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THE PRESIDENCY

No. 1333 12 December 2001

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

No. 60 of 2001: Second Revenue Laws Amendment Act, 2001



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

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 5 December 2001.)

ACT

To amend the Marketable Securities Tax Act, 1948, so as to provide for a further exemption; to effect changes to the Act to give effect to the restructuring of the South African Revenue Service; to provide for objection and appeal procedures where a person is aggrieved by a decision of the Commissioner; to amend the Transfer Duty Act, 1949, so as to effect changes to the Act to give effect to the restructuring of the South African Revenue Service; to provide for a further exemption; to further regulate the objection and appeal procedures where a person is aggrieved by a decision of the Commissioner; to amend the Estate Duty Act, 1955, so as to effect certain consequential amendments to the provisions relating to the determination of the value of property for purposes of the Act; to effect changes to the Act to give effect to the restructuring of the South African Revenue Service; to further regulate the objection and appeal procedures where a person is aggrieved by a decision of the Commissioner; to regulate refunds of amounts of duty not properly chargeable and to provide for the set-off of amounts refundable against any other amount due to the Commissioner; to amend the Income Tax Act, 1962, so as to insert a definition and to amend certain other definitions; to provide that the exercise of certain discretions of the Commissioner shall be subject to objection and appeal; to amend the secrecy provisions to enable the Commissioner to disclose certain information to the Director-General of the National Treasury, the National Commissioner of the South African Police Service and the National Director of Public Prosecutions in certain circumstances; to further regulate the provisions relating to foreign tax credits; to further regulate the provisions relating to the recoupsments of amounts which have been allowed as a deduction; to further regulate the provisions relating to controlled foreign entities; to further regulate the provisions relating to foreign dividends; to further regulate the provisions relating to income received by or accrued to residents from a source outside the Republic; to provide for the determination of taxable income in respect of foreign equity instruments; to further regulate the exemption provisions; to further regulate the provisions relating to the scrapping allowance; to further regulate the capital allowance in respect of pipelines, transmission lines and railway lines; to further regulate the additional strategic industrial investment allowance; to provide for a cut-off date for the provisions relating to schemes of arrangements involving trading stock; to further regulate the limitation of the allowances granted to lessors of certain assets; to provide that where for purposes of the Act regard must be had to the market value of an asset, the amount of input tax in the case of

a vendor must be excluded from that market value; to further regulate the limitation of certain deductions of expenditure where the benefit in respect of which the expenditure relates extends beyond the year of assessment during which the expenditure is incurred; to provide for a cut-off date for the provisions relating to transactions whereby fixed property or company shares are exchanged for shares; to further regulate the provisions relating to gains or losses on foreign exchange transactions; to further regulate the provisions relating to the determination of taxable income and losses in foreign currency; to repeal a provision relating to assessments on transfers of business undertakings by foreign companies to South African subsidiaries; to amend the provisions relating to long-term insurers to provide that the different funds of an insurer shall be deemed to be companies which are connected persons for purposes of certain provisions of the Act; to amend the provisions relating to allowances in respect of capital expenditure of mining assets and the recoupment thereof upon sale, transfer, cession or lease of mining property; to provide for certain consequential amendments; to provide for special rules relating to company formations, share-for-share transactions, intra-group transactions, unbundling transactions and liquidation transactions; to provide for a further exemption from donations tax; to effect changes to the Act to give effect to the restructuring of the South African Revenue Service; to further regulate the provisions relating to secondary tax on companies; to further regulate the requirements relating to returns of information by unit portfolios and in respect of financial instruments administered by portfolio administrators; to provide that where a person appointed as an agent of a taxpayer does not comply with certain provisions of the Act, it shall constitute an offence; to further regulate the objection and appeal procedures where a person is aggrieved by an assessment by the Commissioner and matters relating thereto; to provide that the Minister may promulgate rules prescribing the procedures to be observed in lodging an objection and noting appeal and the conduct and hearing of an appeal before a tax court; to provide that the Minister may by regulation prescribe the circumstances under which the Commissioner may waive a claim against a taxpayer for purposes of the settlement of a dispute and the reporting requirements where a claim is waived; to further regulate the provisions relating to the taxation of lump sum benefits paid by a pension fund where a portion of that benefit must in terms of a divorce order be paid to the former spouse of the member; to further regulate and refine the provisions relating to capital gains tax; to amend the Customs and Excise Act, 1964, so as to insert and amend certain definitions in section 1; to provide that decisions or determinations must be in writing; to further amend provisions relating to the disclosure of information; to make provision for prescribing by rule of wharfs and places where degrouping depots may be established for the handling of imported or exported goods and matters incidental thereto; to further regulate provisions relating to the reporting of cargo; to further provide for the landing of goods before due entry; to further regulate the removal of goods in bond and the export of goods from a customs and excise warehouse; to introduce principles and procedures governing the administration of industrial development zones and matters incidental thereto; to amend a prohibition and a definition relating to marked goods; to further regulate the time of entry for imported goods; to provide for goods imported by air for which immediate clearance is requested; to provide for the disposal of goods on failure to make due entry, goods imported in contravention of any other law and seized and abandoned goods and matters incidental thereto; to amend the provisions determining liability for duty in respect of imported goods and when liability ceases; to further specify principles relating to the interpretation of provisions in the Schedules, the powers of the Commissioner to determine tariff headings, subheadings and items, to make binding tariff determinations and matters incidental thereto; to further provide for the enacting into law of international

agreements under the provisions of the Act; to further provide for the Commissioner's powers to determine the value of imported goods and locally produced goods and matters incidental thereto; to further regulate rebates and refunds of duty and losses in respect of certain goods; to amend procedures relating to claims for goods seized and to prescribe when goods are condemned and forfeited; to further provide for the disposal of seized goods; to introduce new provisions in terms of which the Commissioner may settle or waive claims; to introduce internal administrative appeal procedures and matters incidental thereto; to further provide for procedures governing notice of actions and the period for bringing action; to amend requirements providing for the appointment of agents by a container operator, or a master, pilot or other carrier; to amend provisions relating to the liability of agents to include liability in respect of other carriers; to further regulate the powers of the Commissioner to destroy goods or delay the departure of a ship or vehicle; and to provide for a lien in respect of goods in a customs and excise warehouse; to amend the Stamp Duties Act, 1968, so as to effect changes to the Act to give effect to the restructuring of the South African Revenue Service; to provide for objection and appeal procedures where a person is aggrieved by a decision of the Commissioner; to further regulate the stamp duties on debit entries; to provide for a further exemption; to amend the Value-Added Tax Act, 1991, so as to redefine welfare organisations and further define certain other expressions, to revise the provisions relating to the supply of accommodation, to clarify the exemption in respect of a debt obligation, to provide for the disclosure of certain information to the National Police Commissioner or the National Director of Public Prosecutions, to amend a reference to the Postmaster General to the Managing Director of the South African Post Office Limited, to clarify the position regarding the liability for VAT in the case of the expropriation of property, to clarify the exemption in respect of the rental of dwellings, to amend the provisions relating to exemption in respect of educational services, to regulate the payment of tax on importation in cases where tax has not been paid to a Controller of Customs and Excise, to require that the legal or trading name of a vendor be supplied in a tax invoice for an input tax deduction to be claimable, to provide for a refund in lieu of a refund in respect of the use of diesel in the case of amounts paid to small scale farmers, to regulate the holding of debit or credit notes, tax invoices or statements in the case of agents, to require the issue of a tax invoice in the case of all supplies exceeding R10 000 and impose further requirements in respect of tax invoices, to provide that returns may be submitted electronically up to the last business day of a month, to amend certain provisions relating to objection and appeal, to require that particulars of the banking or similar account of a vendor be submitted, to amend the reference to Receivers of Revenue to SARS offices, to require that reasons be submitted as to why a person appointed as agent is not able to comply with the appointment, to provide that a rental pool scheme operated and managed for the benefit of the owners of sectional title interests or shareholders in a Shareblock Company is regarded as a separate enterprise, to make it an offence to issue a document that purports to be a tax invoice but does not meet certain requirements, to make it an offence to, without lawful cause, fail to comply with a notice of appointment as agent in terms of section 47, to prevent a vendor from stating or implying that any form of discount, including discount in the form of trade or cash discount or a refund is in lieu of VAT, to provide for the rounding off of VAT, to substitute Schedule 1 to the Act which makes provision for exemption on importation; to amend the Income Tax Act, 1993, so as to provide for a cut-off date

for the unbundling provisions in consequence of the introduction of the special rules relating to unbundling transactions in Part III of Chapter II of the Income Tax Act, 1962; to amend the Taxation Laws Amendment Act, 1994, so as to provide for an exemption from marketable securities tax and uncertificated securities tax in the case of rationalisation schemes and to provide for a cut-off date of the rationalisation provisions in consequence of the introduction of the special rules relating to intra-group transactions in Part III of Chapter II of the Income Tax Act, 1962; to amend the Uncertificated Securities Tax Act, 1998, so as to provide for a further exemption; to effect changes to the Act to give effect to the restructuring of the South African Revenue Service; to provide for objection and appeal procedures where a person is aggrieved by a decision of the Commissioner; to amend the Revenue Laws Amendment Act, 1999, so as to repeal an amendment introduced by that Act; to amend the Taxation Laws Amendment Act, 2001, so as to effect certain textual amendments; to amend the Revenue Laws Amendment Act, 2001, so as to effect certain textual amendments; and to provide for matter connected therewith.

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

Amendment of section 3 of Act 32 of 1948, as amended by section 12 of Act 64 of 1960, section 36 of Act 77 of 1968, section 2 of Act 88 of 1974, section 2 of Act 114 of 1977, section 1 of Act 95 of 1978, section 2 of Act 106 of 1980, section 1 of Act 87 of 1982, section 1 of Act 92 of 1983, section 1 of Act 118 of 1984, section 1 of Act 81 of 1985, section 1 of Act 87 of 1988, section 1 of Act 136 of 1992, section 1 of Act 97 of 1993, section 3 of Act 37 of 1996, section 2 of Act 27 of 1997, section 1 of Act 30 of 1998, section 1 of Act 32 of 1999, section 2 of Act 53 of 1999 and section 1 of Act 30 of 2000

1. (1) Section 3 of the Marketable Securities Tax Act, 1948, is hereby amended by the addition of the following paragraph:

“(f) in respect of the purchase of marketable securities by a company that are acquired—

- (i) in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);
- (ii) in terms of a share-for-share transaction contemplated in section 43 of that Act;
- (iii) in terms of an intra-group transaction contemplated in section 44 of that Act;
- (iv) in pursuance of a distribution *in specie* in the course of an unbundling transaction contemplated in section 45 of that Act; or
- (v) in terms of any liquidation distribution contemplated in section 46 of that Act.

where the public officer of that company has made a sworn affidavit or solemn declaration that such company formation transaction, share-for-share transaction, intra-group transaction, unbundling transaction or liquidation distribution complies with the provisions contained in section 42, 43, 44, 45 or 46, as the case may be, of that Act.”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001, and shall apply in respect of any acquisition of a marketable security in terms of a company formation transaction, an intra-group transaction, a share-for-share transaction or unbundling transaction which takes effect on or after that date or liquidation distribution made on or after that date.

Amendment of section 4 of Act 32 of 1948, as substituted by section 2 of Act 103 of 1969 and amended by section 3 of Act 114 of 1977 and substituted by section 4 of Act 37 of 1996

2. Section 4 of the Marketable Securities Tax Act, 1948, is hereby amended—

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

“(1) Every member shall, subject to the provisions of section 3, in respect of every month, and not later than 14 days after the last day of

that month or within such further period as the Commissioner, having regard to the circumstances of the case, may allow, pay to the **[receiver of revenue for the area in which such member carries on business]** Commissioner, the amount representing the tax payable on all marketable securities purchased through the agency of or from such member during that month.”; and 5

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

“(3) A member who has not during any particular month effected any transaction in respect of marketable securities, shall within 14 days after the last day of that month or within such further period as the Commissioner, having regard to the circumstances of the case, may allow, lodge a declaration to that effect with the **[receiver of revenue for the area in which such member carries on business]** Commissioner.”. 10

Amendment of section 9 of Act 32 of 1948, as substituted by section 2 of Act 46 of 1996 and amended by section 5 of Act 30 of 1998 15

3. Section 9 of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution in subsection (1) for the definition of “authorisation letter” of the following definition:

“ ‘authorisation letter’ means a written authorisation granted by the Commissioner, or by any **[chief director or chief revenue inspector under the control, direction or supervision of the Commissioner]** person designated by the Commissioner for this purpose, or by a person occupying a post designated by the Commissioner for this purpose, to an officer to inspect, audit, examine or obtain, as contemplated in section 9B, any information, documents or things.”. 20

Amendment of section 10 of Act 32 of 1948, as amended by section 7 of Act 37 of 1996, section 3 of Act 46 of 1997 and section 4 of Act 53 of 1999 25

4. Section 10 of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) refuses or neglects without just cause shown by him to render to the **[receiver of revenue concerned]** Commissioner, within the period specified, any declaration which he is in terms of section four required so to render, or who wilfully renders or causes or permits to be rendered any such declaration which is false or misleading in any respect; or” 30

Insertion of section 11A in Act 32 of 1948

5. (1) The following section is hereby inserted in the Marketable Securities Tax Act, 1948, after section 11: 35

“Objection and Appeal procedures

11A. (1) Any person aggrieved by a decision of the Commissioner in terms of this Act may object and appeal against that decision to the tax board or the tax court, as the case may be, established in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), in the manner and under the terms and within the period prescribed by that Act and the rules promulgated thereunder. 40

(2) The provisions of the Income Tax Act, 1962, relating to objections and appeals, as provided for in Part III of Chapter III and the rules promulgated thereunder, shall *mutatis mutandis* apply in respect of any objection lodged or appeal noted in terms of this Act. 45

