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GOVERNMENT GAZETTE

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THE PRESIDENCY

DIE PRESIDENSIE

No. 1320.

6 December 2000

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

No. 59 of 2000: Revenue Laws Amendment Act, 2000.

No. 1320.

6 Desember 2000

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 59 van 2000: Wysigingswet op Inkomstewette, 2000.

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 29 November 2000.)*

ACT

To amend the Estate Duty Act, 1955, so as to insert a definition; to amend the Income Tax Act, 1962, so as to delete certain definitions; to amend certain definitions; to insert certain definitions; to make certain decisions of the Commissioner subject to objection and appeal; to further regulate rebates in respect of foreign taxes on income; to further regulate income deemed to have been received or accrued to a person subsequent to any donation, settlement or other disposition; to further regulate the recovery and recoupment of certain deductions and allowances; to further regulate income deemed to be from a source in the Republic; to repeal a section relating to investment income of foreign investment companies; to repeal a section relating to taxation of investment income from foreign sources; to further regulate the taxation of income of controlled foreign entities; to further regulate the taxation of foreign dividends received by or accrued to residents; to regulate income received by or accrued to residents from foreign sources; to make provision for the exemption of amounts received or accrued from the social security system of any other country and foreign pensions; to make provision for further exemptions and to withdraw an exemption; to further regulate an exemption relating to services rendered outside the Republic; to further regulate the exemption of certain amounts received from the State; to further regulate the deduction of expenses and losses; to further regulate the allowances of depreciation of assets used in a taxpayer's trade to take into account the period of use of such assets in a trade which was not previously taxable; to repeal a section relating to the deduction of expenses incurred in appointing agents outside the Republic; to further regulate the deductibility of contributions to any medical scheme to include medical schemes registered under the laws of any other country; to further regulate the set off of assessed losses to provide that foreign losses may not be set off against income from a trade carried on in the Republic; to further regulate the acquisition of trading stock; to further regulate the limitation of certain deductions; to further regulate gains or losses on foreign exchange transactions; to further regulate the taxation of trusts and beneficiaries of trusts; to make provision for the determination of taxable income or losses in foreign currency; to further regulate the determination of taxable income of certain persons in respect of international transactions; to further regulate the taxation of persons who derive income from royalties or similar payments; to further regulate the levy and recovery of secondary tax on companies; to further regulate certain

amounts deemed to be dividends; to make provision for the submission of returns relating to the participation rights in a controlled foreign entity; to further regulate appeals to the specially constituted board; to provide that foreign taxes be taken into account in the determination of interest payable on underpay merits and overpayments of provisional tax; to provide that restraint of trade payments be included in remuneration for the purposes of the determination of employees' tax to be deducted; to provide that where an employer is not a resident the representative taxpayer of such employer shall be obliged to deduct or withhold employees' tax; to provide that the Commissioner may take into account any rebates of foreign tax when prescribing deduction tables for the purposes of employees' tax; to provide that there shall be included in "net remuneration" any annuity provided by a pension fund, provident fund or benefit fund even if such annuity is not payable by such fund; to provide that the Commissioner may take into account any rebates of foreign tax when prescribing tables for optional use by provisional taxpayers; to make provision in the definition of "official rate of interest" for any loan which is denominated in a foreign currency; to delete certain references to obsolete provisions; and to effect certain consequential and textual amendments; to amend the Customs and Excise Act, 1964, so as to make provision for non-reciprocal preferential' tariff treatment of goods exported from the Republic; and to effect certain consequential amendments; to amend the Stamp Duties Act, 1968, so as to make provision for an exemption; to amend the Value-Added Tax Act, 1991, so as to amend certain definitions; and to further regulate appeals to the specially constituted board; to amend the Tax on Retirement Funds Act, 1996, so as to effect certain consequential amendments; and to delete certain references to obsolete provisions; to amend the Skills Development Levies Act, 1999, so as to make provision for the application of certain provisions of the Income Tax Act, 1962; and to amend the Taxation Laws Amendment Act, 2000, so as to rectify a reference to an incorrect date; to further regulate the deductibility of donations made to public benefit organisations; to further regulate the exemption from income tax of the receipts and accruals of public benefit organisations; to further regulate the payment of air passenger tax; and to amend Schedule 1 to that Act to amend a definition; and to provide for matters in connection therewith.

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

Amendment of section 1 of Act 45 of 1955, as amended by section 1 of Act 59 of 1957, section 1 of Act 65 of 1960, section 7 of Act 77 of 1964, section 3 of Act 92 of 1971, section 9 of Act 106 of 1980, section 5 of Act 86 of 1987, section 7 of Act 87 of 1988, section 6 of Act 97 of 1993, section 2 of Act 140 of 1993, section 8 of Act 88 of 1996, section 5 of Act 27 of 1997, section 34 of Act 34 of 1997, section 7 of Act 53 of 1999 and section 6 of Act 30 of 2000

1. (1) Section 1 of the Estate Duty Act, 1955, is hereby amended by the insertion after the definition of "South African Revenue Service" of the following definition:
 - "spouse", in relation to any deceased person, includes a person who at the time of death of such deceased person was the partner of such person—
 - (a) in a marriage recognised in terms of the laws of the Republic;
 - (b) in a marriage entered into in accordance with any system of religious law which is recognised in the Republic; or
 - (c) in a permanent same-sex life relationship."
- (2) Subsection(1) shall be deemed to have come into operation on 27 April 1994.

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 19 of Act 30 of 1998, section 10 of Act 53 of 1999 and section 13 of Act 30 of 2000

2. Section 1 of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of the definition of “domestic company”;
- (b) by the deletion of the definition of “external company”;
- (c) by the substitution for the words preceding paragraph (a) of the definition of “gross income” of the following words:

“ ‘gross income’, in relation to any year or period of assessment, means—

- (i) in the case of any [person] resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such [person] **resident; or**

- (ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within or deemed to be within the Republic, during such year or period of assessment [from a source within or deemed to be within the Republic], excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely—”;

- (d) by the substitution for paragraph (gA) of the definition of “gross income” of the following paragraph:

“(gA) any amount received or accrued from another person as consideration (or payment of like nature) for the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information [for use in the Republic], or for the rendering of or the undertaking to render any assistance or service in connection with the application or utilization of such knowledge or information;”;

- (e) by the substitution for paragraph (k) of the definition of “gross income” of the following paragraph:

“(k) any amount received or accrued by way of dividends including any amount determined in accordance with the provisions of section 9E in respect of any foreign dividend received by or accrued to any person who is a resident [as defined in such section];”;

- (f) by the insertion in subsection (1) after the definition of “insolvent estate” of the following definition:

“ ‘international headquarter company’ means a company—

- (a) the entire equity share capital of which is held by persons who are not residents or trusts;
- (b) where any indirect interest of residents and of any trust in such equity share capital does not exceed five per cent in aggregate of the total equity share capital of such company; and

- (c) where 90 per cent of the value of the assets of such company represents interests in the equity share capital and loan capital of subsidiaries (which are not residents) of such company in which such company holds a beneficial interest of at least 50 per cent.”;
- (g) by the substitution for item (ee) of subparagraph (ii) of paragraph (c) of the definition of “pension fund” of the following item:
- “(ee) for the administration of the fund in such a manner as to preclude the employer from controlling the management or assets of the fund and from deriving any monetary advantage from moneys paid into or out of the fund, except—
- (A) any monetary advantage approved by the Registrar of Pension Funds: or
- (B) that where the employer is a partnership, a member of the partnership may be permitted to derive such monetary advantage if he was previously an employee and, on becoming a partner, was permitted to retain his membership of the fund as though he had not ceased to be an employee, his contributions being based upon his pensionable emoluments during the 12 months which ended on the day on which he ceased to be an employee and his benefits from the fund being calculated accordingly.”;
- (h) by the insertion after the definition of “Republic” of the following definition:
- “ ‘resident’ means any—
- (a) natural person who is—
- (i) ordinarily resident in the Republic; or
- (ii) not at any time during the year of assessment ordinarily resident in the Republic, if such person was physically present in the Republic—
- (aa) for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate during each of the three years of assessment preceding such year of assessment; and
- (bb) for a period or periods exceeding 549 days in aggregate during such three preceding years of assessment:
- Provided that—
- (A) for the purposes of items (aa) and (bb) a day shall include a part of a day; and
- (B) where a person who is a resident in terms of this subparagraph is physically outside the Republic for a continuous period of at least 330 full days immediately after the day on which such person ceases to be physically present in the Republic, such person shall be deemed not to have been a resident from the day on which such person so ceased to be physically present in the Republic; or
- (b) person (other than a natural person) which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic (but excluding any international headquarter company);”;
- (i) by the deletion of the definition of “South African company”: and
- (j) by the deletion of the definition of “territory”,

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995 and section 20 of Act 30 of 1998

3. Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any decision of the Commissioner under the definitions of ‘benefit fund’, ‘pension fund’, ‘provident fund’ and ‘retirement annuity fund’ in section 1, section 6, section 8(4)(b), (c), (d) and (e), [section 9C] section 9D, section 9F, section 10(1)[(CB)] (cH), [(cI), (cJ)] (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 241, section 25D, section 27, section 31, section 35(2), section 38(4), section 57, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph (b) of the definition of ‘formula A in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 22, 24 and 27 of the Fourth Schedule and paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule, shall be subject to objection and appeal.”.

Substitution of section 6quat of Act 58 of 1962, as inserted by section 5 of Act 85 of 1987 and amended by section 5 of Act 28 of 1997, section 12 of Act 53 of 1999 and section 16 of Act 30 of 2000

4. The following section is hereby substituted for section 6quat of the Income Tax Act, 1962:

“Rebate in respect of foreign taxes on income

6quat. (1) Subject to the provisions of subsection (2), [there] a rebate determined in accordance with this section shall be deducted from the normal tax payable by any resident [of the Republic or any person contemplated in section 9C(2)(b) or any shareholder who is a ‘resident’ as defined in section 9E] in whose taxable income there is included—

- (a) any income received by or accrued to such resident [or person] from any [country other than] source outside the Republic (other than any foreign dividend contemplated in paragraph (d)) which is—
 - (i) not deemed to be from a source within the Republic; or
 - (ii) deemed to be from a source within the Republic in terms of section 9(1)(cA), (e) or (fA); or
- (b) any proportional amount [of investment income] contemplated in section 9D; or
- [(c) any income payable to such resident from the Republic, where such income is deemed to be from a source within the Republic in terms of the provisions of paragraphs (d), (d)bis and (f) of section 9(1); or]
- (d) any foreign dividend contemplated in section 9E [a rebate determined in accordance with this section].

(1A) For the purposes of subsection (1), the rebate shall be an amount equal to the sum of any taxes on income proved to be payable, without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment), by—

- [(i)](a) such resident [of the ‘Republic’] in respect of—
 - (i) any income contemplated in subsection (1)(a); or
 - (ii) any dividend contemplated in subsection (1)(d); and
- [(ii)](b) any controlled foreign entity, as contemplated in section 9D, in respect of such proportional amount contemplated in subsection (1)(b); or
- [(b) such person contemplated in section 9C(2)(b); or
- (c) (i) such shareholder in respect of any dividend contemplated in subsection (1)(d); and
- (ii)](c) any company in respect of any profits from which [such] any dividend contemplated in subsection (1)(d) is declared or deemed to have been declared; or

(d) an\ company in respect of the proportional amount of any profits from which any dividend is declared or deemed to have been declared to a controlled foreign entity as defined in section 9D, and which dividend relates to any proportional amount [of investment income] included in the income of such [shareholder] resident as contemplated in subsection (1)(b),

to the government of any country other than the Republic in respect of the amount of income [derived from such country] or proportional amount contemplated in subsection (1)(b), which is so included in that resident's [or person's or shareholder's] taxable income: Provided that where such resident is a member of any partnership or a beneficiary of any trust and such partnership or trust is liable for tax as a separate entity in such other country, a proportional amount of any tax payable by such entity, which is attributable to the interest of such resident in such partnership or participation right of such resident in such trust, shall be deemed to have been payable by such resident.

(1B) Notwithstanding the provisions of subsection (1A)—

(a) the rebate or rebates of any tax proved to be payable to the government of any other country or countries shall not in aggregate exceed an amount which bears to the total normal tax payable the same ratio as the total taxable income attributable to the income or proportional amount contemplated in subsection (1)(b), derived from such country or countries, which is [so] included as contemplated in subsection (1), bears to the total taxable income: **[and**

(b) where such sum of any taxes payable to the government of any such other country exceeds the rebate as determined in paragraph (a) (hereinafter referred to as the excess amount), such excess amount may—

- (i) in the case of any excess amount which relates to any amount included in the income of any company as contemplated in paragraph (a), (c) or (d) of subsection (1), be deducted from any Secondary Tax on Companies which becomes payable by such company after the determination of such excess amount, limited to an amount determined by applying the rate of the Secondary Tax on Companies to the profits attributable to the inclusion of the income contemplated in such paragraphs; or
- (ii) in the case of any excess amount relating to any amount included in the income of any company as contemplated in paragraph (b) of subsection (1), be deducted from any Secondary Tax on Companies which becomes payable by such company on the distribution of any profits derived by way of dividends declared to such company by such controlled foreign entity from profits that relate to any amount of investment income so included in terms of paragraph (b), limited to an amount determined by applying the rate of the Secondary Tax on Companies to the amount of the taxable income attributable to the inclusion of the income contemplated in such paragraph, after the deduction of—

(aa) any normal tax paid or payable; or

(bb) such sum of taxes payable to the government of any such other country,

whichever amount is the greater:]

Provided that—

[A) the amount of any] (i) where such sum of any taxes payable to the government of any such other country exceeds the rebate as

so determined (hereinafter referred to as the excess amount), such excess amount [as exceeds the amount of **any** Secondary Tax on Companies as contemplated in subparagraph (i) or (ii)] may—

[(AA)](aa) be carried forward to the immediately succeeding year of assessment and shall be deemed to be a tax on income paid to the government of [such] any other country in such year; and

[(BB)](bb) be set off against the amount of any normal tax payable by **such [company]** resident during such year of assessment in respect of any amount derived from [such] any other country which is included in the taxable income of such **[shareholder]** resident during such year, as contemplated in paragraph (a), (b) [(c)] or (d) of subsection (1), after any tax payable **[by such company]** to the government of [such] any other country in respect of [the] any amount so included during such year of assessment which may be deducted in terms of subsections (1) and (1A), has been **[set off against]** deducted from the amount of—

(AAA) such normal tax payable in respect of such amount of income or proportional amount contemplated in subsection (1)(b); and

[(BBB)] **any Secondary Tax on Companies as contemplated in subparagraph (i) or (ii) which** becomes payable during such year; and

(B)(ii) the excess amount [contemplated in this paragraph] shall not be allowed to be carried forward for more than [three] seven years reckoned from the year of assessment when such excess amount was for the first time carried forward;

(c) the amount of any tax which—

(i) becomes payable to the government of any other country in respect of any amount which—

