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THE PRESIDENCY

No. 46

24 January 2005

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

No. 32 of 2004: Revenue Laws Amendment Act, 2004.



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

Act No. 32,2004

REVENUE LAWS AMENDMENT ACT, 2004

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.

(English text signed by the President.)
(Assented to 18 January 2005.)

ACT

To amend the Transfer Duty Act, **1949**, so as to regulate the interest and penalty on late payment of duty; to limit the exemption from duty where property is used by a public benefit organisation otherwise than wholly for public benefit activities; to provide for certain consequential and textual amendments; to amend the Income **Tax Act, 1962**, so as to amend certain definitions and insert a new definition; to further regulate the provisions relating to deductions of interest and withholding tax on foreign dividends; to further regulate the provisions in terms of which residents are taxed on amounts received by foreigners as a result of any donation by that resident; to further regulate the taxation of executive share incentive schemes; to regulate the taxation of broad-based employee equity share plans for purposes of determining the tax liability of the employee and the deduction for the employer; to further regulate the taxation of instruments which are convertible between debt and equity; to effect certain consequential amendments as a result of the introduction of the Mineral and Petroleum Resources Development Act, **2002**, and the Securities Services Act, **2004**; to further regulate the exemptions from tax; to further regulate the provisions relating to purchased annuities to make provision for an average exchange rate where consideration given by the purchaser thereof is denominated in a foreign currency; to further regulate the deduction of the cost of improvements effected in terms of a Public Private Partnership; to further regulate the deduction of research and development expenditure; to further regulate the provisions relating to urban development zones; to make provision for the limitation of losses from the disposal of certain assets; to further regulate the provisions relating to the acquisition or disposal of trading stock; to regulate the taxation of transactions where assets are acquired in exchange for the issue of shares; to further regulate the taxation of gains or losses on foreign exchange transactions to exclude non-residents; to further regulate the provisions relating to the incurral and accrual of interest; to regulate the taxation of assets acquired or disposed of for unquantified amounts; to regulate the taxation of the disposal and acquisition of equity shares; to further regulate the provisions relating to the taxation of trusts; to repeal the provisions which regulate the disposal of assets by non-residents; to make provision for a withholding tax in the case where, a non-resident disposes of any immovable property in the Republic; to further, regulate the provisions relating to the taxation of intra-group transactions; **to** further regulate the provisions relating to the taxation of unbundling transactions; to further regulate the provisions relating to liquidation distributions; to further regulate the provisions relating to donations tax; to further regulate the provisions relating to secondary tax on companies; to further regulate the provisions which deem certain amounts to be dividends for purposes of secondary tax on companies; **to** further regulate the provisions relating to transactions, operations or schemes

for purposes of avoiding or postponing liability for or reducing amounts of taxes on income; to further regulate the provisions relating to the taxation of lump sum benefits; to further regulate the employees' tax provisions to include qualifying equity shares granted in terms of a broad-based employee equity share plan and equity instruments in terms of executive equity schemes; to further regulate the provisions relating to provisional tax; to further regulate the provisions relating to fringe benefits to take into account qualifying equity shares granted in terms of a broad-based employee equity share plan and equity instruments in terms of executive equity schemes; to further regulate the capital gains tax provisions to provide for the disposal and acquisition of assets for unquantified amounts; to regulate the capital gains tax implications for qualifying equity shares granted in terms of a broad-based employee equity share plan and equity instruments in terms of executive equity schemes; to further regulate the provisions relating to part disposal of assets; to regulate the capital gains tax implications in respect of the disposal of certain debt claims; to further regulate the provisions relating to disposal of assets for no consideration or consideration not measurable in money; to effect certain textual and consequential amendments and to delete certain obsolete provisions; to amend the Customs and Excise Act, **1964, so** as to insert and amend certain definitions; to further regulate the liability for duty where underpayments are the result of fraud, misrepresentation, non-disclosure of material facts or false declarations for the purposes of the Act; to amend the long title to include environmental levy; to amend the provisions relating to customs controlled areas within Industrial Development Zones; to amend provisions relating to biofuel; to effect certain consequential amendments; to amend the Stamp Duty Act, **1968, so as** to amend and insert certain definitions; to introduce interest and penalty provisions for failure or late payment of duty; to further provide for additional duty in case of evasion; to introduce provisions relating to e-stamping and electronic payments; to regulate the time in which an instrument must be stamped; to provide for regulations in respect of duty on other consideration; to further delete administrative penalties; to regulate the rate and exemption of duty; to provide for certain consequential and textual amendments; to amend the Value-Added Tax Act, **1991, so** as to amend and insert certain definitions; to provide for the imposition of levies introduced in the Customs and Excise Act, **1964**; to introduce certain deeming provisions; to provide for certain zero-rating and exemptions; to provide for the provisions relating to Industrial Development Zones; to further regulate the circumstances where an input tax may be claimed; to prescribe further requirements for tax invoices; to provide for certain textual amendments; to effect certain consequential amendments and to delete obsolete references to Acts that have been repealed; to clarify certain provisions; to amend the Uncertificated Securities Tax Act, **1998, so** as to amend and insert certain definitions; to provide for the value on which duty will be payable on securities; to further regulate the exemptions from duty; to effect certain textual amendments; to amend the Second Revenue Laws Amendment Act, **2001**, and the Revenue Laws Amendment Act, **2002, so** as to further regulate the provisions relating to industrial development zones inserted in the Customs and Excise Act, **1964**; to delete certain provisions which have not come into operation yet; to amend the Revenue Laws Amendment Act, **2003, so** as to delete certain provisions which have not come into operation yet and to further regulate certain commencement dates; to amend the Taxation Laws Amendment Act, **2004, so** as to delete a provision which has not come into operation yet; and to provide for a short title and commencement date; and to provide for matters relating thereto.

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

Amendment of section 4 of Act 40 of 1949, as amended by section 2 of Act 70 of 1963, section 1 of Act 72 of 1970, section 3 of Act 87 of 1982 and section 7 of Act 60 of 2001

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1. (1) Section 4 of the Transfer Duty Act, 1949, is hereby amended—

(a) by the substitution for the heading of the following heading:

“Penalty and interest on late payment of duty”;

(b) by the substitution in subsection (1) for the words preceding the proviso of the following words:

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“If any duty in respect of any transaction entered into before 1 March 2005, remains unpaid after the date of the expiration of the period referred to in section 3, there shall, subject to the provisions of subsection (3), in addition to the unpaid duty, be payable a penalty, at the rate of 10 per cent per annum on the amount of the unpaid duty, calculated in respect of each completed month in the period from that date to the date of payment.”;

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(c) by the insertion of the following subsection after subsection (1):

“(1A) If any duty in respect of any transaction entered into on or after 1 March 2005, remains unpaid after the date of the expiration of the period referred to in section 3, interest shall, subject to the provisions of subsection (3), become payable at a rate equal to 10 per cent per annum of the amount of duty which remains unpaid, calculated in respect of each completed month in the period from that date to the date of payment.”; and

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

“Whenever the Commissioner is satisfied that the delay in the determination of the value on which the duty is payable cannot be ascribed to the person liable to pay the duty, he or she may allow a reasonable extension of time within which the duty may be paid without [penalty] interest if, within six months of the date of acquisition of the property—”.

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(2) Subsection (1)(d) shall come into operation on 1 March 2005 and shall apply in respect of transactions entered into on or after that date.

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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 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 and section 2 of Act 16 of 2004

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2. Section 9 of the Transfer Duty Act, 1949, is hereby amended—

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

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“: Provided that if [any such property or any portion thereof is] at any time subsequent to the acquisition thereof it is used [for some purpose other than exclusively in carrying on any public benefit activities] otherwise than in the manner contemplated in this paragraph, duty shall become payable in respect of the acquisition of that property [or that portion thereof,] and the date upon which that property [or that portion thereof] was first so otherwise used [for that other purpose] shall for

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the purposes of section 3(1) and section 4 be deemed to be the date of acquisition thereof;” and

(b) by the deletion in subsection (2) of paragraph (ii).

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 95 of 1967, 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 No. R.780 of 14 April 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, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 34 of Act 34 of 1997, section 19 of Act 30 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 and section 3 of Act 16 of 2004

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

(a) by the substitution in the definition of “financial instrument” for paragraph (c) of the following paragraph:

“(c) any other contractual right or obligation [which derives its value from] the value of which is determined directly or indirectly with reference to—

- (i) a debt security or equity;
- (ii) any commodity as quoted on an exchange; or
- (iii) a rate index or a specified index;”;

(b) by the substitution in the definition of “listed company” for paragraph (a) of the following paragraph:

“(a) [a stock] an exchange as defined in section 1 and licensed under section 10 of the [Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)] Securities Services Act, 2004; or”;

(c) by the insertion after the definition of “provident fund” 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);”.

(2) (a) Subsection (1)(b) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

(b) Subsection (1)(c) shall come into operation on the date of promulgation of this Act.

Amendment of section 6quat of Act 58 of 1962, as substituted by section 4 of Act 59 of 2000, and amended by section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002 and section 16 of Act 45 of 2003

4. (1) Section 6quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1B) for paragraph (e) of the following paragraph:

“(e) no rebate shall be allowed in respect of any tax payable on any amount contemplated in subsection (1)(d), if the resident has elected to deduct the amount of withholding tax as contemplated in section [11(r)] 11C(4).”.

(2) Subsection (1) shall come into operation on 1 June 2004 and apply in respect of any year 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 9 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 and section 17 of Act 45 of 2003

5. (1) Section 7 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (8) of the following subsection: 10

“(8) Where by reason of or in consequence of any donation, settlement or other disposition (other than a donation, settlement or other disposition to an entity which is not a resident and which is similar to a public benefit organisation contemplated in section 30) made by any resident, [income] any amount is received by or accrued to any person who is not a resident (other than a controlled foreign company in relation to such resident), which would have constituted income had that person been a resident, there shall be included in the income of that resident so much of [the] that amount [of any income] as is attributable to that donation, settlement or other disposition.” 15 20

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending on or after that date.

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 and section 18 of Act 45 of 2003

6. Section 8 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the words in paragraph (a) preceding the proviso of the following words: 35

“(a) 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 and section 27(2)(b) and (d) of this Act, except section 11(k), (p) and (q), section 11quin, 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), or 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.” 40 45

Amendment of section 8A, as inserted by section 11 of Act 89 of 1969 and amended by section 8 of Act 88 of 1971

7. Section SA of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 50

“(a) There shall be included in the taxpayer’s income for the year of assessment the amount of any gain made by the taxpayer after the first day of June, 1969, by the exercise, cession or release during such year of any right to acquire any marketable

security (whether such right be exercised, ceded or released in whole or part), if such right was obtained by the taxpayer before 26 October 2004 as a director or former director of any company or in respect of services rendered or to be rendered by him as an employee to an employer.”.

Insertion of sections 8B and 8C in Act 58 of 1962

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8. (1) The following sections are hereby inserted in the Income Tax Act, 1962, after section 8A:

“Taxation of amounts derived from broad-based employee share plan

8B. (1) There must be included in the income of an employee for a year of assessment any amount received by or accrued to that employee during that year from the disposal of any qualifying equity share or any right or interest in a qualifying equity share, which—

- (a) was acquired by that employee in terms of a broad-based employee share plan; and
- (b) is disposed of by that employee within five years from the date of grant of that qualifying equity share, otherwise than in exchange for another qualifying equity share as contemplated in subsection (2).

(2) If an employee as a result of a subdivision, consolidation, conversion or restructuring of the equity share capital of the employer or any company in the same group of companies as that employer disposes of a qualifying equity share in exchange solely for any other equity share in that employer or any company in the same group of companies as the employer, that other equity instrument acquired in exchange is deemed to be a qualifying equity share which was acquired by that employee on the date of grant of the qualifying equity share disposed of in exchange.

(3) For the purposes of this section—
‘broad-based employee share plan’ of an employer means a plan in terms of which—

- (a) equity shares in that employer, or in a company in the same group of companies as the employer, are acquired by employees of that employer, for consideration which does not exceed the minimum consideration required by the Companies Act, 1973 (Act No. 61 of 1973);
- (b) employees who participate in any other equity scheme of that employer or of a company in the same group of companies as that employer are not entitled to participate and where at least 90 per cent of all other employees who are employed by that employer on a permanent basis on the date of grant (and who have continuously been so employed on a full-time basis for at least one year) are entitled to participate;
- (c) the employees who acquire the equity shares are entitled to all dividends and full voting rights in relation to those equity shares; and
- (d) no restrictions have been imposed in respect of the disposal of those equity shares, other than—
 - (i) a restriction imposed by legislation;
 - (ii) a right of any person to acquire those equity shares from the employee at market value; or
 - (iii) a restriction in terms of which that employee may not dispose of those equity shares for a period, which may not extend beyond five years from the date of grant;

‘date of grant’ in relation to an equity share means the date on which the granting of that equity share is approved by the directors or some other person or body of persons with comparable authority conferred under or by virtue of the memorandum and articles of association of the employer company;

‘market value’ in relation to an equity share means the price which could be obtained upon the sale of that equity share between a willing buyer and a willing seller dealing freely at arm’s length in an open market and without having regard to any restrictions imposed in respect of that equity share;

‘qualifying equity share’ in relation to a person means an equity share acquired in a year of assessment in terms of a broad-based employee share

plan, where the market value of all equity shares (as determined on the relevant date of grant of each equity share), which were acquired by that person in terms of that plan in that year and the two immediately preceding years of assessment, does not in aggregate exceed R9 000.

(4) The provisions of section 25 do not apply in respect of any amount received or accrued from the disposal of any qualifying equity share after the date of death of the person contemplated in subsection (1).

Taxation of directors and employees on vesting of equity instruments

8C. (1) (a) Notwithstanding section 9B and section 23(m), a taxpayer must include in or deduct from his or her income for a year of assessment any gain or loss determined in terms of subsection (2) in respect of the vesting during that year of any equity instrument, if that equity instrument was acquired by that taxpayer by virtue of his or her employment or office of director of any company.

(b) This section does not apply in respect of any equity instrument which—

(i) was acquired in exchange for the disposal of any other equity instrument which had already vested in terms of this section before that disposal; or

(ii) constitutes a qualifying equity share contemplated in section 8B.

(2) (a) The gain to be included in the income of a taxpayer is—

(i) in the case of a disposal contemplated in subsection (5)(c), the amount received or accrued in respect of that disposal which exceeds the sum of any consideration in respect of that equity instrument; or

(ii) in any other case, the sum of—

(aa) the amount by which the market value of the equity instrument determined on the date on which it vests in that taxpayer exceeds the sum of any consideration in respect of that equity instrument; and

(bb) the amount (if any) determined in terms of subsection (4)(b).

(b) The loss to be deducted from the income of a taxpayer is—

(i) in the case of a disposal contemplated in subsection (5)(c), the amount by which the sum of any consideration in respect of that equity instrument exceeds the amount received or accrued in respect of that disposal; or

(ii) in any other case, the amount by which the consideration in respect of the equity instrument exceeds the market value of that equity instrument determined on the date that it vests in that taxpayer.

(3) An equity instrument acquired by a taxpayer is deemed for the purposes of this section to vest in that taxpayer—

(a) in the case of the acquisition of an unrestricted equity instrument, at the time of that acquisition; or

(b) in the case of the acquisition of a restricted equity instrument, at the earliest of—

(i) when all the restrictions, which result in that equity instrument being a restricted equity instrument, cease to have effect;

(ii) immediately before that taxpayer disposes of that restricted equity instrument, other than a disposal in respect of which subsection (4) or (5) applies;

(iii) when that equity instrument, which is an option contemplated in paragraph (a) of the definition of 'equity instrument', terminates; and

(iv) immediately before that taxpayer dies.

(4) (a) If a taxpayer disposes of a restricted equity instrument which was acquired in the manner contemplated in subsection (1) for a consideration which consists of or includes any other restricted equity instrument which is acquired from the employer, associated institution or other person by arrangement with the employer, that other restricted equity instrument acquired in exchange is deemed to be acquired by that taxpayer by virtue of his or her employment or office of director of any company.

(b) If the consideration contemplated in paragraph (a) includes an amount other than restricted equity instruments and that amount exceeds the consideration in respect of the restricted equity instrument which is disposed of as contemplated in paragraph (a), the excess amount must be deemed to be a gain which must be included in the income of the taxpayer in the year of assessment during which that restricted equity instrument is so disposed of.

(5) (a) If a restricted equity instrument which was acquired by a taxpayer in the manner contemplated in subsection (1) is disposed of by that taxpayer to any person—

- (i) otherwise than by or under a disposal made in terms of a transaction at arm's length; or
- (ii) who is a connected person in relation to that taxpayer, the provisions of subsections (2), (3) and (4) apply *mutatis mutandis* in the determination of any gain or loss made by that person as if that person had been the taxpayer, and that gain or loss is for purposes of subsection (1) deemed to be made by that taxpayer in respect of the vesting of that equity instrument.

(b) If an equity instrument was acquired by any person other than the taxpayer by virtue of the taxpayer's employment or office of director, that equity instrument must, for purposes of this section, be deemed to have been so acquired by that taxpayer and disposed of to that person in the manner contemplated in paragraph (a).

(c) Paragraph (a) does not apply where a taxpayer disposes of any restricted equity instrument to his or her employer, an associated institution or other person by arrangement with the employer in terms of a restriction imposed in relation to that equity instrument for an amount not exceeding the consideration in respect of that restricted equity instrument.

(6) If a person who acquires a restricted equity instrument from the taxpayer as contemplated in subsection (5), disposes of that restricted equity instrument to any other person in the manner contemplated in subsection (5)(a)(i) or to a connected person in relation to the taxpayer, subsection (5) applies in respect of that other person as if he or she had acquired that restricted equity instrument directly from that taxpayer.

(7) For purposes of this section, unless the context otherwise indicates— 'associated institution' means an associated institution as contemplated in paragraph 1 of the Seventh Schedule;

'consideration' in respect of an equity instrument means any amount given or to be given (otherwise than in the form of services rendered or to be rendered or anything done, to be done or not to be done)—

- (a) by the taxpayer in respect of that equity instrument;
- (b) by the taxpayer in respect of any other restricted equity instrument which had been disposed of by that taxpayer in exchange for that equity instrument, reduced by any amount received or accrued in respect of that disposal which consisted of something other than that equity instrument to the extent that it has not been included in the income of the taxpayer in terms of subsection (4)(b); and
- (c) by any person contemplated in subsection (5) in respect of that equity instrument or other equity instrument contemplated in paragraph (b), which would have been taken into account had it been given by the taxpayer in respect of that equity instrument or other equity instrument, but does not include any amount given or to be given by that person to the taxpayer or to any other person contemplated in subsection (5):

Provided that where a taxpayer acquires an equity instrument in exchange for any other equity instrument, as contemplated in subsection (4)(a), the market value of the equity instrument given in exchange must not be taken into account in determining the consideration in respect of the equity instrument so acquired;

'employer' means an employer as contemplated in paragraph 1 of the Seventh Schedule;

‘equity instrument’ means a share or part thereof in the equity share capital of a company or a member’s interest in a company which is a close corporation, and includes —

- (a) an option to acquire such a share, part of a share or member’s interest; and
 (b) any other financial instrument that is convertible to a share, part of a share or member’s interest;

‘market value’ in relation to an equity instrument means the price which could be obtained upon the sale of that equity instrument between a willing buyer and a willing seller dealing freely at arm’s length in an open market and, in the case of a restricted equity instrument, had the restriction to which that equity instrument is subject not existed;

‘restricted equity instrument’ in relation to a taxpayer means an equity instrument—

- (a) which is subject to any restriction (other than a restriction imposed by legislation) that prevents the taxpayer from freely disposing of that equity instrument at market value;
 (b) which is subject to any restriction that could result in the taxpayer forfeiting ownership of that equity instrument otherwise than at market value;
 (c) if any person has retained the right to impose a restriction contemplated in paragraph (a) or (b) on the disposal of that equity instrument;
 (d) which is an option contemplated in paragraph (a) of the definition of ‘equity instrument’ and where the equity instrument which can be acquired in terms of that option will be a restricted equity instrument;
 (e) which is a financial instrument contemplated in paragraph (b) of the definition of ‘equity instrument’ and where the equity instrument to which that financial instrument can be converted will be a restricted equity instrument; or
 (f) if the employer, associated institution in relation to the employer or other person by arrangement with the employer has at the time of acquisition by the taxpayer of the equity instrument undertaken to—
 (i) cancel the transaction under which that taxpayer acquired the equity instrument; or
 (ii) repurchase that equity instrument from that taxpayer at a price exceeding its market value on the date of repurchase,
 if there is a decline in the value of the equity instrument after that acquisition; and

‘unrestricted equity instrument’ means an equity instrument which is not a restricted equity instrument.

- (2) Subsection (1) shall come into operation on 26 October 2004 and applies—
- (a) to the extent it inserts section 8B, in respect of any qualifying equity share acquired in terms of a broad-based employee share plan approved on or after that date by the directors or some other person or body of persons with comparable authority conferred under or by virtue of the memorandum and articles of association of the company; and
 - (b) to the extent it inserts section 8C, in respect of any equity instrument acquired on or after that date, otherwise than by way of the exercise of any right granted before that date and in respect of which section 8A applies.