(3) Any decision of the Commissioner, contemplated in subsection (1) shall be deemed to be an assessment for purposes of the application of the provisions of the Income Tax Act, 1962, as contemplated in subsection (2).” 50

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

Amendment of section 3 of Act 40 of 1949, as substituted by section 4 of Act 88 of 1974 and amended by section 1 of Act 99 of 1981 and substituted by section 4 of Act 97 of 1993 and section 10 of Act 37 of 1996

6. Section 3 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsections (2) and (3) of the following subsections: 5

“(2) Pending the completion of the declarations referred to in section fourteen, or the determination of the amount of duty payable under this Act, a deposit on account of the duty payable may be made to the [receiver of revenue] office of the South African Revenue Service to whom the duty is payable in terms of subsection (3). 10

(3) The duty and any penalty payable under section 4 and any transfer duty and interest payable under any law repealed by this Act shall be paid to [a receiver of revenue, on the establishment of the South African Revenue Service (hereafter in this subsection referred to as the departmental receiver of revenue)], the office of the South African Revenue Service where payments are accepted, for the area in which the property in question is [situate] situated or, if the property is [situate] situated in the area of more than one [departmental receiver of revenue] office of the South African Revenue Service where payments are accepted, to any one of those [departmental receivers of revenue] offices, or, in either case, to the [departmental receiver of revenue in whose] office of the South African Revenue Service or the area [is situate] where the deeds registry in which the property is registered is situated.”. 15 20

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

7. Section 4 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (3) of the following subsection: 25

“(3) Whenever [a receiver of revenue to whom duty is payable] the Commissioner is satisfied that the delay in the determination of the value on which the duty is payable cannot be ascribed to the person liable to pay the duty, he may allow a reasonable extension of time within which the duty may be paid without penalty if, within six months of the date of acquisition of the property— 30

(a) a deposit on account of the duty payable is made to the [said receiver] Commissioner of an amount equal to the duty calculated on the amount of the consideration paid or payable or on the declared value, as the case may be; and 35

(b) application is made in writing to the [said receiver] Commissioner for such extension of time.”. 40

Amendment of section 9 of Act 49 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000 and section 2 of Act 5 of 2001 45

8. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by addition to subsection (1) of the following paragraph:

“(1) any company in terms of any intra-group transaction contemplated in section 44 of the Income Tax Act, 1962 (Act No. 58 of 1962), or any liquidation distribution contemplated in section 46 of that Act, where the public officer of that company has made a sworn affidavit or solemn declaration that such 50

intra-group transaction or liquidation distribution complies with the relevant provisions contained in section 44 or 46, as the case may be, of that Act.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001, and shall apply in respect of any property acquired in terms of an intra-group transaction or liquidation distribution which takes effect on or after that date.

Amendment of section 11A of Act 40 of 1949, as inserted by section 5 of Act 46 of 1996 and amended by section 9 of Act 30 of 1998

9. Section 11A of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for the definition of “authorisation letter” of the following definition:

“ ‘authorisation letter’ means a written authorisation granted by the Commissioner, or by any [**chief director or chief revenue inspector under the control, direction or supervision of the Commissioner**] person designated by the Commissioner for this purpose, or by a person occupying a post designated by the Commissioner for this purpose, to an officer to inspect, audit, examine or obtain, as contemplated in section 11C, any information, documents or things:”.

Substitution of section 18 of Act 40 of 1949, as amended by section 3 of Act 27 of 1997

10. (1) Section 18 of the Transfer Duty Act, 1949, is hereby substituted by the following section:

“Objection and Appeal procedures

18. (1) Any person aggrieved by a decision of the Commissioner in terms of this Act may object and appeal against that decision to the tax board or the tax court, as the case may be, established in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), in the manner and under the terms and within the period prescribed by that Act and the rules promulgated thereunder.

(2) The provisions of the Income Tax Act, 1962, relating to objections and appeals, as provided for in Part III of Chapter III and the rules promulgated thereunder, shall *mutatis mutandis* apply in respect of any objection noted or appeal lodged in terms of this Act.

(3) A decision of the Commissioner contemplated in subsection (1) shall be deemed to be an assessment for the purposes of the application of the provisions of the Income Tax Act, 1962, as contemplated in subsection (2).”.

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

Repeal of section 19 of Act 40 of 1949, as amended by section 4 of Act 27 of 1997

11. (1) Section 19 of the Transfer Duty Act, 1949, is hereby repealed.

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

Amendment of section 5 of Act 45 of 1955, as amended by section 3 of Act 59 of 1957, section 4 of Act 65 of 1960, section 10 of Act 71 of 1961, section 10 of Act 77 of 1964, section 4 of Act 81 of 1965, section 2 of Act 56 of 1966, section 7 of Act 114 of 1977, section 7 of Act 81 of 1985, section 12 of Act 87 of 1988, section 2 of Act 136 of 1991, section 9 of Act 97 of 1993, section 8 of Act 53 of 1999 and section 1 of Act 19 of 2001

12. (1) Section 5 of the Estate Duty Act, 1955, is hereby amended—

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

“Determination of value of property [in Estate]”; and

(b) by the substitution for the first proviso to subsection (2) of the following proviso:
 "Provided that where the Commissioner is satisfied that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to 12 per cent on such value of the property, the Commissioner may fix such sum as representing the annual yield as may be reasonable, and the sum so fixed shall [for the purposes of paragraphs (b) and (f) of subsection (1)] be deemed to be the annual value of the right of enjoyment of such property:".

(2) Subsection (1) shall be deemed to have come into operation on 27 July 2001.

Amendment of section 8A of Act 45 of 1955, as substituted by section 7 of Act 46 of 1996 and amended by section 15 of Act 30 of 1998

13. Section 8A of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (1) for the definition of "authorisation letter" of the following definition:

"authorisation letter" means a written authorisation granted by the Commissioner, or by any [chief director or chief revenue inspector under the control, direction or supervision of the Commissioner] person designated by the Commissioner for this purpose, or by a person occupying a post designated by the Commissioner for this purpose, to an officer to inspect, audit, examine or obtain, as contemplated in section 8C, any information, documents or things:".

Amendment of section 9A of Act 45 of 1955, as inserted by section 7 of Act 86 of 1987

14. (1) Section 9A of the Estate Duty Act, 1955, is hereby amended by the substitution for the words following paragraph (b) but preceding the proviso by the following words:

"he shall raise an assessment or assessments in respect of the said value or amount, notwithstanding that an assessment or assessments in respect of the value or amount in question may have been made upon the executor or person liable for the duty, and notwithstanding the provisions of section 24[(9)](3):".

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

Substitution of section 24 of Act 45 of 1955, as substituted by section 15 of Act 77 of 1962 and amended by section 12 of Act 77 of 1964, section 2 of Act 104 of 1976, section 8 of Act 86 of 1987, section 10 of Act 97 of 1993, section 8 of Act 27 of 1997 and section 9 of Act 53 of 1999

15. (1) Section 24 of the Estate Duty Act, 1955, is hereby substituted by the following section:

"Objection and Appeal procedures

24. (1) Every executor or other person liable for duty under this Act who is aggrieved by any assessment of such duty in terms of sections 9 and 9A of this Act, may object and appeal against that assessment to the tax board or the tax court, as the case may be, established in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), in the manner and under the terms and within the period prescribed by that Act and the rules promulgated thereunder.

(2) The provisions of the Income Tax Act, 1962, relating to objections and appeals, as provided for in Part III of Chapter III and the rules promulgated thereunder, shall *mutatis mutandis* apply in respect of any objection lodged or appeal noted in terms of this Act.

(3) Where no objection is made to any assessment or where an objection has been allowed in full or withdrawn, such assessment or altered assessment, as the case may be, shall be final and conclusive."

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

Insertion of section 25A in Act 45 of 1955

16. (1) The following section is hereby inserted in the Estate Duty Act, 1955, after section 25:

“Refunds and set off

25A. (1) If it is proved to the satisfaction of the Commissioner that any amount of duty paid by an executor in respect of an estate was in excess of the amount properly chargeable under this Act, the Commissioner may, subject to the provisions of subsection (3), authorise a refund to such executor of any duty overpaid: Provided that an amount paid in respect of an assessment accepted by the executor and which was made in accordance with any practice generally prevailing at the date of that assessment, shall be deemed to have been properly chargeable.

(2) The Commissioner shall not authorise any refund under this section unless the claim therefor is made within three years after the date of the assessment under which such duty was payable.

(3) Where any refund contemplated in subsection (1) is due to any executor in respect of any estate of a person and such person has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under any other law administered by the Commissioner, within the period prescribed for payment of that amount, the Commissioner may set off against the amount which that person has failed to pay, any amount which has become refundable to the executor of his or her estate under this section.”

(2) Subsection (1) shall come into operation on 7 November 2001 and shall apply in respect of any claim for a refund received by the Commissioner on or after that date.

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, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001 and section 3 of Act 19 of 2001

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

(a) by the insertion after the definition of “financial year” of the following definitions:

“‘foreign equity instrument’ means—

- (a) a share listed on any recognised exchange outside the Republic;
 - (b) a unit in an arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’ in section 1;
 - (c) any other contractual right or obligation which derives its value from any specified index outside the Republic; or
 - (d) any coin made mainly from gold or platinum.
- and any option, future or contract relating to such share, unit, interest, investment or contractual right or obligation or coin;”;

- (b) by the substitution for the proviso to subparagraph (bb) of paragraph (eA) of the definition of "gross income" of the following proviso:

"Provided that where **[any endorsement has been made in the records of the fund which provides]** a court granting a decree of divorce in respect of such member has made an order that any part of such amount shall be paid to the former spouse of such member, as provided for in section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), such part shall for the purposes of this paragraph be deemed to be an amount converted for the benefit or ultimate benefit of such member: or":

- (c) by the insertion in the definition of "gross income" after paragraph (j) of the following paragraph:

"(jA) any amount received by or accrued to any person during the year of assessment from the disposal of any asset manufactured, produced, constructed or assembled by that person, which is similar to any other asset manufactured, produced, constructed or assembled by that person for purposes of manufacture, sale or exchange by that person or on that person's behalf:"

- (d) by the substitution for paragraph (k) of the definition of "gross income" of 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]** which is deemed to be a dividend declared as contemplated in the definition of 'foreign dividend' in section 9E:" and

- (e) by the substitution for subparagraph (i) of paragraph (a) of the definition of "trading stock" of the following subparagraph:

"(i) produced, manufactured, constructed, assembled, purchased or in any other manner acquired by a taxpayer for the purposes of manufacture, sale or exchange by him or on his behalf; or":

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 October 2001.

(b) Subsection (1)(b) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount converted on or after that date.

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

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

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, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001 and section 4 of Act 19 of 2001

18. 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', 'retirement annuity fund' and 'spouse' in section 1, section 6, section 8(4)(b), (c), (d) and (e), section 9D, section 9F, section 10(1)(cH), (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 12E, section 12G, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, 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 and paragraphs 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(c) of the Eighth Schedule, shall be subject to objection and appeal."

Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 32 of Act 104 of 1980, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996, section 34 of Act 34 of 1997, section 21 of Act 30 of 1998, section 11 of Act 53 of 1999 and section 14 of Act 30 of 2000

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19. Section 4 of the Income Tax Act, 1962, is hereby amended—

(a) by the addition to subsection (1) of the following paragraph:

“(e) the Commissioner shall disclose information in respect of any class of taxpayers to the Director-General of the National Treasury, to the extent necessary for the purposes of tax policy design or revenue estimation.”

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(b) by the insertion after subsection (1A) of the following subsections:

“(1B) The Commissioner may apply *ex parte* to a judge in chambers for an order allowing him or her to disclose to the National Commissioner of the South African Police Service, contemplated in section 6(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995), or the National Director of Public Prosecutions, contemplated in section 5(2)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), such information, which may reveal evidence—

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(a) that an offence, other than an offence in terms of this Act or any other Act administered by the Commissioner or any other offence in respect of which the Commissioner is a complainant, has been or may be committed, or where such information may be relevant to the investigation or prosecution of such an offence, and such offence is a serious offence in respect of which a court may impose a sentence of imprisonment exceeding five years; or

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(b) of an imminent and serious public safety or environmental risk, and where the public interest in the disclosure of the information outweighs any potential harm to the taxpayer concerned should such information be disclosed: Provided that any information, document or thing provided by a taxpayer in any return or document, or obtained from a taxpayer in terms of section 74A, 74B or 74C, which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such taxpayer, to the extent that such information, document or thing constitutes an admission by such taxpayer of the commission of an offence contemplated in paragraph (a).

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(1C) For the purposes of subsection (1B), the Commissioner may delegate the powers vested in him or her by that subsection, to any other officer.

(1D) The Director-General or any person acting under the direction and control of such Director-General shall not disclose any information supplied under subsection (1)(e) to any other person or permit any other person to have access thereto, except in the performance of any function contemplated in subsection (1)(e).

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(1E) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (1B) to any other person or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties for purposes of any investigation of, or prosecution for, an offence contemplated in subsection (1B).”

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

“(c) The Director-General of the National Treasury, and any person acting under the direction and control of that Director-General, who performs any function as contemplated in subsection (1)(e), shall take and subscribe before a magistrate or justice of the peace or a commissioner of

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oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed.”; and

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

(2B) The provisions of this section shall not apply in respect of any information relating to any person, where that person has consented that such information may be published or made known to any other person.”.