[(aa)] is declared to any **[company which is a]** resident as a foreign dividend which is exempt from tax in terms of section 9E(7)(e); **or**

(bb) would, but for the provisions of section 9D(9)(f), have been included in any income of such company which is a resident; and

(ii) has not been taken into account as a rebate against any normal tax payable by such **[company]** resident in respect of such amount previously included in his taxable income in terms of section 9D, may be deducted from any **[Secondary Tax on Companies]** normal tax which becomes payable by such **[company on the distribution of any profits]** resident during any year of assessment that any income is derived by way of dividends declared to such [company] resident by any controlled foreign entity from profits relating to any [investment income] amount so previously included;

(d) no rebate shall be allowed as a deduction from the tax payable by any [shareholder] resident, in respect of any tax contemplated in subsection (1A)(c) [(ii)] or (d), which is payable by—

(i) any company distributing any dividend to such [shareholder] resident, if such **[shareholder]** resident (in the case of a company, together with any other company in a group of companies of which such company forms part) holds for his or its

- own benefit less than 10 per cent of the equity share capital in such company; or
- (ii) any company in respect of any profits from which the dividend is declared or deemed to have been declared, if **such [shareholder] resident** does not hold a qualifying interest in such company; and 5
- (e) no rebate shall be allowed in respect of any tax payable on any amount contemplated in subsection (1)(d), if the **[shareholder] resident** has made an election as contemplated in section 9E(6).
- (2) The rebate under subsection (1) shall not be granted in addition to any relief to which the resident **[of the Republic]** is entitled under any agreement between the governments of the Republic and the said other country for the prevention of or relief from double taxation, but may be granted in substitution for the relief to which the resident **[of the Republic]** would be so entitled. 10
- (3) For the purposes of this section— 15
- ‘controlled company’ means a controlled company as defined in section 9E; ‘controlling company’ means a controlling company as defined in section 9E;
- ‘group of companies’ means a group of companies as defined in section 9E; ‘qualifying interest’ means any qualifying interest as defined in section 9E; 20
- [‘resident of the Republic’ means—**
- (a) any natural person who is ordinarily resident in the Republic; and**
- (b) any person, other than a natural person, which is incorporated or has its place of effective management in the Republic.]**
- (4) For the purposes of this section the amount of any foreign tax proved 25 to be payable as contemplated in subsection (1A) in respect of any amount which is included in the taxable income of any resident during any year of assessment, shall be converted to the currency of the Republic by applying—
- (a) the ruling exchange rate on the day on which such foreign tax is actually paid; or 30
- (b) if such foreign tax has not been paid by the last day of such year of assessment the ruling exchange rate on the last day of such year of assessment:
- Provided that where such foreign tax is payable in respect of the amount of any foreign dividend which is included in the taxable income of such resident as contemplated in subsection (1)(d), such foreign tax shall be converted to the currency of the Republic by applying the exchange rate at which the amount of such foreign dividend is converted as contemplated in section 9E. 35 40
- (5) Where any amount of tax, which was proved to be payable to the government of any other country, was allowed as a rebate in terms of this section against the normal tax payable by any resident in any previous year of assessment, and— 45
- (a) it is proved by such resident that the amount of such tax actually payable to such government exceeds the amount which was so allowed as a rebate; or
- (b) the Commissioner is satisfied that the amount of such tax actually payable to such government is less than the amount which was so allowed as a rebate. 50
- the Commissioner may, notwithstanding the provisions of section 79 or section 81(5), issue a reduced or additional assessment, as the case may be, reflecting the amount of the rebate which shall be allowed against normal tax: Provided that the Commissioner shall not issue any such reduced or additional assessment after the expiration of six years from the date of the assessment in terms of which the rebate of the amount of tax proved to be 55

payable was so allowed, unless the Commissioner is satisfied that the fact that the amount of tax proved to be payable to such other government was incorrectly reflected was due to fraud or misrepresentation or non-disclosure of material facts.

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 and section 13 of Act 53 of 1999

5. Section 7 of the Income Tax Act, 1962, is hereby amended by the addition of the following subsections:

“(8) Where by reason of or in consequence of any donation, settlement or other disposition (other than a donation, settlement or other disposition to a foreign entity, as defined in section 9D, of a public character) made by any resident, income is received by or accrued to any person who is not a resident (other than a controlled foreign entity as defined in section 9D in relation to such resident), there shall be included in the income of such resident so much of the amount of any income as is attributable to such donation, settlement or other disposition: Provided that any amount of income received by or accrued to such person by way of foreign dividends, shall for the purposes of this section be determined in accordance with the provisions of section 9E, as if such person had been a shareholder who is a resident.

(9) Where any asset has been disposed of for a consideration which is less than the market value of such asset, the amount by which such market value exceeds such consideration shall for the purposes of this section be deemed to be a donation.

(10) Any resident who, at any time during any year of assessment makes any donation, settlement or other disposition as contemplated in this section, shall disclose such fact to the Commissioner in writing when submitting his return of income for such year and at the same time furnish such information as may be required by the Commissioner for the purposes of this section.”.

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 and section 17 of Act 30 of 2000

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

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

“(b) If any amount referred to in paragraph (a) of this subsection is an amount which has been recovered or recouped during any year of assessment by a [person referred to in section 9(1)(c)] resident who carries on any business as owner or charterer of any ship as a result of the loss, sale or disposal in any other manner by that person of a ship, and if that person satisfies the Commissioner that—”; and

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

“(4A) The provisions of subsection (4)(a), (e), (f) or (k) shall not apply in respect of any amount which is deemed to have been allowed as a deduction in terms of subparagraph (ix) of the proviso to section 11(e),

section 11(o)(bb), section 12B(4B), section 12C(4A), section 12D(3A), section 13(1A), section 13bis(3A) or section 11fer, '.

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 and section 15 of Act 53 of 1999

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

- (a) by the deletion of paragraphs (a), (b), (bA), (c), (cB), (d), (d)bis and (f) of subsection (1);
- (b) by the substitution for subparagraph (i) of paragraph (e) of subsection (1) of the following subparagraph:
 - “(i) any services rendered by such person to or work or labour done by such person for or on behalf of [the] any employer in the national or provincial sphere of government [including any provincial administration] or any local authority in the Republic or [the South African Tourist Corporation or the Council for Scientific and Industrial Research] any national or provincial public entity if not less than 80 percent of the expenditure of such entity is defrayed directly or indirectly from funds voted by Parliament, notwithstanding that such services are rendered or that such work or labour is done outside the Republic, provided such services are rendered or such work or labour is done in accordance with a contract of employment entered into with the Government [or such administration] or local authority or [that Corporation or that Council] national or provincial public entity: or”;
- (c) by the **substitution** for the proviso to paragraph (e) of subsection (1) of the following proviso:
 - “Provided that nothing in this paragraph shall be construed as imposing liability for taxation under this Act upon any payment made to any such person who is stationed outside the Republic, by way of an allowance for the purpose of meeting expenditure (other than domestic or private expenditure) incurred by such person in connection with his official duties outside the Republic;”;
- (d) by the substitution for subsection (1A) of the following subsection:
 - “(1A) For the purposes of paragraph (g)(ii) the services referred to in **[paragraphs (d), (d)bis, (f) and] paragraph (fA)** shall be deemed to have been performed within the Republic.”; and
- (e) by the deletion of subsection (5).

Repeal of section 9A of Act 58 of 1962, as inserted by section 8 of Act 85 of 1987 and amended by section 8 of Act 141 of 1992, section 8 of Act 21 of 1994 and section 8 of Act 28 of 1997

8. Section 9A of the Income Tax Act, 1962, is hereby repealed.

Repeal of section 9C of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997, amended by section 27 of Act 30 of 1998 and section 18 of Act 30 of 2000

9. Section 9C of the Income Tax Act, 1962, is hereby repealed.

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 and section 19 of Act 30 of 2000

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

(a) by the insertion in subsection (1) before the definition of “controlled foreign entity” of the following definition:

“‘business establishment’, in relation to a controlled foreign entity, means a place of business with—

(a) an office, shop, factory, warehouse, farm or other structure which is used or will continue to be used by the controlled foreign entity for a period of not less than one year; 10

(b) a mine, oil or gas well, a quarry or any other place of extraction of natural resources; or

(c) a site for the construction or installation of buildings, bridges, roads, pipelines, heavy machinery or other projects of comparable magnitude which lasts for a period of not less than six months, 15

whereby the business of such entity is carried on, and where—

(i) such place of business is suitably equipped with on-site operational management, employees, equipment and other facilities for the purposes of conducting the primary operations of such business: 20

and

(ii) such place of business is utilised outside the Republic for a *bona fide* business purpose (other than the avoidance, postponement or reduction of any liability for payment of any tax, duty or levy imposed by this Act or by any other law administered by the Commissioner):” 25

(b) by the insertion in subsection (1) after the definition of “controlled foreign entity” of the following definition:

“‘designated country’ means any designated country as defined in section 9E;”;

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

“‘foreign entity’ means any person (other than a natural person or a trust) which **[has its place of effective management in a country other than the Republic]** is not a resident, or which is a resident but where such entity is as a result of the application of the provisions of any agreement entered into by the Republic for the avoidance of double taxation is treated as not being a resident;”;

(d) by the deletion of the definition of “investment income” in subsection (1);

(e) by the deletion of the definition of “resident” in subsection (1);

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

“(2) There shall be included in the income for the year of assessment of any resident contemplated in the definition of ‘controlled foreign entity’ in subsection (1), **[a] an amount equal to the proportional amount of [any investment] the net income [received by or accrued to] of such entity for the foreign tax year of such entity which ends during such year of assessment of such resident,** which bears to the total **[investment] net income [received by or accrued to] of such entity during such foreign tax year,** the same ratio as the percentage of the participation rights of such resident in relation to such entity bears to the total participation rights in relation to such entity: Provided that[—

(a)] the provisions of this subsection shall not apply **[to any amount of investment income to which the provisions of subsection (4) are applicable]** where such resident (together with any connected person in relation to such resident) in aggregate at all times during the foreign tax year holds less than 10 per cent of the participation rights and is entitled to exercise less than 10 per cent of the voting rights in such controlled foreign entity **[and**

(b) **the amount of any investment income received by or accrued to such entity by way of foreign dividends, shall for the purposes of**

this section be determined in accordance with the provisions of section 9E, as if such entity had been a resident].”;

(g) by the insertion after subsection (2) of the following subsection:

“(2A) For the purposes of this section the ‘net income’ of a controlled foreign entity shall be an amount equal to the taxable income of such entity determined in accordance with this Act as if such controlled foreign entity had been a resident: Provided that—

- (a) any deductions or allowances which may be allowed, or any amounts which may be set off against, the income of such entity in terms of this Act shall be limited to the amount of such income;
- (b) any amount whereby such deductions or allowances or amounts exceed the amount of such income, shall be carried forward to the immediately succeeding year of assessment and be deemed to be a balance of assessed loss which may be set off against the income of such entity in such succeeding year for the purposes of section 20; and
- (c) no deduction shall be allowed in respect of any interest, royalties or rental paid by such entity to any other controlled foreign entity in relation to the resident, as contemplated in subsection (9)(fA).”;

(h) by the deletion of subsections (3), (4), (4A) and (5):

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

“(6) The amount **[apportioned to]** included in the income of any resident under the provisions of this section, shall be converted [at a date not later than the end of the financial year of the resident] to the currency of the Republic on the last day of the foreign tax year of the controlled foreign entity and the ruling exchange rate at that date, or any other exchange rate or rates as the Commissioner may approve, determined with reference to the ruling exchange rates during such year, shall be applied to determine the value of the amount to be included in the income of such resident.”;

(j) by the deletion of subsections (7) and (8);

(k) by the substitution for paragraphs (a) and (b) of subsection (9) of the following paragraphs:

“(a) in respect of **[investment income other than income from foreign dividends]** receipts and accruals of any controlled foreign entity which is a company, where [the foreign tax actually paid or payable without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment) in any country other than the Republic, relating to the proportional amount contemplated in subsection (2) or (4) after taking into consideration any deductions or allowances under the taxation provisions of such other country determined at the ratio as contemplated in subsection (2) or (4) as the case may be, is more than 85 per cent of the normal tax payable in the Republic: Provided that for the purposes of the determination of the tax payable in the Republic on such proportional amount, such tax shall be an amount which bears to the total normal tax payable the same ratio as the taxable income attributable to the inclusion of such proportional amount bears to the total taxable income in relation to such resident] such receipts and accruals have been or will be subject to tax on income in a designated country at a statutory rate of at least 27 per cent (after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) without any right of recovery by any person (other than a right of recovery in terms of an

entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment). notwithstanding the fact that such entity may, as a result of any foreign assessed tax loss incurred by such entity during such year or any previous year of assessment, not be liable for the payment of any tax: Provided that where such designated country imposes tax on that company on a progressive scale of statutory rates of tax, the statutory rate shall for the purposes of this paragraph be deemed to be the highest rate on such scale;

(b) where the **[investment income arises from and is effectively connected to the business activities of a substantive business enterprise] net income of any controlled foreign entity which is a company is attributable to any business establishment** of [any] such controlled foreign entity **[conducted through a permanent establishment as defined in section 9C(1) of such controlled foreign entity]** in any country other than the Republic **[where such permanent establishment is suitably equipped for conducting the principal business of such substantive business enterprise]:** Provided that the provisions of this paragraph shall not apply to any receipts and accruals—

(i) derived from any transaction relating to the supply of goods or services by or to such controlled foreign entity with any connected person (in relation to such controlled foreign entity), who is a resident, unless the consideration in respect of such transaction reflects an arm's length price that is consistent with the provisions of section 31; or

(ii) derived from—

(au) any sale of goods by such controlled foreign entity to any connected person (in relation to such controlled foreign entity) who is a resident, unless—

(A) 'such controlled foreign entity purchased such goods within the country of residence of such controlled foreign entity from any person who is not a connected person in relation to such controlled foreign entity;

(B) the creation, extraction, production, assembly, repair or improvement of goods undertaken by such controlled foreign entity amount to more than minor assembly or adjustment, packaging, repackaging and labeling; or

(c) such controlled foreign entity sells a significant quantity of goods of the same or a similar nature to persons who are not connected persons in relation to such controlled foreign entity, at comparable prices (after accounting for the level of the market, volume discounts and costs of delivery); or

(bb) any sale of goods by such controlled foreign entity to a person, other than a connected person (in relation to such controlled foreign entity) who is a resident, where such controlled foreign entity initially purchased such goods or any tangible intermediary inputs thereof from one or more connected persons (in relation to such controlled foreign entity) who are residents, unless—

(A) such goods or tangible intermediary inputs thereof purchased from connected persons (in relation to such controlled foreign entity) who are residents amount to an insignificant portion of the total tangible intermediary inputs of such goods;