Amendment of section 8E of Act 58 of 1962, as inserted by section 6 of Act 70 of 1989 and amended by section 19 of Act 45 of 2003

9. (1) Section 8E of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in subsection (1) of the definition of “affected instrument”;
 - (b) by the insertion in subsection (1) of the following definition before the definition of “effective date”:

“ ‘date of issue’ in relation to a share in a company means—

 - (a) the date on which it is issued by that company;
 - (b) the date on which the holder at any time after the share is issued acquires a right of disposal in respect of that share, otherwise than as a result of the acquisition of that share by that holder;
 - (c) the date on which the company at any time after the share is issued undertakes the obligation to redeem that share in whole or in part; and
 - (d) the date on which the holder at any time after the share is issued obtains the right to require that share to be redeemed in whole or in part, otherwise than as a result of the acquisition of that share by that holder;”;
 - (c) by the insertion in subsection (1) of the following definition after the definition of “effective date”:

“hybrid equity instrument” means—

 - (a) any redeemable preference share which the relevant company is obliged to redeem in whole or in part within a period of three years from the date of issue thereof, or which may at the option of the holder be redeemed in whole or in part within the said period, or in respect of which the holder has a right of disposal which may be exercised within the said period; or
 - (b) any other share, if—
 - (i) the holder has a right of disposal in respect of such share which may be exercised within a period of three years from the date of issue thereof or at the time of issue of that share, the existence of the company issuing that share is to be terminated within a period of three years or is likely to be terminated within such period upon a reasonable consideration of all the facts at the time that share is issued; and
 - (ii) such share does not rank *pari passu* as regards its participation in dividends with all other ordinary shares in the capital of the relevant company or, where the ordinary shares in such company are divided into two or more classes, with the shares of at least one of such classes, or any dividend payable on such share is to be calculated directly or indirectly with reference to—
 - (aa) any specified rate of interest;
 - (bb) the amount of capital subscribed for such share; or

- (cc) the amount of any loan or advance made directly or indirectly by the shareholder or by any connected person in relation to the shareholder.”;
- (d) by the substitution in subsection (1) of the definition of “right of acquisition” of the following definition: 5
- “ ‘right of [acquisition] disposal’ means a right which the holder of an [affected] hybrid equity instrument has to require any party—
- (a) to acquire [such affected] that hybrid equity instrument from [such] that holder; or
- (b) to procure, facilitate or assist with the redemption in whole or in part of [such affected] that hybrid equity instrument or the repayment in whole or in part of the capital subscribed for [such affected] that hybrid equity instrument or the conversion of [such affected] that hybrid equity instrument into any other share which is redeemable in whole or in part within a period of three years from the date of issue thereof.”; 10 15
- (e) by the substitution for subsection (2) of the following subsection:
- “(2)[Subject to the provisions of subsections (3) and (4), any] Any dividend declared by a company on [an affected instrument], a hybrid equity instrument which is declared on or after the date that the share becomes a hybrid equity instrument, shall for the purposes of this Act be deemed in relation to the recipient thereof only to be an amount of interest received by him from a source within the Republic.”; and 20
- (f) by the deletion of subsections (3) and (4).
- (2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any instrument issued or acquired during any year of assessment commencing on or after that date. 25

Insertion of section SF in Act 58 of 1962

10. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 8E: 30

“Limitation of deduction of certain interest payments

8E. (1) For purposes of this section, unless the context otherwise indicates, any word to which a meaning has been ascribed in section 245 bears the meaning so ascribed, and—

‘date of issue’ in relation to an instrument means— 35

(a) the date on which it is issued; and

(b) the date on which that instrument becomes convertible into or exchangeable for a share at any time in the future;

‘hybrid debt instrument’ means an instrument. where—

(a) that instrument is at the option of the issuer convertible into or exchangeable for any share in that issuer or any connected person in relation to that issuer within three years from the date of issue of that instrument; 40

(b) the issuer in relation to that instrument is entitled to repay that instrument in whole or in part within three years from the date of issue of that instrument by the issue of shares by the issuer or any connected person in relation to the issuer to the holder of the instrument; 45

(c) the issuer in relation to that instrument is entitled to repay that instrument in whole or in part within three years from the date of issue of that instrument and is entitled at the time of that repayment to 50

require the holder of that instrument to subscribe for or acquire shares in the issuer or any connected person in relation to the issuer; or

- (d) that instrument, other than a listed instrument issued by a listed company, is at the option of the holder convertible into or exchangeable for any share in the issuer or any connected person in relation to the issuer within three years from the date of issue and it is determined on the date of issue that the value of that share at the time of conversion or exchange is likely to exceed the value of the instrument by at least 20 per cent.

(2) No deduction shall be allowed in terms of this Act in respect of any amount paid or payable by an issuer in terms of a hybrid debt instrument, which is paid or becomes payable after that instrument becomes a hybrid debt instrument.”

(2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any instrument issued or transferred to an issuer during any year of assessment commencing on or after that date.

Amendment of section 9 of Act 58 of 1962, as amended by section 7 of Act 90 of 1962, section 6 of Act 72 of 1963, section 7 of Act 90 of 1964, section 9 of Act 95 of 1967, section 12 of Act 89 of 1969, section 6 of Act 65 of 1973, section 9 of Act 85 of 1974, section 8 of Act 103 of 1976, section 9 of Act 121 of 1984, section 5 of Act 96 of 1985, section 6 of Act 65 of 1986, section 2 of Act 108 of 1986, section 7 of Act 85 of 1987, section 36 of Act 9 of 1989, section 10 of Act 129 of 1991, section 7 of Act 141 of 1992, section 5 of Act 113 of 1993, section 3 of Act 140 of 1993, section 7 of Act 21 of 1994, section 9 of Act 21 of 1995, section 7 of Act 28 of 1997, section 25 of Act 30 of 1998, section 15 of Act 53 of 1999, section 7 of Act 59 of 2000, section 12 of Act 74 of 2002 and section 20 of Act 45 of 2003

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

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

“(cA) any contract made by such person for the disposal of any mineral (including natural oil) won by him or her in the course of mining operations carried on by him or her under any—

(i) mining authorization granted under the Minerals Act, 1991 (Act No. 50 of 1991); or

(ii) prospecting right, mining right, exploration right or production right or mining permit issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002),

wheresoever such contract was made or such mining operations were carried on;”;

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

“(fA) any services rendered by **[such] that** person to, or work or labour done by **[such] that** person for, any other person upon, beneath or above the continental shelf referred to in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), in the course of any operations connected with operations carried on by any person under any—

@ prospecting permit or mining authorization issued or which may be issued under the Minerals Act, 1991 (Act No. 50 of 1991); **[or]**

(ii) **[any]** prospecting or mining lease granted under the Mining Rights Act, 1967 (Act No. 20 of 1967), or under any sublease granted or which may be granted under any such lease; or

(iii) prospecting right, mining right, exploration right or production right, mining permit, retention permit or reconnaissance permission issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002),

wheresoever payment for such services or work or labour is or is to be made;”.

(2) Subsection (1) is deemed to have come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002, came into operation.

Amendment of section 9B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1990 and amended by section 11 of Act 129 of 1991, section 9 of Act 141 of 1992, section 6 of Act 113 of 1993, section 7 of Act 36 of 1996, section 26 of Act 30 of 1998, section 16 of Act 53 of 1999 and section 21 of Act 45 of 2003 5

12. (1) Section 9B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words: 10

“(1) For the purposes of this section ‘affected share’, in relation to any taxpayer, means a listed share in a [listed on a stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)] company as contemplated in paragraph (a) of the definition of ‘listed company’, which has been disposed of by the taxpayer who immediately prior to such disposal had been the owner of such share as a listed share for a continuous period of at least five years:” 15

(2) Subsection (1) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

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 and section 22 of Act 60 of 2001 and substituted by section 14 of Act 74 of 2002 and amended by section 22 of Act 45 of 2003 20

13. (1) Section 9D of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2A) for the words preceding the proviso of the following words: 25

“(2A) For the purposes of this section the ‘net income’ of a controlled foreign company in respect of a foreign tax year is an amount equal to the taxable income of that company determined in accordance with the provisions of this Act as if that controlled foreign company had been a taxpayer, and as if that company had been a resident for purposes of the definition of ‘gross income’, sections 7(8), 10(1)(h), [10(1)(hA),] 25B and paragraphs 2(1)(a), 12, 24, 70, 71, 72 and 80 of the Eighth Schedule:” 30

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of any foreign tax year which ends during a year of assessment of a resident ending on or after that date. 35

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 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, 40 45 50

section 36 of Act 12 of 2003, section 26 of Act 45 of 2003 and section 8 of Act 16 of 2004

14. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for subparagraph (iii) of paragraph (d) of the following subparagraph: 5
- “(iii) mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers) or local publicity association [**or non-proprietary stock exchange**] approved by the Commissioner subject to such conditions as the Minister may prescribe by regulation; or”; 10
- (b) by the substitution in subsection (1) for paragraph (h) of the following paragraph:
- “(h) interest which is received or accrued during any year of assessment by or to any person who is not a resident, unless that person— 15
- (i) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during that year; or
- (ii) at any time during that year carried on business through a permanent establishment in the Republic, 20
- and for purposes of this paragraph, so much of any dividend distributed to that person by a portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of ‘company’ in section 1 out of income derived by that portfolio which is exempt from tax in the hands of that portfolio under paragraph (iA), is deemed to be interest;”;
- (c) by the deletion in subsection (1) of paragraph (hA). 25
- (d) by the insertion in subsection (1) after paragraph (nB) of the following paragraph:
- “(nC) any amount received by or accrued to that person in the form of a qualifying equity share contemplated in section 8B;”;
- (e) by the insertion in subsection (1) before paragraph (nE) of the following paragraph: 30
- “(nD) any amount received by or accrued to that person which constitutes—
- (i) an equity instrument contemplated in section 8C acquired by that person and in respect of which that section applies; or
- (ii) consideration for the disposal of an equity instrument contemplated in subparagraph (i), 35
- which had not yet vested as contemplated in that section at the time of that acquisition or disposal;”;
- (f) by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph (nE) of the following subparagraphs: 40
- “(i) upon the cancellation of a transaction under which the taxpayer purchased shares under such scheme, and in respect of which section 8A applies; or
- (ii) upon the repurchase from the taxpayer, at a price not exceeding the selling price to him, of shares purchased by him under such scheme, and in respect of which section 8A applies.”; 45
- (g) by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph (zI) of the following subparagraphs: 50
- “(i) that amount is granted for the performance by that person of its obligations pursuant to 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), where that person performs an institutional function as defined in that Regulation**];
- (ii) that person is required in terms of that Public Private Partnership to expend an amount at least equal to that amount [**for the development of any physical infrastructure of the Republic**] in respect of any improvements on land or buildings owned by any sphere of government; 55
- [**and**]”; and
- (h) by the deletion in subsection (1) of subparagraph (iii) of paragraph (zI). 60
- (2) (a) Subsection (1)(a) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(b) Subsection (1)(b) and (c) shall—

(i) in the case of any fund—

(aa) the rules of which and the manner in which it is administered, are substantially similar to a “pension fund”, “provident fund” or “retirement annuity fund” as defined in section 1 of the Income Tax Act, 1962, and

(bb) the receipts and accruals of which are exempt from tax in the country of which that fund is a resident, be deemed to have come into operation on 1 January 2001 and shall apply in respect of any year of assessment commencing on or after that date; or

(ii) in any other case, come into operation on 1 January 2005 and shall apply in respect of any year of assessment ending on or after that date.

(c) Subsection (1)(d) shall come into operation on 26 October 2004 and shall apply in respect of any qualifying equity share received or accrued on or after that date.

(d) Subsection (1)(e) shall come into operation on 26 October 2004 and shall apply in respect of any equity instrument acquired on or after that date, otherwise than in terms of the exercise of any option in respect of which section 8A applies.

(e) Subsection (1)(g) and (h) shall come into operation on the date of promulgation of this Act.

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 and section 11 of Act 5 of 2001

15. Section 10A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (11) of the following subsection:

“(11) Any cash consideration given by the purchaser under the annuity contract shall be converted to the currency of the Republic by applying the [ruling] average exchange rate [on the day] for the year of assessment during which the consideration is actually paid.”.

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 and section 9 of Act 16 of 2004

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

(a) by the deletion of paragraphs (bC) and (r);

(b) by the substitution in paragraph (g) for subparagraph (vi) of the following subparagraph:

“(vi) the provisions of this paragraph shall not apply in relation to any such expenditure incurred under an agreement concluded on or after 1 July 1983, if the value of such improvements or the amount to be expended on such improvements, as contemplated in paragraph (h) of the

- definition of 'gross income' in section 1, does not for the purposes of this Act constitute income of the person to whom the right to have such improvements effected has accrued, unless the expenditure was incurred pursuant to an obligation to effect improvements in terms of a Public Private Partnership;”;
- (c) by the addition in paragraph (g) of the following paragraph to the proviso:
“(vii) if during any year of assessment the agreement whereby the right of use or occupation of the land or buildings is granted is terminated before expiry of the period to which that taxpayer was initially entitled to the use or occupation, as contemplated in paragraph (ii), so much of the allowance which may be allowed under this paragraph, which has not yet been allowed in that year or any previous year of assessment, shall be allowable as a deduction in that year of assessment.”;
- (d) by the substitution in paragraph (gC) for the words preceding subparagraph (i) of the following words:
“an allowance in respect of any [cost] expenditure actually incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004 to acquire (otherwise than by way of devising, developing or creating) any—”;
- (e) by the substitution in paragraph (gC) for paragraphs (aa) and (bb) of the proviso of the following paragraphs:
“(aa) where that [cost] expenditure actually incurred by the taxpayer exceeds R5 000, that allowance shall not exceed in any year of assessment—
(A) five per cent of the amount of the [cost] expenditure in respect of any invention, patent, copyright or other property of a similar nature or any knowledge connected with the use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or
(B) 10 per cent of the amount of [that cost] the expenditure in respect of any design or other property of a similar nature or any knowledge connected with the use of such design or other property or the right to have such knowledge imparted;
(bb) where any such invention, patent, design, copyright or other property or knowledge was acquired from any person who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the cost to that connected person of acquiring, devising, developing or creating that invention, patent, design, copyright or other property or knowledge or the market value of that invention, patent, design, copyright or other property or knowledge as determined on the date upon which it was acquired by the taxpayer;”;
- (f) by the insertion after paragraph (l) of the following paragraph:
“(lA) an amount equal to the market value of any qualifying equity share granted to an employee of that person as contemplated in section 8B, as determined on the date of grant as defined in that section, which applies *in lieu* of any other deduction which may otherwise be allowed to that person or any other person in respect of the granting of that share: Provided that the deduction under this paragraph may not during any year of assessment in aggregate exceed R3 000 in respect of all qualifying equity shares granted to a single employee and so much as exceeds R3 000 may be carried forward to the immediately succeeding year of assessment and that excess is deemed to be the market value of qualifying equity shares granted to the relevant,

employee during that immediately succeeding year for purposes of this paragraph.”

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 June 2004 and shall apply in respect of any year of assessment commencing on or after that date.

(b) Subsection (1)(b) and (c) shall come into operation on the date of promulgation of this Act. 5

(c) Subsection (1)(d) and (e) shall be deemed to have come into operation on 1 January 2004 and shall apply in respect of any year of assessment commencing on or after that date.

(d) Subsection (1)(f) shall come into operation on 26 October 2004 and applies in respect of any qualifying equity share granted in terms of a broad-based employee share plan approved on or after that date by the directors or some other person or body of persons with comparable authority conferred under or by virtue of the memorandum and articles of association of the company. 10

Amendment of section 11B of Act 58 of 1962, as inserted by section 29 of Act 45 of 2003 and amended by section 10 of Act 16 of 2004 15

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

(a) by the addition in subsection (1) of the word “or” at the end of paragraph (b) of the definition of “cost”; and

(b) by the addition in subsection (1) of the following paragraph to the definition of “cost”: 20

“(c) where that building, machinery, plant, implement, utensil or article was acquired from any person who is a connected person in relation to the taxpayer, the cost to that connected person of that building, machinery, plant, implement, utensil or article.”; 25

(c) by the substitution in subsection (1) for the definition of ‘trade mark’ of the following definition:

“ ‘trade mark’ means trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993), and any other property of a similar nature.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2004 and shall apply in respect of any year of assessment commencing on or after that date. 30

Insertion of section 11C in Act 58 of 1962

18. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 11B:

“Deductions in respect of foreign dividends 35

11C. (1) In determining the taxable income of a person for a year of assessment which is derived from any foreign dividends received by or accrued to that person during that year, there shall be allowed as a deduction any interest actually incurred by that person during that year in the production of income in the form of foreign dividends. 40

(2) The amount of the deduction under subsection (1) is limited to the amount of foreign dividends which are included in the income of the person during the year of assessment.

(3) The amount by which the interest referred to in subsection (1) exceeds the amount of the foreign dividends referred to in subsection (2) (if any), must be reduced by the amount of any foreign dividends received by or accrued to that person during the year of assessment which are exempt from tax and the balance must— 45

(a) be carried forward to the immediately succeeding year of assessment; and 50

(b) be deemed to be an amount of interest actually incurred by that person during that succeeding year of assessment in the production of income in the form of foreign dividends.

(4) Notwithstanding section 23(g), a person may elect that there shall be allowed to be deducted from any income of that person in the form of foreign dividends, the amount of withholding tax on dividends proved to be payable in respect of any foreign dividend which is included in the income of that person.

(5) An election made by a person in terms of subsection (4) applies in respect of all foreign dividends received by or accrued to that person during the year of assessment for which the election was made.”

(2) Subsection (1) shall be deemed to have come into operation on 1 June 2004 and shall—

(a) in so far as it relates to the deduction of any interest as contemplated in section 11C(1), (2) and (3), apply in respect of any interest incurred or balance of interest carried forward in terms of section 9E(5A) of the Income Tax Act, 1962, to any year of assessment commencing on or after that date; or

(b) in so far as it relates to the deduction of any withholding tax on dividends as contemplated in section 11C(4) and (5), apply in respect of any dividend received or accrued during any year of assessment commencing on or after that date.

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

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

(a) by the substitution in subsection (6) for paragraph (c) of the following paragraph:

“(c) that area is prioritised in that municipality’s integrated development plan adopted and undertaken in terms of Chapter 5 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) as a priority area for further investments to promote business **[and] or** industrial activity **[as well as dense] or** residential settlements to support such activity;”;

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

“(d) that area proportionately contributes or previously contributed a significant portion of the total revenue collections for all areas located within the current boundaries of that municipality, as measured in the form of—

(i) **[in the form of]** property rates; or

(ii) assessed property values **[used to determine those rates]**, and where the contribution from that area is undergoing a sustained **real or nominal** decline;”;

(c) by the deletion in subsection (6) of paragraph (f);

(d) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words:

“(9) Every municipality must provide **[an annual]** a report annually to the Commissioner and the Minister for each urban development zone located within that municipality within such time as is prescribed by the Minister, listing—”;

(e) by the substitution in subsection (9) for paragraphs (c) and (d) of the following paragraphs:

“(c) the estimated costs incurred by the taxpayer in respect of each building;

(d) the estimated total jobs created as a result of this section;”;

(f) by the addition to subsection (9) of the following paragraph:

“(g) the average turnover time for all planning and building approvals.”.

(2) Subsection (1) is deemed to have come into operation on 22 December 2003.

Insertion of section **20B** in Act **58** of **1962**

20. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section **20A**:

“Limitation of losses from disposal of certain assets

20B. (1) Any deduction which is allowable during any year of assessment under section 11(*o*) in respect of the disposal by a person during that year of any asset the full consideration of which will not accrue to that person during that year, must be disregarded in that year. 5

(2) ~~So~~ much of any amount disregarded in terms of subsection (1), which has not otherwise been allowed as a deduction, may be deducted from the income of that person in any subsequent year of assessment to the extent that any consideration which is received by or accrued to that person in that subsequent year from that disposal is included in the income of that person. 10

(3) If during any year of assessment a person contemplated in subsection (1) proves that no further consideration will accrue to him or her in that year and any subsequent year as contemplated in subsection (2), so much of the amount which was disregarded in terms of subsection (1) as has not been allowed as a deduction in any year, must be allowed as a deduction from the income of that person in that year of assessment.” 15

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of any disposal during any year of assessment commencing on or after that date. 20

Amendment of section **23F** of Act **58** of **1962**, as inserted by section **17** of Act **21** of **1994** and substituted by section **30** of Act **30** of **2000** and amended by section **28** of Act **59** of **2000** and section **40** of Act **45** of **2003**

21. (1) Section 23F of the Income Tax Act, 1962, is hereby amended— 25

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

“(2) Where [any] a taxpayer has during any year of assessment disposed of any trading stock in the ordinary course of his or her trade for any consideration the full amount of which will not accrue to him or her during [such] that year of assessment and any expenditure incurred in respect of the acquisition of [such] that trading stock was allowed as a deduction under the provisions of section 11(*a*) during [such] that year or any previous year of assessment, [the amount of such expenditure ~~so~~ allowed as a deduction shall deemed to have been recovered or recouped by such taxpayer and be included in the income ~~of~~ the taxpayer for the year of assessment during which such trading stock was ~~so~~ disposed of], and there shall be allowed to be deducted in— 30 35

(a) such year, ~~so~~ much of such expenditure which bears to the full amount of such expenditure the same ratio as the amount of such Consideration which has accrued to the taxpayer during such year bears to the full amount of such consideration; 40

(b) any subsequent year of assessment ~~so~~ much of such expenditure which bears to the full amount of such expenditure, the same ratio as the amount of such consideration which has accrued to the taxpayer during such subsequent year bears to the full amount of such consideration; or 45

(c) any year of assessment during which it is shown by such taxpayer that the consideration will never accrue to him, ~~so~~ much of such expenditure as has not been allowed as a deduction in terms of the provisions of paragraph (a) or (b), to the extent that such expenditure was actually paid] any amount 50

which would otherwise be deducted must, to the extent that it exceeds any amount received or accrued from the disposal of that trading stock be disregarded during that year of assessment.”.