Amendment 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, section 16 of Act 30 of 2000 and substituted by section 4 of Act 59 of 2000 and amended by section 8 of Act 5 of 2001

20. (1) Section 6quat of the Income Tax Act, 1962, is hereby amended—

(a) by the addition of the word “or” at the end of paragraph (e) of subsection (1);

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

“(f) any amount—

(i) received by or accrued to any other person which is deemed to have been received by or accrued to such resident in terms of section 7;

(ii) of capital gain of any other person which is attributed to that resident in terms of paragraph 68, 69, 70, 71, 72 or 80 of the Eighth Schedule; or

(iii) which represents capital of a trust, as contemplated in section 25B(2A) or paragraph 80(3) of the Eighth Schedule, in respect of which that resident acquires a vested right.”;

(c) by the addition of the word “or” at the end of paragraph (d) of subsection (1A); and

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

“(e) any unit portfolio in respect of the amount of any foreign dividend which is deemed to have been declared to such resident in terms of section 9E(5) and included in the taxable income of that resident; or

(f) any other person contemplated in subsection (1)(f)(i) or (ii) or any trust contemplated in subsection (1)(f)(iii), in respect of the amount included in the taxable income of that resident as contemplated in subsection (1)(f).”;

(2)(a) Subsection (1)(a) shall be deemed to have come into operation on 1 January 2001.

(b) Subsection (1)(b) shall, to the extent that it inserts—

(i) paragraph (f)(i) in subsection (1) of section 6quat, be deemed to have come into operation on 1 January 2001;

(ii) paragraph (f)(ii) in subsection (1) of section 6quat, be deemed to have come into operation on 1 October 2001; and

(iii) paragraph (f)(iii) in subsection (1) of section 6quat, be deemed to have come into operation on 1 January 2001, and to the extent that it adds a reference to paragraph 80(3) of the Eighth Schedule, shall be deemed to have come into operation on 1 October 2001.

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

(d) Subsection (1)(d) shall, to the extent that it inserts—

(i) paragraph (e) in subsection (1A), be deemed to have come into operation on 23 February 2000;

(ii) paragraph (f) shall be deemed to have come into operation on the date that paragraph (f)(i), (ii) and (iii) of subsection (1) of section 6quat, respectively, come into operation.

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36

of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000 and section 7 of Act 19 of 2001

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

(a) by the substitution for the proviso to paragraph (a) of subsection (4) of the following proviso: 5

“Provided that the provisions of this paragraph shall not apply in respect of any such amount so recovered or recouped which has been included in the gross income of such taxpayer in terms of paragraph (eB) or (jA) of the definition of ‘gross income’;” and 10

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

“(k) For the purposes of paragraph (a), where during any year of assessment any person has—

(i) donated any asset; 15

(ii) distributed any asset by way of a dividend; or

(iii) disposed of any asset to a person who is a connected person in relation to that person,

in respect of which a deduction or an allowance has been granted to such person in terms of any of the provisions referred to in that paragraph. 20

such person shall be deemed to have recovered or recouped an amount equal to the market value of such asset as at the date of such donation, distribution or disposal.”

(2)(a) Subsection (1)(a) shall come into operation on the date of promulgation.

(b) Subsection (1)(b) shall come into operation on the date of promulgation and shall apply in respect of any asset disposed of on or after that date. 25

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000 and section 9 of Act 5 of 2001 30

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

(a) by the addition to the definition of “controlled foreign entity” of the following proviso:

“Provided that in determining whether residents jointly hold more than 50 per cent of the participation rights of any foreign entity which is listed on a recognised exchange or which is a scheme or arrangement contemplated in paragraph (e)(ii) of the definition of ‘company’ in section 1, except where connected persons hold more than 50 per cent of the participation rights of that foreign entity, scheme or arrangement, any person who holds less than five per cent of the participation rights of that foreign entity shall be deemed not to be a resident.” 35 40

(b) by the substitution for paragraph (d) of the proviso to subsection (2A) of the following paragraph:

“(d) any capital gain or capital loss of such entity shall, when applying paragraph 43(4) of the Eighth Schedule, be determined [**with reference to and**] in the currency [**in which it conducts the majority of its transactions**] of the Republic and such capital gain or capital loss shall be translated on the last day of the foreign tax year of the controlled foreign entity to the local currency, as defined in section 241, of that controlled foreign entity; and” 45 50

(c) by the addition to the proviso to subsection (2A) of the following paragraphs:

- “(f) where the resident contemplated in subsection (2) is a natural person, special trust or an insurer in respect of its individual policyholder fund, the taxable capital gain of the controlled foreign entity shall, for the purposes of paragraph 10 of the Eighth Schedule, be 25 per cent of that entity’s net capital gain for the relevant year of assessment; and 5
- (g) any amount to be taken into account in the determination of such net income of that entity in respect of the disposal of any foreign equity instrument, shall be determined in the currency of the Republic and such amount shall then be translated on the last day of the foreign tax year of the controlled foreign entity to the local currency, as defined in section 24L, of that controlled foreign entity.”; 10
- (d) by the substitution in paragraph (a) of subsection (9) for the words preceding the proviso of the following words:
- “(a) in respect of receipts and accruals (other than receipts and accruals of a capital nature) or capital gains of any controlled foreign entity which is a company, where— 15
- (i) 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; or
- (ii) those capital gains of that company have been or will be subject to tax in a designated country at a statutory rate of at least 13.5 per cent. 20
- (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.”; 25 30
- (e) by the substitution in the proviso to paragraph (b) of subsection (9) for the words in paragraph (iii) preceding subparagraph (aa) of the following words:
- “(iii) in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, or any **[proceeds derived from] capital gain determined in respect of the disposal of any asset [as determined in accordance with the Eighth Schedule]** from which any such income is earned, or any foreign currency gain determined in respect of any foreign equity instrument or any foreign currency gain determined in terms of section 24L, except where such receipts and accruals, capital gains and foreign currency gains—” 35 40
- (f) by the substitution for item (aa) of subparagraph (iii) of paragraph (b) of subsection (9) of the following item:
- “(aa) do not in total exceed five per cent of the sum of the **[total]** receipts and accruals (other than receipts and accruals of a capital nature) and the amount of all capital gains and foreign currency gains of such controlled foreign entity; or” 45
- (g) by the substitution for subitem (A) of item (bb) of subparagraph (iii) of paragraph (b) of subsection (9) of the following subitem:
- “(A) connected person (in relation to such controlled foreign entity) who is a resident or any resident who holds at least five per cent of the participation rights in that controlled foreign entity; or” 50
- (h) by the addition to item (bb) of subparagraph (iii) of paragraph (b) of subsection (9) of the following proviso:
- “Provided that the receipts and accruals of such banking or financial services, insurance or rental business are derived mainly from persons who are not connected persons in relation to that controlled foreign entity.”; 55

- (i) by the substitution for paragraph (fA) 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 or income of a similar nature, which is **[paid]** payable to such entity by any other **[controlled]** foreign entity **[in relation to such resident]**, or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign entity and that other foreign entity are parties, where that controlled foreign entity and that other foreign entity form part of the same group of companies, as defined in section 41:”;
- (j) by the insertion in subsection (9) of the following paragraph after paragraph (fA):
 (fB) in relation to the net income of a controlled foreign entity to the extent that it relates to any capital gain of such entity, which is determined in respect of the disposal of any asset, as defined in the Eighth Schedule, (excluding any financial instrument or intangible asset), where that asset was attributable to any business establishment of that controlled foreign entity or any other foreign entity which forms part of the same group of companies, as defined in section 41, as that controlled foreign entity:”;
- (k) by the addition to subsection (9) of the following paragraph:
 “(h) in respect of any amount received by or accrued to such controlled foreign entity—
 (i) from the disposal of any interest in the equity share capital of any other foreign entity which is a company; or
 (ii) by way of a dividend declared to that controlled foreign entity by any other foreign entity which is a company,
 if that controlled foreign entity on the date of that disposal or declaration of dividend—
 (aa) holds more than 25 per cent of the equity share capital in that other foreign entity; and
 (bb) in the case of any disposal contemplated in subparagraph (i), held such interest contemplated in item (aa) for a period of at least 18 months prior to that disposal, unless that interest was acquired by the controlled foreign entity from any other foreign entity, where that controlled foreign entity and that other foreign entity form part of the same group of companies, as defined in section 41 and that controlled foreign entity and that other foreign entity in aggregate held that interest for more than 18 months:
 Provided that the provisions of this paragraph shall not apply where more than 50 per cent of either the market value or the actual costs of all the assets of that other foreign entity and any foreign entity, which is a controlled company, as defined in section 41, in relation to that other foreign entity on the date of that disposal or distribution, consists of financial instruments, as defined in paragraph 1 of the Eighth Schedule, other than any shares held in any foreign entity which is a controlled company in relation to that other foreign entity.”;
- (2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 January 2001 and shall apply in respect of any financial year of a controlled foreign entity which ends during any year of assessment of a resident which commences on or after that date.
 (b) Subsections (1)(b), (c), (d), (e) and (f) shall be deemed to have come into operation on 1 October 2001.
 (c) Subsections (1)(g), (h) and (j) shall be deemed to have come into operation on 1 October 2001 and shall apply in respect of any financial year of a controlled foreign entity which ends during any year of assessment of a resident commencing on or after that date.

(d) Subsection (1)(i) shall—

- (i) in so far as it inserts the reference to exchange item contemplated in section 241 or amounts of a similar nature, been deemed to have come into operation on 1 January 2001; and
- (ii) in so far as it amends the rest of paragraph (fA) of subsection (9), been deemed to have come into operation on 1 October 2001.

and shall apply in respect of any financial year of a controlled foreign entity which ends during any year of assessment of a resident commencing on or after that date.

(e) Subsection (1)(k) shall be deemed to have come into operation on 1 October 2001 and shall apply in respect of any disposal of any interest or dividend received or accrued on or after that date.

Amendment of section 9E of Act 58 of 1962, as inserted by section 20 of Act 30 of 2000 and amended by section 11 of Act 59 of 2000, section 10 of Act 5 of 2001 and section 8 of Act 19 of 2001

23. (1) Section 9E of the Income Tax Act, 1962, is hereby amended— 15

- (a) by the deletion of paragraph (b) of the definition of "foreign dividend";
- (b) by the substitution in subsection (5) for the words following paragraph (b) of the following words:
 "such dividend contemplated in paragraph (a) shall, to the extent that such dividend is declared to such holders of units as contemplated in paragraph (b), be deemed to have been declared by such company directly to such holders of units";
- (c) by the substitution for the proviso to paragraph (a) of subsection (5A) of the following proviso:
 "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"; and
- (d) by the substitution for paragraph (d) of subsection (7) of the following paragraph:
 "(d) any company, which is distributed directly or indirectly to a resident who holds a qualifying interest in such company, to the extent that the profits from which the dividend is declared[—
 (i) **were generated in a designated country; and**
 (ii)] are or will be subject to tax in a designated country at a statutory rate of at least 27 per cent or, in the case of any capital gains of that company, at a statutory rate of at least 13,5 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 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;"; and
- (e) by the substitution for paragraph (f) of subsection (7) of the following paragraph:
 "(f) any company out of profits derived by such company by way of—
 (i) any foreign dividend which is exempt from tax in terms of the provisions of this subsection; or
 (ii) any dividend which would have constituted a foreign dividend which is exempt from tax, had such dividend been declared on or after 23 February 2000.".

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 October 2001. 55

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

(c) Subsection (1)(d) shall, in so far as it—

- (i) inserts the reference to capital gains, be deemed to have come into operation on 1 October 2001; and
- (ii) amends the rest of paragraph (d) of subsection (7), be deemed to have come into operation on 23 February 2000. 60

Amendment of section 9F of Act 58 of 1962, as inserted by section 12 of Act 59 of 2000

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

“(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 or, in the case of any capital gains of that company, at a statutory rate of at least 13.5 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):”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Insertion of section 9G in Act 58 of 1962

25. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 9F:

“Taxable income in respect of foreign equity instruments”

9G. (1) For the purposes of this section ‘foreign currency’ means any currency which is not legal tender in the Republic.

(2) Notwithstanding the provisions of section 25D, the amount to be included in the gross income of a person in respect of the disposal by that person of any foreign equity instrument which constitutes trading stock, shall be determined by translating the amount received or accrued in any foreign currency in respect of that disposal into the currency of the Republic at the ruling exchange rate on the date of that disposal.

(3) Any—

(a) expenditure incurred by a person in any foreign currency in respect of any foreign equity instrument which is allowable as a deduction in terms of the provisions of this Act; or

(b) amount in any foreign currency which is taken into account in the determination of the taxable income of any person in respect of any foreign equity instrument,

shall, for purposes of determining the taxable income of that person for the year in which that foreign equity instrument is disposed of, be translated into the currency of the Republic at the ruling exchange rate on the later of the date of incurral of that expenditure or 1 October 2001.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001, and shall apply in respect of any foreign equity instrument disposed of on or after that date.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94

of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000 and section 9 of Act 19 of 2001

26. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for item (aa) of subparagraph (iii) of paragraph (e) of subsection (1) of the following item:
- “(aa) has been formed solely for the purposes of managing the collective interests common to all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable; and”;
- (b) by the substitution for paragraph (dd) of the proviso to subparagraph (i) of paragraph (k) of subsection (1) of the following paragraph:
- “(dd) to the amount of any foreign dividend contemplated in section 9E received by or accrued to any resident, which is not exempt from tax under section 9E(7);”.
- (2) (a) Subsection (1)(a) shall be deemed to have come into operation on 24 November 1999.
- (b) Subsection (1)(b) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000 and section 10 of Act 19 of 2001

27. (1) Section 11 of the Income Tax Act, 1962, is hereby amended by the addition in paragraph (o) to the proviso of the following subparagraph:
- “(vii) no allowance shall be made under this paragraph in respect of any building, improvements 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 is disposed of by that person to any other person who is a connected person in relation to that person: Provided that any amount which is disallowed as a deduction under this subparagraph may be deducted by that person from any amount received by or accrued to that person from that other person, which must be included in the gross income of that person, in that year of assessment or any subsequent year of assessment, if that other person is still a connected person in relation to that person;”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of section 12D of Act 58 of 1962, as inserted by section 23 of Act 30 of 2000 and amended by section 19 of Act 59 of 2000

28. (1) Section 12D of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) 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 any new and unused affected asset which— 5

(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 **[in carrying on his sole business of] for—** 10

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

(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: Provided that such transportation or transmission must constitute the sole or principal business of that taxpayer or is a main or necessary activity in the conduct of the sole or principal business of that taxpayer.” 15

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

Amendment of section 12G of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 20

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

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

“(b) the industrial project will increase production of, and employment in, the relevant industrial sector within the Republic, after taking into account the displacement **[of any other activities]** within that sector;” 25

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

“(b) prescribing the criteria for determining the extent of the increase of production of, and employment in, an industrial sector required and the extent of the displacement **[of other activities]** to be taken into account for purposes of subsection (4)(b);” 30

(c) by the substitution for paragraph (e) of subsection (7) of the following paragraph: 35

“(e) prescribing what constitutes an industrial participation project and a concurrent investment incentive for the purposes of subsection (4)(e);”.