- (B) the creation, extraction, production, assembly, repair or improvement of goods undertaken by such controlled foreign entity amount to more than minor assembly or adjustment, packaging, repackaging and labeling; or 5
- (c) the products are sold by such controlled foreign entity to persons who are not connected persons in relation to such controlled foreign entity, for delivery within the country of residence of such controlled foreign entity; or 10
- (cc) any service performed by such controlled foreign entity to a connected person (in relation to such controlled foreign entity) who is a resident, unless such service is performed outside the Republic and—
- (A) such service relates directly to the creation, extraction, production, assembly, repair or improvement of goods utilised within one or more countries outside the Republic; or 15
- (B) such services relate directly to the sale or marketing of goods of a connected person (in relation to such controlled foreign entity) who is a resident and such goods are sold to persons who are not connected persons in relation to such controlled foreign entity for delivery within the country of residence of such controlled foreign entity; 20
- (iii) in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, except where such receipts and accruals— 25
- (aa) do not in total exceed five per cent of the total receipts and accruals of such controlled foreign entity; or 30
- (bb) arise from the principal trading activities of any banking or financial services, insurance or rental business, excluding any such receipts and accruals from any—
- (A) connected person (in relation to such controlled foreign entity) who is a resident; or 35
- (B) resident to the extent that such receipts and accruals are produced as part of a scheme for the purpose of avoiding the liability for any tax, duty or levy imposed in terms of this Act or any other law administered by the Commissioner;” 40
- (l) by the deletion of paragraphs (c) and (d) of subsection (9);
- (m) by the substitution for paragraphs (e) and (f) of subsection (9) of the following paragraphs:
- “(e) to **[investment income] the net income of any controlled foreign entity [which is—** 45
- (i) **deemed to have accrued to the entity from a source in the Republic in terms of section 9(1)(b) or (bA); or**
- (ii) **to the extent that such net income is included in the taxable income of the entity;**
- (f) in relation to the proportional amount of **[investment income relating] an amount equal to the net income attributable to any resident, to the extent that it relates to any foreign dividend contemplated in section 9E declared to or deemed to have been declared to a controlled foreign entity [which is attributable to any resident, to the extent that the profits from which the dividend is declared or deemed to have been declared relate to any proportional amount of investment income which has been included in the income of such resident in terms of the** 50 55

provisions of this section] which is a company, by any other company which is a controlled foreign entity in relation to such resident: or”;

(n) by the insertion after paragraph (f) of subsection (9) of the following paragraph:

“(fA) in relation to the proportional amount of an amount equal to the net income of a controlled foreign entity which is attributable to any resident, to the extent that it relates to any interest, royalties or rental which is paid to such entity by any other controlled foreign entity in relation to such resident;”;

(o) by the deletion of paragraph (g) of subsection (9);

(p) by the addition of the following subsections:

“(10) For the purposes of subsection (9)(b)(ii) the Minister may—

(a) by notice in the *Gazette* determine that one or more foreign countries be treated as one if such foreign countries comprise a single economic market and such treatment will not lead to an unacceptable erosion of the tax base; or

(b) in consultation with the Commissioner grant exemption to any person from the application of subsection (9)(b)(ii), to the extent that its application will unreasonably prejudice national economic policies or South African international trade and such exemption will not lead to an unacceptable erosion of the tax base.

(11) The provisions of subsection (9)(b), (f) and (fA) shall not apply in respect of any resident, where such resident fails to comply with the provisions of section 72A.”.

(2) Subsection (1)(k) shall, in so far as it amends paragraph (a) of subsection (9) of section 9D, come into operation on 1 January 2001.

(3) In so far as subsection (1)(m)—

(a) amends paragraph (f) to delete the words “investment income relating” and inserts the words “an amount equal to the net income attributable to any resident, to the extent that it relates”, it shall come into operation on 1 January 2001, and shall apply in respect of years of assessment commencing on or after that date;

(b) amends the rest of paragraph (f), it shall come into operation on 1 January 2001, and shall apply in respect of any dividend declared on or after that date.

(4) Subsection (1)(h) shall, in so far as it deletes section 9D(3), come into operation on 1 March 2001.

Amendment of section 9E of Act 58 of 1962, as inserted by section 20 of Act 30 of 2000

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

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “foreign dividend” and the words preceding the proviso to paragraph (a) of the following words and paragraph:

“foreign dividend” means any dividend received by or which accrued to any person from any company **[to the extent that the dividend is declared from profits derived by such company from a source outside the Republic which are not deemed to be from a source within the Republic, or from profits which are deemed to be from a source within the Republic which have not been subject to tax in the Republic]** which is either a foreign entity as defined in section 9D, or a resident to the extent that the dividend is declared from profits derived by such company before such company became a resident, and includes the following amounts which shall be deemed to be a dividend declared by such company to such person—

(a) any amount deemed to have been distributed as contemplated in section 64C(3)(a), (b), (c) or (d) by any company which is a controlled foreign entity to such person or any resident who is a

- connected person in relation to such person to the extent that such company could have distributed a dividend to such person from profits **[derived from a source outside the Republic which are not deemed to be from a source within the Republic, or from profits which are deemed to be from a source within the Republic]** which have not been subject to tax in the Republic, and none of the provisions contained in section 64C(4) apply.”; 5
- (b) by the substitution in subsection (1) for the words preceding the proviso to paragraph (b) of the definition of “foreign dividend” of the following words: 10
 “any amount derived by any person from the disposal by such person of any share or interest in the fixed capital in a company to the extent that such company or any subsidiary of such company has any undistributed profits **[which were derived from a source outside the Republic which are not deemed to be from a source within the Republic, or from profits deemed to be from a source within the Republic]** which have not been subject to tax in the Republic, which were directly or indirectly available for distribution to such person (including any amount deemed in terms of the definition of ‘dividend’ in section 1 to be a profit available for distribution).”; 15
- (c) by the substitution for the words preceding the proviso to paragraph (iii) of the proviso to paragraph (b) of the definition of “foreign dividend” of the following words: 20
 “where such person, or if the seller is a controlled foreign entity in relation to any resident, such resident, retains the same effective interest in the equity share capital or fixed capital of the company as prior to the disposal.”; 25
- (d) by the deletion of the definition of “resident” in subsection (1);
- (e) by the deletion of subsection (2);
- (f) by the insertion after subsection (5) of the following subsection: 30
 “(5A) Notwithstanding the provisions of sections 11(a) and 23(g)—
 (a) there shall be allowed to be deducted from any income of a resident which is derived during any year of assessment from taxable foreign dividends, an amount of any interest actually incurred by such resident in the production of income in the form of foreign dividends: Provided that such deduction shall be limited to the amount of foreign dividends included in the gross income of such resident during such year; and 35
 (b) any amount whereby such interest exceeds the amount of any such foreign dividends shall be reduced by the amount of any foreign dividends received by or accrued to such resident during such year of assessment which are not included in the taxable income of such resident, and the balance shall— 40
 (i) be carried forward to the immediately succeeding year of assessment; and
 (ii) be deemed to be an amount of interest actually incurred by such resident during such succeeding year of assessment in the production of income in the form of foreign dividends.”; 45
- (g) by the deletion of paragraphs (a) and (b) of subsection (7);
- (h) by the substitution for subparagraph (ii) of paragraph (d) of subsection (7) of the following subparagraph: 50
 “(ii) are or will be subject to tax at a statutory rate of at least 27 per cent (after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of 55

assessment): Provided that where such designated country imposes tax on that company at a progressive scale of statutory rates, the statutory rate shall for the purposes of this paragraph be deemed to be the highest rate on such scale; or”;

(i) by the deletion of the word “or” at the end of paragraph (d) of subsection (7); 5

(j) by the substitution for subparagraph (i) of paragraph (e) of subsection (7) of the following subparagraph:

“(i) relate to any amount of **[investment] income which has or will be included** in the income of the shareholder of such company in terms of section 9D; or”;

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(k) by the substitution for subparagraph (ii) of paragraph (e) of subsection (7) of the following subparagraph:

“(ii) have been or will be **[included in the taxable income of such company] subject to tax in the Republic** in terms of this Act: or”;

(l) by the addition of the word “or” at the end of subparagraph (iii) of paragraph 15 (e) of subsection (7);

(m) by the addition to paragraph (e) of subsection (7) of the following subparagraph:

“(iv) arose directly or indirectly from any dividends declared by any company which is a resident: or”;

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(n) by the addition to subsection (7) of the following paragraph:

“(f) any company out of profits derived by such company by way of any foreign dividend which is exempt from tax in terms of the provisions of this subsection.”;

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(o) by the deletion of paragraph (a) of subsection (8);

(p) by the insertion after subsection (8) of the following subsections:

“(8A) The Minister may, by notice in the Gazette to such extent as he may deem necessary in the national interest and subject to such conditions as he may prescribe, grant exemption from the application of this section in respect of any dividend received by or accrued to a resident, which is remitted to the Republic, to the extent that such dividend is declared from profits derived from any project approved by the Minister, having regard to—

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(a) the economic benefits of such project for the Republic;

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(b) the extent to which goods and services will be provided in respect of such project from the Republic;

(c) the potential effect such project may have on the South African tax base;

(d) other assistance granted by the State or organ of State in respect of such project; and

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(e) such other criteria which the Minister may prescribe by notice in the Gazette.

(8B) The Minister may withdraw any exemption granted in terms of subsection (8A), where he is satisfied that any condition imposed in terms of that subsection has not been complied with.”;

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(q) by the addition of the following subsection:

“(10) The amount of any foreign dividend to be included in the gross income of any resident in terms of subsection (3), shall be converted to the currency of the Republic at the ruling exchange rate applicable on the date on which such dividend accrued to such resident.”.

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(2) (a) **Subsection (1)(a), (b), (d), (e), (g) and (j)** shall come into operation on 1 January 2001, and shall apply in respect of any dividend declared on or after that date.

(b) Subsection (1)(c), (f), (h), (i), (k), (l), (m), (n) and (q) shall be deemed to have come into operation” on 23 February 2000.

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(c) Subsection (1)(o) shall come into operation on 1 January 2001.

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

Insertion of section 9F in Act 58 of 1962

12. The following section is hereby inserted after section 9E of the Income Tax Act, 1962:

“Income from foreign sources

9F. (1) For the purposes of this section ‘designated country’ means a designated country as defined in section 9E. 5

(2) The amount of any income which shall be exempt from tax in terms of the provisions of section 10(1)(kA), shall be so much of any amount received by or accrued during the relevant year of assessment to any company which is a resident from a source outside the Republic, which is not deemed to be from a source in the Republic, which has been or will be subject to tax in any designated country at a statutory rate of at least 27 per cent (after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment): Provided that where such designated country imposes tax on a company at a progressive scale of statutory rates, the statutory rate shall for the purposes of this subsection be deemed to be the highest rate on such scale. 10 15 20

(3) Where it is established to the satisfaction of the Commissioner that any amount, or any portion of such amount—
(a) received by or accrued to any person which is required to be included in the gross income of such person; or
(b) which is required to be included in the income of any resident in terms of the provisions of section 9D, during any year of assessment, may not be remitted to the Republic during such year of assessment as a result of currency or other restrictions or limitations imposed in terms of the laws of the country where the amount was received or accrued, such amount or any portion thereof shall be deemed not to have been received or accrued to such person or such resident during such year and such amount or portion thereof shall be included in the gross income of such person or such resident during the year of assessment during which such amount or portion thereof may be so remitted to the Republic.”. 25 30 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 and section 21 of Act 30 of 2000 40 45 50

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

(a) by the substitution for subparagraph (ii) of paragraph (cA) of subsection (1) of the following subparagraph:

- “(ii) any [South African company] association, corporation or company contemplated in paragraph (a) of the definition of ‘company’ in section 1, all the shares of which are held by any such institution, board or body, if the operations of such association, corporation or company are ancillary or complementary to the object of such institution, board or body:”;
- (b) by the substitution for paragraph (cG) of subsection (1) of the following paragraph:
- “(cG) the receipts and accruals of any **[persons (other than a company) who is ordinarily resident in any country other than the Republic or of an external company which is managed and controlled in any such country]** person who is not a resident, which are derived by such person **[or company]** from carrying on business as the owner or charterer of any ship or aircraft, if a similar exemption or equivalent relief is granted by 15 the **[said]** country of which such person is a resident, to any **[person (other than a company) ordinarily resident in the Republic or to any domestic company]** resident in respect of any tax imposed in that country on income which may be derived by such person **[or company]** from carrying on in such country 20 any business as owner or charterer of any ship or aircraft;”;
- (c) by the deletion of paragraph (dA) of subsection (1);
- (d) by the insertion after paragraph (gB) of subsection (1) of the following paragraph:
- “(gC) any— 25
- (i) amount received by or accrued to any resident under the social security system of any other country; or
- (ii) pension received by or accrued to any resident from a source outside the Republic, which is not deemed to be from a source in the Republic, in consideration of past employment outside the Republic;”;
- (e) by the substitution for subparagraphs (i) and (ii) of paragraph (h) of subsection (1) of the following subparagraphs:
- “(i) any person (other than a company) **[not ordinarily resident nor carrying]** who is not a resident and who does not carry on business 35 in the Republic; or
- (ii) **[an external]** a company which is not a resident and which does not [carrying] carry on business in the Republic.”;
- (f) by the substitution for the first proviso to paragraph (h) of subsection (1) of the following proviso: 40
- “Provided that, if in the case of any such stock or securities issued in respect of a loan raised in a country outside the Republic, the Treasury has, with the approval of the Minister of Finance, given an undertaking that the interest derived therefrom by any person **[not ordinarily]** who is not a resident **[in the Republic or by any external company]** shall be 45 exempt from taxes in the Republic, the interest received by or accrued to such a person **[or company]** from such of the said stock or securities as were acquired by such person **[or company]** **outside the Republic and paid for by such person [or company] in the currency of any country other than the Republic shall be exempt from normal tax even if that** 50 **person [or company] carries on business in the Republic;**”;
- (g) by the substitution for the words preceding the proviso to paragraph (hA) of subsection (1) of the following words:
- “interest received by or accrued to a person **[(other than a company) who is ordinarily resident outside the Republic or a company which is managed and controlled outside the Republic]** who is not a 55 resident;”;
- (h) by the substitution for paragraphs (i) and (ii) of the proviso to paragraph (hA) of subsection (1) of the following paragraphs:

- “(i) the exemption under this section shall not apply to any natural person who was at any time **[ordinarily]** a resident **[in the Republic]** if such person has during the year of assessment carried on business in the Republic;
- (ii) for the purposes of this paragraph **[the expression ‘Republic’ shall include] any person who is a resident of any country which has for the purposes of applying any regulation made under section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), been included in the common monetary area. shall be deemed to be a resident of the Republic;**”;
- (i) by the substitution for paragraph (v) of the proviso to paragraph (hA) of subsection (1) of the following paragraph:
- “(v) the exemption under this paragraph shall not apply to any interest received by or accrued to a company which is **[managed and controlled outside the Republic] not a resident**, if such interest is effectively connected with the business carried on by that company in the Republic;”;
- (j) by the substitution for paragraph (iA) of subsection (1) of the following paragraph:
- “(iA) in the case of any unit portfolio referred to in paragraph (e)(i) of the definition of ‘company’ in section 1, so much of the **[interest or foreign dividends contemplated in section 9E] income received by or accrued to such unit portfolio as has been distributed, or as the Commissioner is satisfied will be distributed, by way of a dividend or a portion of a dividend, to persons** who have become entitled to such dividend by virtue of their being registered as holders of units in such unit portfolio on a date falling on or after the first day of April, 1971 ;”;
- (k) by the substitution for paragraph (aa) of the proviso to subparagraph (i) of paragraph (k) of subsection (1) of the following paragraph:
- “(aa) to dividends (other than those distributed out of profits of a capital nature and those received by or accrued to or in favour of any person **[not ordinarily] who is neither a resident. nor carrying on business in the Republic)** distributed by a fixed property company as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), on shares included in a unit portfolio comprised in any unit trust scheme in property shares authorized under the said Act; or”;
- (l) by the substitution for subparagraph (A) of paragraph (bb) of the proviso to paragraph (k) of subsection (1) of the following subparagraph:
- “(A) out of [interest] income derived by such unit portfolio which is exempt from tax in the hands of such unit portfolio under the provision of paragraph (iA); and”;
- (m) by the addition of the word “or” at the end of paragraph (cc) of the proviso to subparagraph (i) of paragraph (k) of subsection (1);
- (n) by the substitution for paragraph (old) of the proviso to subparagraph (i) of paragraph (k) of subsection (1) of the following item:
- “(old) to the amount of any foreign dividend contemplated in section 9E received by or accrued to any resident **[as defined in section 9C] ;**”;
- (o) **by the insertion after paragraph (k) of subsection (1) of the following paragraphs:**
- “(kA) so much of any amount received by or accrued to any company which is a resident from a source outside the Republic as determined in accordance with the provisions of section 9F(2);
- (l) any amount received by or accrued to any person which amount has been subject to withholding tax in terms of the provisions of section 35;”;

(p) by the substitution for paragraph (o) of subsection (1) of the following paragraph:

“(o) any remuneration derived by any person—

(i) as an officer or crew member of a ship engaged—

[(i)](aa) in the international transportation for reward of 5 passengers or goods; or

[(ii)](bb) in the prospecting (including surveys and other exploratory work) for, or the mining of, any minerals (including natural oils) from the seabed outside the continental shelf of the Republic as contemplated in 10 section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), where such officer or crew member is employed on board such ship solely for the purposes of the ‘passage’ of such ship, as defined in the Marine Traffic Act, 1981 (Act No. 2 of 1981), 15

if such person was outside the Republic for a period or periods exceeding 183 full days in aggregate during the year of assessment; or

(ii) in respect of services rendered outside the Republic by such person for or on behalf of any employer, if such person was outside the Republic— 20

(au) for a period or periods exceeding 183 full days in aggregate during any 12 months period commencing or ending during a year of assessment; and

(bb) for a continuous period exceeding 60 full days during such period of 12 months, 25

and such services were rendered during such period or periods: Provided that the provisions of this subparagraph shall not apply in respect of any remuneration derived in respect of the holding of any office or from services rendered for or on behalf of any employer, as contemplated in section 9(1)(e);” 30

(q) by the substitution for paragraph (p) of subsection (1) of the following paragraph:

“(p) any amount received by or accrued to any person who is not [ordinarily] a resident [in the Republic], for services rendered or work or labour done by him outside the Republic for or on behalf of any employer in the national or provincial sphere of government [including the Railway Administration and any provincial administration] or any local authority in the Republic or [the South African Tourist Corporation or the Council for Scientific and Industrial Research] any national or provincial public entity if not less than 80 per cent of the expenditure of such entity is defrayed directly or indirectly from funds voted by Parliament, if such amount is chargeable with income tax in the country in which he is ordinarily resident and the income tax so chargeable is borne by himself and is not paid on his behalf by the Government, the [provincial administration or] local authority concerned or [the said Corporation or the said Council] such public entity;” 40 45

(r) by the deletion of the word “and” at the end of subparagraph (iii) of paragraph (zH) of subsection (1); and 50

(s) by the addition to paragraph (zH) of subsection (1) of the following subparagraphs:

“(v) the Small, Medium Enterprise Development Programme, which came into operation on 1 September 2000; and

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(vi) the Critical Infrastructure Programme, which came into operation on 1 September 2000.”.

(2) Subsection (1)(r) and (s) shall be deemed to have come into operation on 1 September 2000.

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 and section 19 of Act 53 of 1999

14. Section 10A of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso to subsection (4) of the following words:

“The statutory actuary of an insurer who is a party to an annuity contract shall, before payment of the first annuity amount is made under such contract, or **[where such payment was made before the date on which this section or section 9C comes into operation, within one month after the date, or in either case]** within such period as the Commissioner may allow, make a calculation (with due regard to the provisions of subsection (5)) in the manner prescribed in paragraph (a) of subsection (3) or, if the provisions of paragraph (b) of that subsection are applicable, in accordance with that paragraph, of the capital element of all the annuity amounts to be paid under the said contract.”.

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 and section 22 of Act 30 of 2000

15. Section 11 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words preceding paragraph (a) and paragraph (a) of the following words and paragraph:

“For the purpose of determining the taxable income derived by any person from carrying on any trade **[within the Republic]**, there shall be allowed as deductions from the income of such person so derived—

(a) expenditure and losses actually incurred **[in the Republic]** in the production of the income, provided such expenditure and losses are not of a capital nature;”;

(b) by the deletion of paragraph (b);

(c) by the addition to the proviso to paragraph (e) of the following paragraph:

“(ix) where any such machinery, plant, implement, utensil or article was used by the taxpayer during any previous financial year or years for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, the Commissioner shall take into account the period of use of such asset during such previous year or years in determining the amount by which the value of such machinery, plant, implement, utensil or article has been diminished;”;

(d) by the substitution for subparagraph (ii) of paragraph (gA) of the following subparagraph:

“(ii) in obtaining any patent or the restoration of any patent under the Patents Act, 1978, or the registration of any design under the Designs Act, 1993, or the registration of any trade mark under the Trade Marks Act, 1993, or under similar laws of any other country; or”

(e) by the substitution for the words preceding subparagraph (A) of paragraph (cc) of the proviso to paragraph (gA) of the following words:

“no allowance shall be made in respect of any such invention, patent, design, trade mark, copyright or other property or knowledge so acquired or obtained by the taxpayer on or after 24 June 1988, but prior to 1 July 1993 from any other person who is a resident of the Republic or who is ordinarily resident in a neighboring country (or, in the case of a company, [a domestic company or a company] is incorporated [managed or controlled] or has its place of effective management in a neighboring country), if—;

(f) by the substitution for paragraph (old) of the proviso to paragraph (gA) of the following paragraph:

“(old) where any such invention, patent, design, trade mark, copyright or other property or knowledge was so acquired or obtained by the taxpayer on or after 1 July 1993 from any other person who is a resident of the Republic or who is ordinarily resident in a neighboring country (or, in the case of a company, [a domestic company or a company] is incorporated [managed or controlled] or has its place of effective management in a neighboring country), and 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 of such invention, patent, design, trade mark, copyright or other property or knowledge to such connected person or the market value thereof as determined on the date upon which such invention, patent, design, trade mark, copyright or other property or knowledge was acquired or obtained by the taxpayer;”

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

“(gB) expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section) actually incurred by the taxpayer during the year of assessment in obtaining the extension of the term of any patent under the Patents Act, 1978 (Act No. 57 of 1978), or the extension of the registration period of any design under the Designs Act, 1993 (Act No. 195 of 1993), or the renewal of the registration of any trade mark under the Trade Marks Act, 1993 (Act No. 194 of 1993). or under similar laws of any other country, if such patent, design or trade mark is used by the taxpayer in the production of his income or income is derived by him therefrom;”

(h) by the deletion of paragraph (gC);

(i) by the substitution for the words following subparagraph (vii) of paragraph (o) and preceding the proviso thereto of the following words:

“which have been scrapped by such taxpayer during the year of assessment, such allowance to be the excess of the original cost to such taxpayer of such building (or portion thereof), improvements (or portion thereof) to such building, shipbuilding structure, improvements to such shipbuilding structure, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils, articles, transmission line or cable or railway line over the total amount arrived at by adding—

(aa) all the allowances made in respect thereof under the provisions of paragraph (e) of this section, or section 12(1) or section 12(1) as applied by section 12(3), or section 12A(2), or section 12B, or section 12C, or section 12D, or section 13(1), or section 13(1) as applied by section 13(4) or (8), or section 13bis(1), (2) or (3), or section 13ter(2) or (3), or section 14(1) (a) or (b), or the corresponding provisions of any previous Income Tax Act, or section 14bis(1)(a), (b) or (c), or section 24F, or section 24G, or section 27(2)(b) or (d); or

(bb) in the case of any building (or portion thereof), improvements (or portion thereof) to such building, shipbuilding structure, improvements to such shipbuilding structure, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils, articles, transmission line or cable or railway line, which was during any previous financial year or years used by the taxpayer in the course of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, all the allowances which could have been made in terms of the provisions referred to in item (au) as if such receipts and accruals had been included in such taxpayer's income,

to any amount or the value of any advantage accruing to the taxpayer in respect of the sale or other disposal of such building, shipbuilding structure, improvements, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils, articles, transmission line or cable or railway line.”.

Amendment of section 11bis of Act 58 of 1962, as inserted by section 10 of Act 90 of 1962, and amended by section 9 of Act 72 of 1963, section 11 of Act 55 of 1966, section 12 of Act 95 of 1967, section 10 of Act 76 of 1968, section 15 of Act 89 of 1969, section 11 of Act 52 of 1970, section 9 of Act 90 of 1972, section 10 of Act 65 of 1973, section 13 of Act 85 of 1974, section 10 of Act 69 of 1975, section 10 of Act 103 of 1976, section 10 of Act 113 of 1977, section 10 of Act 96 of 1981, section 8 of Act 91 of 1982, section 11 of Act 94 of 1983, section 7 of Act 96 of 1985, section 9 of Act 90 of 1988, section 9 of Act 70 of 1989, section 14 of Act 129 of 1991 and section 1 of Act 49 of 1996

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16. Section 1 *ibis* of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for paragraph (ii) of the proviso to subsection (3) of the following paragraph:

“(ii) any amount by which the marketing expenditure is reduced under paragraph (i) shall be deemed for the purposes of this section to be an amount of marketing expenditure which was incurred in the succeeding year of assessment and which was allowed to be deducted from his income under section 11 [or 17] during such year.”;

(b) by the substitution for the words preceding paragraph (a) of subsection (4) of the following words:

“For the purposes of subsection (3) the marketing expenditure on which the marketing allowance is to be calculated shall be so much of the expenditure incurred by the exporter during the year of assessment and allowed to be deducted from his income under [sections] section 11 [and 17] as is proved to the satisfaction of the Commissioner to have been incurred directly—;

(c) by the substitution for the words following paragraph (e) of subsection (4A) of the following words:

“so much of such expenditure as the Commissioner is satisfied was in effect borne by any producer of any pastoral, agricultural or other farming produce exported by the said Association or by any such committee, board, society or company or by some other person under

marketing arrangements controlled by the said Association or by such committee, board, society or company, shall for the purposes of this section be deemed to be marketing expenditure incurred by such producer, provided such expenditure had it been incurred directly by such producer, would have ranked for deduction from his income under section 11 [or 17], and, where such expenditure was incurred by any such co-operative agricultural society or company or farmers' special co-operative company, the expenditure shall be excluded from any marketing expenditure taken into account for the purposes of any allowance to such society or company under this section.”.

Amendment of section 12B of Act 58 of 1962, as inserted by section 11 of Act 90 of 1988 and amended by section 13 of Act 101 of 1990, section 10 of Act 113 of 1993, section 6 of Act 140 of 1993 and section 13 of Act 28 of 1997

17. Section 12B of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (4A) of the following subsection:

“(4B) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year that such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”.

Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 25 1990 and amended by section 11 of Act 113 of 1993, section 7 of Act 140 of 1993, section 11 of Act 21 of 1994 and section 13 of Act 21 of 1995

18. Section 12C of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after subsection (4) of the following subsection:

“(4A) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year that such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”; and

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

“(5) The deductions which may be allowed or deemed to have been allowed in terms of this section and section 11(o) in respect of any asset shall not in the aggregate exceed the cost to the taxpayer of such asset.”.

Amendment of section 12D of Act 58 of 1962, as inserted by section 23 of Act 30 of 2000

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

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

“(2) In respect of any new and unused affected asset which—

(a) is owned by the taxpayer and is brought into use for the first time by such taxpayer on or after the effective date: and

(b) is used directly by such taxpayer[—

(i) **in the production of his income; and**

(ii) **in carrying** on his sole business of—

[(aa)](i) the transportation of persons, goods, things or natural oil; or

[(bb)](ii) the transmission of electricity or any telecommunication signal,

there shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of such asset to the extent that such affected asset is used in the production of his income.”;

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

“(3A) Where any affected asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year in which such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”; and

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

“(6) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any affected asset shall not in the aggregate exceed the amount of such cost.”.