(b) by the insertion after subsection (2) of the following subsections:

“(2A) So much of any amount disregarded in terms of subsection (2)

may be deducted from the income of that person in any subsequent year of assessment to the extent that any amount which is received by or accrued to that person in that subsequent year from that disposal is included in the income of that person.

(2B) If during any year of assessment a person contemplated in subsection (2) proves that no further amounts will accrue to him or her in that year and any subsequent year as contemplated in subsection (2A), so much of the amount which was disregarded in terms of subsection (2) as has not been allowed as a deduction in any year, must be allowed as a deduction from the income of that person in that year of assessment.”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of any disposal during any year of assessment commencing on or after that date.

Insertion of section 24B in Act 58 of 1962

22. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 24A:

“Transactions where assets are acquired in exchange for shares issued

24B. (1) Subject to subsection (2), if a company acquires any asset from any person in exchange for shares issued by that company —

(a) that company is for purposes of this Act 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 that asset as determined at the time of acquisition; and

(b) that person is for purposes of this Act deemed to have disposed of that asset for an amount equal to that market value.

(2) If a company acquires any share or debt instrument which is issued to that company directly or indirectly in exchange for the issue of shares by that company or any connected person in relation to that company, that company is for purposes of this Act deemed not to have incurred any expenditure in respect of the acquisition of that share or debt instrument so acquired.

(3) If a company issues any debt instrument directly or indirectly in exchange for the issue of shares or of a debt instrument which is issued to that company or to a connected person in relation to that company, that company is for purposes of this Act deemed to have incurred expenditure in respect of the acquisition of that share or debt instrument so acquired, only to the extent that the amounts are paid by that company in terms of the debt instrument so issued.”.

(2) Subsection (1) shall —

(a) for purposes of determining any capital gain or capital loss from the disposal of any asset (other than trading stock), be deemed to have come into operation on 1 October 2001 and shall apply in respect of any such asset acquired on or after that date; and

(b) in any other case, come into operation on the date of promulgation and shall apply in respect of any asset acquired on or after that date.

Amendment of section 241 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 and section 42 of Act 45 of 2003

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23. Section 241 of the Income Tax Act, 1962, is hereby amended by the addition to subsection (2) of the following proviso:

“: Provided that this section does not apply in respect of any exchange item of a person who is not a resident (other than a controlled foreign company), unless that exchange item is attributable to a permanent establishment of that person in the Republic.”

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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 and section 27 of Act 53 of 1999

24. (1) Section 24J of the Income Tax Act, 1962, is hereby amended— 15

(a) by the addition in subsection (1) of the following proviso to paragraph (b) of the definition of “adjusted initial amount”:

“: Provided that where that instrument forms part of any transaction, operation or scheme—

(i) any payments made by the issuer to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder, must be deducted for purposes of this paragraph; and 20

(ii) in the case where any party to that transaction, operation or scheme is a connected person in relation to that issuer, any payments made by that connected person to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder, must be deducted for purposes of this paragraph;” 25

(b) by the substitution in subsection (1) for paragraph (a) of the definition of “holder” of the following paragraph: 30

“(a) means any person who has become entitled to any interest or amount receivable in terms of such income instrument; or” 35

(c) by the substitution in subsection (1) for the definition of “issue price” of the following definition:

“ ‘issue price’, in relation to an instrument, means the market value of the consideration given or received, as the case may be, for the issue of the instrument as determined on the date on which that instrument is issued;” 40

(d) by the substitution in subsection (1) for paragraph (a) of the definition of “issuer” of the following paragraph:

“(a) means any person who has incurred any interest or has any obligation to repay any amount in terms of such instrument; or” 45

(e) by the substitution in subsection (1) for the definition of “transfer price” of the following definition:

“ ‘transfer price’, in relation to the transfer of an instrument, means the market value of the consideration payable or receivable, as the case may be, for the transfer of such instrument as determined on the date on which that instrument is transferred;” 50

(f) by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph (d) of the proviso to the definition of “yield to maturity” of the following subparagraphs:

“(i) of the rights or interests of a holder in relation to an income instrument [to receive interest] in respect of any amounts receivable in terms of such income instrument, the rate of compound interest in relation to such income instrument shall be redetermined in respect of such holder with reference to the 55

- appropriate adjusted initial amount in relation to such income instrument determined before such variation or alteration; or
- (ii) in the obligations of an issuer in relation to an instrument **[to pay any interest]** in respect of any amounts payable in terms of such instrument, the rate of compound interest in relation to such instrument shall be redetermined in respect of such issuer with reference to the appropriate adjusted initial amount in relation to such instrument determined before such variation or alteration.”;
- (g) by the addition in subsection (1) of the following further proviso to the definition of “yield to maturity”:
- “: Provided further that where that instrument forms part of any transaction, operation or scheme—
- (a) any payments made by the issuer to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder; and
- (b) in the case where any party to that transaction, operation or scheme is a connected person in relation to that issuer, any payments made by that connected person to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder, must be taken into account as amounts payable for purposes of determining that rate of compound interest.”;
- (h) by the addition to subsection (2) of the following words after paragraph (b): “which must be deducted from the income of that person derived from carrying on any trade, if that amount is incurred in the production of the income.”; and
- (i) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
- “(3) Where any person is the holder in relation to an income instrument during any year of assessment, there shall for the purposes of this Act be deemed to have accrued to **[such] that person and must be included in the gross income of that person** during **[such] that** year of assessment (whether or not that amount constitutes a receipt or accrual of a capital nature), an amount of interest which is equal to—”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of any instrument issued, acquired or transferred on or after that date.

Insertion of section 24M in Act 58 of 1962

25. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 24L:

“Incurral and accrual of amounts in respect of assets acquired or disposed of for unquantified amount

- 24M.** (1) If a person during any year of assessment disposes of an asset for consideration which consists of or includes an amount which cannot be quantified in that year of assessment, so much of that consideration as—
- (a) cannot be quantified in that year must for purposes of this Act be deemed not to have been accrued to that person in that year; and
- (b) becomes quantifiable during any subsequent year of assessment must for purposes of this Act be deemed to have been accrued to that person from that disposal in that subsequent year.
- (2) If a person during any year of assessment acquires an asset for consideration which consists of or includes an amount which cannot be quantified in that year of assessment, so much of that consideration as—
- (a) cannot be quantified in that year must for purposes of this Act be deemed not to have been incurred by that person in that year; and
- (b) becomes quantifiable during any subsequent year of assessment must for purposes of this Act be deemed to have been incurred by that

person in respect of the acquisition of that asset in that subsequent year.

(3) The amount of any recovery or recoupment by a person of any amount allowed as a deduction in respect of any asset contemplated in subsection (1) must, for purposes of section 8(4), be determined with reference to the amounts received by or accrued to that taxpayer in terms of this section.

(4) If an asset which was acquired by a person during any year of assessment as contemplated in subsection (2)—

(a) constitutes a depreciable asset; and

(b) any amount is in terms of subsection (2)(b) deemed to have been actually incurred by that person in any subsequent year of assessment which has not been taken into account in determining the amount of any allowance in respect of that depreciable asset in any previous year and would have been so taken into account had that amount been actually incurred by that person,

so much of the amount as would have been so allowed as an allowance in any previous year must be allowed in that subsequent year of assessment.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any asset disposed of or acquired during any year of assessment commencing on or after that date.

Insertion of section 24N in Act 58 of 1962

26. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 24M:

“Incurral and accrual of amounts in respect of disposal or acquisition of equity shares

24N. (1) Where a person (hereinafter referred to as ‘the seller’) during a year of assessment disposes of equity shares to any other person (hereinafter referred to as ‘the purchaser’) in the circumstances contemplated in subsection (2), any quantified or quantifiable amount payable by the purchaser to the seller must—

(a) to the extent that it is not due and payable to the seller during that year, be deemed for purposes of this Act—

(i) not to have been accrued to the seller in that year; and

(ii) not to have been incurred by the purchaser during that year; and

(b) to the extent that it becomes due and payable to the seller in any subsequent year of assessment, be deemed for purposes of this Act—

(i) to have been accrued to the seller during that subsequent year; and

(ii) to have been incurred by the purchaser during that subsequent year.

(2) Subsection (1) applies in respect of the disposal by a seller to a purchaser of any equity shares in a company where—

- (a) more than 25 per cent of the amount payable for those shares becomes due and payable by the purchaser after the end of the year of assessment of the seller and the amount payable is based on the future profits of that company;
- (b) the value of the equity shares in that company which have in aggregate been disposed of during that year and in respect of which the provisions of this section apply, exceeds 25 per cent of the total value of equity shares in that company; 5
- (c) the purchaser and seller are not connected persons in relation to each other after that disposal; 10
- (d) the purchaser is obliged to return the equity shares to the seller in the event of failure by the purchaser to pay any amount when due; and
- (e) the amount is not payable by the purchaser to the seller in terms of a financial instrument which is payable on demand and which is readily tradeable in the open market.”. 15

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal during any year of assessment commencing on or after that date.

Substitution of section 25B of Act 58 of 1962, as inserted by section 27 of Act 129 of 1991 and amended by section 22 of Act 141 of 1992, section 36 of Act 30 of 1998, section 32 of Act 59 of 2000 and section 14 of Act 19 of 2001 20

27. (1) The following section hereby substitutes section 25B of the Income Tax Act, 1962:

“Income of trusts and beneficiaries of trusts

25B. (1) Any [income] amount received by or accrued to or in favour of any person during any year of assessment in his or her capacity as the trustee of a trust, shall, subject to the provisions of section 7, to the extent to which [such income] that amount has been derived for the immediate or future benefit of any ascertained beneficiary who has a vested right to [such income] that amount during [such] that year, be deemed to be [income] an amount which has accrued to [such] that beneficiary, and to the extent; 30
which [such income] that amount is not so derived, be deemed to be [income] an amount which has accrued to [such] that trust.

(2) Where a beneficiary has acquired a vested right to any [income] amount referred to in subsection (1) in consequence of the exercise by the trustee of a discretion vested in him or her in terms of the relevant deed of trust, agreement or will of a deceased person, [such income] that amount shall for the purposes of that subsection be deemed to have been derived for the benefit of [such] that beneficiary. 35

(2A) Where during any year of assessment any resident acquires any vested right to any amount representing capital of any trust which is not a resident, [and] that amount must be included in the income of that resident in that year, if— 40

- (a) [such] capital arose from[—
- (i) income received by or accrued to such trust; or 45
- (ii) any receipts and accruals of such trust which would have constituted income if such trust had been a resident, in any previous year of assessment during which [such] that resident had a contingent right to [such income or receipts and accruals] that amount; and 50
- (b) [such income or receipts and accruals have] that amount has not been subject to tax in the Republic in terms of [the provisions of] this Act[, 50
such amount shall be included in the income of such resident in such year of assessment]. 55

(3) Any deduction or allowance which may be made under the provisions of this Act in the determination of the taxable income derived by way of any **[income] amount** referred to in subsection (1), **[shall] must**, to the extent to which **[such income] that amount** is under **[the provisions of]** that subsection deemed to be **[income] an amount** which has accrued to—

@ a beneficiary **[or to the trust]**, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by **[such] that** beneficiary **[or trust, as the case may be]; and**

(b) the trust, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by that trust.

(4) **[Notwithstanding the provisions of subsection (3), any]** The deduction or allowance contemplated in **[that]** subsection **(3)** which is deemed to be made in the determination of the taxable income of a beneficiary of a trust during any year of assessment, shall be limited to **[the income which is]** so much of the amount deemed to **[be income which has]** have been received by or accrued to **[such]** @beneficiary in terms of subsection (1), as is included in the income of that beneficiary during **[such] that** year of assessment.

(5) The amount by which the sum of the deductions and allowances contemplated in subsection (4) exceeds the amount included in the income of the beneficiary during a year of assessment as contemplated in that subsection, **[shall]—**

(a) **[be] &** deemed to be a deduction or allowance which may be made in the determination of the taxable income of the trust during **[such] that** year **[of assessment]**; Provided that the sum of **[such] those** deductions and allowances shall be limited to the taxable income of **[such] that** trust during **[such] that** year of assessment as calculated before allowing any deduction or allowance under this subsection; or

(b) where the trust is not subject to tax in the Republic, **must** be carried forward and be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by **[such] that** beneficiary by way of **[income] amounts** referred to in subsection (1) during the immediately succeeding year of assessment.

(6) The amount by which the sum of the deductions and allowances contemplated in subsection (4) exceeds the sum of the amount included in the income of the beneficiary as contemplated in subsection (4) **[of such beneficiary]** and the taxable income of **[such] the** trust as contemplated in subsection (5)(a), **[shall for the purposes of subsection (3)] must** be deemed to be a deduction or allowance for purposes of subsection (3), which may be made in the determination of the taxable income derived by **[such] that** beneficiary by way of **[income] any amount** referred to in subsection (1) during the immediately succeeding year of assessment.

(7) **[The provisions of]** Subsections (4), (5) and (6) **[shall] do** not apply in respect of any **[income] amount** which is deemed to have accrued to any beneficiary in terms of subsection (1), where **[such] that** beneficiary is not subject to tax in the Republic on **[such income] that amount**.”

(2) Subsection (1) shall come into operation on the date of promulgation and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by section 16 of Act 19 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002 and section 45 of Act 45 of 2003

28. (1) Section 30 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (3)(b)(ii) for item (bb) of the following item:

“(bb) in [securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) any listed financial instrument of a company contemplated in paragraph (a) of the definition of ‘listed company’; or”;

(b) by the substitution for subsection (3B) of the following subsection: 5

“(3B) Where an organisation applies for approval before the later of 31 December [2003] 2004 or the last day of its first year of assessment, the Commissioner may approve that organisation for the purposes of this section, or for the purposes of any provision contained in section 10 which was repealed on 15 July 2001, with retrospective effect.”. 10

(2) Subsection (1)(a) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

Repeal of section 31A of Act 58 of 1962

29. (1) Section 31A of the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act 15 and shall apply in respect of any disposal by a non-resident on or after that date.

Insertion of section 35A in Act 58 of 1962

30. The following section is hereby inserted in the Income Tax Act, 1962, after section 35:

“Withholding of amounts from payments to non-resident sellers of 20 immovable property

35A. (1) Any person (hereinafter referred to as ‘the purchaser’) who must pay any amount to any other person who is not a resident (hereinafter referred to as ‘the seller’), or to any other person for or on behalf of that seller, in respect of the disposal by that seller of any immovable property in the Republic must, subject to subsection (2), withhold from the amount which that person must so pay, an amount equal to— 25

- (a) 5 per cent of the amount so payable, in the case where the seller is a natural person;
- (b) 7,5 per cent of the amount so payable, in the case where the seller is a company; and 30
- (c) 10 per cent of the amount so payable, in the case where the seller is a trust.

(2) The seller may apply to the Commissioner, in the form and at the place as the Commissioner may determine, for a directive that no amount or a reduced amount be withheld by the purchaser in terms of subsection (1) solely having regard to— 35

- (a) any security furnished for the payment of any tax due on the disposal of the immovable property by the seller;
- (b) the extent of the assets of the seller in the Republic; 40
- (c) whether that seller is subject to tax in respect of the disposal of the immovable property; and
- (d) whether the actual liability of that seller for tax in respect of the disposal of the immovable property is less than the amount contemplated in subsection (1). 45

(3) The amount withheld from any payment to the seller in terms of subsection (1) is an advance in respect of that seller’s liability for normal tax for the year of assessment during which that property is disposed of by that seller.

(4) The amount withheld by a purchaser in terms of subsection (1), must be paid to the Commissioner— 50

- (a) where that purchaser is a resident, within 14 days after the date on which that amount was so withheld; or
- (b) where that purchaser is not a resident, within 28 days after the date on which that amount was so withheld. 55

(5) If amount has been withheld in terms of subsection (1) from any amount payable in a foreign currency, that amount so withheld must be

translated to the currency of the Republic at the spot rate on the date that the amount is paid to the Commissioner.

(6) The purchaser must, together with the payment contemplated in subsection (4), submit to the Commissioner a declaration in the form and containing the information as the Commissioner may prescribe.

(7) If a purchaser knows or should reasonably have known that the seller is not a resident and fails to withhold any amount as required by subsection (1), that purchaser—

- (a) is personally liable for the payment of the amount which he or she failed to withhold; and
- (b) must pay that amount to the Commissioner not later than the date on which payment should have been made if the amount had in fact been withheld.

(8) Subsection (7) does not apply if an estate agent or conveyancer assists in the disposal of the immovable property and that estate agent or conveyancer fails to notify the purchaser as contemplated in subsection (11).

(9) If a purchaser fails to pay any amount contemplated in subsection (1) to the Commissioner within the period allowed for payment in terms of subsection (4), that purchaser—

- (a) is liable for interest at the prescribed rate on any amount outstanding calculated from the day following the last date for payment to the date that the amount is received by the Commissioner; and
- (b) must pay a penalty equal to ten per cent of that amount, in addition to any other penalty or charge for which he or she may be liable under this Act.

(10) The Commissioner may having regard to the circumstances of the case remit the whole or any part of the penalty imposed under subsection (9)(b).

(11) Any estate agent and any conveyancer who is entitled to any remuneration or other payment in respect of services rendered in connection with the disposal of the immovable property by the seller or the registration of transfer, as the case may be, must before any payment is made to the seller each notify the purchaser in writing of the fact that the seller is not a resident and that the provisions of this section may apply.

(12) If an estate agent or conveyancer knows or should reasonably have known that the seller is not a resident and fails to comply with subsection (11), that failing estate agent or conveyancer is jointly and severally liable for the payment of the amount which the purchaser is required to withhold and pay to the Commissioner in terms of this section, but limited to the amount of remuneration or other payment in respect of the services rendered in connection with the disposal of the immovable property by the seller or the registration of transfer, as the case may be.

(13) The purchaser, estate agent or conveyancer, as the case may be, may recover any amount paid in terms of subsection (7) or (12) from the seller.

(14) This section does not apply—

- (a) if the amounts payable by the purchaser to the seller and to any other person for or on behalf of the seller, in respect of the acquisition by that purchaser of the immovable property, in aggregate do not exceed R2 million; or
- (b) in respect of any deposit paid by a purchaser for purposes of securing the disposal of the immovable property by the seller to that purchaser, until the agreement for that disposal has been entered into, in which case any amount which would have been required to be withheld from the amount of that deposit, must be withheld from the first following payments made by that purchaser in respect of that disposal.

(15) For purposes of this section —

‘conveyancer’ means a ‘conveyancer’ as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

‘estate agent’ means an ‘estate agent’ as defined in section 1 of the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976);

‘foreign currency’ means any currency other than the currency of the Republic;

‘immovable property’ means immovable property contemplated in paragraph 2(1)(b)(i) and (2) of the Eighth Schedule.”

(2) Subsection (1) shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.

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 and section 41 of Act 60 of 2001

31. (1) Section 36 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (11) for subparagraphs (aa) and (bb) of paragraph (c) of the following subparagraphs, respectively:

“(aa) the amount under this paragraph shall not be calculated for any period during which mining operations are not carried on in accordance with the terms of the relevant—

(A) mining authorization issued under the Minerals Act, 1991 (Act No. 50 of 1991); **or**

(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);

(bb) notwithstanding anything to the contrary in any law contained, the amount under this paragraph shall not be taken into account for the purpose of—

~~8~~ calculating the capital allowance provided for in section 25(2) of the Mining Rights Act, 1967; **[or]**

(B) **[for the purpose of]** determining the profits of which a share is payable to the State in terms of any mining authorization issued under the Minerals Act, 1991 (Act No. 50 of 1991); **or**

(C) determining the amounts payable to the State in terms of the transitional mineral and petroleum provisions contemplated in Schedule 3 of the Taxation Laws Amendment Act, 2004 (Act No. 16 of 2004);”.

(2) Subsection (1) shall be deemed to have come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002, came into operation.