(2) Subsection (1) shall be deemed to have come into operation on 27 July 2001.

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

30. Section 13 of the Income Tax Act, 1962, is hereby amended by the substitution for the heading of the following heading:

“**Deductions in respect of buildings used in a process of manufacture [or by hotelkeepers]**” 50

Amendment of section 22A of Act 58 of 1962, as inserted by section 19 of Act 88 of 1971

31. Section 22A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“If, under any scheme of arrangement or reconstruction of any company or its affairs (including any scheme for the amalgamation of two or more companies and any other scheme) which is sanctioned by any order of court on or after the first day of April, 1971, any company (hereinafter referred to as the transferee company) has before 1 October 2001, acquired from any other company (hereinafter referred to as the transferor company) any asset which was trading stock of the transferor company, and in respect of such acquisition—”

Amendment of section 23A of Act 58 of 1962, as inserted by section 21 of Act 121 of 1984 and substituted by section 12 of Act 70 of 1989 and amended by section 22 of Act 101 of 1990, section 24 of Act 129 of 1991 and section 34 of Act 30 of 1998

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

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

“(b) any machinery, plant, implement, utensil, article, aircraft or ship which has been let and in respect of which the lessor is or was entitled to an allowance under section 11(e), 12B or 12C, whether in the current or a previous year of assessment, other than any such machinery, plant, implement, utensil, article, aircraft or ship let by him under an agreement of lease formally and finally signed by every party to the agreement before 19 November 1988.”;

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

“(a) such property may be hired by members of the general public directly from that lessor in terms of such a lease, for a period of less than one month.”; and

(c) by the substitution for the definition of “rental income” of the following definition:

“‘rental income’ means income derived by way of rent from the letting of movable property or any machinery or plant in respect of which an allowance has been granted to the lessor under section 11(e), 12, 12B or 12C, whether in the current or any previous year of assessment.”

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any agreement of lease formally and finally signed by all parties on or after that date.

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

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

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

“**Reduction of cost or market value of certain assets**”;

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

“(1) Where for the purposes of applying any provision of this Act regard is to be had to the cost to the taxpayer or the market value of any asset acquired by him or to the amount of any expenditure incurred by him, and—”;

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

“the amount of such input tax shall be excluded from the cost or the market value of such asset or the amount of such expenditure.”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of section 23H of Act 58 of 1962, as inserted by section 31 of Act 30 of 2000 and amended by section 29 of Act 59 of 2000

34. (1) Section 23H of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph: 5
- “(b) in respect of—
- (i) goods or services [or any other benefit], all of which will not be supplied or rendered to such person, [or the full benefit of which such person will not become entitled to] during such year of assessment; or, 10
- (ii) any other benefit, the period to which the expenditure relates extends beyond such year of assessment.”;
- (b) by the substitution for subparagraph (iii) of subsection (1) of the following subparagraph: 15
- “(iii) any other benefit to which such [person will become entitled] expenditure relates, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such person will [be entitled to] enjoy such benefit bears to the total number of months during which such person will [be entitled to] enjoy such benefit or where the period of such benefit is not determinable, such period over which the benefit is likely to be enjoyed.”; 20
- (c) by the substitution for paragraph (aa) of the proviso to subsection (1) of the following paragraph: 25
- “(aa) where all the goods or services are to be supplied or rendered within six months after the end of the year of assessment during which the expenditure was incurred, or such person [becomes entitled to] will have the full enjoyment of such benefit in respect of which the expenditure was incurred within such period; or”;
- (d) by the substitution for paragraph (b) of subsection (3) of the following paragraph: 30
- “(b) such person will never [become entitled to] enjoy such other benefit in respect of which any expenditure is incurred.”;
- (2) Subsection (1) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 24A of Act 58 of 1962, as amended by section 23 of Act 89 of 1969, section 20 of Act 88 of 1971, section 24 of Act 85 of 1974 and section 15 of Act 85 of 1987 35

35. Section 24A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40
- “(1) If, under any transaction entered into before 1 October 2001 for the disposal by any person (hereinafter referred to as the trader) of any trading stock consisting of fixed property or any shares in any company, the consideration received by or accrued to the trader for such trading stock in effect consists of or includes—”.

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993 and amended by section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998, section 26 of Act 53 of 1999 and section 31 of Act 59 of 2000 45

36. (1) Section 24I of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the definition of “exchange item” of the following definition: 50
- “‘exchange item’ of or in relation to a person means an amount in a foreign currency—
- (a) which constitutes any unit of currency acquired and not disposed of by that person;

- (b) owing by or to that person in respect of a loan or advance or a debt incurred by or payable to such person;
- (c) owed by or to that person in respect of a forward exchange contract; or
- (d) where that person has the right or contingent obligation to buy or sell that amount in terms of a foreign currency option contract.”; 5
- (b) by the substitution in subsection (1) for the definition of “foreign currency” of the following definition:
- “ ‘foreign currency’ means in relation to—
- (a) any permanent establishment of a person, any currency which is not legal tender in the country in which that permanent establishment is situated; 10
- (b) any resident in respect of any exchange item which is not attributable to a permanent establishment outside the Republic, any currency which is not legal tender in the Republic;
- (c) any company or trust which is not a resident in respect of any exchange item which is not attributable to a permanent establishment of that company or trust, any currency which is not legal tender in the country in which that company is incorporated or trust is formed;” 15
- (c) by the insertion in subsection (1) after the definition of “intrinsic value” of the following definition:
- “ ‘local currency’ means in relation to— 20
- (a) any permanent establishment of a person, any currency which is legal tender in the country in which that permanent establishment is situated;
- (b) any resident in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, any currency which is legal tender in the Republic; 25
- (c) any company or trust which is not a resident in respect of any exchange item which is not attributable to a permanent establishment, any currency which is legal tender in the country in which that company is incorporated or trust is formed;”;
- (d) by the substitution for the definition of “spot rate” in subsection (1) of the following definition: 30
- “ ‘spot rate’ means the appropriate quoted exchange rate at a specific time for the delivery of currency [**within a period of two business days**];”;
- (e) by the deletion of the definition of “transitional exchange difference” in subsection (1); 35
- (f) by the substitution for the definition of “translate” in subsection (1) of the following definition:
- “ ‘translate’ means the restatement of an exchange item in the local currency [of the Republic] at the end of any year of assessment, by applying the ruling exchange rate to such exchange item.”; 40
- (g) by the substitution for subsection (2) of the following subsection:
- “(2) The provisions of this section shall apply in respect of any—
- (a) company;
- (b) trust carrying on any trade; and
- (c) natural person who holds any exchange item for purposes of trade.”; 45
- (h) by the substitution for subsection (3) of the following subsection:
- “(3) In determining the taxable income of any person contemplated in subsection (2), there shall be included in or deducted from the income, as the case may be, of that person—
- (a) any exchange difference in respect of an exchange item of or in relation to that person, subject to subsection (10); 50
- (b) (i) any premium or like consideration received by, or paid by, such person in terms of a foreign currency option contract entered into by such person; or
- (ii) any consideration paid by such person in respect of a foreign 55
- currency option contract acquired by such person; and

- (c) any discount which accrued to such person or any premium incurred by him in respect of any forward exchange contract, where—
- (i) such forward exchange contract was entered into by such person as a related or matching forward exchange contract to serve as a hedge in respect of any loan, advance or debt utilized or to be utilized by such person to acquire any asset or to finance any expense, or to serve as a hedge in respect of any loan, advance or debt arising from the sale of any asset or the supply of any services; and
- (ii) such loan, advance or debt was recorded on transaction date at the forward rate in terms of such forward exchange contract, but such asset so acquired or such expense so financed, or such asset so sold or services so supplied, was recorded at the spot rate or an alternative rate as the Commissioner may have prescribed in terms of the definition of 'ruling exchange rate':
- Provided that such discount or premium shall be deemed to have accrued or been incurred, as the case may be, on a day to day basis during the period of such forward exchange contract for the purposes of this paragraph.
- (i) by the substitution for subsection (6) of the following subsection:
- “(6) Any inclusion in or deduction from income in terms of this section **[in respect of an exchange difference, transitional exchange difference or a premium or discount in respect of a forward exchange contract or a premium or other consideration in respect of or in terms of a foreign currency option contract,]** shall be in lieu of any deduction or inclusion which may otherwise be allowed or included under any other provision of this Act.”;
- (j) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:
- “(7) Notwithstanding the provisions of **[subsections (2) and (4)]** subsection (3), but subject to the provisions of sections 36 and 37E—”;
- (k) by the substitution in subsection (7A) for the words preceding subparagraph (i) of paragraph (a) of the following words:
- “**Subject to subsection (10),** where any exchange difference is to be included in or deducted from the income of any company in terms of subsection **[(2) (3)]**, there shall, in lieu of such deduction or inclusion, be included in or deducted, as the case may be, from the income of such company during any year of assessment an amount equal to 10 per cent of the deferred amount of such exchange difference arising from a loan or advance owing by such company to any other company or a loan or advance owing by any other company to such company (such a loan or advance referred to as a qualifying exchange item for the purposes of this subsection), if—”;
- (l) by the substitution for subsection (8) of the following subsection:
- “(8) Any foreign exchange loss sustained in respect of a transaction entered into by a person, or any premium or other consideration paid in respect of or in terms of a foreign currency option contract entered into or acquired by a person, shall not be allowed as a deduction from such person's income under subsection **[(2) or (4)]** (3), **[as the case may be]** if such transaction was entered into or such foreign currency option contract was entered into or acquired solely or mainly to enjoy a reduction in tax by way of a deduction from income.”;

(m) by the addition of the following subsections:

“(9) Any exchange item of a person contemplated in subsection (2), held on 1 October 2001, other than in the course of trade of such person, shall be deemed to have been acquired by that person on that date at the ruling exchange rate on that date.”

(10) No deduction shall be allowed from the income of any person in terms of this section in respect of any exchange difference arising from a transaction entered into by such person with any controlled foreign entity in relation to that person or any connected person in relation to that controlled foreign entity, to the extent that the income attributable to that transaction is not included in the net income of that controlled foreign entity for purposes of section 9D.

(11) No amount shall be included in or deducted from the income of a person in terms of this section in respect of any exchange difference arising from—

(a) any amount owing by a person in respect of a loan, advance or debt incurred by that person to acquire any asset to which the provisions of paragraph 43(1) or (2) of the Eighth Schedule applies; and

(b) any forward exchange contract or foreign currency option contract entered into to hedge such loan, advance or debt.

(12) Where any amount contemplated in paragraphs (a) to (d) of the definition of ‘exchange item’ is denominated in the local currency of a permanent establishment of a person, and that amount—

(a) becomes attributable to that permanent establishment, that amount shall be deemed to be an exchange item which has been realised for the purposes of this section; or

(b) ceases to be attributable to that permanent establishment otherwise than by way of disposal, that amount shall be deemed to be an exchange item which has been acquired for the purposes of this section.”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of section 25D of Act 58 of 1962, as inserted by section 33 of Act 59 of 2000

37. (1) Section 25D of the Income Tax Act, 1962, is hereby substituted by the following section:

“Determination of taxable income 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—

(a) where such income is attributable to a permanent establishment of that resident outside the Republic, be determined in the relevant currency of the country [from where the income is derived] in which that permanent establishment is situated, if the financial records of that permanent establishment are kept in that currency, 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; or

(b) in any other case, be determined in the currency of the Republic.”

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2001 and shall apply in respect of any year of assessment commencing on or after that date.

Repeal 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, section 34 of Act 30 of 2000 and section 35 of Act 59 of 2000

38. (1) Section 28bis is hereby repealed. 5
 (2) Subsection (1) shall come into operation on 1 December 2001.