(2) Subsection (1)(a) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962, section 5 of Act 6 of 1963, section 11 of Act 72 of 1963, section 12 of act 90 of 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971, section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974, section 13 of Act 69 of 1975, section 7 of Act 101 of 1978, section 10 of Act 104 of 1980, section 14 of Act 96 of 1981, section 10 of Act 96 of 1985, section 12 of Act 85 of 1987, section 12 of Act 90 of 1988, section 12 of Act 113 of 1993, section 11 of Act 46 of 1996 and section 22 of Act 53 of 1999

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

(a) by the insertion after subsection (I) of the following subsection:

“(1 A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”; and

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

“(2) The aggregate of the allowances allowed under subsection (1) or the corresponding provisions of any previous Income Tax Act, or deemed to have been allowed in terms of subsection (1A), in respect of any

building or improvements shall not exceed the cost (after the deduction of any amount referred to in **subsection (3)** or the corresponding provisions of any previous Income Tax Act) of such building or improvements, as the case may be, less the aggregate of any allowances made to the taxpayer in respect of such building or improvements, as the case may be, under subsection (7) or section 11(g) or the corresponding provisions of any previous Income Tax Act.”. 5

Amendment of section **13bis** of Act 58 of 1962, as inserted by section 15 of Act 88 of 1965, and amended by section 18 of Act 55 of 1966, section 14 of Act 95 of 1967, section 14 of Act 88 of 1971, section 14 of Act 69 of 1975, section 13 of Act 94 of 1983, section 46 of Act 97 of 1986, section 13 of Act 90 of 1988, section 13 of Act 113 of 1993 and section 12 of Act 21 of 1994 10

21. Section **13bis** of the Income Tax Act, 1962, is hereby amended—

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

“(3A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”; and 15 20

(b) by the substitution for subsection (5) of the following subsection: 25

“(5) The aggregate of the allowances under the preceding provisions of this section and subsection (1) of section *thirteen*, as applied by subsection (4) of that section, and the corresponding provisions of any previous Income Tax Act, or any amount deemed to have been allowed in terms of subsection (3A), in respect of the cost of any building or portion thereof or any improvements or portion thereof shall not exceed such cost or, if such allowances have been calculated on a portion of such cost, such portion.” 30

Amendment of section **13ter** of Act 58 of 1962, as inserted by section 13 of Act 91 of 1982, and amended by section 14 of Act 94 of 1983 35

22. Section **13ter** of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after subsection (6) of the following subsection:

“(6A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by him the receipts and accruals of which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section (excluding the provisions of subsection (7)(a)) be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”; and 40 45

(b) by the substitution for subsection (10) of the following subsection:

“(10) The aggregate of the allowances allowed or deemed to have been allowed under the preceding provisions of this section in respect of the cost of any residential unit shall not exceed such cost or, if such allowances have been calculated on a portion of such cost, such portion.”. 50

Amendment of section 14 of Act 58 of 1962, as substituted by section 19 of Act 55 of 1966 and amended by section 17 of Act 85 of 1974, section 12 of Act 103 of 1976, section 11 of Act 104 of 1979, section 10 of Act 65 of 1986, section 14 of Act 113 of 1993, section 8 of Act 140 of 1993, section 14 of Act 21 of 1995 and section 14 of Act 28 of 1997

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23. Section 14 of the Income Tax Act, 1962, is hereby amended—

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

“There shall be allowed to be deducted from the income of any [person referred to in section 9(1)(c)] resident who carries on any business as owner or charterer of any ship—”;

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

“Where on or after 1 January 1974 any [South African company] association, corporation or company contemplated in paragraph (a) of the definition of ‘company’ in section 1 (being a [person referred to in section 9(1)(c)] resident who carries on any business as owner or charterer of any ship) has concluded a contract for the acquisition by it of a ship and such company (hereinafter referred to as the taxpayer company) satisfies the Commissioner that—”; and

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(c) by the substitution for the definition of “South African ship” in subsection (2) of the following definition:

“ ‘South African ship’ means—

(a) a ship which is owned by a [person referred to in section 9(1)(c)] resident who carries on any business as owner or charterer of any ship, if such ship is a South African ship as defined in section 2 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951); or

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(b) if the Minister [of Finance], having regard to the circumstances of the case, so directs, a ship which is owned by a company (in this section referred to as a subsidiary company) which is managed and controlled in the Republic if the sole beneficial shareholder in that company is [a South African company] an association, corporation or company contemplated in paragraph (a) of the definition of ‘company’ in section 1 (in this section referred to as a parent company) which is managed and controlled in the Republic.”.

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Amendment of section **14bis** of Act 58 of 1962, as inserted by section 16 of Act 88 of 1965 and amended by section 15 of Act 141 of 1992, section 15 of Act 113 of 1993, section 9 of Act 140 of 1993 and section 15 of Act 21 of 1995

24. Section **14bis** of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words preceding the proviso to paragraph (b) of subsection (1) of the following words:

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“if such person is a [person referred to in paragraph (c) of subsection (1) of section **nine**] resident who carries on any business as owner or charterer of any aircraft and such [person] resident on or after the first day of April, 1965, concludes a contract for the acquisition by him of a new aircraft (whether built or still to be built), or of an aircraft which is not new and is proved to the satisfaction of the Secretary for Transport at all times since its construction to have been maintained in the highest class applicable to an aircraft of its type, and such [person] resident satisfies the Commissioner that the aircraft in question is or will be registered by him in the Republic and is or will be used by him in his business of transporting by air and for reward persons, livestock, goods or mail, an allowance in respect of the year of assessment during which such contract is concluded equal to forty per cent of the adjustable cost to such [person] resident of that aircraft, or, if at the time at which the allowance under this paragraph has to be made, the cost price of the aircraft has not yet been determined, of the adjustable estimated cost

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- price of that aircraft, provided the said [person] resident satisfies the Commissioner that not less than forty per cent of the cost price or of the estimated cost price, as the case may be, of the aircraft will be paid by him within a period of two years, or, if the Commissioner agrees, three years after the end of that year of assessment or, if the said [person] resident does not so satisfy the Commissioner, an allowance in respect of any year of assessment equal to forty per cent. of the portion, if any, of the adjustable cost price of the aircraft paid by him during that year of assessment.”;
- (b) by the substitution for paragraph (iii) of the proviso to paragraph (b) of subsection (1) of the following paragraph: 10
- “(iii) if in respect of any year of assessment the Commissioner is no longer satisfied that an aircraft in respect of which an allowance has been made under the preceding provisions of this paragraph (whether in the current or any previous year of assessment) will be registered in the Republic or will be used by the taxpayer as aforesaid, or if in any year of assessment any such aircraft which has been registered in the Republic or has been used by the taxpayer as aforesaid, ceases to be so registered or used, or if in any year of assessment the taxpayer ceases to be a [person referred to in paragraph (c) of subsection (1) of section *nine*] resident, so much of the amount of the said allowance as is not in terms of subsection (4) of section *eight* required to be included in the taxpayer’s income for the current or any other year of assessment and is not in terms of paragraph (a) of subsection (2) of this section required to be deducted from the cost or estimated cost price of a further aircraft acquired to replace such aircraft, less such amount as would, if this paragraph had not been enacted, have been allowed to the taxpayer by way of deductions (in addition to those actually allowed) under paragraph (a) of this section or paragraph (o) of section *eleven*, either in the current or any previous year of assessment, shall in terms of this proviso be included in the income of the taxpayer for the current year of assessment.”; 15 20 25 30
- (c) by the substitution for subparagraph (i) of paragraph (c) of subsection (1) of the following subparagraph: 35
- “(i) the person is a [person mentioned in section 9(1)(c)] resident who carries on any business as owner or charterer of any aircraft, who has acquired a new or used aircraft under a contract concluded by him on or after 1 August 1992;” and
- (d) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words: 40
- “If during any year of assessment any aircraft in respect of which an allowance has been granted to the taxpayer under subsection (1)(c) (whether in the current or any previous year of assessment) ceases to be registered by him in the Republic or ceases to be used by him in his business of transporting by air and for reward persons, livestock, goods or mail, or if the taxpayer to whom such allowance was granted ceases to be a [person mentioned in section 9(1)(c)] resident, there shall be included in the taxpayer’s income in such first-mentioned year of assessment the amount (if any) by which the said allowance exceeds the sum of—”. 45 50

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Repeal of section 17 of Act 58 of 1962, as substituted by section 14 of Act 90 of 1962, and amended by section 14 of Act 113 of 1977

25. Section 17 of the Income Tax Act, 1962, is hereby repealed

Amendment of section 18 of Act 58 of 1962, as inserted by section 12 of Act 104 of 1980 and amended by section 15 of Act 96 of 1981, section 15 of Act 121 of 1984, section 11 of Act 96 of 1985, section 14 of Act 90 of 1988, section 11 of Act 70 of 1989, section 16 of Act 101 of 1990, section 19 of Act 129 of 1991, section 18 of Act 141 of 1992, section 16 of Act 21 of 1995 and section 23 of Act 53 of 1999

26. Section 18 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) any contributions made by him during the year of assessment to any medical scheme registered under the provisions of the Medical Schemes Act, 1998 (Act No. 131 of 1998). or any fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered: and”.

Amendment of section 20 of Act 58 of 1962, as amended by section 13 of Act 90 of 1964, section 18 of Act 88 of 1965, section 13 of Act 76 of 1968, section 18 of Act 89 of 1969, section 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 19 of Act 191 of 1990, section 16 of Act 113 of 1993, section 17 of Act 21 of 1995, section 15 of Act 28 of 1997 and section 20 of Act 30 of 2000

27. Section 20 of the Income Tax Act, 1962, is hereby amended—

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

“For the purpose of determining the taxable income derived by any person from carrying on any trade [within the Republic], there shall be set off against the income so derived by such person—”;

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

“(b) any assessed loss incurred by the taxpayer during the same year of assessment in carrying on [in the Republic] any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares.”: and

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

“Provided that there shall not be set off against any amount—

(a) distributed to such person by any pension fund or provident fund which is included in the gross income of such person in terms of paragraph (eB) of the definition of ‘gross income’ in section 1. any—

[(a)](i) balance of assessed loss; or

[(b)](ii) ‘assessed loss’ as defined in subsection (2) incurred in such year before taking into account any amount of such distribution; or

(b) derived by any person from the carrying on within the Republic of any trade, any—

(i) assessed loss incurred by such person during such year; or

(ii) any balance of assessed loss incurred in any previous year of assessment.

in carrying on any trade outside the Republic.”.

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REVENUE LAWS AMENDMENT ACT, 2000

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

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

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

“(c) it is shown by him that by reason of the loss or destruction of such trading stock or the termination of the agreement in terms of which such trading stock was acquired by him or for any other reason, such trading stock will neither be disposed of nor held by him, to the extent that such expenditure was actually paid.”; and

(b) by the deletion of the words following paragraph (c) of subsection (1).

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 23H of Act 58 of 1962, as inserted by section 31 of Act 30 of 2000

29. (1) Section 23H of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) which is allowable as a deduction in terms of the provisions of section 11(a), [(b)](c) or (d) or section 28(2)(a) and (c); and”.

(2) In so far as subsection (1)—

(a) deletes the reference to section 11(b), it shall come into operation on 1 January 2001, and apply to years of assessment commencing on or after that date; and

(b) inserts the reference to section 28(2)(u) and (c), it shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any expenditure incurred on or after that date.

Amendment of section 24F of Act 58 of 1962, as inserted by section 17 of Act 85 of 1987 and amended by section 19 of Act 90 of 1988, section 24 of Act 101 of 1990 and section 26 of Act 129 of 1991

30. Section 24F of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of subsection (7) of the following words:

“The amount of any print cost or any marketing expenditure contemplated in section 11bis which may be allowed under the provisions of [sections] section 11 [and 17] shall not in the aggregate exceed the total of—”;

(b) by the substitution for the second proviso to subsection (7) of the following proviso:

“Provided further that any amount of print cost or marketing expenditure which has been disallowed in terms of this subsection shall be carried forward and be deemed for the purposes of [sections] section 11 [and 17] to be an amount of print cost or marketing expenditure, as the case may be, incurred in the succeeding year of assessment.”; and

(c) by the substitution for paragraph (b) of the proviso to paragraph (b) of subsection (9) of the following paragraph:

“(b) any amount of such marketing expenditure which has been allowed as a deduction in terms of subsection (7) and which has not been taken into account in the calculation of the marketing allowance by reason of the provisions of paragraph (a) or (b) of this subsection shall be deemed for the purposes of section 11bis to be an amount of marketing expenditure incurred in the succeeding year of assessment and allowed as a deduction in that year under the provisions of section 11 [or 17].”.

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 and section 26 of Act 53 of 1999

31. Section 241 of the Income Tax Act, 1962. is hereby amended- 5
- (a) by the substitution for the definition of "foreign currency" in subsection (1) of the following definition:
- " 'foreign currency' means, in relation to any trade carried on by any person—
- (a) within the Republic, any currency which is not legal tender in the 10 Republic, or
- (b) in any country outside the Republic. any currency which is not legal tender in such other country;";
- (b) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words: 15
- "In determining the taxable income of any person derived from carrying on any trade by him [within the Republic] in respect of any year of assessment ending on or after 1 January 1994, there shall be included in or deducted from the income so derived, as the case may be, any transitional exchange difference (but subject to the provisions of 20 subsection (3)) and any exchange difference-";
- (c) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
- "(b) arising from a loan or advance owing by such person or a debt incurred by such person, where such loan or advance has been 25 utilized or such debt has been incurred in order to finance expenditure incurred by a connected person in relation to such person in the course of the carrying on of any trade [within the Republic] by such connected person."; and
- (d) by the substitution for the words preceding paragraph (a) of subsection (4) of 30 the following words:
- "In determining the taxable income of any person derived from carrying on any trade by him [within the Republic], there shall in respect of any year of assessment ending on or after 1 January 1994 be included in or deducted from the income so derived, as the case may be—". 35

Amendment 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 and section 36 of Act 30 of 1998

32. (1) Section 25B of the Income Tax Act, 1962, is hereby amended—
- (a) by the insertion after subsection (2) of the following subsection: 40
- "(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—
- (a) such capital arose from income received by or accrued to such trust in any previous year of assessment during which such resident had a contingent right to such income; and 45
- (b) such income has not been subject to tax in the Republic in terms of the provisions of this Act,
- such amount shall be included in the income of such resident in such year of assessment.";
- (b) by the substitution for subsection (3) of the following subsection: 50
- "(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 referred to in subsection (1) (but excluding any income contemplated in subsection (2)) shall, to the extent to which such income is under the provisions of that subsection deemed to be income 55 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 beneficiary or trust, as the case may be.”:

(c) by the substitution for subsection (5) of the following subsection:

“(5) The amount by which the sum of the deductions and allowances contemplated in subsection (4) exceeds the income 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 year of assessment: Provided that the sum of such deductions and allowances shall be limited to the taxable income of such trust during such 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, 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 beneficiary by way of income referred to in subsection (i) during the immediately succeeding year of assessment.”: and

(d) by the addition of the following subsection:

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

(2) Subsection (1) shall come into operation on 1 March 2001.

Insertion of section 25D in Act 58 of 1962

33. The following section is hereby inserted after section 25C of the Income Tax Act, 1962:

“Determination of taxable income or losses in foreign currency

25D. The amount of any taxable income derived by any resident from a source outside the Republic (other than by way of any foreign dividend as contemplated in section 9E), shall be determined in the relevant currency of the country from where the income is derived and the amount of the taxable income so determined shall be converted on the last day of the relevant year of assessment to the currency of the Republic and the ruling exchange rate at that date, or any other exchange rate or rates as the Commissioner may approve taking into account the ruling exchange rates during such year of assessment, shall be applied to determine the value of the amount of the taxable income so derived.”.

Amendment of section 27 of Act 58 of 1962, as amended by section 17 of Act 113 of 1977, section 11 of Act 101 of 1978, section 19 of Act 104 of 1980, section 21 of Act 96 of 1981, section 15 of Act 96 of 1985, section 18 of Act 85 of 1987, section 22 of Act 90 of 1988, section 28 of Act 129 of 1991, section 23 of Act 141 of 1992, section 23 of Act 113 of 1993 and section 15 of Act 36 of 1996

34. Section 27 of the Income Tax Act, 1962, is hereby amended by the substitution for the proviso to paragraph (a) of subsection (2) of the following proviso:

“Provided that the amounts allowed as deductions under this paragraph shall not in the aggregate exceed an amount which bears to the taxable income of such agricultural co-operative for the year of assessment (as calculated before allowing any deductions under this paragraph and [sections] section 1 *bis* [and 21*ter*] and before setting off any balance of assessed loss brought forward from a previous year of assessment) the same ratio as the aggregate value of the business conducted by such agricultural co-operative with its members during such year bears to the aggregate value of all business conducted by it during such year;”.