Amendment of section 41 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 and amended by section 49 of Act 45 of 2003

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

(a) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the definition of “domestic financial instrument holding company” of the following subparagraph:

“(i) the amount of that debt is or was included in the income of that company or controlled group company, as the case may be (or in the case of a foreign controlled group company, would have been so included were that foreign company a resident); and”;

(b) by the substitution in subsection (1) for paragraph (b) of the definition of “domestic financial instrument holding company” of the following paragraph:

“(b) any financial instrument held by that company or by any controlled group company in relation to that company, where that company or controlled group company, as the case may be, is **[regulated in terms of]**—

- (i) a bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990); 5
 - (ii) **[the Financial Markets Control Act, 1989 (Act No. 55 of 1989)]** an authorised user regulated in terms of the Securities Services Act, 2004;
 - (iii) an insurer regulated in terms of the Long Term Insurance Act, 1998 (Act No. 52 of 1998); 10
 - (iv) an insurer regulated in terms of the Short Term Insurance Act, 1998 (Act No. 53 of 1998); or
 - [(v) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or]**
 - (vi) a collective investment scheme regulated in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002); or”; 15
- (c) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the definition of “foreign financial instrument holding company” of the following subparagraph: 20
- “(i) the amount of that debt is or was included in the income of that foreign company or controlled group company, as the case may be (or would have been so included were that foreign company or controlled group company a resident); and”; and 25
- (d) by the substitution for subsection (2) of the following subsection: 25
- “(2) The provisions of this ~~Act~~ must, subject to subsection (5), apply in respect of a company formation transaction, a 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 **[31A,] 24B(2) and (3),** and 103.”. 30

(2) (a) Subsection (1)(b) shall come into operation on the date that the Securities Services Act, 2004, comes into operation. 35

(b) Subsection (1)(d) shall come into operation on 26 October 2004 and shall apply in respect of any disposal in terms of any company formation transaction, share for share transaction, amalgamation transaction, intra-group transaction, unbundling transaction or liquidation distribution which takes effect on or after that date.

Amendment of section 42 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 and amended by section 50 of Act 45 of 2003 40

33. (1) Section 42 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (9) for paragraph (c) of the following paragraph: 45

- “(c) that financial instrument is being transferred to any company **[regulated in terms of]** that is— 45
- (i) a bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990);
 - (ii) **[the Financial Markets Control Act, 1989 (Act No. 55 of 1989)]** an authorised user regulated in terms of the Securities Services Act, 2004;
 - (iii) an insurer regulated in terms of the Long Term Insurance Act, 1998 (Act No. 52 of 1998); 50
 - (iv) an insurer regulated in terms of the Short Term Insurance Act, 1998 (Act No. 53 of 1998); or
 - [(v) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or]**
 - (vi) a collective investment scheme regulated in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).”. 55

(2) Subsection (1) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

Amendment of section 43 of Act 59 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 and amended by section 51 of Act 45 of 2003

34. Section 43 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (7) of the following subsection: 5

“(7) The provisions of this section do not apply in respect of the disposal by a person of an equity share in a target company where that target company immediately prior to that disposal constitutes a domestic financial instrument holding company or a foreign financial instrument holding company [as defined in section 9D].” 10

Amendment of section 45 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 and amended by section 53 of Act 45 of 2003 and section 17 of Act 16 of 2004

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

(a) by the substitution for subsection (4) of the following subsection: 15

“(4) (a) This subsection applies in respect of a transferee company which has acquired an asset—

- (i) in terms of a disposal by a transferor company by means of an intra-group transaction; or
- (ii) in terms of one or more disposals subsequent to the disposal contemplated in subparagraph (i) and no capital gain or capital loss was determined in respect of any of those disposals as a result of the application of this Part. 20

(b) Where a transferee company which has acquired an asset as contemplated in paragraph (a) ceases to form part of any group of companies in relation to the transferor company contemplated in paragraph (a)(i) at any time before the disposal by the transferee company of that asset, that transferee company must— 25

- (i) except as provided for in subparagraph (ii), be deemed to have disposed of that asset on the day immediately before the date on which that transferee company ceased to form part of that group of companies for an amount equal to the market value of the asset as at that date and as having immediately reacquired that asset for an amount equal to the market value of that asset as at that date; and 30
- (ii) for purposes of determining a deduction or allowance to which that transferee company may be entitled as contemplated in the definition of ‘allowance asset’ in section 41, be deemed as having immediately reacquired that asset for an amount equal to the lower of the market value of that asset as at that date or the cost of that asset immediately prior to that disposal;” and 35

(b) by the substitution in subsection (6)(a) for subparagraph (iii) of the following subparagraph: 40

“(iii) that financial instrument is being transferred to any transferee company [regulated in terms of] that is—

(aa) a bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990); 45

(bb) [the Financial Markets Control Act, 1989 (Act No. 55 of 1989) an authorised user regulated in terms of the Securities Services Act, 2004;

(cc) an insurer regulated in terms of the Long Term Insurance Act, 1998 (Act No. 52 of 1998); 50

(dd) an insurer regulated in terms of the Short Term Insurance Act, 1998 (Act No. 53 of 1998); or

[(ee) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or] 55

(ff) a collective investment scheme regulated in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002); or” .

(2) (a) Subsection (1)(a) shall come into operation on 26 October 2004 and shall apply in respect of any intra-group transaction which takes effect on or after that date.

(b) Subsection (1)(b) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

Amendment of section 46 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and amended by section 23 of Act 30 of 2002 and substituted by section 34 of Act 74 of 2002 and amended by section 54 of Act 45 of 2003

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

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

“(a) that shareholder must be deemed to have acquired the equity shares held in the unbundling company (hereinafter referred to as the ‘previously held shares’) and those shares at a cost equal to—

(i) where the previously held shares were held by that shareholder as trading stock, the amount taken into account by that person in respect of the previously held shares as contemplated in section 11(a) or 22(1) or (2); or

(ii) where the previously held shares were held by that shareholder as capital assets and those shares—

(aa) constitute pre-valuation date assets as contemplated in paragraph 1 of the Eighth Schedule, the valuation date value of those shares as contemplated in paragraph 25 of the Eighth Schedule; or

(bb) do not constitute pre-valuation date assets as contemplated in paragraph 1 of the Eighth Schedule, the expenditure in respect of those shares allowable in terms of paragraph 20 of the Eighth Schedule; and”;

(b) by the substitution in subsection (7) for paragraph (b) of the following paragraph:

“(b) in respect of any disposal of shares in terms of an unbundling transaction to a shareholder—

(i) who is not [a resident] subject to tax (as defined in this Act or the Tax on Retirement Funds Act, 1996) in the Republic or who is subject to tax in the Republic at a reduced rate as a result of the application of any agreement for the avoidance of double taxation; and

(ii) where that shareholder acquires more than five per cent of those shares.”.

(2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any unbundling transaction which takes effect on or after that date.

Amendment of section 47 of Act 58 of 1962, as inserted by section 34 of Act 74 of 2002 and amended by section 55 of Act 45 of 2003

37. (1) Section 47 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “liquidation distribution” of the following paragraph:

“(a) in terms of which any company (hereinafter referred to as the ‘liquidating company’) distributes all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company, but only to the extent to which those assets are so disposed of to another company (hereinafter referred to as the ‘holding company’) which—

(i) is [a resident] subject to tax (as defined in this Act or the Tax on Retirements Funds Act, 1996) in the Republic, unless that company is taxed at a reduced rate in the Republic as a result of the application of any agreement for the avoidance of double taxation; and

(ii) [which holds] on the date of that disposal holds at least 75 per cent of the equity shares of that liquidating company; and”.

(2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any liquidation distribution which takes effect on or after that date.

Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 96 of 1981, section 31 of Act 94 of 1983, section 4 of Act 30 of 1984, section 28 of Act 121 of 1984, section 18 of Act 96 of 1985, section 21 of Act 85 of 1987, section 26 of Act 90 of 1988, section 28 of Act 141 of 1992, section 32 of Act 113 of 1993, section 18 of Act 36 of 1996, section 39 of Act 30 of 1998, section 38 of Act 30 of 2000, section 41 of Act 59 of 2000, section 45 of Act 60 of 2001, section 24 of Act 30 of 2002, section 35 of Act 74 of 2002 and section 56 of Act 45 of 2003

38. (1) Section 56 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (r) of the following paragraph:

“(r) by a company to any other company that is a resident and is a member of the same group of companies as the company making that donation.”

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any donation which takes effect on or after that date.

Amendment of section 58 of Act 58 of 1962

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

(a) by renumbering the existing wording as subsection (1);

(b) by the addition of the following subsection:

“(2) Where a person disposes of a restricted equity instrument, as defined in section 8C, to any other person under the circumstances contemplated in section 8C(5), that restricted equity instrument shall for the purposes of this Act be deemed to have been donated at the time that it is deemed to vest for the purposes of section 8C and to have a value equal to the fair market value of that instrument at that time: Provided that in the determination of the value of that restricted equity instrument a reduction shall be made of an amount equal to the value of any consideration in respect of that donation.”

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 and section 58 of Act 45 of 2003

40. (1) Section 64B of the Income Tax Act, 1962, is hereby amended—

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

“(3) Subject to subsection (3A), the net amount of any dividend referred to in subsection (2) shall be the amount by which such dividend declared by a company exceeds the sum of any dividends [(other than— (a) any dividends contemplated in subsection (5)(b), (c), (d) and @; (b) any foreign dividends; or (c) any dividend which accrued to a borrower as contemplated in the definition of ‘securities lending arrangement’ in respect of a share which was borrowed in terms of such arrangement, but including foreign dividends to the extent that those foreign dividends are exempt in terms of section 10(1)(k)(ii)(aa),] which have accrued to that company during the dividend cycle in relation to such firstmentioned dividend [accrued to the company]:”

(b) by the insertion after subsection (3) of the following subsection:

“(3A) In determining the sum of the dividends which have accrued to a company as contemplated in subsection (3), no regard must be had to—

(a) any dividend contemplated in subsection (5)(b), (c) or (f);

(b) any dividend to the extent that the dividend is taxable by virtue of section 10(1)(k)(i)(bb);

(c) any dividend which accrued to a borrower as contemplated in the definition of ‘securities lending arrangement’ in respect of a share which was borrowed in terms of that arrangement; or

- (d) any foreign dividend, other than a foreign dividend which accrued to that company (hereinafter referred to as the 'recipient company')—
- (i) in circumstances other than as contemplated in subparagraph (ii) to the extent that the profits from which the dividend is distributed relate to an amount which has been subject to tax in the Republic in terms of this Act without reduction as a result of the application of any agreement for the avoidance of double taxation, at the rate applicable to a company which either—
- (aa) mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies; or
- (bb) has its place of residence outside the Republic and carries on a trade through a branch or agency within the Republic; or
- (ii) to the extent that that foreign dividend arose directly or indirectly from any dividend declared by a company which is a resident (hereinafter referred to as the 'resident company') and which was subject to secondary tax on companies: Provided that where—
- (aa) at least 10 per cent of the equity share capital in that resident company is indirectly held by that recipient company through any foreign company as defined in section 9D (hereinafter referred to as an 'intermediate company'); and
- (bb) no other resident directly or indirectly holds an equal or greater interest in the equity share capital of that resident company (other than an interest held indirectly through that recipient company),
- so much of any foreign dividend which accrues to the recipient company from an intermediate company as does not exceed the aggregate amount of all dividends declared by that resident company to any intermediate company while that recipient company holds at least that interest in that resident company, which have not previously been taken into account under this paragraph, is deemed to arise indirectly from a dividend declared by that resident company.”;
- (c) by the deletion in subsection (5) of paragraph (d);
- (d) by the substitution in subsection (5) for subparagraph (iii) of paragraph (f) of the following subparagraph:
- “(iii) that shareholder **[is a resident]** would be subject to secondary tax on companies should that shareholder—
- (aa) declare a dividend from that dividend so declared by that company; and
- (bb) not elect that this paragraph must apply in respect of that dividend; and”;
- (e) by the substitution in subsection (5) for the proviso to paragraph (f) of the following proviso:
- “Provided that for purposes of this paragraph, where that shareholder was formed solely by one **[or more companies]** company within that group of companies, that shareholder must be deemed—
- (a) to have been in existence **[and to have been the controlling company in relation to that company declaring the dividend]** from the date on which the controlling company in relation to that shareholder was formed; and
- (b) to have been the controlling company in relation to the company declaring the dividend from the date on which that company declaring the dividend formed part of the same group of companies as the controlling company in relation to the shareholder.”;
- (f) by the substitution in subsection (7) for paragraph (ii) of the proviso of the following paragraph:

“(ii) for the purposes of **[paragraph (b)]** this subsection the expression ‘month’ means any of the twelve portions into which any calendar year is divided.”; and

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

“(11) The provisions of this Act relating to the assessment and recovery of normal tax and additional tax in the event of default or omission shall with the changes required by the context *mutatis mutandis* apply **[for the purposes of the assessment and recovery]** in respect of secondary tax on companies.”.

(2) (a) Subsection (1)(a), (c), (e), (f) and (g) shall come into operation on the date of promulgation and shall apply in respect of any dividend declared on or after that date.

(b) Subsection (1)(b) shall—

(i) to the extent that it inserts the provisions relating to foreign dividends in section 64B(3A)(d)(ii), be deemed to have come into operation on 1 June 2004 and shall apply in respect of the aggregate amount of dividends declared by the resident company during any year of assessment of the recipient which commences on or after that date; and

(ii) to the extent that it inserts the provisions in section 64B(3A)(a), (b), (c) and (d)(i), come into operation on the date of promulgation and shall apply in respect of any dividend declared on or after that date.

(c) Subsection (1)(d) is deemed to have come into operation on 26 August 2004 and applies in respect of any dividend declared on or after that date and where—

(i) any dividend is purportedly declared before 26 August 2004; and

(ii) an election in respect of that dividend in terms of section 64B(5)(f)(v) of the Income Tax Act, 1962, is received by the Commissioner on or after 26 August 2004,

that dividend is deemed to have been declared on 26 August 2004 for the purposes of this paragraph, unless it is proven to the satisfaction of the Commissioner that such dividend was actually declared before that date: Provided that any decision by the Commissioner in this regard shall be subject to objection and appeal in terms of Part III of Chapter III of the Income Tax Act, 1962.

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 and section 59 of Act 45 of 2003

41. (1) Section 64C 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 shareholder or any connected person in relation to that shareholder is released or relieved from any obligation measurable in money which is owed to that company by that shareholder or connected person, to the extent that the amount so owed was not already deemed to be a dividend declared by that company in terms of paragraph (g);”;

(b) by the addition in subsection (2) of the word “or” at the end of paragraph (g);

(c) by the addition to subsection (2) of the following paragraph:

“(h) that amount is incurred by that company in terms of an instrument in respect of which section 8F applies;”;

(d) by the insertion in subsection (4) after paragraph (b) of the following paragraph:

“(bA) where the amount constitutes cash or an asset which is transferred by the company in terms of a disposal or acquisition of an asset for consideration which reflects an arm’s length price;”;

(e) by the substitution in subsection (4) for the words in paragraph (f) preceding subparagraph (i) of the following words:

“(f) to any loan or credit granted to a shareholder of the company or any connected person in relation to the shareholder during any year of assessment of the company granting the loan or credit, if—”;

(f) by the deletion in subsection (4) of paragraphs (g) and (j);

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

"(i) to any loan or credit granted to a trust by a company to enable [such] that trust to purchase shares in [such] that company or the controlling company in relation to that company with a view to the resale of [such] those shares by [such] that trust to employees of [such] that company [or of an associated company in relation to such company], under a share incentive scheme operated by the company for the benefit of [such] those employees;";

(h) by the substitution in subsection (4) for paragraph (k) of the following paragraph:

"(k) to any amount contemplated in subsection (2)(a), (b), (c), (d) or (g) distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available for the benefit of any shareholder which is a resident or any connected person in relation to the shareholder, which is a resident—

(i) if that shareholder is a company that is a member of the same group of companies as the company which is deemed to have declared that dividend; and

(ii) to the extent that the amount does not exceed the company's profits and reserves available for distribution that arose during the period that the shareholder was a member of the same group of companies as the company which is deemed to have declared that dividend: Provided that any profits and reserves taken into account for purposes of this paragraph may not be taken into account in applying this paragraph in respect of any future amounts distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available: and"; and

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

"(6) For purposes of this section and section 64B, the dividend contemplated in subsection (2)[(a), (b), (c), (d) and (f)] shall respectively be deemed to have been declared by the company on the date that—

(a) the cash or asset is distributed or transferred as contemplated in subsection (2)(a);

(b) the obligation is released or relieved as contemplated in subsection (2)(b);

(c) the debt is paid or settled as contemplated in subsection (2)(c);

(d) the amount is used or applied as contemplated in subsection (2)(d);

[or]

(e) the loan or advance is made available[, **as the case may be**] as contemplated in subsection (2)(g); or

(f) the amount is incurred as contemplated in subsection (2)(h)."

(2)(a) Subsection (1)(a), (d), (e), (f), (g) and (h) shall come into operation on the date of promulgation and shall apply in respect of any amount distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available on or after that date.

(b) Subsection (1)(b) and (c) shall come into operation on 26 October 2004 and shall apply in respect of any amount incurred in terms of an instrument issued or acquired during any year of assessment commencing on or after that date.

(c) Subsection (1)(i) shall—

(i) to the extent that it inserts a reference to subsection (2)(h) in subsection (6) come into operation on 26 October 2004 and shall apply in respect of any amount incurred in terms of an instrument issued or acquired during any year of assessment commencing on or after that date; and

(ii) to the extent that it amends the rest of subsection (6) come into operation on the date of promulgation and shall apply in respect of any amount distributed, transferred, released, relieved, paid, settled, used, applied or made available on or after that date.

Act No. 32, 2004

REVENUE LAWS AMENDMENT ACT, 2004

Amendment of section **103** of Act **58** of **1962**, as amended by section **14** of Act **101** of **1978**, section **37** of Act **121** of **1984**, section **19** of Act **70** of **1989**, section **29** of Act **36** of **1996**, section **45** of Act **30** of **1998**, section **52** of Act **59** of **2000** and section **33** of Act **5** of **2001**

42. (1) Section 103 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph: 5

“(a) Where under any transaction, operation or scheme—

- (i) any taxpayer has ceded [his] **&** right to receive any amount of [interest] income in exchange for any amount of dividends; and
- (ii) in consequence of [such] **that** cession the [taxpayer’s] liability for normal tax 10
of the taxpayer or any other party to the transaction, operation or scheme, as determined before applying the provisions of this subsection, has been reduced or extinguished,

the Commissioner shall determine the liability for normal tax of the taxpayer and any other party to the transaction, operation or scheme as if [such] **that** cession had not been effected.”. 15

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any cession during any year of assessment commencing on or after that date.

Amendment of paragraph **1** of Second Schedule to Act **58** of **1962**, as amended by section **31** of Act **90** of **1962**, section **23** of Act **90** of **1964**, section **34** of Act **88** of **1971**, section **34** of Act **69** of **1975**, section **26** of Act **113** of **1977**, section **17** of Act **104** of **1979**, section **27** of Act **104** of **1980**, section **28** of Act **96** of **1981**, section **46** of Act **94** of **1983**, section **24** of Act **65** of **1986**, section **43** of Act **101** of **1990**, section **35** of Act **21** of **1995**, section **41** of Act **28** of **1997**, section **47** of Act **30** of **1998** and section **82** of Act **45** of **2003** 20
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43. Paragraph **1** of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in “formula C” for item (bb) of subparagraph (i) of paragraph (b) of the following item:

“(bb) years of pensionable service purchased after 1 March 1998 by [‘non-statutory force members’] a ‘former member of a non-statutory force or service’ as defined in the Government Employees’ Pension Law, 1996 (Proclamation No. **21** of 1996), in respect of any periods or other periods of service accounted for prior to 1 March 1998; or” 30

Substitution of paragraph **2A** of Second Schedule to Act **58** of **1962**, as inserted by section **43** of Act **28** of **1997** and amended by section **49** of Act **30** of **1998** 35

44. (1) Paragraph **2A** of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso of the following words:

“2A. For the purposes of paragraph 2, where any lump sum benefit is received or accrues from a fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1 of this Act, the amount of such lump sum benefit shall be deemed to be **an** amount equal to the amount determined in accordance with formula C:” 40

(2) Subsection (1) shall be deemed to have come into operation on 1 March 1998.

