Republic of that holding company;

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(bb) a subsidiary company, as defined in section 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), requests that a refund or other amount be transferred to the bank account or the account with a similar institution in the Republic of another subsidiary company of its holding company, as defined in section 1 of [the Companies Act, 1973 (Act No. 61 of 1973)] that Act; or

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(cc) a holding company, as defined in section 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), requests that a refund or other amount be transferred to the bank account or the account with a similar institution in the Republic of its subsidiary company, as defined in section 1 of [the Companies Act, 1973 (Act No. 61 of 1973)] that Act.”.

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(2) Subsection (1) comes into operation on 1 April 2014.

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Amendment of Schedule 1 to Act 89 of 1991, as amended by section 48 of Act 136 of 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 31 July 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996, section 53 of Act 27 of 1997, substituted by section 177 of Act 60 of 2001, amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice R.111 in *Government Gazette* 24274 of 17 January 2003, section 189 of Act 45 of 2003, section 52 of Act 16 of 2004, section 53 of Act 16 of 2004, section 54 of Act 16 of 2004, section 55 of Act 16 of 2004, section 108 of Act 32 of 2004, section 111 of Act 31 of 2005, section 112 of Act 31 of 2005, section 113 of Act 31 of 2005, section 114 of Act 31 of 2005, section 115 of Act 31 of 2005, section 116 of Act 31 of 2005, section 117 of Act 31 of 2005, section 118 of Act 31 of 2005, section 119 of Act 31 of 2005, section 120 of Act 31 of 2005, section 121 of Act 31 of 2005, section 122 of Act 31 of 2005, section 123 of Act 31 of 2005, section 52 of Act 9 of 2006, section 53 of Act 9 of 2006, section 89 of Act 20 of 2006, section 85 of Act 8 of 2007, Government Notice R.958 in *Government Gazette* 30370 of 12 October 2007, section 107 of Act 35 of 2007, Government Notice R.766 in *Government Gazette* 32416 of 24 July 2009 and section 143 of Act 24 of 2011

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181. (1) Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the insertion in item no. 412.00 after Note 1 of the following Note:

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“1A. For the purposes of item no. 412.07—

- (a) any offer to abandon or application to destroy any goods shall be in writing by or on behalf of the owner thereof, and shall—
- (i) include the bill of entry, the invoices and other documents relating to the importation of the goods;
 - (ii) state the identifying particulars of the goods;
 - (iii) state the reason for abandonment, or if application is made for destruction the reason why destruction and not abandonment is requested; and
 - (iv) indemnify the Commissioner against any claim by any other person;
- (b) the owner shall be responsible for the cost of storage in and removal to the customs and excise warehouse or any place of security indicated by the Commissioner, if such storage or removal is required by the Commissioner, and for any other expenses, including the cost of destruction;
- (c) goods shall be destroyed under the supervision of an officer; and
- (d) goods in respect of which security of the duty due has been furnished to the Commissioner shall be deemed to be under control of the Commissioner.”;
- (b) by the insertion after item no. 412.04/00.00/01.00 of the following items:
- “412.07 Goods unconditionally abandoned to the Commissioner by the owner or goods destroyed with the permission of the Commissioner: Provided that the Commissioner may decline to accept abandonment or grant permission for destruction**
- 412.07/00.00/01.00 Goods while still in a customs and excise warehouse or under the control of the Commissioner (excluding goods cleared under Schedule No. 3 of the Customs and Excise Act)
- 412.07/00.00/02.00 Goods cleared under Schedule No. 3 of the Customs and Excise Act
- 412.07/87.00/01.02 Motor vehicles cleared under any item of Schedule No. 4 of the Customs and Excise Act, damaged by accident or unavoidable cause”;
- (c) by the substitution in item no. 490.00 for Note 5 of the following Note:
- “5. On request by the importer, and subject to the permission of the Commissioner, temporary admission may be terminated by entering the goods for home consumption, whereupon tax must be paid, or by abandonment or destruction **[of the goods whereupon tax must be paid]**. The provisions of item no. 412.07 will apply to the abandonment or destruction of the goods concerned.”.
- (2) Subsection (1) comes into operation on 1 January 2014.