Amendment of section 28bis of Act 58 of 1962, as inserted by section 19 of Act 88 of 1965 and amended by section 25 of Act 89 of 1969, section 25 of Act 85 of 1974, section 18 of Act 113 of 1977, section 23 of Act 94 of 1983 and section 34 of Act 30 of 2000

35. Section 28bis of the Income Tax Act, 1962, is hereby amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs: 5

- “(a) that any company (hereinafter referred to as the subsidiary) which is [incorporated, managed and controlled in the Republic] a resident has under an arrangement with any other company (hereinafter referred to as the foreign company) which is [incorporated, managed and controlled outside the Republic] not a resident, acquired all the assets and assumed all the liabilities of the foreign company relating to any industrial, commercial or other business undertaking of the foreign company in the Republic which has been transferred by the foreign company to the subsidiary as a going concern; and 10
- (b) that at the time the arrangement was implemented, all the issued shares of the subsidiary were held for its own benefit by the foreign company or a company which was [incorporated, managed and controlled outside the Republic] not a resident and was controlled by or controlled the foreign company,”. 15

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 20

36. Section 29A of the Income Tax Act, 1962, is hereby amended by the deletion of paragraph (c) of subsection (11).

Amendment of section 31 of Act 58 of 1962, as substituted by section 23 of Act 21 of 1995 and amended by section 37 of Act 30 of 1998 and section 31 of Act 53 of 1999 25

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

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

“ ‘international agreement’ means a transaction, operation or scheme entered into between— 30

- (1) (i) a [person who, in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person, is managed or controlled in the Republic] resident; and 35
- (ii) any other person who [in the case of a natural person, is ordinarily resident outside the Republic or in the case of a person other than a natural person, is managed or controlled outside the Republic] is not a resident; or
- (b) (i) a person who [in the case of a natural person, is ordinarily resident outside the Republic or in the case of a person other than a natural person, is managed or controlled outside the Republic] is not a resident; and 40
- (ii) any other person who [in the case of a natural person, is ordinarily resident outside the Republic or in the case of a person other than a natural person, is managed or controlled outside the Republic] is not a resident, 45

for the supply of goods or services to or by a permanent establishment [as contemplated in section 9C(1)] of either of such persons in the Republic; or

- (c) (i) a person who [in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person is managed or controlled in the Republic] is a resident; and 50

- (ii) any other person who [in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person is managed or controlled in the Republic] is resident,
for the supply of goods or services to or by a permanent establishment [as contemplated in section 9C(1)] of either of such persons outside the Republic;”;
or
- (d) (i) a person who is a resident; and
(ii) any other person who is president, where either of such persons is as a result of the application of the provisions of any agreement entered into by the Republic for the prevention of double taxation, not subject to tax in the Republic; and”;
- (b) by the insertion after the definition of “international agreement” in subsection (1) of the following definition:
- ‘permanent establishment’ means a permanent establishment as defined from time to time in Article 5 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development;”;
- (c) by the substitution for the words preceding subparagraph (i) of paragraph (a) of subsection (3) and subparagraphs (i) and (ii) of the following words and subparagraphs:
- “Where any [natural person ordinarily resident outside the Republic or any person other than a natural person who is managed or controlled outside the Republic] person who is not a resident (hereinafter referred to as the investor) has granted financial assistance contemplated in paragraph (c) of the definition of ‘services’ in subsection (1), whether directly or indirectly, to-
- (i) any connected person (in relation to the investor) who [in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person, is managed or controlled in the Republic] is a resident; or
- (ii) any other person (in whom he has a direct or indirect interest) other than a natural person, [who is managed or controlled in the Republic] which is a resident (hereinafter referred to as the recipient) and, by virtue of such interest, is entitled to participate in not less than 25 per cent of the dividends, profits or capital of the recipient, or is entitled, directly or indirectly, to exercise not less than 25 per cent of the votes of the recipient.”.

Amendment of section 33 of Act 58 of 1962, as amended by section 26 of Act 85 of 1974 and section 28 of Act 113 of 1993

38. Section 33 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person [(not being a person ordinarily resident in the Republic or a domestic company)] other than a resident who embarks passengers or loads livestock, mails or goods in the Republic, as an owner or charterer of any ship or aircraft, shall be deemed to have derived therefrom (apart from any taxable income derived by him from other sources) a taxable income of 10 per cent of the amount payable to him or to any agent on his behalf, whether the amount be payable in or outside the Republic, in respect of passengers, livestock, mails and goods so embarked or loaded, but the provisions of this section shall not apply to any such person who renders accounts which satisfactorily disclose the taxable income derived by him from the embarking of passengers or the loading of livestock, mails and goods as aforesaid.”.

Amendment of section 35 of Act 58 of 1962, as amended by section 20 of Act 90 of 1962, section 20 of Act 65 of 1973, section 27 of Act 85 of 1974, section 24 of Act 94 of 1983 and section 21 of Act 21 of 1994

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

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

“(1) Any person (other than a resident) by whom any amount is received or to whom any amount accrues by virtue of—

(a) the use or right of use in the Republic of, or the grant of permission to use in the Republic—

(i) any patent as defined in the Patents Act, 1978 (Act No. 57 of 1978), or any design as defined in the Designs Act, 1993 (Act No. 195 of 1993), or any trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978), or any model, pattern, plan, formula or process or any other property or right of a similar nature; or

(ii) any motion picture film, or any film or video tape or disc for use in connection with television, or any sound recording or advertising matter used or intended to be used in connection with such motion picture film, film or video tape or disc,

wheresoever such patent, design, trade mark, copyright, model, pattern, plan, formula, process, property, right, motion picture film, film, video tape or disc, sound recording or advertising matter has been produced or made or such right of use or permission has been granted or payment for such use, right of use or grant of permission has been made or is to be made, and whether such payment has been made or is to be made by a person resident in or outside the Republic; or

(b) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in the Republic, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information, wheresoever such knowledge or information has been obtained or such knowledge or information has been imparted or is to be imparted or such assistance or service has been rendered or is to be rendered or any such undertaking has been given, and whether payment for such knowledge, information, assistance, service or undertaking has been made or is to be made by a person resident in or outside of the Republic,

shall be liable for tax, to be known as the withholding tax on royalties, which shall be levied and paid for the benefit of the National Revenue Fund at a rate of 12 per cent of such amount: Provided that the provisions of this subsection shall not apply in respect of any amount which is received by or accrues to any—

(i) company which is not a resident, if such amount is derived by such company from any trade carried on through a branch or agency in the Republic and such amount is subject to tax in the Republic;

(ii) person (other than a person whose place of residence is in a neighboring country) in respect of the use (otherwise than for advertising purposes in connection with any motion picture film or otherwise than in connection with television) in any printed publication of any copyright as aforesaid.”;

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

“Any person who incurs a liability to pay to any other person [(not being a person] who is [ordinarily] not a resident [in the Republic or a company which has its place of effective management inside the Republic]] any amount referred to in [section 9(1)(b) or (bA)]

subsection (1), or who receives payment of any such amount on behalf of such other person, shall within 14 days after the end of the month during which the said liability is incurred or the said payment is received, as the case may be, or within such further period as the Commissioner may approve, make a payment (which shall be [deemed to be an advance] a 5 final payment made on behalf of such other person) to the Commissioner in respect of such other person's [obligation to pay normal] liability for tax [for the year of assessment during which the said amount accrues to or is received ~~by~~ such other person, calculated at the rate of 12 per cent of the said amount] in terms of subsection (1), and shall submit to 10 the Commissioner at the time of such tax payment a declaration in such form as the Commissioner may prescribe:";

(c) by the substitution for paragraph (ii) of the proviso to paragraph (a) of subsection (2) of the following paragraph:

"(ii) for the purposes of this subsection a person having an address 15 outside the Republic shall until the contrary is proved be deemed not to be [not ordinarily resident in the Republic or, in the case of a company, to be a company which is not a domestic company] a resident;" and

(d) by the substitution for paragraph (c) of subsection (2) of the following 20 paragraph:

"(c) The general provisions contained in Parts 1 to VI of [subsection (2) of section five] this Act shall *mutatis mutandis* apply in respect of payments made to the Commissioner in terms of paragraph (a).":

Substitution of section **54** of Act 58 of 1962, as substituted ~~by~~ section 24 of Act 90 of 25 **1988**

40. The following section is hereby substituted for section 54 of the Income Tax Act, 1962:

"Levy of donations tax

54. Subject to the provisions of section 56, there shall be paid for the 30 benefit of the National Revenue Fund a tax (in this Act referred to as donations tax) on the value of any property disposed of (whether directly or indirectly and whether in trust or not) under any donation [which took or takes effect on or after 16 March 1988] by any [person] resident (in this Part referred to as the donor) [who, in the case of a person other than a 35 company, is ordinarily resident in the Republic, or, in the case of a company, is a domestic company]. ".

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 40 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 and section 38 of Act 30 of 2000

41. Section 56 of the Income Tax Act, 1962, is hereby amended by the substitution for 45 subparagraph (i) of paragraph (g) of subsection (1) of the following subparagraph:

"(i) before the donor [being a person other than a company] became [ordinarily] a resident [in] of the Republic for the first time [or, in the case of a company, became for the first time, a domestic company]; or".

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 and section 39 of Act 30 of 2000

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

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

“(2) There shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the secondary tax on companies, which is calculated at the rate of 12,5 per cent of the net amount, as determined in terms of subsection (3), of any dividend declared on or after 14 March 1996 by any company [on or after 14 March 1996] which is a resident.”;

(b) by the substitution for the words preceding the proviso to subsection (3) of the following words:

“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 any dividends contemplated in subsection (5)(b), (c), (d) and (f) or any foreign dividends as defined in section 9E, but including foreign dividends which are exempt in terms of section 9E(7)(a), (b), (c), (d), [or] (c)(ii), (iii) or (iv) or (f)), or section 9E(8A)), which have during the dividend cycle in relation to such firstmentioned dividend accrued to the company.”;

(b) by the deletion of paragraph (h) of subsection (5);

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

“(u) If any dividend subject to the payment of secondary tax on companies has been declared by a company which derives profits from sources within and outside the Republic, the secondary tax on companies in respect of that dividend shall be calculated on an amount which bears to the net amount of that dividend the same ratio as the sum of the net annual profits of the company derived from—

(i) sources within or deemed to be within the Republic in terms of section 9 [9C or 9E]; and

(ii) sources outside the Republic which are not deemed to be from a source in the Republic and which are not exempt from tax in terms of the provisions of section 10(1)(kA),

bears to the total sum of its net annual profits derived from all sources.”.

(2) In so far as subsection (1)(b) amends subsection (3)—

(a) by deleting the reference to paragraphs (a) and (b) of subsection (7) and inserting a reference to section 9E(8A), it shall come into operation on 1 January 2001, and shall apply in respect of any dividend accrued on or after that date; and

(b) by inserting the reference to paragraph (c)(iii) and (iv) and (f), shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any foreign dividend—

(i) received by or accrued to any company on or after that date: or

(ii) which accrued to the company before 23 February 2000, but which is received on or after that date: Provided that the provisions of this paragraph shall not apply in respect of any foreign dividend which was declared by a company before 23 February 2000, where—

(aa) the company declaring the dividend is listed on a recognised stock exchange; or

(bb) in any other case, the chief executive officer and—

(A) an external auditor of the company declaring the dividend; or

(B) where the company declaring the dividend is situated in a country which does not require compulsory appointment of an

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external auditor, a registered **public** accountant **of the same standing as a qualified** chartered accountant.
have declared under oath or affirmation that such dividend was actually declared by the company before 23 February 2000.

Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 5 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 and section 40 of Act 30 of 2000

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

(a) by the substitution for paragraph (d) of subsection (4) of the following 10 paragraph:

“(d) to any loan granted[—

(i) which is denominated in the currency of the Republic] in respect of which a rate of interest not less than the ‘official rate of interest’, as defined in paragraph 1 of the Seventh Schedule 15 [or

(ii) which is denominated in a foreign currency, in respect of which a market-related rate of interest] is payable by the recipient;”;

(b) by the deletion of the word “and” at the end of paragraph (h) of subsection 20 (4);

(c) by the addition of the word “and” at the end of paragraph (i) of subsection (4); and

(d) by the addition to subsection (4) of the following paragraph:

“(j) to any loan granted to any recipient which is a company by any 25 other company which holds for its own benefit, whether directly or indirectly, any of the equity share capital of such recipient company: Provided that the provisions of this paragraph shall not apply where such recipient company holds any of the equity share capital in such other company.”.

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(2) Subsection (1)(b), (c) and (d) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 70 of Act 58 of 1962, as amended by section 11 of Act 6 of 1963, section 20 of Act 90 of 1964, section 43 of Act 85 of 1974, section 24 of Act 69 of 1975, section 26 of Act 28 of 1997, section 37 of Act 53 of 1999 and section 42 of 35 Act 30 of 2000

44. Section 70 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) where such dividend represents an amount of any taxable foreign dividend as determined in accordance with the provisions of section 9E and such company 40 is a resident [as defined in section 9C], notify each shareholder who is a resident of the amount of such taxable foreign dividend.”.

Amendment of section 72 of Act 58 of 1962

45. Section 72 of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of the following words: 45

“Every person who makes a return of his own income or in a representative capacity makes a return of the income of some other person, shall attach to such return a statement in such form as the Commissioner may require, showing fully—”.