Substitution of paragraph **2B** of Second Schedule to Act **58** of **1962**, as inserted by section **42** of Act **53** of **1999** and amended by section **64** of Act **60** of **2001** 45

45. Paragraph **2B** of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso of the following words:

“2B. For the purposes of [paragraph] paragraphs 2 and 2A, where a court [granting an decree of divorce in respect of any member of a pension fund, provident fund or retirement annuity fund] has made an order that any part of the pension interest of [that] a member of a pension fund, provident fund or retirement annuity fund shall be paid to the former spouse of [such] **that** member, as provided for in [section **7 (8) of**] the Divorce Act, 1979 (Act No. **70** of 1979), the amount of [such] **that part [shall be] is deemed to be an** amount that accrues to 50
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[such] that [person] member on the date on which the pension interest, of which [such] that amount forms part, accrues to [such] that [person] member.”.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001 and section 32 of Act 30 of 2002

46. (1) Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in the definition of “provisional taxpayer” for paragraph (d) of the following paragraph:

“(d) any person [(other than a person referred to in paragraph 18(1)(c))] who is notified by the Commissioner that he or she is a provisional taxpayer;”;

(b) by the insertion in the definition of “remuneration” after paragraph (c) of the following paragraphs:

“(d) the market value of any qualifying equity share contemplated in section 8B, determined on the date of disposal, which has been disposed of by that person and where the receipts and accruals from that disposal must be included in that person’s income under that section;

(e) any gain determined in terms of section 8C which is required to be included in the income of that person;”.

(2) Subsection (1)(b) shall come into operation on 26 October 2004 and applies in respect of any qualifying equity share disposed of or any gain made on or after that date.

Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 28 of Act 90 of 1964, section 42 of Act 88 of 1971, section 49 of Act 85 of 1974, section 19 of Act 104 of 1979, section 26 of Act 65 of 1986, section 9 of Act 108 of 1986, section 23 of Act 70 of 1989, section 50 of Act 113 of 1993, section 37 of Act 36 of 1996, section 24 of Act 19 of 2001, section 34 of Act 30 of 2002, section 58 of Act 74 of 2002 and section 24 of Act 16 of 2004

47. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (a) of the following item:

“(a) in respect of any [period] year of assessment in respect of which provisional tax would but for the provisions of this item be payable by him or her, any person (other than a company or a director of a private company) who satisfies the Commissioner that apart from any taxable income which he or she may derive by way of remuneration, or any amount referred to in paragraph (iii) of the definition of ‘remuneration’ in paragraph 1, he or she will not during that [period] year of assessment derive any taxable income in excess of R10 000;”.

Amendment of paragraph 27 of Fourth Schedule to Act 58 of 1962, as amended by section 43 of Act 121 of 1984 and section 29 of Act 65 of 1986

48. Paragraph 27 of the Fourth Schedule to the Income Tax Act, 1962, is hereby, amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) If any provisional taxpayer fails to pay any amount of provisional tax for which he or she is liable within the period allowed for payment thereof in terms of paragraph 21 [22] or 23, or [sub-paragraph (1) of] paragraph 25(1), or within such extended period as the Commissioner may allow in terms of [sub-paragraph (2) of] paragraph 25(2), he [shall] or she must, in addition to any other penalty or charge incurred by him or her under this Act, pay to the Commissioner a penalty equal to ten per cent of the amount not paid.”.

Amendment of paragraph 28 of Fourth Schedule to Act 58 of 1962, as amended by section 29 of Act 90 of 1964, section 30 of Act 95 of 1967, section 48 of Act 89 of 1969, section 48 of Act 88 of 1971, section 23 of Act 90 of 1972, section 55 of Act 85 of 1974, section 53 of Act 94 of 1983, section 44 of Act 121 of 1984 and section 30 of Act 65 of 1986

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49. Paragraph 28 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (8) of the following subparagraph:

“(8) For the purposes of this paragraph, ‘taxes’ means the normal tax levied under this Act [but excluding any normal tax payable by a close corporation under section 40A(4)(b)].”.

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Amendment of paragraph 2 of Seventh Schedule to Act 58 of 1962, as added 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 and section 54 of Act 30 of 1998

50. (1) Paragraph 2 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

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(a) by the substitution for paragraph (a) of the following paragraph:

“(a) any asset consisting of any goods, commodity, [marketable security] financial instrument or property of any nature (other than money) has been acquired by the employee from the employer or any associated institution in relation to the employer or from any person by arrangement with the employer, either for no consideration or for a consideration given by the employee which is less than the value of such asset, as determined under paragraph 5(2): Provided that the provisions of this subparagraph shall not apply in respect of—

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@ any meal, refreshment, voucher, board, fuel, power or water with which the employee has been provided as contemplated in subparagraph (c) or (d); [or]

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(ii) [in respect of] any marketable security acquired by the exercise by the employee, as contemplated in section 8A [of this Act], of any right to acquire any marketable security; [or]

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(iii) any qualifying equity share acquired by an employee as contemplated in section 8B; or

(iv) any equity instrument contemplated in section 8C; or”.

(b) by the substitution for item (f) of the following item:

“(f) a loan (other than a loan [which was treated as a dividend under the provisions of section 8B of this Act prior to the repeal thereof by section 6 of the Income Tax Act, 1990] 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, 1973 (Act No. 61 of 1973), or the payment of any stamp duties or uncertificated securities tax payable in respect of that share, or a loan in respect of which a subsidy is payable as contemplated in subparagraph (gA)) has been granted to the employee, whether by the employer or by any other person by arrangement with the employer or any associated institution in relation to the employer, and either no interest is payable by the employee on such loan or interest is payable by him thereon at a rate of lower than the official rate of interest; or”.

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(2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any equity instrument or qualifying equity share acquired on or after that date.

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Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 65 of Act 60 of 2001, section 63 of Act 74 of 2002, section 90 of Act 45 of 2003 and section 25 of Act 16 of 2004

51. (1) Paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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(a) by the substitution in the definition of “recognised exchange” of paragraph (a) of the following paragraph:

“(a) [a stock] an exchange licensed under the [Stock Exchanges Control Act, 1985 (Act no. 1 of 1985) Securities Services Act, 2004];”;

(b) by the deletion in the definition of “recognised exchange” of paragraph (b).

(2) Subsection (1) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

Amendment of paragraph 2 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 25 of Act 19 of 2001, section 66 of Act 60 of 2001, section 64 of Act 74 of 2002 and section 91 of Act 45 of 2003 5

52. Paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

“(1) Subject to paragraph 97, this Schedule applies to the disposal on or after valuation date of—” 10

Amendment of paragraph 3 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 67 of Act 60 of 2001

53. (1) Paragraph 3 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 15

(a) by the substitution in item (b) for subitem (i) of the following subitem:

“(i) so much of any amount received by or accrued to that person during the current year of assessment, as constitutes part of the proceeds of that disposal which has not been taken into account—

(aa) during any year in determining the capital gain or capital loss in respect of that disposal; or 20

(bb) in the redetermination of the capital gain or capital loss in terms of paragraph 25(2); or”;

(b) by the substitution in item (b) for subitem (ii) of the following subitem:

“(ii) so much of the base cost of that asset that has been taken into account in determining the capital gain or capital loss in respect of that disposal as has been recovered or recouped during the current year of assessment and which has not been taken into account in the redetermination of the capital gain or capital loss in terms of paragraph 25(2); or”;

(c) by the addition to item (b) of the following subitem: 30

“(iii) the sum of—

(aa) any capital gain redetermined in terms of paragraph 25(2) in the current year of assessment in respect of that disposal; and

(bb) any capital loss (if any) determined in respect of that disposal in terms of paragraph 25 for the last year of assessment during which that paragraph applied in respect of that disposal.” 35

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal during any year of assessment commencing on or after that date.

Amendment of paragraph 4 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 68 of Act 60 of 2001 and section 65 of Act 74 of 2002 40

54. (1) Paragraph 4 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in item (b) of the word “or” at the end of paragraph (cc) of subitem (i); 45

(b) by the addition in item (b) to subitem (i) of the following words after paragraph (cc):

“and which have not been taken into account in the redetermination of the capital gain or capital loss in terms of paragraph 25(2);” 50

(c) by the substitution in item (b) for subitem (ii) of the following subitem:

“(ii) so much of [the base cost of] any expenditure incurred during the current year of assessment in respect of that asset, which is allowable in terms of paragraph 20 and that has not been taken into account—

(aa) during any year in determining the capital gain or capital loss in respect of that disposal, as has been paid or has become due and payable during the current year of assessment]; or 55

(bb) in the redetermination of the capital gain or capital loss in terms of paragraph 25(2); or.”;

(d) by the addition to item (b) of the following subitem:

“(iii) the sum of—

(aa) any capital loss redetermined in terms of paragraph 25(2) in the current year of assessment in respect of that disposal; and 5

(bb) any capital gain (if any) determined in respect of that disposal in terms of paragraph 25 for the last year of assessment during which that paragraph applied in respect of that disposal.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal during any year of assessment commencing on or after that date. 10

Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 71 of Act 60 of 2001, section 67 of Act 74 of 2002 and section 92 of Act 45 of 2003 15

55. (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to subparagraph (2) of the following item:

“(j) which constitutes an equity instrument contemplated in section 8C, which has not yet vested as contemplated in that section;”.

(2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any equity instrument acquired on or after that date. 20

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 72 of Act 60 of 2001, section 68 of Act 74 of 2002 and section 93 of Act 45 of 2003

56. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (a) of the following item: 25

“(a) a person who ceases to be a resident, in respect of all assets of that person other than—

(i) assets in the Republic listed in paragraph 2(1)(b)(i) and (ii);

(ii) any qualifying equity share contemplated in section 8B, which was granted to that person less than five years before the date on which that person so ceases to be a resident; and 30

(iii) any equity instrument contemplated in section 8C, which had not yet vested as contemplated in that section at the time that the person so ceases to be a resident;”; 35

(2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any person who ceases to be a resident on or after that date.

Amendment of paragraph 13 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 69 of Act 74 of 2002

57. (1) Paragraph 13 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for subitem (viii) of item (a) of the following subitem: 40

“(viii) the termination of an option granted by a company to a person to acquire a share, **[unit]** participatory interest or debenture of that company, the date on which that option terminates; or” 45

(2) Subsection (1) shall be deemed to have come into operation on the date that the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), came into operation.

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 26 of Act 19 of 2001, section 75 of Act 60 of 2001, section 71 of Act 74 of 2002 and section 95 of Act 45 of 2003 50

58. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for the words in item (g) preceding subitem (i) of the following words: 55

- “(g) the following **[amounts]** expenditure actually incurred **[as expenditure]** which is directly related to the cost of ownership of that asset, which is used wholly and exclusively for business purposes or which constitutes a share listed on a recognised exchange or a participatory interest in a portfolio of a collective investment scheme—”; and 5
- (b) by the substitution in subparagraph (1) for the proviso in item (g) of the following proviso:
 “Provided that if that asset constitutes a share listed on a recognised exchange or a participatory interest in a portfolio of a collective investment scheme, the expenditure contemplated in subitems (i) to (iii) in respect of that asset must for the purposes of this **[subparagraph]** item be reduced by two-thirds;” 10
- (c) by the substitution in subparagraph (1) for subitem (i) of item (h) of the following subitem:
 “(i) a marketable security or an equity instrument, the acquisition or vesting, as the case may be, of which resulted in the determination of any gain or loss to be included in or deducted from any **[that]** person’s income in terms of section 8A or 8C, the market value of that marketable security or equity instrument that was taken into account in determining the amount of that gain or loss (including where the gain and loss so determined was nil) **[or, where the gain so determined was nil, the amount of the consideration taken into account under section 8A in respect of that acquisition;]”; 15**
- (d) by the addition in subparagraph (3) of the word “or” at the end of item (a) and the deletion of the word “or” at the end of item (b); and 25
- (e) by the deletion in subparagraph (3) of item (c). 25
- (2) (a) Subsection (1)(c) shall come into operation on 26 October 2004 and shall apply in respect of any disposal of an equity instrument acquired on or after that date.
- (b) Subsection (1)(d) and (e) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal during a year of assessment commencing on or after that date. 30

Amendment of paragraph 20A of Eighth Schedule to Act 58 of 1962, as inserted by section 96 of Act 45 of 2003

59. Paragraph 20A 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: 35
- “(b) in any other case, any amount allowable in terms of paragraph 20.”.

Amendment of paragraph 25 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 77 of Act 60 of 2001 and section 73 of Act 74 of 2002

60. (1) Paragraph 25 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 40
- (a) by renumbering the existing wording as subparagraph (1);
- (b) by the addition of the following subparagraphs:
 “(2) If a person has determined the base cost as contemplated in subparagraph (1) of a pre-valuation date asset which was disposed of during any prior year of assessment and in the current year of assessment— 45
- (a) any amount of proceeds is received or accrued in respect of that disposal which has not been taken into account in any prior year in determining the capital gain or capital loss in respect of that disposal; 50
- (b) any amount of proceeds which was taken into account in determining the capital gain or capital loss in respect of that disposal has become irrecoverable, or has become repayable or that person is no longer entitled to those proceeds as a result of the cancellation, termination or variation of any agreement or due to the prescription or waiver of a claim or a release from an obligation or any other event during the current year; 55

- (c) any amount of expenditure is incurred which forms part of the base cost of that asset which has not been taken into account in any prior year in determining the capital gain or loss in respect of that disposal; or
- (d) any amount of base cost of that asset that has been taken into account in any prior year in determining the capital gain or capital loss in respect of that disposal, has been recovered or recouped, that person must redetermine the base cost of that asset in terms of subparagraph (1) and the capital gain or capital loss from the disposal of that asset, having regard to the full amount of the proceeds and base cost so redetermined. 5
- (3) The amount of capital gain or capital loss redetermined in the current year of assessment in terms of subparagraph (2), must be taken into account in determining any capital gain or capital loss from that disposal in that current year, as contemplated in paragraph 3(1)(b)(iii) or 4(1)(b)(iii).” 10 15

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal during any year of assessment commencing on or after that date.

Amendment of paragraph 33 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 80 of Act 74 of 2002 and substituted by section 99 of Act 45 of 2003 20

61. (1) Paragraph 33 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the addition in subparagraph (3) of the word “or” at the end of item (b); 25
- (b) by the deletion in subparagraph (3) of item (c).
- (2) Subsection (1) shall come into operation on the date of promulgation of this Act.

Insertion of paragraph 35A in Eighth Schedule to Act 58 of 1962

62. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 35: 30

“Disposal of certain debt claims

35A. (1) This paragraph applies where—

- (a) a person has disposed of an asset during any year of assessment, all the proceeds of which will not accrue to that person in that year; 35
- (b) that person subsequently disposes of any right to claim payment in respect of that disposal; and
- (c) that claim includes any amount which has not yet accrued to that person at the time of the disposal of that claim.

(2) So much of any consideration received by or accrues to a person from the disposal of a claim contemplated in subparagraph (1)(b) as is attributable to any amount which has not yet accrued to that person as contemplated in subparagraph (1)(c), must be treated as an amount of consideration which accrues to that person in respect of the disposal of the asset contemplated in subparagraph (1)(a). 40

(3) So much of any capital gain or capital loss determined in respect of the disposal by the person of the right to claim payment as contemplated in subparagraph (1)(b), as is attributable to any amount which has not yet accrued to that person, must be disregarded.” 45

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal during any year of assessment commencing on or after that date. 50

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 and section 81 of Act 74 of 2002

63. (1) Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 5
- (a) by the substitution in subparagraph (1) for item (a) of the following item:
“(a) the person who disposed of that asset must be treated as having disposed of that asset for [proceeds] an amount received or accrued equal to the market value of that asset as at the date of that disposal; and”;
- (b) by the substitution for subparagraph (2) of the following subparagraph: 10
“(2) Subparagraph (1) does not apply in respect of the disposal of—
- (a) a right contemplated in section 8A;
- (b) an asset in the circumstances contemplated in section 10(1)(nE);
- (c) a qualifying equity share contemplated in section 8B by an 15
employer, associated institution or any other person by arrangement with the employer, as contemplated in paragraph 1 of the Seventh Schedule, to an employee;
- (d) an equity instrument contemplated in section 8C in respect of which that section applies and which had not yet vested as contemplated in that section at the time of that disposal; or 20
- (e) any asset in respect of which section 24B applies.”.
- (2) Subsection (1)(b) shall —
- (a) to the extent that it inserts paragraphs (c) and (d), come into operation on 26 October 2004 and shall apply in respect of the disposal of any equity instrument or qualifying equity share acquired on or after that date; 25
- (b) to the extent it inserts paragraph (e), be deemed to have come into operation on 1 October 2001 and shall apply in respect of any asset acquired on or after that date.

Insertion of paragraph 39A in Eighth Schedule to Act 58 of 1962

64. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 39: 30

“Disposal of asset for unaccrued amounts of proceeds

- 39A.** (1) Where a person during any year of assessment disposes of an asset and all the proceeds from the disposal of that asset will not accrue to that person during that year, that person must, when determining the aggregate capital gain or aggregate capital loss for that year or any subsequent year of assessment, disregard any capital loss determined in respect of that disposal. 35
- (2) A person’s capital loss which is disregarded during any year of assessment in terms of subparagraph (1) which has not otherwise been allowed as a deduction may be deducted from that person’s capital gains determined in any subsequent year in respect of the disposal of the asset contemplated in subparagraph (1). 40
- (3) If during any year of assessment a person shows that no further proceeds will accrue to that person from the disposal contemplated in subparagraph (1), so much of the capital loss contemplated in that subparagraph as has not been deducted from any subsequent capital gains as contemplated in subparagraph (2), may be taken into account in determining that person’s aggregate capital gain or aggregate capital loss for that year of assessment.”. 45
- (2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal during any year of assessment commencing on or after that date. 50

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

65. Paragraph 56 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 5

- (a) by the deletion in subparagraph (2) of the word “or” at the end of item (b) and the addition of the word “or” at the end of item (c); and
- (b) by the addition to subparagraph (2) of the following item:
- “(d) a capital gain which the creditor proves must be or was included in the determination of the aggregate capital gain or aggregate capital loss of any acquirer of the claim.” 10

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1996, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001 and section 131 of Act 45 of 2003 15

66. Section 1 of the Customs and Excise Act, 1964, is hereby amended— 20

- (a) by the substitution for the definition of “common customs area” of the following definition:
- “ ‘common customs area’ means the combined areas of the Member States of SACU;”
- (b) by the substitution for the definition of “customs duty” of the following definition: 25
- “ ‘customs duty’ means, subject to the provisions of subsection (3), any duty leviable under Schedule No. 1 (except Parts 3, 4 and 5 thereof) or No. 2 on goods imported into the Republic;”
- (c) by the insertion after the definition of “rule” of the following definitions: 30
- “ ‘SACU’ means the Southern African Customs Union between the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland; ‘SACU Agreement’ means the Southern African Customs Union Agreement published in Schedule No. 10;” 35
- (d) by the substitution for subsection (3) of the following subsection:
- “(3) For the purposes of the SACU Agreement—
- (a) ‘customs duty’ includes, except for the purposes of articles 32, 33 and 34 of the said agreement, any duty leviable under Part 3, 5 or 8 of Schedule No. 1 on goods imported; 40
- (b) ‘excise duty’ includes, except for the purposes of articles 32, 33 and 34 of the said agreement, any duty leviable under Part 3, 5 or 8 of Schedule No. 1 on goods manufactured in the common customs area.”

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1996, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995, section 51 of Act 53 of 1999, section 43 of Act 19 of 2001, section 125 of Act 60 of 2001 and section 136 of Act 45 of 2003 45

67. Section 44 of the Customs and Excise Act, 1964, is hereby amended— 50

- (a) by the substitution in subsection (11) for paragraph (a) of the following paragraph:
- “(a) Notwithstanding anything to the contrary contained in this Act [contained], but subject to the provisions of sections 47 (10) and (11), 65 (7) and (7A) and 69 (6) and (7) and subsection (12) of this section, except where this subsection otherwise provides in respect of any matter to which any of such provisions relate, there shall be no liability for any underpayment of duty on any goods [where such underpayment is due 55

to the acceptance of a bill of entry bearing any incorrect information, after a period of two years from the date of entry of such goods: Provided that such liability shall not cease—

(i) if a false declaration has been made for the purposes of this Act; or

(ii) in respect of any such underpayment discovered during any inspection from a date two years prior to the date on which such inspection commenced.]=

(i) after a period of two years from the date of acceptance of a bill of entry; or

(ii) where such underpayment was discovered during an inspection, two years prior to the date on which such inspection commenced: Provided that such liability shall, subject to paragraph (c), not cease even if an underpayment is discovered after an earlier assessment and payment of an amount in respect of any inspection during the period concerned, where such underpayment is the result of—

(aa) fraud;

(bb) misrepresentation;

(cc) non-disclosure of any material facts; or

(dd) any false declaration for the purposes of the Act.”; and

(b) by the substitution in subsection (11) for paragraph (c) of the following paragraph:

“(c) Except where the Commissioner may otherwise determine [the circumstances of each case,] in exceptional circumstances, where any [false declaration has been made for the purposes of this Act] underpayment arises from the circumstances contemplated in the proviso to paragraph (a), there shall be no limitation on the period of liability for underpayment of duty or the period for which any books, accounts or any other documents, in whatever form available, are required to be produced to or may be inspected by an officer.”.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, sections 9 and 15 of Act 98 of 1980, section 8 of Act 86 of 1982, section 6 of Act 52 of 1986, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 6 of Act 68 of 1989, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 4 of Act 44 of 1996, section 63 of Act 30 of 1998, section 53 of Act 53 of 1999, section 126 of Act 60 of 2001, section 104 of Act 74 of 2002 and section 138 of Act 45 of 2003

68. Section 47 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (10) for paragraph (b) of the following paragraph:

“(b) subject to section 44 (11) (c), any [false declaration is made for the purposes of this Act] underpayment arises from the circumstances contemplated in the proviso to section 44(11)(a).”.