Repeal of Act 50 of 1998

182. The Demutualisation Levy Act, 1998 (Act No. 50 of 1998), is hereby repealed.

Amendment of section 8 of Act 25 of 2007, as amended by section 127 of Act 60 of 2008, section 97 of Act 17 of 2009, section 127 of Act 7 of 2010 and section 248 of Act 24 of 2011

183. (1) Section 8 of the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007), is hereby amended by the insertion in subsection (1)(a) after subparagraph (i) of the following subparagraph:

“(iA) in terms of a substitutive share-for-share transaction referred to in section 43 of the Income Tax Act or in terms of paragraph 11(2)(l) of the Eighth Schedule to the Income Tax Act;”.

(2) Subsection (1) is deemed to have come into operation on 4 July 2013.

Amendment of section 5 of Act 28 of 2008, as amended by section 98 of Act 17 of 2009 and section 132 of Act 7 of 2010

184. (1) Section 5 of the Mineral and Petroleum Resources Royalty Act, 2008 (Act No. 28 of 2008), is hereby amended—

- (a) by the addition in subsection (3) to the end of paragraph (e) of the word “or”; 5
- (b) by the substitution in subsection (3) at the end of paragraph (f) for the expression “; or” of a full stop; and
- (c) by the deletion in subsection (3) of paragraph (g).

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of a mineral resource transferred on or after that date. 10

Amendment of section 6A of Act 28 of 2008, as inserted by section 134 of Act 7 of 2010

185. (1) Section 6A of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs: 15

“(a) is transferred below the **[minimum]** condition specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been brought to the **[minimum]** condition specified for that mineral resource; or 20

(b) is transferred at a condition beyond the **[minimum]** condition specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been transferred at the higher of the **[minimum]** condition specified for that mineral resource or the condition in which that mineral resource was extracted.”; and 25

- (b) by the insertion after subsection (1) of the following subsection:

“(1A) If any unrefined mineral resource with a range is transferred—

(a) at a condition below the minimum of the range of conditions specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been brought to the minimum of the range of conditions specified for that mineral resource; 30

(b) at or within the range of conditions specified in Schedule 2, the mineral resource must be treated as having been transferred at that condition; or

(c) at a condition above the maximum range of conditions specified in Schedule 2, the mineral resource must be treated as having been transferred at the maximum of the range of conditions specified for that mineral resource.”. 35

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of any mineral resources transferred on or after that date. 40

Amendment of section 7 of Act 28 of 2008

186. (1) Section 7 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

- (a) by the addition in subsection (1) to the end of paragraph (b) of the word “and”; 45

- (b) by the substitution in subsection (1) at the end of paragraph (c) for the expression “; and” of a full stop; and

- (c) by the deletion in subsection (1) of paragraph (d).

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of a mineral resource transferred on or after that date. 50

Amendment of Schedule 1 to Act 28 of 2008, as amended by section 136 of Act 7 of 2010

187. (1) Schedule 1 to the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

- (a) by the substitution for the words in the “Refined condition” column corresponding to “Copper” of the following words: 5
“Copper is refined once processed into copper metal slabs, blister copper or cathode copper of **[at least]** 99.0% purity.”;
- (b) by the substitution for the words in the “Refined condition” column corresponding to “Lead” of the following words: 10
“Lead is refined once processed into bars and billets containing **[at least]** 99.0 % pure lead.”;
- (c) by the substitution for the words in the “Refined condition” column corresponding to “Vanadium” of the following words: 15
“Vanadium as chemically extracted and refined to a **[minimum]** purity of 10% V₂O₅ equivalent and above”; and
- (d) by the substitution for the words in the “Refined condition” column corresponding to “Zinc” of the following words: 20
“Zinc is refined once processed into zinc metal, plates or slabs containing **[at least]** 98.5% pure zinc.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of any mineral resources transferred on or after that date.