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001 and section 15 of Act 19 of 2001

39. (1) Section 29A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (10) of the following subsection: 10

“(10) The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund shall be determined separately in accordance with the provisions of this Act as if each such fund had been a separate taxpayer and the individual policyholder fund, company policyholder fund, untaxed policyholder fund and corporate fund, shall be deemed to be separate [persons] companies which are connected persons in relation to each other for the purposes of subsections (6), (7) and (8) and sections 9B, 20, 24I, 24J, 24K, [and] 24L, and 26A and the Eighth Schedule to this Act.” 15

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 20

Amendment of section 33 of Act 58 of 1962, as amended by section 26 of Act 85 of 1974, section 28 of Act 113 of 1993 and section 38 of Act 59 of 2000

40. Section 33 of the Income Tax Act, 1962, is hereby amended by the substitution for the heading of the following heading:

“Assessment of owners or charterers of ships or aircraft [not ordinarily resident or registered, managed or controlled in] who are not residents of the Republic”. 25

Amendment of section 36 of Act 58 of 1962, as amended by section 12 of Act 72 of 1963, section 15 of Act 90 of 1964, section 20 of Act 88 of 1965, section 23 of Act 55 of 1966, section 16 of Act 95 of 1967, section 14 of Act 76 of 1968, section 26 of Act 89 of 1969, section 21 of Act 65 of 1973, section 28 of Act 85 of 1974, section 20 of Act 104 of 1980, section 25 of Act 94 of 1983, section 16 of Act 96 of 1985, section 14 of Act 70 of 1989, section 26 of Act 101 of 1990, section 30 of Act 129 of 1991, section 24 of Act 141 of 1992, section 29 of Act 113 of 1993 and section 17 of Act 36 of 1996 30

41. (1) Section 36 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (hh) of the proviso to paragraph (c) of the definition of “capital expenditure” in subsection (11) of the following paragraph: 35

“(hh) where a [change of ownership] sale, transfer, lease or cession of [a] any mining property, as contemplated in section 37, occurs [and the assets passing by such change of ownership include any] which results in the disposal of an asset in respect of which the provisions of paragraph (d) are applicable, so much of the effective value as relates to the asset so [included] disposed of shall qualify for the calculation of the amount under this paragraph as from the first day of the year of assessment following the year of assessment during which the [change of ownership occurred] agreement of sale, transfer, lease or cession of that mining property takes effect; and”. 40 45

(2) Subsection (1) shall come into operation on the date of promulgation and shall apply in respect of any disposal of an asset on or after that date.

Substitution of section 37 of Act 58 of 1962, as amended by section 29 of Act 85 of 1974 and section 25 of Act 141 of 1992

42. (1) Section 37 of the Income Tax Act, 1962, is hereby substituted by the following section:

Calculation of capital expenditure on sale, transfer, lease or cession of mining property 5

37.(1) For the purposes of this Act, but subject to subsection (1A), whenever [a change of ownership of a mining property, occurs the new owner] a taxpayer—

(a) sells, transfers, leases or cedes any mining property; and 10

(b) disposes of any assets contemplated in section 36(11) (hereinafter referred to as 'the capital assets') in consequence of the sale, transfer, lease or cession contemplated in paragraph (a),

the person acquiring those capital assets shall be deemed to have acquired such [preliminary surveys, boreholes, shafts, development and equipment (in this section referred to as the development assets) as are included in the] capital assets [passing by such change of ownership] at a cost equal to the effective value [to the new owner of the development assets at the time the change of ownership takes place takes place] of those capital assets to that person on the effective date of that agreement of sale, transfer, lease or cession of the mining property, and the said cost shall be deemed to be expenditure that is incurred by [the new owner] that person during the period of assessment during which [the change of ownership occurs] that agreement takes effect and to be capital expenditure which is in respect of such period required to be taken into account for the purposes of the definition of 'capital expenditure incurred' in section 36(11). [Provided that if in a case in which consideration is given, the effective value of all the assets so passing, exceeds the consideration, the amount of such cost and expenditure shall be deemed to be an amount which bears to the amount of such consideration the same ratio as such effective value of the development assets bears to the effective value to the new owner at the said time of all the assets passing.] 20 25 30

(1A) Where any consideration is given by the person acquiring the assets disposed of by the taxpayer, as contemplated in subsection (1), and the effective value of all those assets (including any mining property) so acquired, exceeds that consideration, the amount of the cost and expenditure in respect of the capital assets shall, for the purposes of subsection (1), be deemed to be an amount which bears to the total amount of such consideration the same ratio as such effective value of those capital assets bears to the effective value to that person of all the assets (including any mining property) so disposed of to that person. 35 40

(2) For the purposes of paragraph (j) of the definition of 'gross income' in section 1 and section 36, the [person from whom ownership of any mining property is acquired in consequence of a change of ownership of that property] taxpayer who disposes of any capital assets contemplated in subsection (1), shall be deemed to have disposed of [the development assets included in the] such capital assets [passing by the change of ownership] for a consideration equal in value to the cost of [the development] those capital assets to the [new owner] person acquiring such capital assets as determined under subsection (1) and (1A), and such consideration shall be deemed to have been received by or to have accrued to the said [person at the time the change of ownership takes place] taxpayer on the effective date of the agreement of sale, transfer, lease or cession. 45 50

(3) If the value of the consideration given or the value of the property **[passing where no consideration is given]** disposed of is in dispute, **[it]** the value may, **[with the consent of the new owner]** be fixed by the Commissioner and shall **[failing such consent]** be determined—

- (a) in the case of any mining property, in the same manner as if transfer duty were payable; or
 (b) in the case of any capital asset, at the market value of such capital asset.

(4) The effective value **[at the time the change of ownership takes place]** on the effective date of the agreement of sale, transfer, lease or cession, of all the assets **[passing and of the development assets included therein]** disposed of, shall be determined by the Director General **[Mineral and Energy Affairs]** for Minerals and Energy who shall, notwithstanding the repeal of the Second Schedule to the Transvaal Mining Leases and Mineral Law Amendment Act, 1918 (Act No. 30 of 1918), for the purposes of such determination have all the powers which were conferred upon him by the provisions of that Schedule.

(5) For the purpose of this section, 'mining property' means—

- (a) any land on which mining is carried on; or
 (b) any right to minerals (including any right to mine for minerals) and a lease or sub-lease of such a right."

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal of a capital asset on or after that date.

Amendment of section 38 of Act 58 of 1962, as amended by section 21 of Act 90 of 1962, section 16 of Act 90 of 1964, section 28 of Act 89 of 1969, section 31 of Act 85 of 1974, section 27 of Act 94 of 1983, section 24 of Act 121 of 1984, section 32 of Act 53 of 1999 and section 36 of Act 30 of 2000

43. (1) Section 38 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:

- "(c) any company which **[the Commissioner is satisfied was incorporated to serve a specified purpose, beneficial to the public or a section of the public, if under the constitution of the company no shareholder is entitled to participate in the profits or income of the company to an extent greater than seven per cent of the nominal value of his shareholding]** has been approved as a public benefit organisation in terms of the provisions of section 30(3):".

(2) Subsection (1) shall be deemed to have come into operation on 15 July 2001.

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

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

"PART III

Special Rules relating to company formations, share-for-share transactions, intra-group transaction, unbundling transactions and liquidation distributions

General

41. (1) For the purposes of this Part, unless the context otherwise indicates, any word or expression that has been defined in section 1, shall bear the same meaning so defined, and—

- 'capital asset' means an asset as defined in paragraph 1 of the Eighth Schedule, which does not constitute trading stock;
 'controlled company' means a company in relation to which another company is the controlling company;
 'controlling company' means a company which holds for its own benefit, whether directly or indirectly through one or more companies in the group of companies of which all the companies in question are members, shares

which constitute at least 75 percent of the total equity share capital of any other company: Provided that in determining the total equity share capital of that other company, regard must be had to any agreement in respect of which any person is on the date of determining whether a company is a controlling company, entitled to acquire an interest in the equity share capital in that company on that date at no or nominal cost; 5

'depreciable asset' means a capital asset in respect of which a deduction is allowable under the provisions of the Act, the recovery or recoupment of which would have to be included in the income of that person in terms of paragraph (j) of the definition of 'gross income' in section 1 or section 8(4)(a), were that asset to be disposed of; 10

'equity share' in relation to a company, means a share in the equity share capital of that company;

'group of companies' means a controlling company and one or more other companies which are controlled companies in relation to that controlling company; 15

'listed company' means a company the equity share capital of which is listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

'market value' in relation to an asset means the price which could be obtained upon a sale of that asset between a willing buyer and a willing seller dealing at arm's length in an open market; and 20

'unlisted company' means any company which is not a listed company.

(2) Any person who acquires or disposes of any asset in terms of any transaction in respect of which the provisions of this Part apply, must provide full particulars relating to that transaction to the Commissioner, in such form as the Commissioner may prescribe, in the return furnished by that person for the year of assessment in which that transaction takes effect. 25

(3) The Minister may prescribe by regulation the circumstances under which prior written approval of the Commissioner must be obtained or may be elected to be obtained in respect of any company formation transaction, share-for-share transaction, intra-group transaction, unbundling transaction or liquidation distribution before the provisions of this Part shall apply in respect of that transaction, transfer or distribution. 30

Company Formations 35

42. (1) For the purposes of this section—

'company formation transaction' means a transaction in terms of which a person (other than a trust which is not a special trust) transfers an asset to a company which is a resident, in exchange for equity shares of that company and that person, after that transaction, holds a qualifying interest in that company; 40

'qualifying interest' of any person means equity shares held by that person in a company, which—

(a) is a listed company or will become a listed company within six months after that transaction (or as may be approved by the Commissioner, where the Commissioner is satisfied that those equity shares cannot be listed within that initial six months period due to circumstances beyond the control of the company, such further period not exceeding six months); or 45

(b) in any other case, constitute an interest of more than 25 per cent of the total equity share capital of that company: Provided that in determining the total equity share capital of that company, regard must be had to any agreement in terms of which any person is, on the date of determining the qualifying interest, entitled to acquire an interest in the equity share capital in that company on that date at no or nominal cost. 50 55

(2) Notwithstanding any provision to the contrary contained in the Act, but subject to subsections (3) and (5), where a person disposes of a capital asset to a company in terms of a company formation transaction and the market value of that capital asset exceeds the base cost of that capital asset on the date of that disposal— 60

- (a) that person must be deemed to have—
- (i) disposed of that capital asset for an amount equal to the base cost of that capital asset on the date of that disposal; and
 - (ii) acquired those equity shares on the date that such person acquired that capital asset and for a cost equal to that base cost, which cost must, for the purposes of paragraph 20(1)(a) of the Eighth Schedule, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares; and
- (b) that company must be deemed to have acquired that capital asset on the date that such person acquired that capital asset and at a cost equal to the base cost contemplated in paragraph (a), which cost must, for the purposes of paragraph 20(1)(a) of the Eighth Schedule, be treated as an expenditure actually incurred and paid by that company in respect of that asset.
- (3) Subject to subsection (5), where a person disposes of a capital asset (hereinafter referred to as 'the formation asset') to a company in the circumstances contemplated in subsection (2) and that person, at any time during the period of 18 months prior to that disposal, disposed of any other capital asset to that company in respect of which a capital loss was determined—
- (a) that person must, for purposes of subsection (2)(a), be deemed to have—
 - (i) disposed of that formation asset for an amount equal to the market value of that formation asset: Provided that the amount of the capital gain determined in respect of the disposal of that formation asset which must be taken into account in the determination of the aggregate capital gain or aggregate capital loss of that person in terms of the Eighth Schedule, shall not exceed the amount by which the capital losses determined in respect of all disposals by that person to that company within that period of 18 months, exceeds all capital gains determined in respect of all disposals by that person to that company during that period; and
 - (ii) acquired the equity shares in that company in terms of the company formation transaction, at a cost equal to the sum of—
 - (aa) the base cost of that formation asset on disposal thereof to that company; and
 - (bb) the amount of that capital gain that was taken into account in the determination of the aggregate capital gain or aggregate capital loss of that person, as contemplated in subparagraph (i);
 - (b) that person must, where the amount of that capital loss was disregarded in terms of the provisions of subsection (9), reduce the balance of that capital loss by the amount of the capital gain taken into account in the determination of the aggregate capital gain or aggregate capital loss, as contemplated in paragraph (a)(i); and
 - (c) the company must, for purposes of subsection (2)(b), be deemed to have acquired that formation asset at a cost equal to the cost of the equity shares to that person as contemplated in paragraph (a)(ii), which cost must for the purposes of paragraph 20(1)(a) of the Eighth Schedule be treated as expenditure actually incurred and paid by that company in respect of that asset.
- (4) Notwithstanding any provision to the contrary contained in this Act, where any person disposes of any asset (other than any financial instrument as defined in paragraph 1 of the Eighth Schedule) to a company in terms of a company formation transaction and that asset constitutes trading stock and is attributable to the business undertaking of that person which is transferred to that company as a going concern, and will constitute trading stock in the hands of the company to which that asset is so disposed of—

- (a) that person must be deemed to have—
- (i) disposed of that asset for an amount equal to the cost of that asset contemplated in section 22(1) or (3), as the case may be; and
 - (ii) acquired the equity shares in terms of that company formation transaction at a cost equal to that amount, which cost must, for purposes of paragraph 20(1)(a) of the Eighth Schedule, be treated as an expenditure actually incurred and paid in respect of those equity shares; and
- (b) that company must, be deemed to have acquired that asset at a cost equal to the amount of the cost to that person of that asset, contemplated in section 22(1) or (3), as the case may be.
- (5) Subject to subsection (11), where—
- (a) a person disposes of an asset to a company in terms of a company formation transaction; and
 - (b) that person in exchange for that asset, becomes entitled to any consideration in addition to any equity shares issued by the company to that person,
- the disposal of that asset to that company, contemplated in paragraph (a) must, to the extent that any equity shares are issued by the company to that person, be deemed to be a disposal in terms of a company formation transaction for purposes of this section, and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b)—
- (i) in the case of a disposal of a capital asset, be treated as a part disposal for purposes of the Eighth Schedule; or
 - (ii) in the case of a disposal of an asset which constitutes trading stock, be deemed to be a sale of that trading stock for the purposes of the Act.
- (6) Where a person transfers an asset or a liability to a company as part of a company formation transaction and that asset or liability constitutes—
- (a) a depreciable asset, any allowance which—
 - (i) that company may be entitled to in terms of this Act shall be limited to the amount of any allowance which that person would have been entitled to deduct in respect of that asset, had that asset not been disposed of by that person to that company; and
 - (ii) was allowed as a deduction during any year of assessment in the determination of the taxable income of that person—
 - (aa) which has been recovered or recouped by that person shall, for the purposes of section 8(4)(a) and paragraph (j) of the definition of 'gross income' be deemed not to have been recovered, recouped or received; and
 - (bb) must for the purposes of the recoupment of any allowance, or inclusion thereof in the income of that company, be deemed to have been allowed as a deduction of that company during that year of assessment; or
 - (b) any asset or liability in respect of which an allowance under section 11(i), 11(j), 24 or 24C was allowable to that person as at the end of the year of assessment preceding that in which that asset or liability is transferred—
 - (i) the amount of any debt due to that person that was included in the income of that person during any year of assessment, must for purposes of section 11(i) be deemed to have been included in the income of that company during that year; and
 - (ii) so much of that allowance as relates to the asset or liability so transferred must not be included in that person's income during the year of that transfer but must be included in the income of that company.