Amendment of section 55 of Act 91 of 1964, as amended by section 12 of Act 95 of 1965, section 6 of Act 103 of 1972, section 15 of Act 112 of 1977, section 8 of Act 61 of 1992 and section 3 of Act 16 of 1997

69. Section 55 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) The imposition of any anti-dumping duty in the case of dumping as defined, in the [Board on Tariffs and Trade Act, 1986 (Act No. 107 of 1986)] International Trade Administration Act, 2002 (Act No. 71 of 2002), a countervailing duty in the case of subsidized export as so defined or a safeguard duty in the case of disruptive competition as so defined and the rate at which or the circumstances in which such duty is imposed in respect of any imported goods shall be in accordance with any request by the Minister of Trade and Industry [and for Economic Co-ordination] under the provisions of the [Board on Tariffs and Trade Act, 1986] International Trade Administration Act, 2002.”.

Amendment of section **65** of Act **91** of **1964**, as substituted by section **13** of Act **86** of **1982** and amended by section **8** of Act **101** of **1985**, section **8** of Act **52** of **1986**, section **48** of Act **45** of **1995**, section **5** of Act **44** of **1996**, section **59** of Act **53** of **1999**, section **128** of Act **60** of **2001** and section **144** of Act **45** of **2003**

70. Section 65 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (7) for paragraph (b) of the following paragraph: 5

“(b)subject to section 44 (11) (c), any [false declaration is made for the purposes of this Act] underpayment arises from the circumstances contemplated in the proviso to section 44 (11) (a),”.

Amendment of section **69** of Act **91** of **1964**, as substituted by section **12** of Act **68** of **1989** and amended by section **1** of Act **111** of **1991**, section **3** of Act **105** of **1992**, section **6** of Act **98** of **1993**, section **6** of Act **44** of **1996**, section **61** of Act **53** of **1999**, section **49** of Act **19** of **2001**, section **129** of Act **60** of **2001** and section **145** of Act **45** of **2003** 10

71. Section 69 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (6) for paragraph (b) of the following paragraph: 15

“(b)subject to section 44(11)(c), [false declaration is made for the purpose of this Act] any underpayment arises from the circumstances contemplated in the proviso to section 44(11)(a),”.

Substitution of the long title of Act **91** of **1964**, as substituted by section **66** of Act **30** of **2000** 20

72. The long title of the Customs and Excise Act, 1964 is hereby substituted with the following title:

“**To** provide for the levying of customs and excise duties and a surcharge for a fuel levy [and], for an air passenger tax and an environmental levy; the prohibition and control of the importation, export, manufacture or use of certain goods; and for matters incidental thereto.”. 25

Amendment of section **1** of Act **77** of **1968**, as amended by section **16** of Act **103** of **1969**, section **5** of Act **66** of **1973**, section **7** of Act **88** of **1974**, section **19** of Act **106** of **1980**, section **3** of Act **118** of **1984**, section **17** of Act **87** of **1988**, section **36** of Act **9** of **1989**, section **3** of Act **69** of **1989**, section **5** of Act **136** of **1991**, section **4** of Act **20** of **1994**, section **16** of Act **27** of **1997**, section **34** of Act **34** of **1997**, section **77** of Act **30** of **1998**, section **74** of Act **53** of **1999**, section **40** of Act **5** of **2001**, section **54** of Act **19** of **2001**, section **141** of Act **60** of **2001**, section **42** of Act **12** of **2003** and section **37** of Act **16** of **2004** 35

73. (1) Section 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution for the definition of “duly stamped” of the following paragraph:

“‘duly stamped’ in relation to any instrument requiring to be stamped under this Act, means that such instrument has been stamped as required by this Act for the proper amount of duty and the amount of any interest, penalty or additional duty incurred under [section **9(1)(a)**] sections **9**, **9A** and **9B** and, where adhesive stamps have been used, that such stamps have been defaced as required by this Act;” 40

(b) by the substitution for paragraph (a) of the definition of “stamp” of the following paragraph: 45

“(a)when used as a noun, means—

- (i) an adhesive stamp approved by the [Minister] Commissioner for, use under this Act; [or]
- (ii) an impression made by means of a die approved by the Commissioner; 50
- (iii) a special receipt of the payment of that duty in accordance with section **5(1)(ii)** and (iii); or
- (iv) the words ‘duty paid’ where an electronic receipt has been issued in accordance with section **5(1)(iv)**; and” 55

(2) Subsection (1)(a) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

Amendment of section 5 of Act 77 of 1968, as amended by section 9 of Act 89 of 1972, section 7 of Act 66 of 1973, section 9 of Act 114 of 1977, section 5 of Act 118 of 1984, section 10 of Act 86 of 1987, section 19 of Act 87 of 1988, section 6 of Act 136 of 1991, section 6 of Act 136 of 1992, section 79 of Act 30 of 1998 and section 68 of Act 30 of 2000 5

74. (1) Section 5 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding the proviso of the following words: 10

“(1) The payment of any duty, [or of any] interest, penalty or additional duty incurred under [section 9] sections 9, 9A or 9B shall, save as is otherwise specially provided in this Act, be denoted by means of adhesive revenue stamps for the amount of [such] that duty [or adhesive penalty stamps for the amount of such penalty], interest, penalty or additional duty, and [such] those stamps [shall] must be affixed to the instrument chargeable with the duty, [or] interest, penalty or additional duty and be defaced as prescribed by this Act.”; 15

(b) by the addition in subsection (1) of the following paragraphs to the proviso: 20

“(iv) where any person meets the requirements for the stamping of an instrument by electronic means as prescribed by the Commissioner, any electronic payments made by that person may be acknowledged by means of the issue of an electronic receipt, and any such instrument which bears on its face the words ‘duty paid’, shall for the purposes of this Act be deemed to be duly stamped to the value of that electronic receipt; 25

(v) where the amount of duty, interest, penalty and additional duty payable in respect of any instrument in aggregate equals an amount of R200 or more, that duty, interest, penalty and additional duty may not be denoted by way of adhesive stamps or an impression as contemplated in paragraph (ii);” 30

(2) Subsection (1)(a) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

Amendment of section 6 of Act 77 of 1968, as amended by section 10 of Act 114 of 1977, section 6 of Act 118 of 1984, section 20 of Act 87 of 1988 and section 8 of Act 32 of 1999 35

75. (1) Section 6 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion of subsection (2);

(b) by the substitution for subsection (4) of the following subsection: 40

“(4) All facts and circumstances affecting the liability of any instrument to duty or the amount of duty with which any instrument is chargeable shall be fully and truly set forth in the instrument[, and any person who, with intent to evade the payment of duty— 45

(a) executes any instrument in which all such facts and circumstances are not fully and truly set forth; or 45

(b) being employed or concerned in or about the preparation of any instrument, fails fully and truly to set forth therein all such facts and circumstances, shall incur a penalty not exceeding R1 000].” 50

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of any investment executed on or after that date.

Amendment of section 7 of Act 77 of 1968, as amended by section 18 of Act 103 of 1969, section 10 of Act 89 of 1972, section 8 of Act 66 of 1973, section 3 of Act 70 of 1975, section 5 of Act 87 of 1982, section 7 of Act 118 of 1984, section 5 of Act 69 of 1989, section 55 of Act 19 of 2001, section 43 of Act 12 of 2003, section 156 of Act 45 of 2003 and section 38 of Act 16 of 2004

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76. (1) Section 7 of the Stamp Duties Act, 1968, is hereby amended by the deletion in subsection (1) of paragraph (b).

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of any instrument executed on or after that date.

Amendment of section 8 of Act 77 of 1968

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77. (1) Section 8 of the Stamp Duties Act, 1968, is hereby amended—

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

“(b) Any such instrument not stamped before or at the time of execution may, except as is otherwise specifically provided in this Act, be stamped within [twenty-one] 30 days thereafter by or in the presence of the person liable under this Act to stamp the instrument, or any party thereto [or any banker to whom such instrument has been presented in the ordinary course of such banker’s business or in the presence of an authorized revenue officer].”;

(b) by the addition to subsection (1) of the following paragraphs:

“(c) In respect of the registration of transfer of a marketable security—

- (i) in the case where registration is in the name of a broker, or the nominee of a broker, the instrument of transfer referred to in section 23 must be stamped before the expiry of a period of 3 months from the date of execution of the relevant instrument of transfer; or
- (ii) in any other case, the instrument of transfer referred to in section 23 must be stamped before the expiry of a period of six months from the date of execution of the relevant instrument of transfer; or

(d) In respect of the acquisition by any person from any other person under any of the circumstances mentioned in item 15(5)(a), (b) or (c) to Schedule 1, the relevant deed or declaration referred to in section 23(15) must be stamped before the expiry of a period of six months from the date of that acquisition.

(e) Where any instrument which makes provision for the payment of rental or any ‘other consideration’ as contemplated in section 22(6), which cannot be quantified at the time of execution of that instrument, it must be stamped annually by a lessor within six months after the end of—

- (i) any year of assessment, as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), of any lessor who is a taxpayer, as defined in section 1 of the Income Tax Act, 1962; or
- (ii) the twelve months ending on the last day of February each year in the case of any other lessor,

during which that consideration became quantifiable.”;

(c) by the substitution for subsections (2) and (3) of the following subsections:

“(2) Every instrument chargeable with duty, which is executed outside the Republic [shall must], save as is otherwise specifically provided in this Act, within [twenty-one] 30 days after the date on which it is first received in the Republic, be stamped by the person so receiving it, and it [shall be] is the duty of [such] that person to note thereon the date of receipt and sign [such] that note.

(3) If any person is in doubt as to whether he or she is liable to stamp any instrument, or as to the extent of his or her liability, and he or she has within [twenty-one] 30 days after the date of execution of [such] that instrument, or if [such] that instrument was executed outside the

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Republic, after the date **[such] that** instrument was first received in the Republic, lodged it with an **[authorized] authorised** revenue officer for submission to the Commissioner for his or her decision as to whether **[such] that** liability exists or as to the extent of **[such] that** liability, the date on which the decision of the Commissioner is communicated to the person who lodged **[such] that** instrument as aforesaid, **[shall] must** for the purposes of this Act be deemed to be the date of execution of the instrument or the date on which **[such] that** instrument was first received in the Republic, as the case may be.”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date or in respect of any duty payable in respect of rental or “other consideration” which becomes quantifiable on or after that date.

Amendment of section 9 of Act 77 of 1968, as amended by section 21 of Act 87 of 1988, section 5 of Act 20 of 1994 and section 142 of Act 60 of 2001

78. (1) Section 9 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution for the heading of the following heading:

“Interest on late payments”;

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

“(1) If any duty is not paid in full within the period for payment prescribed by section 8, interest shall be paid at a rate of 10 per cent per annum on the balance of duty outstanding in respect of each month or part thereof during which it remains unpaid, reckoned from the day following the last date for payment contemplated in section 8 to the date of payment to the Commissioner.”;

(c) by the deletion of subsection (4).

(2) Subsection (1)(a) and (b) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

Insertion of section 9A in Act 77 of 1968

79. (1) The following section is hereby inserted in the Stamp Duties Act, 1968, after section 9:

“Penalty for failure to pay duty within prescribed period

9A. (1) If any person who is liable for the payment of duty under this Act, fails to pay any amount of that duty within the period for the payment thereof as specified in section 8, that person must, in addition to the amount of that duty, pay a penalty equal to 10 per cent of that amount of duty.

(2) If the Commissioner is satisfied that the failure on the part of the person concerned or any other person under the control or acting on behalf of that person to stamp the instrument within the period contemplated in subsection 8 was not due to an intent not to stamp the instrument or to postpone the payment of the duty, the Commissioner may remit in whole or in part any penalty payable in terms of subsection (1).”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

Insertion of section 9B in Act 77 of 1968

80. (1) The following section is hereby inserted in the Stamp Duties Act, 1968, after section 9A:

“Additional duty in case of evasion

9B. (1) Where a person liable to pay duty in terms of section 7, or any person contemplated in section 12A, fails to perform any duty imposed by this Act or does or omits to do anything, with intent— 5

(a) to evade the payment of any amount of duty payable by him or her; or
(b) to cause a refund to him or her by the Commissioner of any amount of duty, which is in excess of the amount properly refundable to him or her, 10

that person shall be chargeable with additional duty not exceeding an amount equal to double the amount of duty contemplated in paragraph (a) or the amount in excess as contemplated in paragraph (b), as the case may be. 15

(2) The amount of the additional duty must be assessed by the Commissioner and must be paid by the person referred to in subsection (1) within the period that the Commissioner may allow.

(3) The power conferred upon the Commissioner by this section applies in addition to any other right conferred upon the Commissioner by this Act.” 20

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

Amendment of section 10 of Act 77 of 1968, as amended by section 5 of Act 95 of 1978 and section 56 of Act 19 of 2001 25

81. (1) Section 10 of the Stamp Duties Act, 1968, is hereby amended—

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

“(d) in the case of any other instrument, by the person liable under this Act to stamp the instrument or by any party thereto or by an **[authorized]** authorised revenue officer **[or by a banker to whom the instrument has been presented in the ordinary course of such banker’s business].”;** 30

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

“(2) Where duty on any instrument is denoted by adhesive revenue stamps and such instrument has been stamped as provided in section 9 or, where the instrument has been stamped as provided in section 8 but the stamps thereon have not been defaced as provided in subsection (1) of this section, the stamps shall, subject to the payment of any interest, penalty or additional duty incurred under **[section] sections 9(1), 9A and 9B** in respect of such instrument, be defaced by an **[authorized]** authorised revenue officer **[or by a banker to whom such instrument has been presented in the ordinary course of such banker’s business].”;** 35 40

(c) by the deletion of subsection (3);

(d) by the substitution for subsection (5) of the following subsection: 45

“(5) An authorised revenue officer shall not **[be required to]** deface the stamps affixed to any instrument unless he or she is satisfied that the duty in respect of **[such] that** instrument, and any interest, penalties and additional duty incurred in respect of **[such] that** instrument under this Act, have been paid in full.”; 50

(e) by the substitution for subsection (7) of the following subsection:

“(7) Any public officer, **[banker,]** firm or company required or empowered by this Act to deface any adhesive stamp may deface the stamp by impressing thereon in indelible ink by means of a rubber stamp or other device the date and, in the case of such **[banker,]** firm or company, the name of the **[bank,]** firm or company.”. 55

(2) Subsection (1)(b) and (d) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Substitution of section 11 of Act 77 of 1968

82. (1) The following section hereby substitutes section 11 of the Stamp Duties Act, 1968:

“Adjudication respecting liability for stamp duty, interest, [or] penalty or additional duty”

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11. A note or certificate made on or in respect of any instrument and signed by the Commissioner or by his or her authority, stating that the instrument is duly stamped or is not chargeable with duty, interest, [or] penalty or additional duty [**penalty or further duty or penalty**], shall for all purposes be conclusive evidence of the fact so noted or certified.”

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(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Amendment of section 12 of Act 77 of 1968

83. (1) Section 12 of the Stamp Duties Act, 1968, is hereby amended—

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

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“(b) in any proceedings by or on behalf of the State for the recovery of any duty on the instrument or of any interest, penalty or additional duty alleged to have been incurred under this Act in respect of [**such**] that instrument.”;

(b) by the substitution for the proviso of the following proviso:

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“Provided that the court before which any such instrument is tendered may permit or direct that, subject to the payment of any interest, penalty and additional duty incurred in respect of [**such**] that instrument under [**section 9(1)**] sections 9, 9A and 9B, the instrument be stamped in accordance with the provisions of this Act and upon the instrument being duly stamped may admit it in evidence.”

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(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date,

Amendment of section 12A of Act 77 of 1968, as inserted by section 6 of Act 72 of 1970

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84. (1) Section 12A of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution for the heading of the following heading:

“Person making use of instrument not duly stamped to be liable for unpaid duty, interest [and] penalty and additional duty thereon”;

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

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“(1) Any person who for any purpose in connection with a business conducted by him or her keeps or retains, or who in any manner other than a manner contemplated in section 12 makes use of, an instrument which is required to be stamped under this Act but has not been duly stamped, [**shall be**] is liable for the unpaid duty in respect of [**such**] that instrument and any unpaid interest, penalty and additional duty incurred in respect of [**such**] that instrument under [**section 9(1)**] sections 9, 9A and 9B.”;

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

“(2) The provisions of subsection (1) shall not be construed as relieving any person who under any other provision of this Act is liable for the duty or any interest, penalty or additional duty in respect of any instrument, from his or her liability to pay any unpaid amount of [**such**] that duty, interest, [or] penalty or additional duty.”

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(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

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Amendment of section 13 of Act 77 of 1968

85. (1) Section 13 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) In the event of any refusal by any person to have any such instrument duly stamped, or if any public officer has reason to believe that fraud or evasion of duty was intended, the public officer **[shall]** must impound the instrument and transmit it to the Commissioner for the purpose of the recovery of the duty and any interest, penalty and additional duty incurred.”

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Substitution of section 15 of Act 77 of 1968

86. (1) The following section hereby substitutes section 15 of the Stamp Duties Act, 1968:

“Stamping of unstamped instruments with amount of duty, interest, [and] penalty and additional duty recovered 15

15. Upon the recovery under section 30 of the duty or any interest, penalty or additional duty payable in respect of any instrument, the duty, **[or] interest, penalty or additional duty recovered** shall be denoted on the instrument by means of **[the appropriate revenue or penalty stamps] a special receipt** or, if the Commissioner so directs, a note or certificate may be made on the instrument and signed by the Commissioner or by his or her authority stating that the instrument is duly stamped.”

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Substitution of section 19 of Act 77 of 1968, as substituted by section 6 of Act 69 of 1989 and amended by section 75 of Act 53 of 1999 and amended by section 39 of Act 16 of 2004 25

87. (1) The following section hereby substitutes section 19 of the Stamp Duties Act, 1968:

“Debit entries 30

19. The duty payable in terms of Item 6 of Schedule 1 in respect of any debit entry in an account shall not be denoted by means of stamps, but shall be paid by the banker or person carrying on the credit card scheme concerned or by the institution or Postbank, as the case may be, within a period of 30 days after the end of the month during which that entry is made.”

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Amendment of section 22 of Act 77 of 1968, as amended by section 19 of Act 103 of 1969, section 11 of Act 114 of 1977, section 6 of Act 95 of 1978, section 6 of Act 102 of 1979, section 24 of Act 87 of 1988, section 7 of Act 69 of 1989 and section 6 of Act 20 of 1994

88. (1) Section 22 of the Stamp Duties Act, 1968, is hereby amended by the substitution for subsection (6) of the following subsection: 5

“(6) The expression ‘other consideration’ in Item 14(1) of Schedule 1 includes —

- (a) the value of improvements which the lessee is obliged to effect on the land or to the buildings leased by him or her and that value is deemed to be the amount stipulated in the lease as the value or, where no amount is so stipulated, the fair and reasonable value determined by the Commissioner; and 10
- (b) any acceptance by the lessee of a liability for payments for which the lessor would otherwise be liable:

Provided that payment of any amount in terms of a stipulation in a lease is deemed not to be ‘other consideration’, where the amount — 15

- (i) constitutes charges which relate to public services rendered or utilities provided to the lessee; or
- (ii) relates to the duty payable by the lessor on that lease or agreement of lease.”. 20

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date. 20

Amendment of section 23 of Act 77 of 1968, as amended by section 20 of Act 103 of 1969, section 13 of Act 92 of 1971, section 11 of Act 89 of 1972, section 10 of Act 66 of 1973, section 10 of Act 88 of 1974, section 20 of Act 106 of 1980, section 6 of Act 87 of 1982, section 5 of Act 92 of 1983, section 25 of Act 87 of 1988, section 8 of Act 69 of 1989, section 7 of Act 136 of 1991, section 13 of Act 37 of 1996, section 19 of Act 27 of 1997, section 80 of Act 30 of 1998, section 76 of Act 53 of 1999, section 157 of Act 45 of 2003 and section 40 of Act 16 of 2004 25

89. (1) Section 23 of the Stamp Duties Act, 1968, is hereby amended—

- (a) by the substitution in subsection (1B) for paragraph (c) of the following paragraph: 30

“(c) The company or corporate body issuing any shares, stock or debentures to which the provisions of paragraph (a) or (b) apply shall be responsible for compliance with those provisions[, and if such company or corporate body or any officer thereof fails to comply with any requirement thereof, such company or corporate body shall, in addition to being liable for any unpaid duty which is payable in respect of the issue of the shares, stock or debentures in question, incur a penalty not exceeding R1 000].”; 35

- (b) by the deletion in subsection (2) of paragraph (b);
- (c) by the deletion of subsection (7); 40
- (d) by the deletion of subsections (8) and (9);
- (e) by the substitution for subsection (11) of the following subsection:

“(11) The duty payable under Item 15(4) of Schedule 1 shall be denoted on a copy of any application to court, take-over offer or resolution, as the case may be, required in respect of any scheme referred to in subsection (10), and the company of which the shares in question are cancelled or redeemed shall endorse on [such] that copy the market value of [such] those shares and the amount payable in respect of the redemption of those shares, including any premium so payable, as determined in accordance with [the said] subsection (10) and, in the case of any take-over offer, the date of the final acceptance of [such] that offer and [shall] must retain [such] that copy, which [shall] must at all reasonable times during a period of [three] five years after the relevant date referred to in subsection (13), be open for inspection by any person acting under the authority of the Commissioner.”; 50

- (f) by the deletion in subsection (15) of paragraph (b); and 55

(g) by the substitution for subsection (16) of the following subsection:

“(16) Any deed or declaration referred to in subsection (15) [shall] must at all reasonable times during a period of [three] five years after it has come into the possession of the person with whom it is lodged as contemplated in [the said] subsection (15), be open for inspection by any person acting under the authority of the Commissioner.”.