Amendment of Schedule 2 to Act 28 of 2008, as amended by section 103 of Act 17 of 2009, section 137 of Act 7 of 2010 and section 153 of Act 24 of 2011

188. (1) Schedule 2 to the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended— 25

- (a) by the substitution for the words in the “Unrefined condition” column corresponding to “Coal” of the following words: 25
“**[Minimum calorific]** Calorific value of 19.0MJ/kg to 27MJ/kg”;
- (b) by the substitution for the words in the “Unrefined condition” column corresponding to “Iron ore” of the following words: 30
“Plant feed **[with a minimum]** of 61.5% Fe content”;
- (c) by the substitution for the words in the “Unrefined condition” column corresponding to “Lead” of the following words: 35
“Concentrate **[with a minimum]** of 50% Pb”;
- (d) by the substitution for the words in the “Unrefined condition” column corresponding to “Limestone” of the following words: 40
“Concentrate **[with a minimum]** of 54% CaCO₃”;
- (e) by the substitution for the words in the “Unrefined condition” column corresponding to “Ilmenite” of the following words: 40
“**[A minimum of]** 80% FeTiO₃”;
- (f) by the substitution for the words in the “Unrefined condition” column corresponding to “Rutile” of the following words: 45
“**[A minimum of]** 70% TiO₂ concentrate”;
- (g) by the substitution for the words in the “Unrefined condition” column corresponding to “Zircon” of the following words: 45
“**[A minimum of]** 90% ZrO₂ + SiO₂ + HfO₂”; and
- (h) by the substitution for the words in the “Unrefined condition” column corresponding to “Tungsten (CaWO₄) and Wolfram” of the following words: 50
“**[Minimum]** 65% WO₃ in concentrate”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of any mineral resources transferred on or after that date.

Amendment of section 13 of Act 24 of 2011

189. (1) Section 13 of the Taxation Laws Amendment Act, 2011 (Act No. 24 of 2011), is hereby amended by the substitution for subsection (2) of the following subsection: 55

“(2) Subsection (1) [comes] is deemed to have come into operation on [a date determined by the Minister by notice in the *Gazette*, which date must be later than 1 January 2012,] 1 July 2013 and applies in respect of amounts of tax withheld or imposed by any sphere of government of any country other than the Republic during years of assessment commencing on or after [the] that date [so determined].” 5

(2) Subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of amounts of tax withheld or imposed by any sphere of government of any country other than the Republic during years of assessment commencing on or after that date. 10

Amendment of section 70 of Act 24 of 2011, as amended by section 173 of Act 22 of 2012

190. (1) Section 70 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection: 15

“(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 30 August 2011 and apply in respect of debt instruments and shares issued on or after that date, other than debt instruments and shares issued in terms of intra-group transactions which, but for any suspensive conditions contained in such agreements, would have been entered into [on or after] before that date.”. 20

(2) Subsection (1) is deemed to have come into operation on 10 January 2012. 20

Amendment of section 2 of Act 22 of 2012

191. (1) Section 2 of the Taxation Laws Amendment Act, 2012 (Act No. 22 of 2012), is hereby amended—

(a) by the deletion in subsection (1) of paragraph (w); and

(b) by the deletion of subsection (14). 25

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 9 of Act 22 of 2012

192. (1) Section 9 of the Taxation Laws Amendment Act, 2012, is hereby amended—

(a) by the deletion in subsection (1) of paragraph (d); and 30

(b) by the deletion of subsection (4).

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of government grants received on or after that date.

Amendment of section 17 of Act 22 of 2012

193. (1) Section 17 of the Taxation Laws Amendment Act, 2012, is hereby amended 35 by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) ceases to be a controlled foreign company [in relation to a resident].”.

(2) Subsection (1) is deemed to have come into operation on 1 February 2013.