- (7) Where a person—
- (a) acquired any equity share in a company in terms of a company formation transaction, as contemplated in subsection (2) or (4), and more than 50 per cent of the market value of all the assets disposed of by that person to that company consists of depreciable assets or trading stock or both depreciable assets and trading stock; and 5
- (b) disposes of any such equity share (other than by way of involuntary disposal, as contemplated in paragraph 65 of the Eighth Schedule, or the death of that person) within a period of 18 months after the date of acquisition contemplated in paragraph (a), 10
- that equity share must be deemed to be trading stock of that person.
- (8) Where a person disposed of any asset in terms of a company formation transaction, as contemplated in subsection (2) or (4), and that person ceases to hold a qualifying interest in that company, as contemplated in paragraph (b) of the definition of 'qualifying interest' in subsection (1), within a period of 18 months after the date of the disposal of that asset (whether or not by way of the disposal of any shares in that company), that person must— 15
- (a) where that person ceased to hold a qualifying interest other than as the result of the disposal of any equity shares, be deemed to have— 20
- (i) disposed of all the equity shares acquired in terms of that company formation transaction which were not disposed of immediately before that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares on the date that those equity shares were acquired in terms of the company formation transaction; and 25
- (ii) immediately reacquired all the equity shares not disposed of immediately after that person ceased to hold a qualifying interest at a cost equal to that market value, which cost be treated as expenditure actually incurred and paid by that person in respect of those equity shares for purposes of paragraph 20(1)(a) of the Eighth Schedule; or 30
- (b) where that person ceases to hold a qualifying interest as a result of the disposal of any equity shares, (other than in terms of an intra-group transaction contemplated in section 44, unbundling transaction contemplated in section 45 or a liquidation distribution contemplated in section 46), be deemed to have— 35
- (i) disposed of all the equity shares (other than any shares contemplated in subsection (7)) for proceeds equal to—
- (aa) in the case of the equity share actually disposed of by that person, the higher of the proceeds from that disposal or the market value of those equity shares on the date of that disposal; or 40
- (bb) in the case of equity shares not actually disposed of by that person, the market value of those equity shares on the date that person acquired those equity shares; and 45
- (ii) immediately reacquired any equity shares held after that person ceased to hold a qualifying interest at a cost equal to that market value contemplated in subparagraph (i)(bb): 50
- Provided that the provisions of this subsection shall not apply where that person ceases to hold a qualifying interest in that company as the result of the death of that person and that qualifying interest accrues to the surviving spouse of that person upon his or her death.
- (9) Despite paragraph 39 of the Eighth Schedule, where a person disposes of a capital asset to a company in terms of a company formation 55

transaction and the base cost of that asset exceeds the market value of that asset at the date of that disposal—

- (a) that person must disregard any capital loss determined in respect of the disposal of that asset to that company in determining the aggregate capital gain or aggregate capital loss of that person; and 5
- (b) that company must be deemed to have acquired that asset for a cost equal to the market value of that asset on the date of that disposal, which cost must be treated as an expenditure actually incurred and paid for the purposes of paragraph 20(1)(a) of the Eighth Schedule in respect of that asset: 10

Provided that a person's capital loss which is disregarded during any year of assessment in terms of paragraph (a) may, after reduction thereof as contemplated in subsection (3)(b), be deducted from any capital gain determined in respect of any capital asset disposed of by that person to that company during that year or any subsequent year of assessment, if that person at the time of that disposal holds a qualifying interest in that company. 15

(10) Where a company disposes of a capital asset within a period of 18 months after acquiring that asset in terms of a company formation transaction— 20

- (a) the capital gain determined in respect of the disposal of that asset may not be set off against any assessed loss, balance of assessed loss, capital loss or assessed capital loss of that company; or
- (b) the company must disregard any capital loss determined in respect of the disposal of that asset. 25

(11) Where a person disposes of—

- (a) any asset to a company in terms of a company formation transaction, as contemplated in subsection (2), which secures any debt—
 - (i) which was incurred by that person more than 18 months before that disposal; or 30
 - (ii) which was incurred by that person within a period of 18 months before that disposal—
 - (aa) and that debt was incurred at the same time as that asset was acquired by that person; or
 - (bb) to the extent that debt constitutes the refinancing of any debt in respect of that asset incurred more than 18 months before that disposal, 35

and that company assumes that debt or an equivalent amount of debt that is secured by that asset; or

- (b) any business undertaking to a company as a going concern in terms of a company formation transaction, as contemplated in subsection (2), which includes any amount of any debt that is attributable to, and arose in, the normal course of that business undertaking, 40

that person must be deemed to have acquired any equity share in exchange for the disposal of that asset or business undertaking at a cost equal to the base cost of that asset or business undertaking, reduced by the amount of that debt: Provided that where that debt exceeds the base cost of that asset or business undertaking, that person must add that excess to proceeds when that person disposes of that equity share. 45

(12) Where in terms of a company formation transaction— 50

- (a) any company (hereinafter referred to as 'the subsidiary') which is a resident acquires all the assets and assumes all the liabilities relating to the business undertaking of any company which is not a resident (hereinafter referred to as 'the foreign company'), carried on through a branch in the Republic; 55
- (b) the business undertaking of that branch has been transferred to that subsidiary as a going concern; and

- (c) at the time of the transfer of that business undertaking, all the issued share capital of the subsidiary was held for its own benefit by the foreign company,
that foreign company and that subsidiary must be deemed to be one and the same company in respect of any transaction of the branch, for purposes of determining any taxable income derived or any assessed loss incurred by the subsidiary after the transfer of that business undertaking. 5
- (13) The provisions of this section shall not apply in respect of the disposal of any asset—
- (a) by a person to a company, where all the receipts and accruals of that company are exempt from tax in terms of the provisions of section 10; 10
- (b) by a person, where the asset constitutes a financial instrument as defined in paragraph 1 of the Eighth Schedule, unless—
- (i) that financial instrument constitutes a debt due to that person in respect of goods sold or services rendered by that person in the course of carrying on any business which is transferred as a going concern; or 15
- (ii) the total market value of all financial instruments so transferred (other than debts contemplated in subparagraph (i)), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern; 20
- (c) by a company where that asset was acquired by that company in terms of any company formation transaction, unless that asset was held by that company for a period of more than 18 months.

Share-for-share Transactions

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- 43.** (1) For the purposes of this section, a 'share-for-share transaction' means any transaction in terms of which any person (other than a trust which is not a special trust) disposes of any equity share (hereinafter referred to as the 'target share') in a company (hereinafter referred to as the 'target company'), which is a resident to any other company (hereinafter referred to as the 'acquiring company'), which is a resident, in exchange for any equity share issued by that acquiring company to that person, and— 30
- (a) the acquiring company—
- (i) in the case where that target company is a listed company or will become a listed company within six months after that transaction (or where the Commissioner is satisfied that those equity shares cannot be listed within that initial six months period due to circumstances beyond the control of the company, such further period not exceeding six months, as may be approved by the Commissioner), after that transaction and any other share-for-share transaction (entered into in terms of any offer made on the same terms as that transaction and which is accepted within a period of 45 days before or after that transaction) holds equity shares in that target company, which constitute a direct interest of— 40
- (aa) more than 25 per cent in the equity share capital of that target company, in the case where no other shareholder holds an equal or greater amount of equity share capital in that target company; or 45
- (bb) in any other case, at least 35 per cent in the equity share capital of the target company; or 50
- (ii) where the target company is not a company contemplated in subparagraph (i), after that transaction holds shares in the target company, which constitute a direct interest of more than 50 per cent in the equity share capital of the target company; and 55

- (b) that person after that transaction holds equity shares in that acquiring company—
- (i) which is a listed company on the date of that transaction; or
 - (ii) in any other case, which constitutes a direct interest of more than 25 per cent in the equity share capital of that acquiring company: 5
- Provided that in determining the total equity share capital of the target company or the acquiring company, regard must be had to any agreement in terms of which, on the date of determining the interest of that acquiring company or that person, any person is entitled to acquire an interest in the equity share capital of that target company or acquiring company, as the case may be on that date, at no or nominal cost. 10
- (2) Notwithstanding any provision to the contrary contained in this Act, but subject to subsection (4), where a person disposes of any target shares, which are held by that person other than as trading stock, to an acquiring company in terms of a share-for-share transaction and the market value of those target shares exceeds the base cost thereof— 15
- (a) that person must be deemed to have—
 - (i) disposed of those target shares for an amount equal to the base cost to that person of those target shares on the date of that disposal; and 20
 - (ii) acquired the shares in that acquiring company on the date that such person acquired those target shares, and at a cost equal to the base cost contemplated in subparagraph (i), which cost must be treated as expenditure actually incurred and paid for purposes of paragraph 20(1)(a) of the Eighth Schedule in respect of those shares in the acquiring company; and 25
 - (b) the acquiring company must—
 - (i) where the target company is a listed company and the equity shares in that company were acquired by the acquiring company from any shareholder who does not hold a direct interest of more than 25 per cent in the equity share capital of the acquiring company after that transaction, be deemed to have acquired those equity shares at a cost equal to the market value of those equity shares; or 30
 - (ii) in any other case, be deemed to have acquired those equity shares at a cost equal to that base cost contemplated in paragraph (a)(i), which cost must be treated as expenditure actually incurred and paid by that company for the purposes of paragraph 20(1)(a) of the Eighth Schedule in respect of those target shares. 35
- (3) Notwithstanding any provision to the contrary contained in this Act, but subject to subsection (4), where a person disposes of any equity shares, which are held by that person as trading stock, to a company in terms of a share-for-share transaction— 40
- (a) that person must be deemed to have—
 - (i) disposed of those equity shares for an amount equal to the cost of those equity shares contemplated in section 22(1) or (3), as the case may be; and 45
 - (ii) acquired the equity shares in the company in terms of the share-for-share transaction at a cost equal to that amount and those equity shares so acquired must be deemed to be trading stock of that person; and 50
 - (b) that company must be deemed to have acquired those target shares at a cost equal to the amount of the cost contemplated in paragraph (a)(i), which cost must be treated as expenditure actually incurred and paid by that company for purposes of paragraph 20(1)(a) of the Eighth Schedule in respect of those target shares. 55
- (4) For the purposes of this section, where—

- (a) a person disposes of any equity shares to a company in terms of a share-for-share transaction; and
- (b) that person becomes entitled to any consideration in addition to any equity shares issued by the company to that person, in exchange for those equity shares, 5
- the disposal of those equity shares to that company must, to the extent that any equity shares are issued by the company to that person, be deemed to be a disposal in terms of a share-for-share transaction for purposes of this section and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b)— 10
- (i) in the case where the equity shares disposed of were held other than as trading stock, be treated as a part disposal for purposes of the Eighth Schedule; or
- (ii) in the case where the equity shares disposed of constituted trading stock, be deemed to be a sale of that trading stock for purposes of this Act. 15
- (5) Where the provisions of subsection (2) or (3) apply in respect of a disposal of an equity share by a person in terms of a share-for-share transaction and that person, within a period of 18 months after that transaction, ceases to hold an interest in the acquiring company, as contemplated in paragraph (b)(ii) of the definition of 'share-for-share transaction', (whether or not by way of a disposal of any equity shares in that acquiring company), other than by way of an intra-group transaction contemplated in section 44, that person must be deemed to have— 20
- (a) disposed of all the equity shares acquired in terms of that share-for-share transaction, which were not disposed of immediately before that person ceased to hold a qualifying interest for proceeds equal to— 25
- (i) in the case of the equity shares actually disposed of by that person, the higher of the proceeds from that disposal or the market value of those equity shares on the date of that disposal; or 30
- (ii) in the case of equity shares not actually disposed of by that person, the market value of those equity shares on the date that person acquired those equity shares; and
- (b) immediately reacquired all the equity shares held in the acquiring company after that person ceases to hold that interest at a cost equal to that market value contemplated in paragraph (a)(ii): 35
- Provided that the provisions of this subsection shall not apply where that person ceases to hold an interest, as contemplated in paragraph (b)(ii) of the definition of 'share-for-share transaction', in that company as the result of the death of that person and that interest accrues to the surviving spouse of that person upon his or her death. 40
- (6) Where a person disposes of any target share to a company in terms of a share-for-share transaction in the circumstances contemplated in subsection (2) and that person, at any time within the period of 18 months before that transaction, disposed of any other equity share to that company in respect of which a capital loss was determined— 45
- (a) that person must be deemed to have—
- (i) disposed of that target share to the acquiring company for proceeds equal to the market value of that target share: Provided that the amount of the capital gain determined in respect of the disposal of that target share which must be taken into account in the determination of the aggregate capital gain or aggregate capital loss of that person in terms of the Eighth Schedule, shall not exceed the amount by which the capital losses, determined in respect of all disposals of equity shares by that person to that 55