(2) (a) Subsections (1)(d) and (f) shall come into operation on the date of promulgation of this Act.

(b) Subsection (1) (a), (b), (c) and (e) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Amendment of Item 14 of Schedule 1 to Act 77 of 1968, as amended by section 19 of Act 114 of 1977 and section 7 of Act 95 of 1978

90. (1) Item 14 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in paragraph (1) before subparagraph (a) of the following paragraph:

“(1) In respect of [any such] a lease or agreement, an amount of duty calculated [in accordance with the following scale] on a sum equal to the aggregate amount of rent payable (exclusive of value-added tax) in respect of the period for which the lease or agreement is required to be stamped as provided in section 22 of this Act, plus the amount of any other consideration whatsoever, the amount of which is quantifiable at the time of execution of that lease or agreement (excluding the duty payable under this item and exclusive of value-added tax) due or payable in respect or by virtue of [such] that lease or agreement at a rate of 0.5% of the quantifiable amount of the lease: Provided that where an amount of consideration in respect of a lease or agreement of lease is not quantifiable at the time of execution of the lease, the duty calculated at a rate of 0.5% on the sum of the amounts of that consideration which became quantifiable (exclusive of value-added tax) during any year of assessment, as defined in section 1 of the Income Tax Act 1962 (Act No. 58 of 1962), of any lessor who is a taxpayer, as defined in section 1 of the Income Tax Act, 1962, or in the 12 months ending on the last day of February each year in the case of any other lessor:”;

(b) by the deletion in paragraph (1) of subparagraphs (a), (b), (c) and (d);

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

(d) by the deletion of paragraph (3); and

(e) by the insertion after subitem (I) of the following exemption from duty:

“*Exemption from duty under paragraph (1):*

For the purposes of this Item, no duty shall be payable in the event that the duty calculated on a lease or agreement of lease does not in aggregate exceed R200 over the period of the lease: Provided that this exemption shall not apply where the total consideration payable in respect of a lease or agreement of lease is not quantifiable at the time of execution of that lease.”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

Amendment of item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994, section 86 of Act 30 of 1998, section 79 of Act 53 of 1999, section 72 of Act 30 of 2000, section 63 of Act 59 of 2000, section 42 of Act 5 of 2001, section 147 of Act 60 of 2001, section 56 of Act 30 of 2002, section 113 of Act 74 of 2002 and section 163 of Act 45 of 2003

91. (1) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in *Exemptions from the duty under paragraph (1) or (2)* for subparagraph (i) of the following subparagraph:

“(i) where the securities are **[interest-bearing]** debentures, including debenture stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not, and which constitute instruments as contemplated in section 24J of the Income Tax Act, 1962 **[unless convertible into shares or similar equity interest or eligible to participate in dividends];**”;

(b) by the deletion in paragraph (3) of subparagraph (a);

(c) by the substitution for subparagraph (h) of paragraph (3) of the following subparagraph:

“(h) where transfer is registered—for every R10, or part thereof, of the amount or value of the consideration given or, where no consideration is given or the consideration given is less than the value of the marketable security transferred, of the value of the marketable security transferred:0 025”

(d) by the deletion under the *Exemptions from the duty under paragraph (3)* of subparagraph (t);

(e) by the substitution in *Exemptions from the duty under paragraph (3) for subparagraph (z)* of the following subparagraph:

“(z) where the securities are **[interest-bearing]** debentures, including debenture stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not, and which constitute instruments as contemplated in section 24J of the Income Tax Act, 1962 **[unless convertible into shares or similar equity interest or eligible to participate in dividends];**” and

(f) by the insertion in Paragraph (5) before the *Exemptions from the duty under paragraph (5)* of the following paragraph:

“The duty payable in terms of Item 15(5)(viii) does not apply in respect of the acquisition of any marketable security on or after 1 January 2005.”

(2) Notwithstanding the deletion by subsection (1)(b) of paragraph 3(a) of Item 15 of Schedule I to the Stamp Duties Act, 1968, these provisions remain in force in respect of any liability for an amount of duty which could have been imposed in respect of the registration of transfer of any marketable security which was sold or disposed of on or before 26 March 1969.

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 and section 43 of Act 16 of 2004 5

92. (1) Section 1 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for the definition of “**consideration**” of the following definition: 10
- “**consideration**’, in relation to the supply of goods or services to any person, includes any payment made or to be made (including any deposit on any returnable container and tax), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include any payment made by any person as [an unconditional gift] a donation to any association not for gain;”;
- (b) by the deletion in the definition of “**domestic goods and services**” of the word “or” at the end of paragraph (d); 20
- (c) by the addition to the definition of “**domestic goods and services**” of the following paragraphs: 25
- “(f) laundry; or
- (g) nursing services;”;
- (d) by the insertion after the definition of “**donated goods or services**” of the following definition: 30
- “**donation**’ means a payment whether in money or otherwise voluntarily made to any association not for gain for the carrying on or the carrying out of the purposes of that association and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods or services to the person making that payment or in the form of a supply of goods or services to any other person who is a connected person in relation to the person making the payment, but does not include any payment made by a public authority or a local authority;”;
- (e) by the substitution in the definition of “**enterprise**” for paragraph (ii) of the proviso of the following paragraph: 35
- “[the supply outside the Republic of goods or services by any concern from] any branch or main business [thereof where such branch or main business in permanently located at premises] of an enterprise permanently situated at premises outside the Republic shall be deemed to be carried on by a person separate from the vendor, if— 40
- (aa) the branch or main business can be separately identified; and 45
- (bb) an independent system of accounting is maintained by the concern in respect of the branch or main business [, 50
- shall be deemed not to be effected in the course of furtherance of any enterprise or activity carried on by such concern];”;**
- (f) by the insertion in the definition of “**enterprise**” of the following paragraph to the proviso: 55
- “(ix) where a person carries on or intends carrying on an enterprise or activity supplying commercial accommodation as contemplated in paragraph (a) of the definition of ‘commercial accommodation’ in section 1, and the total value of taxable supplies made by that person in the preceding period of 12 months or which it can reasonably be expected that that person will make in a period of 12 months, as the case may be, will not exceed R60 000, shall be deemed not to be the carrying on of an enterprise;”; 55

- (g) by the insertion after the definition of “**goods**” of the following definition:
 “**grant** means any appropriation, grant in aid, subsidy or contribution transferred, granted or paid to a vendor by a public authority, local authority or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), but does not include— 5
- (a) a payment made for the supply of any goods or services to that public authority or local authority, including all goods or services supplied to a public authority, local authority or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) in accordance with a procurement process prescribed— 10
- (i) in terms of the Regulations issued under section 76(4)(c) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or 15
- (ii) in terms of Chapter 11 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), or any other similar process; or
- (b) a payment contemplated in section 8(23);”;
- (h) by the substitution in the definition of “**motor car**” for the words preceding paragraph (a) of the following words: 20
- “**motor car**’ includes a motor car, station wagon, minibus, double cab light delivery vehicle and any other motor vehicle of a kind normally used on public roads, which has three or more wheels and is constructed or [adapted] converted wholly or mainly for the carriage of passengers, but does not include—”; 25
- (i) by the deletion in the definition of “**motor car**” of the word “or” at the end of paragraph (c);
- (j) by the addition to the definition of “**motor car**” of the following paragraphs: 30
- “(e) game viewing vehicles (other than sedans, station wagons, minibuses or double cab light delivery vehicles) constructed or permanently converted for the carriage of seven or more passengers for game viewing in national parks, game reserves, sanctuaries or safari areas and used exclusively for that purpose, other than use which is merely incidental and subordinate to that use; or 35
- (f) vehicles, constructed as or permanently converted into hearses for the transport of deceased persons and used exclusively for that purpose;”;
- (k) by the substitution for the definition of “**public authority**” of the following definition: 40
- “**public authority**’ means—
- (i) any department or division of the public service [(including a provincial administration, the South African National Defence Force, the South African Police Service and Correctional Services)] as listed in Schedules 1, 2 or 3 of the Public Service Act, 1994 (Act No. 103 of 1994); or 45
- (ii) any public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
- (iii) any other public entity designated by the Minister for the purposes of this Act to be a public authority;”;
- (l) by the deletion of the definition of “**unconditional gift**”; and 50
- (m) by the substitution for the definition of “**welfare organisation**” of the following definition: 55
- “**welfare organisation**’ means any [association not for gain] public benefit organisation which [is registered under the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997) and] is exempt from income tax in terms of section 10(1)(cN) of the Income Tax Act, if it carries on or intends to carry on any welfare activity determined by the Minister for purposes of this Act [to be of a philanthropic or benevolent nature, having regard to the needs, interests and well-being of the general public], relating to those activities that fall 60
- under the headings—
- (a) welfare and humanitarian;
- (b) health care;

- (c) land and housing;
- (d) education and development; or
- (e) conservation, environment and animal welfare.”.

(2) Subsection (1)(g) and (k) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

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Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, paragraph 2 of Government Notice 2695 of 8 November 1991, section 13 of Act 136 of 1992, section 10 of Act 20 of 1994, section 19 of Act 37 of 1996, section 24 of Act 27 of 1997, section 87 of Act 30 of 1998, section 82 of Act 53 of 1999, section 149 of Act 60 of 2001, section 115 of Act 74 of 2002 and section 44 of Act 16 of 2004

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93. Section 2 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (1)(k) for the words preceding the proviso of the following words:

“the buying or selling of [**futures contracts or option contracts as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), or any similar contract**] any derivative.”;

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- (b) by the substitution for paragraph (i) of subsection (2) of the following paragraph:

“**‘cheque’** means a [**cheque as defined in section 1 of the Stamp Duties Act**] bill drawn on a bank payable on demand, a postal order, a money order, a traveller’s cheque, or any order or [**authorization**] authorisation (whether in writing, by electronic means, or otherwise) to a financial institution to credit or debit any account.”; and

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- (c) by the insertion after the definition of “**debt security**” in subsection (2) of the following definition:

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“(iiiA) **‘derivative’** means a derivative as defined for purposes of Statement AC 133 of generally accepted accounting practice.”.

Amendment of section 7 of Act 89 of 1991, as amended by section 165 of Act 45 of 2003

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94. Section 7 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs:

“(a) Where any goods manufactured in the Republic, being of a class or kind subject to excise duty or environmental levy under ~~Part 2 or 3~~ of Schedule No. 1 to the Customs and Excise Act, have been supplied at a price which does not include such excise duty or environmental levy and tax has become payable in respect of the supply in terms of subsection (1)(a), value-added tax shall be levied and paid at the rate of 14 per cent for the benefit of the National Revenue Fund on an amount equal to the amount of such excise duty or environmental levy which, subject to any rebate of such excise duty or environmental levy under the said Act, is paid.

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(b) The tax payable in terms of paragraph (a) shall be paid by the person liable in terms of the Customs and Excise Act for the payment of the said excise duty or environmental levy.”; and

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

“(d) Subject to this Act, the provisions of the Customs and Excise Act relating to the clearance of goods subject to excise duty or environmental levy and the payment of [**such**] that excise duty or environmental levy, shall *mutatis mutandis* have effect as if enacted in this Act.”.

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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 and section 166 of Act 45 of 2003 5

95. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition in subsection (2) of the following paragraph to the proviso:

“(iv) this subsection shall not apply to a vendor that is a constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) or a public authority, respectively, where that vendor (other than a vendor who applied and was registered as a vendor during the period 22 December 2003 to 31 March 2005) ceases to be a vendor as a result of—

(aa) the substitution of the definition of ‘public authority’ in the Revenue Laws Amendment Act, 2004 or the insertion of paragraph (viii) to the proviso to the definition of ‘enterprise’ in the Revenue Laws Amendment Act, (Act No. 45 of 2003); or

(bb) the re-classification of that vendor or part of that vendor’s activities within the Schedules to the Public Finance Management Act, 1999 (Act No. 1 of 1999) subsequent to the introduction of the Revenue Laws Amendment Act, 2004.”;

(b) by the insertion after subsection (2A) of the following subsection:

“(2B) Where a supply is deemed to have been made by a vendor in terms of subsection (2) and that vendor ceases on or before 30 June 2005 to be a vendor solely as a consequence of the introduction of proviso (ix) to the definition of ‘enterprise’ in section 1, the tax payable to the Commissioner in respect of that deemed supply shall, if the amount thereof is in excess of R3 000, be paid to the Commissioner in so many equal monthly instalments as the Commissioner may allow.”;

(c) by the insertion after subsection (5) of the following subsection:

“(5A) For the purposes of section 11(2)(t), a vendor (excluding a designated entity) shall be deemed to supply services to any public authority, local authority or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) to the extent of any grant paid to or on behalf of that vendor in respect of the taxable supply of goods or services by that vendor.”;

(d) by the substitution for subsection (14) of the following subsection:

“(14) For the purposes of this Act—

(a) where any goods are supplied by a vendor to a person otherwise than in the circumstances contemplated in paragraph 2(b) of the Seventh Schedule to the Income Tax Act, and a deduction under section 16(3) in respect of the acquisition by the vendor of [such] those goods was denied in terms of section 17(2) or would have been denied if section 7 of this Act had been applicable prior to the commencement date, the vendor shall be deemed to have supplied the goods otherwise than in the course or furtherance of his enterprise;

(b) where any input tax is allowed in terms of section 18(9) in respect of a game viewing vehicle or a hearse as contemplated in paragraph (e) or (f) of the definition of ‘motor car’ in section 1, the subsequent supply of that game viewing vehicle or hearse shall be deemed to be supplied in the course of the vendor’s enterprise.”;

(e) by the insertion after subsection (14) of the following subsection:

“(14A) For the purposes of this Act, where input tax has been allowed on the conversion of a game viewing vehicle or a hearse, as contemplated in paragraph (e) or (f) of the definition of ‘motor car’ in section 1 and that game viewing vehicle or hearse is subsequently applied for purposes other than those purposes as contemplated in paragraph (e) or (f) of the definition of ‘motor car’ in section 1, a supply of that game viewing vehicle or hearse shall be deemed to take place.”; and

(f) by the substitution for subsection (21) of the following subsection:

“(21) For the purposes of this Act, compensation or any other payment, other than an amount contemplated in section 12(a), received by a vendor in consequence of the expropriation of **[land, including an improvement thereto]** fixed property, is deemed to be received in respect of a supply of goods made in the course or furtherance of an enterprise unless that **[land or improvement thereto]** fixed property forms no part of the assets held or used by the vendor for the purposes of an enterprise.”

(2) Subsection (1)(a) and (c) shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*.

Amendment of section 9 of Act 89 of 1991, as amended by section 25 of Act 136 of 1991 and section 167 of Act 45 of 2003

96. Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsection after subsection (9):

“(10) Where any supply of a game viewing vehicle or a hearse is deemed to be made as contemplated in section 8(14)(b) or 8(14A) the time of supply shall be deemed to be the time that the game viewing vehicle or hearse is supplied as contemplated in those sections.”

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 13 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 and section 168 of Act 45 of 2003

97. Section 10 of the Value-Added Tax Act, 1991, is hereby amended by the insertion of the following subsection after subsection (23):

“(24) Where a game viewing vehicle or a hearse is deemed to be supplied by a vendor in terms of section 8(14)(b) or (14A) the supply shall be deemed to be made for a consideration in money equal to the open market value, of that game viewing vehicle or hearse.”

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, paragraph 6 of 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 and section 46 of Act 16 of 2004

98. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs:

“(c) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if the goods are used exclusively in an export country or in a customs controlled area: Provided that this subsection shall not apply where a ‘motor car’ as defined in section 1 is supplied to a person located in a customs controlled area; or

(d) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if **[such] those** goods are used by **[such] that** lessee or other person exclusively in any commercial, financial, industrial, mining, farming, fishing or professional concern conducted in an export country and payment of rent or other consideration under **[such] that** agreement is effected from such export country; or”;

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

“(m) a vendor supplies movable goods, (excluding any ‘motor car’ as defined in section 1), in terms of a sale or instalment credit agreement”

- to a registered vendor in a customs controlled area and those goods are either —
- (i) physically delivered by the supplier to the recipient; or
 - (ii) physically delivered by a VAT registered cartage contractor, engaged by the supplier, whose main activity is that of transporting goods: Provided that this subsection shall not apply where the cartage contractor is not liable to the supplier for delivery of the goods and that supplier is not liable for the full cost relating to that delivery;
- (c) by the substitution in subsection (1) for subparagraph (ii) of paragraph (n) of the following subparagraph:
- “(ii) any prospecting right, mining right, exploration right, **[or]** production right, mining permit or retention permit as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), wholly or partly renewed in terms of that Act.”;
- (d) by the insertion in subsection (1) after paragraph (o) of the following paragraph:
- “(p)(i) the supply of an enterprise or part of an enterprise as a going concern, by a vendor to that vendor’s branch or division, which branch or division is separately registered in terms of section 50(2): Provided that that enterprise or part, as the case may be, shall not be disposed of as a going concern unless—
- (aa) that enterprise or part is capable of separate operation; and
 - (bb) will be an income-earning activity on the date of transfer thereof; and
 - (cc) a tax invoice issued in accordance with section 20 in relation to that supply is inclusive of tax at the rate of zero per cent; or
- (ii) the supply of an enterprise, branch or division, as contemplated in section 50(2), as a going concern to a separately registered enterprise of that vendor: Provided that that enterprise or part, as the case may be, shall not be disposed of as a going concern unless—
- (aa) that enterprise or part is capable of separate operation; and
 - (bb) will be an income-earning activity on the date of transfer thereof; and
 - (cc) a tax invoice issued in accordance with section 20 in relation to that supply is inclusive of tax at the rate of zero per cent.”;

(e) by the substitution in subsection (2) for subparagraph (iii) of paragraph (h) of the following subparagraph:

“(iii) the storage, repair, maintenance, cleaning, management or arranging the provision of a container referred to in paragraph **[2(i) of Part A] (1)(i)** of Schedule 1 or the arranging of **[such] those** services.”;

(f) by the addition to subsection (2) of the following paragraph:

“(t) the services are deemed to be supplied in terms of section 8(5A).”.

(2) (a) Subsection (1)(a) shall —

 - (i) to the extent it inserts the words “being movable goods” in section 11(1)(c) and (d) of the Value-Added Tax Act, 1991, come into operation on the date of promulgation; and
 - (ii) to the extent it amends the rest of section 11(1)(c) of the Value-Added Tax Act, 1991, come into operation on the date that section 21A of the Customs and Excise Act, 1964, comes into operation.

(b) Subsection (1)(b) shall come into operation on the date section 21A of the Customs and Excise Act, 1964, comes into operation.

(c) Subsection (1)(f) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 12 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 86 of Act 53 of 1999, section 69 of Act 19 of 2001, section 154 of Act 60 of 2001 and section 117 of Act 74 of 2002

99. Section 12 of the Value-Added Tax Act, 1991, is hereby amended— 5

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

“(i) a dwelling under an agreement for the letting and hiring thereof, and any ‘right of occupation’ as defined in section 1 of the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988);” 10

(b) by the substitution for paragraph (g) of the following paragraph:

“(g) the supply by any person in the course of a transport business of any service comprising the transport by that person in a vehicle (other than a game viewing vehicle contemplated in paragraph (e) of the definition of ‘motor car’ in section 1) operated by him of fare-paying passengers and their personal effects by road or railway (excluding a funicular railway), not being a supply of any such service which, but for this paragraph, would be charged with tax at the rate of zero per cent under section 11(2)(a);” 15 20

(c) by the deletion in paragraph (h) of subitem (D) of item (cc) of subparagraph (i); and

(d) by the addition in paragraph (h) of the following subparagraph:

“(iii) the supply of services to learners or students or intended learners or students by the Joint Matriculation Board referred to in section 15 of the Universities Act, 1955 (Act No. 61 of 1955);” 25

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 29 of Act 97 of 1993, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001, section 155 of Act 60 of 2001 and section 170 of Act 45 of 2003 30

100. (1) Section 13 of the Value-Added Tax Act, 1991, is hereby amended—

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

“For the purposes of this Act goods shall be deemed to be imported into the Republic on the date on which the goods are in terms of **[section 10]** the provisions of the Customs and Excise Act deemed to be imported;” 35

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

“(ii) where any goods have been imported and entered in a licensed Customs and Excise warehouse **[or customs controlled area]** but have not been entered for home consumption, any supply of **[such]** those goods before they are entered for home consumption shall be zero-rated for the purposes of this Act;” and 40

(c) by the deletion of subsection (4).