Insertion of section 72A in Act 58 of 1962

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46. The following section is hereby inserted after section 72 of the Income Tax Act, 1962:

"Return as to participation right in controlled foreign entity

72A. (1) Every resident who at any time during the relevant year of assessment-

- (a) directly or indirectly holds not less than 10 per cent of the participation or voting rights or control in any controlled foreign entity as contemplated in section 9D; and 5
 - (b) together with any connected person in relation to such resident, in aggregate holds more than 50 per cent of the total participation or voting rights or control in such controlled foreign entity, 10
- shall submit to the Commissioner a return containing the information contemplated in subsection (2) relating to such controlled foreign entity, in such form and within such time as may be prescribed by the Commissioner: Provided that the provisions of this subsection shall not apply to any resident where any person who is a resident and who is a connected person in relation to such first-mentioned resident, holds a greater percentage of the participation rights than such first-mentioned resident. 15
- (2) The return contemplated in subsection (1) shall show fully—
- (a) the name, address and country of residence of such controlled foreign entity; 20
 - (b) a description of the various classes of participation rights in such controlled foreign entity;
 - (c) the percentage and class of participation or voting rights held by such resident whether directly, indirectly or together with connected persons; 25
 - (d) the percentage and class of participation rights held by any other resident (who is a connected person in relation to such resident) who directly or indirectly holds not less than 10 per cent of the participation or voting rights in such controlled foreign entity;
 - (e) a description of the receipts and accruals of such controlled foreign entity which are— 30
 - (i) included in the income of such resident in terms of the provisions of section 9D;
 - (ii) not included in the income of such resident in terms of the provisions of section 9D(9);
 - (f) a description of any amount of tax proved to be payable by such controlled foreign entity to the government of any other country in respect of any income contemplated in paragraph (e)(i), including particulars relating to the country in which such tax was payable and the underlying profits to which such foreign tax relates. 35
- (3) Every resident who is required to submit a return contemplated in subsection (1), shall— 40
- (a) submit the relevant information referred to in subsection (2)(a), (b), (d) and (f) relating to any other resident contemplated in subsection (2)(d) to such other resident; and
 - (b) have available for submission to the Commissioner when so requested, an income statement and balance sheet of such controlled foreign entity prepared in accordance with the laws of the country of which such controlled foreign entity is a resident, or internationally accepted accounting practice. 45
- (4) Every resident who receives any information contemplated in subsection (3), shall submit such information to the Commissioner in such form and manner as the Commissioner may prescribe." 50

Amendment of section 83A of Act 58 of 1962, as inserted by section 37 of Act 129 of 1991 and amended by section 37 of Act 113 of 1993 and Government Notice R.1245 of 26 September 1997 55

47. Section 83A of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) the amount of the tax in dispute does not exceed [R30 000 (or any other) such amount which the Minister [of Finance] may from time to time fix by notice

in the *Gazette*, or, having regard to any assessed loss which may be carried forward will probably not in total exceed [the relevant] such amount; or”.

Amendment of section **89bis** of Act 58 of 1962, as inserted by section 14 of Act 6 of 1963 and amended by section 21 of Act 95 of 1967, section 28 of Act 88 of 1971, section 45 of Act 85 of 1974, section 26 of Act 91 of 1982, section 35 of Act 94 of 1983, section 32 of Act 121 of 1984 and section 21 of Act 65 of 1986 5

48. Section **89bis** of the Income Tax Act, 1962, is hereby amended—

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

“For the purposes of this section ‘taxes’ means the taxes comprehended in the definition of ‘tax’ in section 1, excluding donations tax.”; and 10

(b) by the deletion of paragraphs (a) and (b) of subsection (3).

Amendment of section **89ter** of Act 58 of 1962, as inserted by section 14 of Act 6 of 1963, and substituted by section 37 of Act 89 of 1969 and amended by section 36 of Act 94 of 1983, section 33 of Act 121 of 1984, section 41 of Act 113 of 1993 and section 28 of Act 21 of 1994 15

49. Section **89ter** of the Income Tax Act, 1962, is hereby amended—

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

“For the purposes of subsections (1) and (2) ‘taxes’ means the taxes comprehended in the definition of ‘tax’ in section 1, excluding donations tax and secondary tax on companies.”; and 20

(b) by the deletion of paragraphs (a), (c) and (d) of subsection (3).

Amendment of section **89quat** of Act 58 of 1962, as inserted by section 34 of Act 121 of 1984, substituted by section 22 of Act 65 of 1986 and amended by section 18 of Act 70 of 1989, section 42 of Act 113 of 1993, section 15 of Act 140 of 1993, section 33 of Act 21 of 1995 and section 24 of Act 36 of 1996 25

50. Section **89quat** of the Income Tax Act, 1962, is hereby amended—

(a) by the addition of the word “and” at the end of paragraph (c) of the definition of “credit amount” in subsection (1); and 30

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

“(d) any amount of foreign taxes which maybe deducted from the tax payable by such taxpayer in respect of the relevant year of assessment in terms of the provisions of section **6quat**; ”. 35

Amendment of section 90 of Act 58 of 1962, as amended by section 15 of Act 6 of 1963, section 23 of Act 95 of 1967, section 35 of Act 121 of 1984, section 20 of Act 96 of 1985, section 38 of Act 129 of 1991 and section 43 of Act 30 of 1998

51. Section 90 of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of the following words: 40

“Subject to the provisions of this Act, any tax (other than [non-resident shareholder’s tax, undistributed profits tax, excess profits duty] donations tax [and non-residents tax on interest]) and any interest payable in terms of section 89(2) or **89quat**, shall be payable—”.

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 and section 45 of Act 30 of 1998

52. Section 103 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) For the purposes of subsection (1) any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act) whereby any [person (other than a company) who is ordinarily resident or carrying on business in the Republic, or any company registered or carrying on business in the Republic] resident has disposed of shares held by such [person or such company] resident in any company [registered ~~or~~ incorporated in the Republic] which is a resident to any person [(other than a company) not ordinarily resident or carrying on business in the Republic or to any company registered outside the Republic] who is not a resident, shall unless it is proved to the satisfaction of the Commissioner that the parties are independent persons dealing at arm’s length with each other, be deemed to be a transaction, operation or scheme entered into or carried out by means or in a manner not normally employed in the entering into or carrying out of such a transaction, operation or scheme of the nature of the transaction, operation or scheme in question.”

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 and section 52 of Act 30 of 2000

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

(a) by the substitution for paragraphs (b) and (bA) of the definition of “provisional taxpayer” of the following paragraphs:

“(b) unless the Commissioner in the particular case otherwise directs, any director of a private company if such director [is ordinarily resident in the Republic] or such company is [managed and controlled or has its registered office in the Republic] a resident;

(bA) unless the Commissioner in the particular case otherwise directs, any member of a close corporation if such member is [ordinarily] a resident [in the Republic];”;

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

“(a) any amount referred to in paragraph (a), (c), (cA), (d), (e), (eA) or (f) of the definition of ‘gross income’ in section 1 of this Act;”;

(c) by the substitution for the words preceding the proviso to paragraph (ii) of the exclusions to the definition of “remuneration” of the following words:

“any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person who is not [ordinarily] a resident [in the Republic] or an employee contemplated in paragraph (b), (c), [or] (d), (e) or (f) of the definition of ‘employee’) in the course of any trade carried on by him independent y of the person by whom such amount is paid or payable and of the person to whom such services have been or are to be rendered.”; and

(d) by the substitution for the words following paragraph (d) of the definition of “representative employer” of the following words:

“who is a resident, but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Schedule.”

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

(3) In so far as subsection (1)(c)---

(a) inserts the reference to paragraphs (e) and (f) it shall be deemed to have come into operation on 1 August 2000; and

(b) deletes the words "ordinarily" and "in the Republic" it shall come into operation on 1 January 2001, and shall apply in respect of any year of assessment commencing on or after that date.

(4) Subsection (1)(d) shall come into operation on 1 March 2001.

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 28 of Act 113 of 1977, section 40 of Act 9(J of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997 and section 53 of Act 30 of 2000

54. Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) Every---

(a) employer who is a resident; or

(b) representative employer in the case of any employer who is not a resident.

(whether or not registered as an employer under paragraph 15), who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount by way of employees' tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee's spouse, in respect of such liability of that spouse, and shall pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which he ceased to be an employer, or in either case within such further period as the Commissioner may approve."

Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980, section 46 of Act 101 of 1990 and section 46 of Act 28 of 1997

55. Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister [of Finance] in his budget statement or as varied by the [said] Minister under section 5 (3) of this Act, to the rebates applicable in terms of section 6 and section 6quat of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe deduction tables applicable to **such** classes of employees as he may determine, and the manner in which such tables shall be applied, and the amount of employees' tax to be deducted from any amount of remuneration shall, subject to the provisions of subparagraph (3 j of this paragraph and paragraphs 10, 11 and 12, be determined in accordance with such tables or where subparagraph (3) is applicable, in accordance with that subparagraph."

Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962, as inserted by section 41 of Act 90 of 1988 and amended by section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992, section 3 of Act 168 of 1993, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996, section 48 of Act 28 of 1997 and section 53 of Act 30 of 1998

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56. (1) Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subitem (ii) of item (f) of the definition of "net remuneration" in subparagraph (1) of the following subitem:

"(ii) by way of an annuity provided or payable by a pension fund, provident fund or benefit fund;"

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(2) Subsection (1) shall be deemed to have come into operation on 1 March 2000.

Amendment of paragraph 17 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 27 of Act 90 of 1964, section 41 of Act 88 of 1971, section 33 of Act 103 of 1976, section 30 of Act 104 of 1980 and section 51 of Act 101 of 1990

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57. Paragraph 17 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (5) of the following subparagraph:

"(5) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister [of Finance] in his budget statement or as varied by the [said] Minister under section 5 (3) of this Act, to the rebates applicable in terms of section 6(2) and (3)(a) and section 6quat of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe tables for optional use by provisional taxpayers falling within any category specified by the Commissioner, or by provisional taxpayers generally, for the purpose of estimating the liability of such taxpayers for normal tax, and the Commissioner may prescribe the manner in which such tables shall be applied."

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Amendment of paragraph 2 of Fifth Schedule to Act 58 of 1962, as added by section 26 of Act 52 of 1970 and amended by section 50 of Act 88 of 1971, section 24 of Act 90 of 1972, section 34 of Act 103 of 1976, section 58 of Act 85 of 1974, section 31 of Act 91 of 1982 and section 56 of Act 94 of 1983

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58. Paragraph 2 of the Fifth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso to subparagraph (3) of the following words:

"Any person [(other than a company)] who is not [ordinarily] a resident and is not carrying on business in the Republic [and any company which is not a South African company and is not carrying on business in the Republic], shall not be liable for the payment of any loan portion:"

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Amendment of paragraph 1 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 26 of Act 96 of 1985, Government Notice No. R.2706 of 29 November 1985, section 33 of Act 65 of 1986, Government Notice No. R.2683 of 19 December 1986, section 28 of Act 85 of 1987, Government Notice No. R.714 of 14 April 1989, section 24 of Act 70 of 1989, Government Notice No. R.763 of 29 March 1990, section 55 of Act 101 of 1990, section 35 of Act 141 of 1992, section 52 of Act 113 of 1993, section 30 of Act 21 of 1994, section 40 of Act 36 of 1996 and section 54 of Act 30 of 2000

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59. Paragraph 1 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of "official rate of interest" of the following definition:

" 'official rate of interest' means—

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- (a) in the case of a loan which is denominated in the currency of the Republic, the rate of interest fixed by the Minister from time to time by notice in the *Gazette*;
 or
 (b) in the case of a loan which is denominated in a foreign currency, a market related rate of interest:".

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 1966, 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 and section 1 of Act 59 of 1999

60. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended by the substitution for the definition of "this Act" in subsection (1) of the following definition:
 " 'this Act' includes any proclamation, government notice, regulation or rule issued or made or agreement concluded or deemed to have been concluded thereunder, any agreement contemplated in section 49, or any taxation proposal contemplated in section 58 which is tabled in the National Assembly;"
- (2) Subsection (1) shall be deemed to have come into operation on 24 November 1999.

Insertion of section 46A in Act 91 of 1964

61. (1) The following section is hereby inserted after section 46 of the Customs and Excise Act, 1964:

"Non-reciprocal preferential tariff treatment of goods exported from the Republic

- 46A. (1) In this section, unless the context otherwise indicates—
 'circumvention' includes any circumvention of any provision of an enactment by—
 (a) transshipment, rerouting, false declaration concerning the country or place of origin or falsification of official documents; or
 (b) making any false declaration concerning fibre content, quantities, description or classification of goods,
 as provided in article 5 of the Agreement on Textiles and Clothing included in Annex 1 A of the Agreement established by the World Trade Organisation, kept by the Commissioner as contemplated in subsection (2);
 'enactment' includes the provisions of any legislative act by a government of a country providing for preferential tariff treatment, any administrative requirements of the customs administration of such country, any legislation or agreement incorporated by reference in such provisions and any amendment to such provisions, requirements, legislation or agreement, kept by the Commissioner as contemplated in subsection (2);
 'preferential tariff treatment' means the non-reciprocal preferential tariff treatment of goods exported from the Republic allowed on importation into any country in terms of and on compliance with the requirements of any enactment of the government of such country;
 'transshipment' has the meaning assigned thereto in section 113(b)(4) of the African Growth and Opportunity Act contained in the Trade and Development Act of 2000 of the United States of America, kept by the Commissioner as contemplated in subsection (2).
 (2) (a) The Commissioner shall—
 (i) keep two copies of any enactment and any amendment thereto received from the customs administration of the country allowing preferential tariff treatment;

- (ii) record the date advised by such administration on which any such enactment or amendment becomes or became effective in such country for the purposes of such treatment; and
- (iii) effect any such amendment to the enactment.
- (b) Any enactment or amendment thereto shall for the purposes of this Act be effective from the date so recorded.
- (c) Wherever in any legal proceedings any question arises as to the contents of any enactment or as to the date upon which any enactment or any amendment thereto became effective, a copy of the enactment or the enactment as amended and any date so recorded shall be accepted as *prima facie* proof of the contents thereof and of the effective date of the enactment or the amendment thereto.
- (d) Any such copy kept by the Commissioner shall be accessible to any interested person during official working hours.
- (e) The Commissioner may publish any enactment or part thereof or amendment thereto in the *Gazette*.
- (3) (a) Notwithstanding anything to the contrary in this Act contained, the application of any provision of this Act relating to any importer, producer, manufacturer, exporter, licensee or other principal or any agent or the importation or exportation of goods, the preferential tariff treatment of goods, goods obtained, produced or manufactured, due entry or any other provision or customs procedure or any power, duty or function in connection therewith, shall, unless otherwise provided in, or in any rule made in terms of, this section for the purposes of giving effect to any enactment, be subject to compliance with the provisions of such enactment or any part or provision thereof, as the case may be.
- (b) The provisions of section 4(12A) shall apply *mutatis mutandis* in respect of any goods exported from the Republic for the purpose of benefiting from the preferential tariff treatment contemplated in an enactment and any person referred to in section 4(12A)(a) shall be deemed to have agreed to comply with the requirements governing the allowing of such treatment by the government of the country to which the goods are exported, including requirements relating to—
- (i) maintaining complete books, accounts and other documents in respect of—
- (aa) the production or manufacture and any materials used in the production or manufacture of the goods exported;
- (bb) the purchase of, cost of, value of and payment for the goods exported and all materials, including indirect materials used in the production or manufacture of the goods exported;
- (cc) proof of the originating status of such goods in accordance with the relevant rules of origin; and
- (old) the exportation of the goods;
- (ii) permitting and assisting customs officers of the country of importation to investigate—
- (au) such books, accounts and other documents; and
- (bb) any circumvention contemplated in subsection (8).
- (4) In administering the provisions of any enactment or any part or provision thereof and the application of any provisions of this Act to give effect thereto the Commissioner may, notwithstanding anything to the contrary in this Act contained—
- (a) decide on or determine any matter or perform any duty or function or impose any condition in connection with the provisions so administered, including any decision or determination or the performance of any duty or function or the imposing of any condition in respect of—
- (i) any heading in Part 1 or any item of any other Part of Schedule