- company during that 18 month period, exceed the capital gains determined in respect of all disposals of equity shares by that person to that company during that period; and
- (ii) acquired the equity shares in that acquiring company in terms of a share-for-share transaction, at a cost equal to the sum of— 5
- (aa) the base cost of that target share on disposal thereof to that company; and
- (bb) the amount of that capital gain that was taken into account in the determination of the aggregate capital gain or aggregate capital loss of that person, as contemplated in subparagraph (i); 10
- (b) that person must, where the amount of that capital loss was disregarded in terms of the provisions of subsection (7), reduce the balance of that capital loss by the amount of the capital gain taken into account in the determination of the aggregate capital gain or aggregate capital loss, as contemplated in paragraph (a)(i); and 15
- (c) the company must be deemed to have acquired those target shares at a cost equal to the cost to that person of the equity shares in the acquiring company, as contemplated in paragraph (a)(ii).
- (7) Despite paragraph 39 of the Eighth Schedule, where a person disposes of any equity share to a company in terms of a share-for-share transaction and the base cost of that share exceeds the market value of that equity share at the time of that disposal— 20
- (a) that person must disregard any capital loss determined in respect of the disposal of that equity share to that company in determining the aggregate capital gain or aggregate capital loss of that person; and 25
- (b) that company must be deemed to have acquired that equity share for a cost equal to the market value of that share on the date of that disposal, which cost must be treated as an expenditure actually incurred and paid for the purposes of paragraph 20(1)(a) of the Eighth Schedule in respect of that target share: 30
- Provided that a person's capital loss which is disregarded during any year of assessment in terms of paragraph (a) may, after reduction thereof as contemplated in subsection (6)(b), be deducted from any capital gain determined in respect of any capital asset disposed of by that person to that company during that year or any subsequent year of assessment, if that person at the time of that disposal holds an interest in that company as contemplated in paragraph (b)(ii) of the definition of 'share-for-share transaction'. 35
- (8) Where an acquiring company disposes of an equity share (other than in terms of an intra-group transaction contemplated in section 44, an unbundling transaction contemplated in section 45 or a liquidation transaction contemplated in section 46), within a period of 18 months after acquiring that equity share in terms of a share-for-share transaction— 40
- (a) the company may not set off any capital gain determined in respect of the disposal of that equity share against any assessed loss, balance of assessed loss, capital loss or assessed capital loss of that company; and 45
- (b) the company must disregard any capital loss determined in respect of the disposal of that equity share.
- (9) The provisions of this section shall not apply in respect of the disposal of any equity share by a company— 50
- (a) to a transferee company, all the receipts and accruals of which are exempt from tax in terms of the provisions of section 10;

- (b) where that equity share was acquired in terms of a share-for-share transaction in terms of this section within a period of 18 months before that disposal; or
- (c) where more than 50 per cent of either the market value or the actual costs of all the assets of that target company and any other company, which is a controlled company in relation to that target company on the date of that share-for-share transaction, consists of financial instruments, as defined in paragraph 1 of the Eighth Schedule, other than any shares held in any other company which is a controlled company in relation to that target company.

Intra-group transactions

44. (1) For the purposes of this section—
 'intra-group transaction' means a transaction in terms of which any asset is disposed of by one company which is a resident (hereinafter referred to as the 'transferor company') to another company which is a resident (hereinafter referred to as the 'transferee company') and both companies form part of the same group of companies on the date of that transaction.

(2) Notwithstanding any provision to the contrary contained in this Act, where a transferor company disposes of any asset to a transferee company, in terms of an intra-group transaction the transferor company and transferee company may jointly elect that the provisions of subsection (3) or (5), as the case may be, must apply.

(3) Notwithstanding the provisions of paragraph 38 of the Eighth Schedule, where the transferor company and the transferee company have elected that the provisions of this subsection must apply in respect of the disposal by that transferor company of any capital asset to that transferee company—

- (a) the transferor company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal;
- (b) the transferee company must be deemed to have acquired that capital asset on the date that the transferor company acquired that asset, and at a cost equal to the base cost contemplated in paragraph (a), which cost must be treated as expenditure actually incurred and paid by the transferee company for purposes of paragraph 20(1)(a) of the Eighth Schedule in respect of that capital asset.

(4) Where a transferor company transfers an asset or a liability to a transferee company as part of an intra-group transaction and that asset or liability constitutes—

- (a) a depreciable asset, any allowance which—
- (i) that transferee company may be entitled to in terms of this Act shall be limited to the amount of any allowance which that transferor company would have been entitled to deduct in respect of that asset, had that asset not been disposed of by that transferor company to that transferee company; and
- (ii) was allowed as a deduction during any year of assessment in the determination of the taxable income of that transferor company—
- (aa) which has been recovered or recouped by that transferor company shall, for the purposes of section 8(4)(a) and paragraph (j) of the definition of 'gross income' be deemed not to have been recovered, recouped or received; and
- (bb) must for the purposes of the recoupment of any allowance, or inclusion thereof in the income of that transferee

- company, be deemed to have been allowed as a deduction of that transferee company during that year of assessment; or
- (b) any asset or liability in respect of which an allowance under section 11(i), 11(j), 24 or 24C was allowable to that transferor company as at the end of the year of assessment preceding that in which that asset or liability is transferred— 5
- (i) the amount of any debt due to that transferor company that was included in the income of that transferor company during any year of assessment, must for purposes of section 11(i) be deemed to have been included in the income of that transferee company during that year; and 10
- (ii) so much of that allowance as relates to the asset or liability so transferred must not be included in the income of that transferor during the year of that transfer but must be included in the income of that transferee company. 15
- (5) Notwithstanding section 22(8), where the transferor company and the transferee company have elected that the provisions of this subsection apply in respect of the disposal by that transferor company to that transferee company of any asset that constitutes trading stock—
- (a) that transferor company must be deemed to have disposed of that asset for an amount equal to the amount of the cost to that transferor company of that asset as contemplated in section 22(1) or (3), as the case may be; and 20
- (b) the transferee company must be deemed to have acquired that asset on the date that the transferor company acquired that asset, and at a cost equal to the cost contemplated in paragraph (a). 25
- (6) Where an asset is disposed of by a transferor company to a transferee company in terms of an intra-group transaction in respect of which the provisions of subsection (3) or (5) apply and the transferor company and the transferee company at any time thereafter cease to form part of the same group of companies before the disposal by the transferee company of that asset, that transferee company must be deemed to have disposed of that asset for an amount equal to the market value of that asset on the date that such companies cease to form part of the same group of companies and as having immediately reacquired that asset for a cost equal to that market value: Provided that where the transferor company or transferee company is liquidated or deregistered as contemplated in section 46, the holding company and the liquidating company, as contemplated in that section, must be deemed to be one and the same company for purposes of this subsection. 30 35 40
- (7) The provisions of subsections (3) and (5) shall not apply, where—
- (a) the asset disposed of by a company is a financial instrument, as defined in paragraph 1 of the Eighth Schedule, unless—
- (i) that financial instrument constitutes a debt due to that person in respect of goods sold or services rendered by that person in the course of carrying on any business which is transferred as a going concern; or 45
- (ii) the total value of all financial instruments so transferred, (other than debts contemplated in subparagraph (i)), does not exceed five per cent of the total value of all assets of any business which is transferred as a going concern; 50
- (b) all the receipts and accruals of the transferee company are exempt from tax in terms of section 10; or
- (c) more than 50 per cent of either the market value or the actual costs of all the assets of that company and any other company, which is a controlled company in relation to that company, on the date of that 55

transfer, consists of financial instruments, as defined in paragraph 1 of the Eighth Schedule, other than any shares held in any controlled company in relation to that company.

(8) Where a transferee company acquired a capital asset from a transferor company in terms of an intra-group transaction, as contemplated in subsection (3) and that transferee company disposes of that asset within a period of 18 months after that acquisition, and—

- (a) a capital gain is determined in respect of that disposal, any amount recovered or recouped or capital gain so determined may not be set off against any assessed loss, balance of assessed loss, capital loss or assessed capital loss of that transferee company; or
- (b) a capital loss is determined in respect of that disposal, that capital loss must be disregarded and any claim for an allowance under the provisions of section 11(o) must be disallowed.

(9) An acquisition or disposal of any asset in terms of an intra-group transaction in respect of which the provisions of subsection (3) or (5) apply, shall be deemed not to be a dividend for purposes of Part VII of Chapter II of this Act.

Unbundling Transactions

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

'distributable shares' means any equity shares in a company which is a resident, held directly by an unbundling company which is a resident, for its own benefit on the date of the unbundling transaction, if that unbundling company's interest in that company on that date—

- (a) where that company is a listed company or will become a listed company, within six months after that transaction (or such further period not exceeding six months, as may be approved by the Commissioner, where the Commissioner is satisfied that those equity shares cannot be listed within that initial six months period due to circumstances beyond the control of the company), constitutes—
 - (i) more than 25 per cent in the equity share capital of that company, in the case where no other shareholder holds an equal or greater amount of equity share capital in that company; or
 - (ii) in any other case, at least 35 per cent in the equity share capital of the company;
- (b) where that company is an unlisted company—
 - (i) constitutes more than 50 per cent of the equity share capital of that unlisted company; and
 - (ii) in the case where the unbundling company is a listed company, those equity shares are, in pursuance of a distribution *in specie* thereof in the course of an unbundling transaction, to be listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), within six months of such distribution *in specie* (or such further period not exceeding six months, as may be approved by the Commissioner, where the Commissioner is satisfied that those equity shares cannot be listed within that initial six months period due to circumstances beyond the control of the company):

Provided that—

- (i) in determining the total equity share capital of a company contemplated in paragraphs (a) and (b), regard must be had to any agreement in terms of which any person is, on the date of determining that interest of the unbundling company, entitled to acquire an interest in the equity share capital in that company on that date at no or nominal cost; and
- (ii) any such equity share in a listed or unlisted company which was acquired by the unbundling company during the period of 18 months before the date of that unbundling transaction, shall not—

(aa) be taken into account in determining the interest in terms of paragraph (a) or (b); or

(bb) constitute a distributable share for purposes of this section, unless that equity share was acquired in terms of any transaction contemplated in this Part or an unbundling transaction contemplated in section 60 of the Income Tax Act, 1993 (Act No. 113 of 1993), or a rationalisation scheme contemplated in section 39 of the Taxation Laws Amendment Act, 1994 (Act No. 20 of 1994);

'holding company' in relation to any other company means a company which is a resident and which directly holds for its own benefit at least 75 per cent of the equity share capital of that other company;

'qualifying shareholder' means any person who by reason of being the owner or the beneficial owner of an equity share in an unbundling company, is entitled to receive distributable shares by way of a distribution *in specie* in the course of an unbundling transaction;

'unbundled company' means any company the equity shares of which are distributed by an unbundling company in terms of an unbundling transaction;

'unbundling company' means the unbundling company contemplated in the definition of 'unbundling transaction';

'unbundling transaction' means any transaction, which is to be carried out to enable—

(a) the shareholders of any listed company; or

(b) the holding company of an unlisted company, (which listed or unlisted company is hereinafter referred to as the 'unbundling company'), to acquire directly by way of a distribution *in specie* by that unbundling company all the distributable shares held by that unbundling company in the company which is to be unbundled, in such manner as will ensure that the effective interest of such shareholders or holding company in such distributable shares will not be materially changed by such transaction.

(2) Notwithstanding any provision to the contrary contained in this Act, where an unbundling company disposes of any distributable shares to its shareholders or its holding company, as the case may be, in terms of an unbundling transaction—

(a) that unbundling company must be deemed to have disposed of those shares for proceeds equal to the base cost of those shares on the date of that disposal; and

(b) the shareholder or that holding company, as the case may be, must—
(i) be deemed to have acquired the equity shares held in the unbundling company (hereinafter referred to as the previously held shares) and those distributable shares at a cost equal to—

(aa) where those previously held shares were held by that shareholder as trading stock, the cost to that person of the previously held shares for the purposes of section 22(1) or (3), as the case may be, or where such person is not a company, the lesser of such cost or the diminished value of such disposed shares, as contemplated in that section;

(bb) in any other case, the base cost of those previously held shares, which cost must for the purposes of paragraph 20(1)(a) of the Eighth Schedule, be treated as expenditure actually incurred and paid in respect of those previously held shares and those distributable shares:

Provided that—

- (A) a portion of such cost or such base cost, as the case may be, must be apportioned to such distributable shares, which portion shall be deemed to be an amount which bears to such cost or such base cost, as the case may be, the same ratio as the market value of such distributable shares bears to the market value of such previously held shares, such market values being determined on the date on which the qualifying shareholders become entitled to acquire distributable shares by way of a distribution *in specie*; and 5
- (B) such previously held shares and such distributable shares must be deemed to be the same shares for purposes of section 9B; 10
- (ii) where those previously held shares were held by that person in the unbundling company as a result of a right contemplated in section 8A, which has been exercised by that person and distributable shares are distributed to such person in accordance with an unbundling transaction, any portion of any gain made by such person in the exercise of such right to acquire such previously held shares must be included in the income of that person— 15
- (aa) in the year of assessment during which that person becomes entitled to dispose of those distributable shares, which portion shall be an amount which bears to such gain the same ratio as the market value of such distributable shares on the date on which that person became entitled to such distributable shares by way of a distribution *in specie* bears to the market value of such previously held shares on that date; and 20
- (bb) in the year of assessment during which that person becomes entitled to dispose of the previously held shares, which portion shall be calculated by reducing such gain by the amount which has been determined or is to be determined in terms of item (aa); 25
- Provided that for the purposes of paragraph (A) of the proviso to subparagraph (i) and subparagraph (ii)(aa), the market value of such previously held shares on the date on which the qualifying shareholders became entitled to acquire such distributable shares by way of a distribution *in specie*, shall be determined without having regard to the fact that such distributable shares are to be issued to such shareholders. 30
- (3) Notwithstanding anything to the contrary contained in this Act— 35
- (a) the distribution *in specie* by a company of any distributable shares shall be deemed not to be a dividend for the purposes of Part VII of Chapter II; and 40
- (b) any distribution *in specie* received by a company must be deemed— 45
- (i) not to be a dividend which accrued to that company for the purposes of section 64B(3); and
- (ii) to be profits which are not of a capital nature for the purposes of section 64B(5)(c).
- (4) The distribution *in specie* by an unbundling company in terms of an unbundling transaction in respect of which the provisions of this section apply, must be deemed to have been distributed first from the share premium account of that unbundling company (if any) and to the extent that the distribution exceeds the amount of that share premium account, be deemed to have been distributed from undistributed profits. 50
- (5) The provisions of this section shall not apply— 55
- (a) where more than 50 per cent of either the market value or the actual costs of all the assets of the unbundled company and any other company, which is a controlled company, in relation to that unbundled