(2) (a) Subsection (1)(a) and (c) shall come into operation on the date of promulgation of this Act. 45

(b) Subsection (1)(b) shall come into operation on the date that section 21A of the Customs and Excise Act, 1964, comes into operation.

Amendment of section 14 of Act 89 of 1991, as amended by section 171 of Act 45 of 2003

101. Section 14 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the deletion in subsection (5) of the word “or” at the end of paragraph (a);
 (b) by the insertion in subsection (5) of the word “or” at the end of paragraph (c); 5
 (c) by the addition to subsection (5) of the following paragraph:
“(d) a supply by a person of services as contemplated in terms of proviso (iii)(aa) to the definition of ‘enterprise’ in section 1;”.

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 and section 173 of Act 45 of 2003 10

102. Section 17 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (2) for subparagraph (iii) of paragraph (a) of the following subparagraph: 15
“(iii) such goods or services consist of a meal or refreshment supplied by the vendor as operator of any conveyance to a passenger [and] or [a] crew member, in such conveyance during a journey, where such meal or refreshment 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;”; 20
 (b) by the substitution in subsection (2) for subparagraph (vii) of paragraph (a) of the following subparagraph: 25
“(vii) such goods or services [(where no consideration relating specifically to the supply of entertainment is payable shall be deemed to constitute a single supply for purposes of this subsection)] are acquired by a vendor for an employee or office holder of such vendor, that are incidental to the admission into a medical care facility[.]”;
 (c) by the addition in subsection (2) of the following subparagraph to paragraph (a): 30
“(viii) such goods or services consist of a meal or refreshment supplied by the vendor as operator of any ship or vessel (otherwise than in the circumstances contemplated in subparagraph (iii)) in such ship or vessel to a crew member of such ship or vessel, where such meal or refreshment is supplied in the course of making a taxable supply by that vendor;”. 35

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998, section 89 of Act 53 of 1999 and section 174 of Act 45 of 2003 40

103. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Change in use adjustments”;
 (b) by the deletion in subsection (4) of the word “or” at the end of paragraph (ii) of the proviso and the addition of the word “or” at the end of paragraph (iii); 45
 (c) by the addition in subsection (4) to the proviso of the following paragraph:
“(iv) this subsection shall not apply where a constitutional institution listed in Schedule 1 or a public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), is re-classified within the Schedules to the Public Finance Management Act, 1999 (Act No. 1 of 1999) and applies those goods or services for the purposes of consumption, use or supply in the course of making taxable supplies.”; and 50
 (d) by the addition of the following subsections: 55
“(9) Where a vendor has acquired or imported a motor car (in respect of which input tax has been denied in terms of section 17(2)(c)) and has subsequently converted that motor car into a game viewing vehicle or a

hearse, as contemplated in paragraph (e) or (f) of the definition of 'motor car' in section 1, that motor car is deemed to be supplied in that tax period to that vendor, and the Commissioner shall allow that vendor to make a deduction in terms of section 16(3) of an amount equal to the tax fraction of the lesser of—

- (a) the adjusted cost; or
- (b) the open market value,

of that motor car on the day before that conversion: Provided that this deduction excludes any amount of input tax which qualifies or has qualified for a deduction under another provision of this Act.

(10) Where—

- (a) goods or services have been supplied by a vendor at the zero rate in terms of sections 11(1)(c), 11(1)(m) or 11(2)(k) to a registered vendor who is a customs controlled area enterprise; or
- (b) goods have been imported into the Republic by a registered vendor who is a customs controlled area enterprise for use, consumption or supply in that area and those goods are exempt from tax in terms of section 13(3),

and those goods or services were acquired for the purposes of entertainment in respect of which a deduction of input tax would have been denied in terms of section 17(2), those goods or services shall be deemed to be supplied by him in the same tax period in which they were so acquired, in accordance with the formula:

$$A \times B$$

in which formula—

'A' represents the rate of tax levied in terms of section 7(1); and
'B' represents—

- (a) the cost to the vendor of the acquisition of those goods or services which were supplied to him in terms of sections 11(1)(c), 11(1)(m) or 11(2)(k); or
- (b) the value to be placed on the importation of goods into the Republic as determined in terms of section 13(2)."

(2) (a) Subsection (1)(b) and (c) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(b) Subsection (1)(d) shall—

- (i) to the extent that it inserts subsection (9) in section 18 of the Value-Added Tax Act, 1991, come into operation on the date of promulgation of this Act and shall apply in respect of any motor car acquired or imported on or after that date; and
- (ii) to the extent that it inserts subsection (10) in section 18 of the Value-Added Tax Act, 1991, come into operation on the date that section 21A of the Customs and Excise Act, 1964, comes into operation.

Amendment of section 20 of Act 89 of 1991, as amended by paragraph 11 of Government Notice 2695 of 8 November 1991, 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 and section 47 of Act 16 of 2004

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104. (1) Section 20 of the Value-Added Tax Act, 1991, is hereby amended—

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

“Except as otherwise provided in this section, a supplier, being a registered vendor, making a taxable supply (other than a supply contemplated in section 8(10)) to a recipient, **[shall, at the request of the recipient, provide that recipient,] must** within 21 days **[after receiving that request, with] of the date of that supply issue a tax invoice containing such particulars as are specified in this section.”;**

(b) by the deletion of subsection (1A);

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

“(e) full and proper description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied;”;

(d) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“(5) Notwithstanding anything in subsection (4), where the consideration in money for a supply does not exceed **[R1 000] R3 000**, a tax invoice (abridged tax invoice) shall be in the currency of the Republic and shall contain the particulars specified in that subsection or the following particulars:”;

(e) by the substitution in subsection (5) for paragraph (d) of the following paragraph:

“(d) a description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied;”;

(f) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:

“(8) Notwithstanding anything in this section, where a supplier makes a supply (not being a taxable supply) of second-hand goods or of goods as contemplated in section 8(10) to a recipient, being a registered vendor, the recipient shall in the form as the Commissioner may prescribe, where the value of the supply is R1 000 or more, obtain and maintain a declaration by the supplier stating whether the supply is a taxable supply or not and shall further maintain sufficient records to enable the following particulars to be ascertained:”;

(2) (a) Subsection (1)(a), (b), (c), (d) and (e) shall come into operation on 1 March 2005 and shall apply in respect of any supply made on or after that date.

(b) Subsection (1)(f) shall come into operation on the date of promulgation of this Act.

Amendment of section 39 of Act 89 of 1991, as amended by section 30 of Act 136 of 1992, section 3 of Act 61 of 1993, section 23 of Act 20 of 1994, section 40 of Act 27 of 1997, section 166 of Act 60 of 2001 and section 184 of Act 45 of 2003, section 50 of Act 16 of 2004

105. Section 39 of the Value-Added Tax Act, 1991, is hereby amended— 5
- (a) by the deletion of subsection (3);
- (b) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words: 10
- “To the extent that the Commissioner is satisfied that the failure on the part of the person concerned or any other person under the control or acting on behalf of that person to make payment of the tax within the period for payment contemplated in subsection (1)(a), (2), [(3),] (4), (6) or (6A) or on the date referred to in subsection (5), as the case may be—”;
- (c) by the substitution in subsection (7) for the words following subparagraph (ii) of paragraph (a) of the following words: 15
- “he may remit, in whole or in part, the interest payable in terms of this section; or” ;
- (d) by the substitution in subsection (7) for paragraph (b) of the following paragraph: 20
- “(b) was not due to an intent not to make payment or to postpone liability for the payment of the tax, he may remit, in whole or in part, any penalty payable in terms of this section.”.

Amendment of section 48 of Act 89 of 1991, as amended by section 99 of Act 53 of 1999 and section 186 of Act 45 of 2003 25

106. Section 48 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (9) of the following subsection: 30
- “(9) Where a vendor is a company, every member, shareholder [**and**] or director who controls or is regularly involved in the management of the company’s overall financial affairs shall be personally [**liability**] liable for the tax, additional tax, penalty or interest for which the company is liable.”.

Amendment of section 68 of Act 89 of 1991, as amended by section 39 of Act 136 of 1992 and section 26 of Act 20 of 1994

107. Section 68 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 35
- “(a) by any person enjoying full or limited immunity, rights or privileges under [**section 3 of the Diplomatic Immunities and Privileges Act, 1989 (Act No. 74 of 1989)**] sections 3, 4, 5 and 6 of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), or under an agreement or otherwise as contemplated in section [**4**] 7 of that Act or under the recognized principles 40 of international law; or”.

Amendment of Schedule 1 to Act 89 of 1991, as substituted by section 106 of Act 53 of 1999 and section 177 of Act 60 of 2001 and amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, section 189 of Act 45 of 2003 and sections 52, 53, 54 and 55 of Act 16 of 2004

108. Schedule 1 of the Value-Added Tax Act, 1991, is hereby amended— 5
- (a) by the substitution in paragraph 5 for the words preceding subparagraph (a) of the following words: 5
- “Goods, excluding clothing and food, forwarded unsolicited and free of charge by a non-resident to—”;
- (b) by the substitution in item 409.00 for paragraph (i) of subitem 409.01/00.00/ 10
01.00 of the following paragraph:
- “(i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11(1)(a); or”;
- (c) by the substitution in item 409.00 for paragraph (i) of subitem 409.02/00.00/ 15
01.00 of the following paragraph:
- “(i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11(1)(a); or”;
- (d) by the substitution in item 409.00 for paragraph (i) of subitem 409.06/00.00/ 20
01.00 of the following paragraph:
- “(i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11(1)(a); or”.

Amendment of section 1 of Act 31 of 1998

109. (1) Section 1 of the Uncertificated Securities Tax Act, 1998, is hereby amended—
- (a) by the insertion after the definition of “**beneficial ownership**” of the 25
following definition:
- “ ‘**closing price**’ means the closing price at which the securities were traded on the exchange on which the securities are listed, as determined by that exchange on each day on which trade in those securities occurs on that exchange: Provided that where the securities were not traded on the 30
date of the transaction or other manner of acquisition, the closing price of those securities shall be deemed to be the closing price of those securities on the last business day, preceding the date of the transaction or other manner of acquisition, on which those securities were traded on that exchange, as determined by the exchange on which those securities are 35
listed.”;
- (b) by the insertion after the definition of “**Commissioner**” of the following definition:
- “ ‘**exchange**’ means an exchange as defined in section 1 and licensed 40
under section 10 of the Securities Services Act, 2004.”;
- (c) by the insertion after the definition of “**lending arrangement**” of the following definition:
- “ ‘**lowest price**’ means the lowest price at which the securities were traded on the exchange on which the securities are listed, as determined by that exchange on each day on which trade in those securities occurs on that exchange: Provided that where the securities were not traded on the 45
date of the transaction or other manner of acquisition, the lowest price of those securities shall be deemed to be the lowest price of those securities on the last business day, preceding the date of the transaction or other manner of acquisition, on which those securities were traded on that 50
exchange, as determined by the exchange on which those securities are listed.”;
- (d) by the substitution for the definition of “**member**” of the following definition:
- “ ‘**member**’ means any person [**admitted as a member of a stock 55
exchange**] who is an authorised user as defined in section 1 of the Securities Services Act, 2004, providing services in respect of the buying and selling of securities.”;
- (e) by the substitution for the definition of “**participant**” of the following 60
definition:

“ **‘participant’** means [a participant as defined in the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992)] any person who holds in custody and administers securities or an interest in securities and who has been accepted in terms of section 34 of the Securities Services Act, 2004, by a central securities depository as a participant in that central securities depository;”;

(f) by the deletion of the definition of “**ruling price**”;

(g) by the substitution for the definition of “**securities**” of the following definition:

“ **‘securities’** means [listed securities as defined in section 1 of the Stock Exchange Control Act, 1985 (Act No. 1 of 1985),] —

fa) shares, depository receipts in public companies and other equivalent equities; and

(b) derivative instruments and debentures that are convertible into any instrument contemplated in paragraph (a), that are listed on an exchange in the Republic;”;

(h) by the deletion of the definitions of “**stock-broker**” and “**stock exchange**”.

(2)(a) Subsection (1)(a), (c) and (f) shall come into operation on 1 March 2005.

(b) Subsection (1)(b), (d), (e), (g) and (h) shall come into operation on the date on which the Securities Services Act, 2004 comes into operation.

Amendment of section 5 of Act 31 of 1998

110. (1) Section 5 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) if no amount referred to in paragraph (a) is declared, or if the amount so declared is less than the [fair market value] lowest price of the securities on the date of the relevant transaction or other manner of acquisition, the [ruling] closing price of those securities on the [business day immediately preceding the day on which the transfer of such securities is effected by the participant] date of the relevant transaction or other manner of acquisition.”.

(2) Subsection (1) shall come into operation on 1 March 2005 and shall apply in respect of any change in beneficial ownership on or after that date.

Amendment of section 6 of Act 31 of 1998, as amended by section 15 of Act 32 of 1999, section 87 of Act 30 of 2000, section 75 of Act 19 of 2001, section 180 of Act 60 of 2001, section 60 of Act 30 of 2002, section 122 of Act 74 of 2002 and section 191 of Act 45 of 2003

- 111.** (1) Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended— 5
- (a) by the substitution in subsection (1) for subparagraph (iv) of paragraph (a) of the following paragraph: 5
- “(iv) to the extent that the securities are instruments as contemplated in section 245 of the Income Tax Act, 1962 (Act No. 58 of 1962);” and
- (b) by the substitution in subsection (1) for item (aa) of subparagraph (i) of paragraph (b) of the following paragraph: 10
- “(aa) a member who has purchased the securities for his, her or its own account and benefit;”;
- (c) by the substitution in subsection (1) for subparagraph (iii) of paragraph (b) of the following paragraph: 15
- “(iii) to the extent that the securities are instruments as contemplated in section 24J of the Income Tax Act, 1962 (Act No. 58 of 1962);”;
- (d) by the substitution in subsection (1) for subitems (A), (B) and (C) of item (gg) of subparagraph (ix) of paragraph (b) of the following subitems: 20
- “(A) in subparagraphs [(i) to (vi)] (aa) to (ff) regardless of whether or not an election has been made for the provisions of that section to apply; 20
- (B) in subparagraph [(i), (ii) or (iii)] (aa), (bb) or (cc) regardless of the market value of the asset disposed of in exchange for those securities; or
- (C) in subparagraphs [(i) to (vi)] (aa) to (ff) regardless of whether or not that person acquired those securities as capital assets or as trading stock.”. 25
- (2) Subsection (1) shall come into operation on 1 March 2005 and shall apply in respect of any change in beneficial ownership on or after that date.

Amendment of section 121 of Act 60 of 2001, as amended by section 202 of Act 45 of 2003

- 112.** Section 121(1) of the Second Revenue Laws Amendment Act, 2001, which 30
inserts section 21A of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution for subsection (4) of the following subsection: 30
- “(4) Notwithstanding anything to the contrary contained in this section or any other provision of this Act, goods to which subsection (7) relates shall, subject to any exception or adaptation prescribed in any 35
Schedule or rule even if free of duty, be deemed to be goods liable to duty for the purposes of the application of any provision of this Act.”;
- (b) by the deletion of subsections (10), (15) and (16);
- (c) (i) by renumbering subsection (11) as subsection (10); 40
- (ii) by renumbering subsection (12) as subsection (11);
- (iii) by renumbering subsection (13) as subsection (12);
- (iv) by renumbering subsection (14) as subsection (13);
- (v) by renumbering subsection (17) as subsection (14);
- (vi) by renumbering subsection (18) as subsection (15); and 45
- (vii) by renumbering subsection (19) as subsection (16).

Amendment of section 153 of Act 60 of 2001

- 113.** Section 153 of the Second Revenue Laws Amendment Act, 2001, is hereby amended by the deletion in subsection (1) of paragraph (c).

Amendment of section 103 of Act 74 of 2002

114. Section 103 of the Revenue Laws Amendment Act, 2002, which inserts section 37B of the Customs and Excise Act, 1964 is hereby amended—

- (a) by the substitution in section 37B(2) for paragraph (a) of the following paragraph: 5
- “(a)(i) Except where otherwise provided—
- (aa) in this section;
- (bb) by the Minister in any amendment of any Schedule in terms of any provision of this Act; or
- (cc) by the Commissioner in any rule, 10
- the provisions of this Act governing the administration of excisable goods or fuel levy goods, including the manufacture, levying of duty and granting of any rebate or refund of duty on such goods, shall apply *mutatis mutandis* to biofuel.
- (ii) For the purposes of paragraph (i) unless otherwise specified in any Schedule or rule such provisions relating to distillate fuel or petrol shall be deemed to include respectively a reference to biodiesel or bioethanol or any mixtures thereof with distillate fuel or petrol.”; 15
- (b) by the insertion of the following paragraph in subsection (2) after paragraph (b): 20
- “(c) The Commissioner may, except if any provision of this Act otherwise provides, in respect of biofuel manufactured in the Republic by any person for his or her own use and not for sale or other disposal by rule—
- (i) (aa) exempt for any period any person or biofuel or any quantity of biofuel manufactured by such person from payment of duty; 25
- (bb) cancel any such exemption under circumstances prescribed by rule;
- (ii) prescribe, subject to paragraph (b), conditions and other requirements in respect of such exemption; 30
- (iii) prescribe procedures relating to the manufacture and removal of biofuel for home consumption.”;
- (c) by the substitution in section 37B(4) for paragraph (a) of the following paragraph: 35
- “(a) require any seller of biofuel who is not a manufacturer to register in terms of section 59A.”;
- (d) by the substitution for subsection (2) of section 103 of the Revenue Laws Amendment Act, 2002, of the following subsection: 40
- “(2) Subsection (1), which may be determined to come into operation separately for biodiesel and bioethanol, shall come into operation on a date or dates to be determined by the President by Proclamation in the *Gazette*.”. 40

Repeal of section 46 of Act 16 of 2004

115. Section 46 of the Taxation Laws Amendment Act, 2004, is hereby repealed. 45

Amendment of section 59 of Act 45 of 2003

116. Section 59 of the Revenue Laws Amendment Act, 2003, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) (a) Subsection (1)(a) to (l), (n), (o) and (p) shall come into operation on the date of promulgation of this Act and shall apply in respect of any cash or asset distributed, any obligation relieved, any debt settled, any amount applied, any adjustment or any loan or advance granted on or after that date. 50
- (b) Subsection (1)(m) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any cash or asset distributed, any obligation relieved, any debt settled, any amount applied, any adjustment or any loan or advance granted on or after that date.”. 55

Amendment of section 163 of Act 45 of 2003

117. Section 163 of the Revenue Laws Amendment Act, 2003, is hereby amended by the addition to subsection (2) of the following paragraph:

- “(c) Notwithstanding the deletion by subsection (1)(f) and (o) of paragraph (3)(b) to (g) and paragraph (5)(i) to (vi) of Item 15 of Schedule 1 to the Stamp Duties Act, 1968, these provisions remain in force in respect of any liability for an amount of duty which could have been imposed in terms thereof in respect of—
- (i) the registration of any marketable security which was sold or disposed of on or before 31 March 1997; or
 - (ii) the acquisition of any marketable security on or before that date.”,

Amendment of section 164 of Act 45 of 2003

118. Section 164 of the Revenue Laws Amendment Act, 2003, is hereby amended—

- (a) by the deletion in subsection (1) of paragraphs (b), (e) and (h); and
 - (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
- “(2) (a) Subsection (1)[(b),] (c), [(e)], (g), [(h)], (i), (j) and (o) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.”

Repeal of section 165 of Act 45 of 2003

119. Section 165 of the Revenue Laws Amendment Act, 2003, is hereby repealed.

Amendment of section 166 of Act 45 of 2003, as amended by section 66 of Act 16 of 2004

120. Section 166 of the Revenue Laws Amendment Act, 2003, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (a) and
 - (b) by the substitution for subsection (2) of the following subsection:
- “(2) Subsection (1)[(a),] (b) and (d) shall to the extent it inserts subsection (23) come into operation on the date determined by the President by proclamation in the *Gazette*.”

Amendment of section 169 of Act 45 of 2003

121. Section 169 of the Revenue Laws Amendment Act, 2003, is hereby amended by the deletion in subsection (1) of paragraph (a).

Amendment of section 170 of Act 45 of 2003

122. Section 170 of the Revenue Laws Amendment Act, 2003, is hereby amended by the deletion in subsection (1) of paragraphs (a) and (c).

Amendment of section 173 of Act 45 of 2003

123. Section 173 of the Revenue Laws Amendment Act, 2003 is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (c);
- (b) by the deletion of subsection (2).

Short title and commencement

124. (1) This Act shall be called the Revenue Laws Amendment Act, 2004.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected by this Act to the Income Tax Act, 1962, shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2005.