Amendment of section 19 of Act 22 of 2012

194. (1) Section 19 of the Taxation Laws Amendment Act, 2012, is hereby 40 amended—

(a) by the deletion in subsection (1) of paragraph (i); and

(b) by the deletion of subsection (9).

(2) Subsection (1) is deemed to have come into operation on 1 April 2013.

Amendment of section 22 of Act 22 of 2012 45

195. (1) Section 22 of the Taxation Laws Amendment Act, 2012, is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) Paragraph (c) of subsection (1) comes into operation on 1 March [2013] 2014 and applies in respect of amounts received or accrued on or after that date.”.
- (2) Subsection (1) is deemed to have come into operation on 1 February 2013.

Amendment of section 50 of Act 22 of 2012

- 196.** (1) Section 50 of the Taxation Laws Amendment Act, 2012, is hereby amended 5
by the substitution for subsection (2) of the following subsection:
“(2) Subsection (1) comes into operation on [1 January 2013] 31 March 2014
and applies in respect of premiums incurred and policy benefits received or accrued
[on or] after that date.”.
- (2) Subsection (1) is deemed to have come into operation on 1 February 2013. 10

Amendment of section 53 of Act 22 of 2012

- 197.** (1) Section 53 of the Taxation Laws Amendment Act, 2012, is hereby amended
by the substitution for subsection (2) of the following subsections:
“(2) Paragraphs (g), (k), (l) and (m) of subsection (1) come into operation on 15
1 January 2013 and apply in respect of years of assessment commencing on or after
that date.
(2A) Paragraph (l) of subsection (1) comes into operation on 1 January 2014 and
applies in respect of years of assessment commencing on or after that date.”.
- (2) Subsection (1) is deemed to have come into operation on 1 February 2013.

Amendment of section 54 of Act 22 of 2012 20

- 198.** (1) Section 54 of the Taxation Laws Amendment Act, 2012, is hereby
amended—
(a) by the deletion in subsection (1) of paragraph (i); and
(b) by the deletion of subsection (6).
- (2) Subsection (1) is deemed to have come into operation on 1 February 2013. 25

Repeal of section 69 of Act 22 of 2012

- 199.** (1) The Taxation Laws Amendment Act, 2012, is hereby amended by the repeal
of section 69.
- (2) Subsection (1) is deemed to have come into operation on 30 June 2013.

Amendment of section 83 of Act 22 of 2012 30

- 200.** (1) Section 83 of the Taxation Laws Amendment Act, 2012, is hereby amended
by the substitution in subsection (1) for paragraph (g) of the following paragraph:
“(g) by the substitution in subsection (4)(b)(ii) for [subparagraph (f)] item (aa) of
the following [subparagraph] item:
‘[(i)](aa) the market-related interest in respect of that [loan or advance] 35
debt, less the amount of interest that is payable to that company
in respect of that [loan or advance] debt for that year of
assessment; or’;”.
- (2) Subsection (1) is deemed to have come into operation on 1 January 2013.

Amendment of section 89 of Act 22 of 2012 40

- 201.** (1) Section 89 of the Taxation Laws Amendment Act, 2012, is hereby amended
by the substitution in subsection (1) for paragraph (c) of the following paragraph:
“(c) by the substitution in subsection (3) for the words after paragraph (b) of the
following words:
‘submitted to the regulated intermediary—
(i) a declaration by the beneficial owner in such form as may be 45
prescribed by the Commissioner that the dividend is subject to

- that reduced rate as a result of the application of an agreement for the avoidance of double taxation; and
- (ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing should the circumstances affecting the reduced rate applicable to the beneficial owner referred to in subparagraph (i) change or the beneficial owner cease to be the beneficial owner.”.

(2) Subsection (1) is deemed to have come into operation on 1 February 2013.