- No. 1 applicable to any goods imported or produced, obtained, manufactured, exported or used in the production or manufacture of any goods, or the customs value of any such imported goods:
- (ii) any action or procedure concerning—
 - (au) the origin or proof of origin of goods imported or exported: 5
 - (bb) the importation or production or manufacture or exportation of goods and the ex-factory price of goods or the cost or value of materials:
 - (cc) tariff quotas;
 - (old) any circumvention and any action taken in respect thereof; 10
 - (ee) rendering mutual and technical assistance in respect of any customs co-operation, including any investigation, as required by any enactment, by any officer of the customs administration of the country allowing such preferential tariff treatment;
 - (ff) the keeping and the production of books, accounts and other documents and the furnishing of information in respect of any matter to which this section relates; 15
 - (gg) requirements in connection with any agency where any person is represented in the exportation of any goods involving proof of origin: 20
 - (hh) furnishing of a certificate of origin including in respect of multiple shipments of identical goods over a specified period;
 - (ii) any document relating to origin issued retrospectively;
 - (jj) the issue of or refusal to issue a visa;
 - (iii) any other power, duty or function or procedure provided in any enactment or part or provision thereof contemplated in subsection (1) which requires either expressly or by implication customs administrative action in respect of goods produced, manufactured or exported for the purposes of such enactment: 25
 - (b) make rules— 30
 - (i) concerning any matter referred to in paragraph (a);
 - (ii) where reference is made to customs or competent authorities, to domestic, national or customs law or any like reference or any other matter which requires either expressly or by implication application of customs legislation; 35
 - (iii) in connection with the entry of goods imported or exported and documents to be produced in support thereof;
 - (iv) prescribing forms or procedures or specifying any condition or provision of this Act to be complied with for the purposes of such enactment; 40
 - (Y) to delegate or assign subject to section 3(2), any power, duty or function to any officer or other person;
 - (vi) regarding any other matter which may be reasonably necessary for the purposes of administering such provisions;
 - (c) subject to such conditions as the Commissioner may in each case impose, enter into any agreement with any person, with the concurrence of any producer, manufacturer or exporter, as the case may be, to perform any function or provide any service for the purposes of establishing and reporting on the origin of goods or issuance of any proof of origin. 50
- (5) Whenever any report is required by the importing country from time to time in terms of any enactment of such country in connection with the producer, manufacturer or exporter or any other person concerned with the export of goods for the purposes of preferential tariff treatment or the production, manufacture or export of such goods and the furnishing of such 55

report is authorised by the Minister, the Commissioner shall, notwithstanding anything to the contrary in this Act or any other law contained, furnish to the customs administration of such country such report containing such particulars as may be required in terms of any enactment kept by the Commissioner as contemplated in subsection (2).

(6) (a) (i) Every producer, manufacturer or exporter of goods to which this section relates, shall be registered with the Commissioner for the purposes of this section.

(ii) No such goods may, from a date to be specified by rule, be exported unless the producer, manufacturer or exporter thereof is registered,

(b) Application for such registration shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and any additional requirements [hat may be prescribed in any other rule and as may be determined by the Commissioner in each case.

(c) Any registered producer, manufacturer or exporter of such goods shall comply with such requirements as the Commissioner may prescribe by rule and determine in each case.

(d) The Commissioner may—

(i) refuse to register any applicant and for that purpose the provisions of section 60(2) shall apply *mutatis mutandis* to such application for registration:

(ii) cancel the registration of any producer, manufacturer or exporter of such goods—

(aa) if any books, accounts or other documents are not kept or produced as required by or in terms of this Act: or

(bb) who is convicted of an offence or where forfeiture of any amount deposited or secured by such person is ordered by way of penalty under the provisions of section 91 in respect of any circumvention or contravention contemplated in subsection (8);

(iii) subject to any prohibition imposed for the purposes of subsection 8(b), reregister any person at any time after such cancellation on such conditions as the Commissioner may impose in each case.

(7) No goods shall be exported with the object of obtaining any benefit of preferential tariff treatment in terms of an enactment unless the goods comply with the provisions of origin or any other provision of such enactment or of this Act governing the acquisition of origin or any other requirement which is to be complied with for the purposes of giving effect to such provisions.

(8) (u) Any person who, in connection with any goods produced or manufactured or exported for the purposes of obtaining any preferential tariff treatment therefor in the country of importation in terms of any enactment—

(i) makes any false statement or makes use of any declaration or document containing such statement or performs any other act for the purposes of circumvention of any provision of such enactment relating to the origin, production, manufacture or exportation of such goods;

(ii) contravenes or fails to comply with any other provision of this Act; or

(iii) attempts to circumvent or contravene any provision contemplated in subparagraphs (i) and (ii), as the case may be.

shall be guilty of an offence and liable on conviction to a fine not exceeding R 100000 or three times the export value of the goods in respect of which the offence was committed, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment and the goods in respect of which the offence was committed shall be liable to forfeiture in accordance with this Act.

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(b) The Commissioner may on conviction of any exporter or where forfeiture of any amount deposited or secured by such exporter is ordered by way of penalty under the provisions of section 91 in respect of any circumvention contemplated in paragraph (a) prohibit, for a period not exceeding 5 years from the date of such conviction or order of forfeiture for any such circumvention involving transshipment, such exporter, any successor of such exporter and any other entity, owned or operated by the principal of the exporter, from exporting any goods for the purposes of obtaining any benefit in terms of any enactment.

(9) The Commissioner may make any rules under this section with retrospective effect as from 1 October 2000 or any date thereafter.”.

(2) Subsection (1) shall, except in so far as any offence is created by section 46A(8) be deemed to have come into operation on 1 October 2000.

Amendment of section 80 of Act 91 of 1964, as amended by section 10 of Act 85 of 1968, section 27 of Act 105 of 1969, section 28 of Act 112 of 1977, section 22 of Act 86 of 1982, section 7 of Act 89 of 1984, section 12 of Act 52 of 1986, section 27 of Act 84 of 1987, section 32 of Act 59 of 1990, section 8 of Act 105 of 1992, section 8 of Act 98 of 1993, section 68 of Act 30 of 1998 and section 63 of Act 53 of 1999

62. Section 80 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (q) of subsection (1) of the following paragraph:

“(q) contravenes or fails to comply with any provision of any agreement contemplated in section 49 or 51 ;“;

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 and section 72 of Act 30 of 2000

63. (1) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution for subparagraph (i) of paragraph (hA) under the heading “*Exemptions from the duty under paragraph(3)*” of the following subparagraph:

(i) any pension fund established by law to any other pension fund established by law or to any other pension fund which is registered under the Pension Funds Act, 1956; or”,

(2) Subsection (1) shall be deemed to have come into operation on 1 March 2000.

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 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 81 of Act 53 of 1999 and section 76 of Act 30 of 2000

64. Section 1 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition of the following proviso to the definition of “local authority”:

“Provided that where any local authority has been disestablished and superseded by a new local authority in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), such disestablished local authority and such new local authority shall for the purposes of this Act be deemed to be and to have been one and the same local authority;”; and

(b) by the substitution for the words preceding the proviso to the definition of “resident of the Republic” of the following words:

“ ‘resident of the Republic’ means a [person (other than a company) who is ordinarily resident in the Republic or a company which is a

domestic company president as defined in section 1 of the Income Tax Act:”.

Amendment of section 33A of Act 89 of 1991, as inserted by section 36 of Act 136 of 1991

65. Section 33A of the Value-Added Tax Act, 1991. is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 5

“(a) the appeal is lodged against an assessment of the Commissioner, and the amount of the tax in dispute does not exceed [R30 000 (or any other) such amount which the Minister [of Finance] may from time to time fix by notice in the *Gazette*; or”.

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Amendment of section 1 of Act 38 of 1996, as amended by section 85 of Act 30 of 2000

66. Section 1 of the Tax on Retirement Funds Act, 1996, is hereby amended—

(a) by the substitution for the definition of “guaranteed annuity” in subsection (1) of the following definition: 15

“ ‘guaranteed annuity’ means an annuity contemplated in section [29(4)(a)(iii)] 29 A(4)(a) (iii) of the Income Tax Act, where such annuity is contractually subject to a guaranteed increase at a fixed rate, which rate may be zero, over the full term of the annuity, excluding any annuity which may participate in any bonus distributions by the insurer;”;

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(b) by the substitution for the definition of “untaxed policyholder fund” of the following definition:

“ ‘untaxed policyholder fund’ means a fund contemplated in section [29(4)(a)] 29A(4)(a) of the Income Tax Act.”.

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Amendment of section 3 of Act 38 of 1996, as amended by section 86 of Act 30 of 2000

67. (1) Section 3 of the Tax on Retirement Funds Act, 1996, is hereby amended by the substitution for paragraphs (b) and (c) of the following paragraphs:

“(17) ‘I’ represents the gross amount of any interest received by or accrued to such fund during such tax period [from a source within the Republic or deemed to be within the Republic as contemplated in sections 9 and 9C of the Income Tax Act]; 30

(c) ‘R’ represents the gross amount of any rental income received by or accrued to such fund during such tax period [from a source within the Republic or deemed to be within the Republic as contemplated in the last-mentioned sections 9 and 9C]; and”.

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(2) Subsection (1) shall come into operation on 1 March 2001.

Amendment of section 4 of Act 38 of 1996, as amended by section 32 of Act 46 of 1996 40

68. Section 4 of the Tax on Retirement Funds Act. 1996, is hereby amended—

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

“(c) ‘B’ represents the portion of symbol ‘A’ attributable to assets referred to in section [29(4)(a)(i)] 29A(4)(a)(i) of the Income Tax Act as allocated to retirement funds in terms of section 9 during such tax period.”;

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(b) by the substitution for subparagraphs (i) and (ii) of paragraph (d) of the following subparagraphs:

“(i) representing business of such untaxed policyholder fund as contemplated in section [29(4)(a)(iii)] 29 A(4)(a)(iii) of the income Tax Act (excluding assets contemplated in paragraph (c));

(ii) equal to the [statutory] actuarial value of liabilities under guaranteed annuities: and”;

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

(i) section [29(4)(a)(ii)] 29 A(4)(a)(ii) of the Income Tax Act (excluding assets in respect of amounts allocated to retirement funds contemplated in paragraph (c) and assets representing guaranteed annuities contemplated in paragraph (d)); and”; and

(d) by the substitution for the words preceding item (aa) of subparagraph (ii) of paragraph (f) of the following words:

“section [29(4)(a)(iii)] 29 A(4)(a)(iii) of the Income Tax Act (excluding assets—”.

Amendment of section 16 of Act 38 of 1996, as amended by section 59 of Act 27 of 1997

69. (1) Section 16 of the Tax on Retirement Funds Act, 1996, is hereby amended— 20

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

“(k) income of controlled foreign entities and [investment] income arising from any donation, settlement or other disposition,”; and

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

“(viii) in respect of the inclusion of any [investment income] amount in the income of any fund.”. 25

(2) Subsection (1) shall come into operation on 1 March 2001.

Amendment of section 13 of Act 9 of 1999, as amended by section 93 of Act 30 of 2000

70. (1) Section 13 of the Skills Development Levies Act, 1999, is hereby amended— 30

(a) by the deletion of the word “and” at the end of paragraph (h);

(b) by the addition of the word “and” at the end of paragraph (i);

(c) by the addition of the following paragraph:

“(j) jurisdiction of courts as contained in section 105,”;

(d) by the addition of the word “and” at the end of paragraph (vi); and 35

(e) by the addition of the following paragraph:

“(vii) jurisdiction of courts.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 September 1999.

Amendment of section 12 of Act 30 of 2000

71. Section 12 of the Taxation Laws Amendment Act. 2000, is hereby amended by the substitution for paragraph (c) of the following paragraph: 40

“(c) the taxable income of any company contemplated in paragraph 2(b) or (c) of Schedule 1 to this Act. for the year of assessment commencing on or after 1 April 2000 and ending during the period of twelve months ending on 31 March [2000] 2001,”. 45

Amendment of section 24 of Act 30 of 2000

72. (1) Section 24 of the Taxation Laws Amendment Act. 2000, is hereby amended by the substitution for subparagraph (ii) of paragraph (b) of subsection (1) of section 18A of the Income Tax Act, 1962, of the following subparagraph:

“(ij) during the year of assessment preceding the year of assessment of such public benefit organisation during which the donation is received, distributed or incurred the obligation to so distribute at least 75 per cent of the funds 50

received by such organisation by way of donations which qualified for a deduction in terms of this section.”.

(2) Subsection (1) shall be deemed to have come into operation on 19 July 2000.

Amendment of section 35 of Act 30 of 2000

73. (1) Section 35 of the Taxation Laws Amendment Act, 2000, is hereby amended by 5
the substitution for paragraph (a) of subsection (2) of section 30 of the Income Tax Act,
1962, of the following paragraph:

“(a) The Minister shall, by notice in the Gazette, determine any activity which
is of a philanthropic or benevolent nature, having regard to the needs, interests and
well-being of the general public for the purposes of this section.”.

(2) Subsection (1) shall be deemed to have come into operation on 19 July 2000. 10

Amendment of section 59 of Act 30 of 2000

74. (1) Section 59 of the Taxation Laws Amendment Act, 2000, is hereby amended by
the addition to subsection (2) of the following proviso:

“Provided that the provisions of subsection (1) shall not apply in respect of the 15
carriage of any chargeable passenger, where the ticket in respect of such flight was
purchased and issued before 1 August 2000.”.

(2) Subsection (1) shall be deemed to have come into operation on 19 July 2000.

Amendment of paragraph 4 of Schedule 1 to Act 30 of 2000

75. (1) Paragraph 4 of Schedule 1 to the Taxation Laws Amendment Act, 2000, is 20
hereby amended by the substitution for item (iii) of subparagraph (b) of the following
item:

“(iii) ‘investment income’ means any [investment income as defined in section
9C of the Income Tax Act, 1962, and **includes**]—

(aa) dividends; [and] 25

(bb) [any] proceeds derived from investment or trading in financial instru-
ments (including futures, options and other derivatives), marketable
securities or immovable property:

(cc) annuity, other than—

(A) pensions in consideration of past employment; or 30

(B) payments made under the social security system of any other
country;

(old) interest, including—

(A) interest as contemplated in section 24J;

(B) any amount as contemplated in section 24K; or 35

(C) any other income which, in terms of the laws of the Republic
administered by the commissioner,

is subject to the same treatment as income from money lent:

(ee) rental income received by or accrued to any person as consideration for
the use of, or the right to use, any movable or immovable property; and 40

(ff) amount received by or accrued to any person as consideration for the use
of, or the right to use, any copyright of literary, artistic or scientific work
(including cinematography films and films, tapes or discs for radio or
television broadcasting), any patent, trade mark, design or model, plan,
secret formula or process, or any other property or right of a similar
nature, or for information concerning industrial, commercial or scientific
experience;”.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2000. 45

Short title and commencement

76. (1) This Act shall be called the Revenue Laws Amendment Act, 2000. 50

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected by this Act shall come into operation on 1 January 2001, and shall apply in respect of years of assessment commencing on or after that date.