Amendment of section 98 of Act 22 of 2012

202. (1) Section 98 of the Taxation Laws Amendment Act, 2012, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“**[The] Paragraph 5 of the** Second Schedule to the Income Tax Act, 1962, is hereby amended—”; and

- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) by the substitution for the words in subparagraph (1) after item (e) of the following words:

‘as has not been exempted in terms of section 10C or has not previously been allowed to the person as a deduction in terms of this Schedule in determining the amount to be included in that person’s gross income.’; and”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 February 2013.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2014 and applies in respect of amounts received or accrued on or after that date.

Amendment of section 99 of Act 22 of 2012

203. (1) Section 99 of the Taxation Laws Amendment Act, 2012, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

- “(d) by the substitution in subparagraph (1)(b) for the words after subitem (v) of the following words:

‘as has not been exempted in terms of section 10C or has not previously been allowed to the person as a deduction in terms of this Schedule in determining any amount to be included in that person’s gross income.’.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of amounts received or accrued on or after that date.

Repeal of section 102 of Act 22 of 2012

204. (1) The Taxation Laws Amendment Act, 2012, is hereby amended by the repeal of section 102.

(2) Subsection (1) is deemed to have come into operation on 1 February 2013.

Amendment of section 106 of Act 22 of 2012

205. (1) Section 106 of the Taxation Laws Amendment Act, 2012, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (a); and

- (b) by the deletion of subsection (2).

(2) Subsection (1) is deemed to have come into operation on 1 February 2013.

Amendment of section 109 of Act 22 of 2012

206. (1) Section 109 of the Taxation Laws Amendment Act, 2012, is hereby amended—

(a) by the deletion in subsection (1) of paragraph (a); and

(b) by the deletion of subsection (2).

(2) Subsection (1) is deemed to have come into operation on 1 February 2013.

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Repeal of section 112 of Act 22 of 2012

207. (1) The Taxation Laws Amendment Act, 2012, is hereby amended by the repeal of section 112.

(2) Subsection (1) is deemed to have come into operation on 1 February 2013.

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Amendment of section 117 of Act 22 of 2012

208. (1) Section 117 of the Taxation Laws Amendment Act, 2012, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 **[January]** March 2013 and applies in respect of disposals made on or after that date.”

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(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

Repeal of section 139 of Act 22 of 2012

209. (1) The Taxation Laws Amendment Act, 2012, is hereby amended by the repeal of section 139.

(2) Subsection (1) is deemed to have come into operation on 1 February 2013.

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Amendment of section 170 of Act 22 of 2012

210. (1) Section 170 of the Taxation Laws Amendment Act, 2012, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Section 49 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

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“(2) Subsection (1) is deemed to have come into operation on 3 June 2011 and applies in respect of any amount of interest incurred in terms of a debt instrument where that debt instrument was issued or used for the purpose of procuring, enabling, facilitating or funding the acquisition by an acquiring company of an asset in terms of a reorganisation transaction entered into—

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(a) on or after that date; and

(b) on or before 31 March 2014.”

(2) Subsection (1) comes into operation on 30 December 2013.

Amendment of section 171 of Act 22 of 2012

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211. (1) Section 171 of the Taxation Laws Amendment Act, 2012, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Section 50 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) is deemed to have come into operation on 3 August 2011 and applies in respect of any amount of interest incurred in terms of a debt instrument where that debt instrument was issued or used for the purpose of procuring, enabling, facilitating or funding the acquisition by an acquiring company of an asset in terms of a reorganisation transaction entered into—

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(a) on or after that date; and

(b) on or before 31 March 2014.”

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(2) Subsection (1) comes into operation on 30 December 2013.

Special zero-rating in respect of goods and services supplied by Cricket South Africa

212. (1) The supply of goods and services by Cricket South Africa in respect of the hosting of the Champions League Twenty20 (2012) event shall be subject to value-added tax imposed in terms of section 7(1) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), at the rate of zero per cent to the extent that the consideration for that supply is received from the Governing Council of the Champions League Twenty20. 5

(2) Subsection (1) is deemed to have come into operation on 1 July 2012.

Short title

213. This Act is called the Taxation Laws Amendment Act, 2013. 10