- company, on the date of that unbundling transaction, consists of financial instruments, as defined in paragraph 1 of the Eighth Schedule, other than any shares held in any other controlled company in relation to that unbundled company; or
- (b) in respect of any distribution of shares in terms of an unbundling transaction to a shareholder who is not a resident, where that shareholder acquires more than five per cent of the distributable shares in terms of that unbundling transaction. 5

Transactions relating to liquidation, winding-up and deregistration

46. (1) For the purposes of this section— 10
- ‘distribution *in specie*’ means a distribution of equity shares whether by means of a dividend, a total or partial reduction of capital (including any share premium), a redemption of redeemable preference shares or an acquisition of equity shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973); 15
- ‘holding company’ in relation to any other company means a company which is a resident, which on the date of the liquidation distribution directly holds for its own benefit shares which constitute at least 75 per cent of the equity share capital of that other company: Provided that in determining the value of the total equity share capital of that company, regard must be had to any agreement, in terms of which any person is on the date of determining whether that company is a holding company, entitled to acquire an interest in the equity share capital in that company on that date at no or nominal cost; 20
- ‘liquidating company’ means the liquidating company contemplated in the definition of ‘liquidation distribution’; 25
- ‘liquidation distribution’ means a disposal by a liquidating company which is a resident, of any asset to its holding company in anticipation of or in the course of the liquidation, winding up or deregistration of that liquidating company. 30
- (2) Notwithstanding any provision to the contrary contained in this Act, where a liquidating company disposes of a capital asset in terms of a liquidation distribution to its holding company—
- (a) that liquidating company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of the disposal thereof; and 35
- (b) that holding company must be deemed to have acquired that asset on the same date that that asset was acquired by that liquidating company and at a cost equal to that base cost of that asset to that liquidating company, which cost must be treated as expenditure actually incurred and paid for purposes of paragraph 20(1)(a) of the Eighth Schedule in respect of that asset. 40
- (3) Notwithstanding any provision to the contrary contained in this Act, where a liquidating company disposes of an asset, which constitutes trading stock, in terms of a liquidation distribution to its holding company— 45
- (a) that liquidating company must be deemed to have disposed of that asset for an amount equal to the cost of that asset as contemplated in section 22(1) or (3), as the case may be; and
- (b) that holding company must be deemed to have acquired that asset at a cost equal to the cost contemplated in paragraph (a). 50
- (4) Where a company disposes of an asset or a liability in terms of a liquidation distribution to its holding company and that asset or liability constitutes—
- (a) a depreciable asset, any allowance which— 55
- (i) that holding company may be entitled to in terms of this Act shall be limited to the amount of any allowance which that liquidating company would have been entitled to deduct in respect of that asset, had that asset not been distributed by that liquidating company to that holding company; and

- (ii) was allowed as a deduction during any year of assessment in the determination of the taxable income of that liquidating company—
- (aa) which has been recovered or recouped by that liquidating company shall, for the purposes of section 8(4)(a) and paragraph (j) of the definition of 'gross income' be deemed not to have been recovered, recouped or received; and 5
- (bb) must for the purposes of the recoupment of any allowance, or inclusion thereof in the income of that holding company, be deemed to have been allowed as a deduction of that holding company during that year of assessment; or 10
- (b) any asset or liability in respect of which an allowance under section 11(i), 11(j), 24 or 24C was allowable to that company as at the end of the year of assessment preceding that in which that asset or liability is transferred— 15
- (i) the amount of any debt due to that liquidation company that was included in the income of that liquidating company during any year of assessment, must for purposes of section 11(i) be deemed to have been included in the income of that holding company during that year; and 20
- (ii) so much of that allowance as relates to the asset or liability so transferred must not be included in the income of that liquidating company during the year of that transfer but must be included in the income of that holding company. 25
- (5) Where the holding company acquires any asset from the liquidating company in terms of a liquidation distribution in respect of which the provisions of subsection (2) apply, and that holding company disposes of that asset within a period of 18 months after so acquiring that asset— 25
- (a) any capital gain determined in respect of the disposal of that asset by the holding company may not be set off against any amount of assessed loss, balance of assessed loss, assessed capital loss or capital loss of that holding company (other than any capital loss determined in respect of the disposal of any other asset acquired by the holding company from the liquidating company in terms of that liquidation distribution); or 30 35
- (b) any capital loss determined in respect of the disposal of that asset must be disregarded in determining the aggregate capital gain or aggregate capital loss of that holding company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that holding company from the liquidating company in terms of that liquidation distribution. 40
- (6) The provisions of this section shall not apply where—
- (a) all the receipts and accruals of the holding company are exempt from tax in terms of section 10; 45
- (b) more than 50 per cent of either the market value or the actual costs of all the assets of that liquidating company and any other company, which is a controlled company in relation to that liquidating company on the date of that liquidation distribution, consists of financial instruments, as defined in paragraph 1 of the Eighth Schedule, other than any shares held in any other controlled company in relation to that liquidating company; 50
- (c) the liquidating company has not, within a period of six months after the date of the liquidation distribution, taken such steps as may be prescribed by the Minister by regulation in the *Gazette* to liquidate, 55

wind up or deregister that company: Provided that any tax which becomes payable as a result of the application of this paragraph shall be recoverable from the holding company.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001 and shall apply in respect of any transaction entered into on or after that date. 5

Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 96 of 1981, section 31 of Act 94 of 1983, section 4 of Act 30 of 1984, section 28 of Act 121 of 1984, section 18 of Act 96 of 1985, section 21 of Act 85 of 1987, section 26 of Act 90 of 1988, section 28 of Act 141 of 1992, section 32 of Act 113 of 1993, section 18 of Act 36 of 1996, section 39 of Act 30 of 1998, section 38 of Act 30 of 2000 and section 41 of Act 59 of 2000 10

45. (1) Section 56 of the Income Tax Act, 1962, is hereby amended by the addition to subsection (1) of the following paragraph: 15

“(q) by a company to any other company in terms of an intra-group transfer contemplated in section 44, where the public officer of that company has made a sworn affidavit or solemn declaration that such intra-group transfer complies with the provisions contained in section 44.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001, and shall apply in respect of any donation made in terms of an intra-group transaction entered into on or after that date. 20

Amendment of section 60 of Act 58 of 1962, as amended by section 39 of Act 85 of 1974 and section 28 of Act 90 of 1988

46. Section 60 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection: 25

“(1) Donations tax shall be [payable] paid to the Commissioner within three months or such longer period as the Commissioner may allow from the date upon which the donation in question takes effect [and shall be paid to the receiver of revenue for the district within which the donor (in the case of any person other than a company) is ordinarily resident or (in the case of any company) has its registered office or principal place of business].” 30

Substitution of section 63 of Act 58 of 1962, as substituted by section 34 of Act 53 of 1999

47. Section 63 of the Income Tax Act, 1962, is hereby substituted by the following section: 35

“Objection and appeal

63. The decision of the Commissioner in the exercise of his discretion under section 57[(3)](2), section 62(1)(c)(iii), the proviso to section 62(1)(d) or section 62(2)(a) or 62(4), and any determination by the Commissioner under section 55(2)(g) of the value of the mineral rights attaching to any property, shall be subject to objection and appeal.”. 40

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000 and section 18 of Act 5 of 2001 45

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

- (a) by the substitution for the definition of “holding company” in subsection (1) of the following definition:
 “ ‘holding company’ means any company which holds for its own benefit whether directly, or indirectly through one or more intermediate companies, **[together with shares held in terms of a share incentive scheme all]** at least 75 per cent of the equity share capital of any other company;”;
- (b) by the substitution in the definition of “intermediate company” in subsection (1) for the words preceding paragraph (a) of the following words:
 “ ‘intermediate company’ means any company **[all]** at least 75 per cent of whose equity share capital is **[together with shares held in terms of a share incentive scheme,]** held by—”;
- (c) by the deletion in subsection (1) of the definition of “share incentive scheme”;
- (d) by the substitution for the proviso to paragraph (c) of subsection (5) of the following proviso:
 “Provided that where such dividend is distributed in anticipation of the liquidation or winding up or deregistration of a company and such company **[is]** has not **[liquidated or wound up or deregistered]** within six months after the date on which such dividend is so distributed **[or such further period as is in the circumstances of the case considered reasonably necessary]** taken such steps as may be prescribed by the Minister by regulation in the *Gazette* to liquidate, wind up or deregister that company, the provisions of this paragraph and of subsection (3)(b) shall be deemed not to have applied to such dividend and any secondary tax on companies which becomes payable as a result thereof shall be recoverable from the shareholders to whom such dividend was distributed in the same proportion as such dividend was so distributed;”;
- (e) by the deletion of subparagraph (i) of paragraph (f) of subsection (5).
- (2) (a) Subsection (1)(a), (b) and (c) shall come into operation on 1 January 2002 and shall apply in respect of any dividend declared on or after that date.
- (b) Subsection (1)(d) and (e) shall come into operation on the date of promulgation of this Act and shall apply in respect of any dividend declared on or after that date.

Substitution of section 70A of Act 58 of 1962, as inserted by section 21 of Act 5 of 2001

49. (1) Section 70A of the Income Tax Act, 1962, is hereby substituted the following section:

“Return of information by Unit Portfolio

70A. Any unit portfolio contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1, and any unit portfolio comprised in any unit trust scheme in property shares authorised under the Unit Trust Control Act, 1981 (Act No. 54 of 1981), shall furnish to the Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe.”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of section 70B of Act 58 of 1962, as inserted by section 21 of Act 5 of 2001

50. (1) Section 70B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every person who administers a portfolio of financial instruments, as defined in the Eighth Schedule, on behalf of any other person and has the mandate of that other person to buy and sell any such financial instruments on such other person’s behalf, shall furnish to the Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe.”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of section 74 of Act 58 of 1962, as substituted by section 14 of Act 46 of 1996 and amended by section 27 of Act 28 of 1997

51. Section 74 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definition of "authorisation letter" of the following definition: 5
 " 'authorisation letter' means a written authorisation granted by the Commissioner, or by any [chief director or chief revenue inspector under the control, direction or supervision of the Commissioner] person designated by the Commissioner for this purpose or occupying a post designated by the Commissioner for this purpose, to an officer to inspect, audit, examine or obtain, as contemplated in section 74B, 10 any information, documents or things;".

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993, section 27 of Act 21 of 1994, section 15 of Act 46 of 1996, section 39 of Act 53 of 1999, section 44 of Act 30 of 2000, section 23 of Act 5 of 2001 and section 18 of Act 19 of 2001 15

52. Section 75 of the Income Tax Act, 1962, is hereby amended—
 (a) by the addition of the word "or" at the end of paragraph (i) of subsection (1); and
 (b) by the insertion in subsection (1) after paragraph (i) of the following 20 paragraph:
 "(j) without just cause fails to comply with the provisions of section 99, where that person has been declared to be the agent of any other person as contemplated in that section,".

Amendment of section 81 of Act 58 of 1962, as amended by section 27 of Act 69 of 1975 and section 15 of Act 70 of 1989 25

53. (1) Section 81 of the Income Tax Act, 1962, is hereby amended—
 (a) by the substitution for the heading of the following heading:
 "Objection against assessment";
 (b) by the substitution for subsection (1) of the following subsection: 30
 "(1) Objections to any assessment made under this Act [may] shall be made [within 30 days after the date of the assessment,] in the manner and under the terms and within the period prescribed by this Act and the rules promulgated in terms of section 107A by any taxpayer who is aggrieved by any assessment in which [he is interested] that taxpayer 35 has an interest.";
 (c) by the substitution for subsections (2), (3), (4) and (5) of the following subsections:
 "(2) The period prescribed in the rules within which objections must be made may be extended by the Commissioner where the Commissioner is satisfied that reasonable grounds exist for the delay in lodging the objection. 40
 (3) Any decision by the Commissioner in the exercise of his or her discretion under subsection (2) shall be subject to objection and appeal.
 (4) The Commissioner may on receipt of a notice of objection to an 45 assessment alter the assessment or may disallow the objection and shall send to the taxpayer or his or her representative notice of such alteration or disallowance, and record therein any alteration or disallowance made in the assessment.
 (5) Where no objections are made to any assessment or where 50 objections have been allowed in full or withdrawn, such assessment or altered [or reduced] assessment, as the case may be, shall [subject to the right of appeal hereinafter provided,] be final and conclusive.";
 and
 (d) by the addition of the following subsections: 55
 "(6) Where any dispute between the Commissioner and the person aggrieved by an assessment has been settled in accordance with the

alternative dispute resolution procedures prescribed in the regulations, as contemplated in section 107B, the Commissioner may alter that assessment for purposes of giving effect to that settlement.

(7) Any altered assessment contemplated in subsection (6) shall not be subject to objection and appeal.”

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

Amendment of section 83 of Act 58 of 1962, as amended by section 21 of Act 90 of 1964, section 22 of Act 103 of 1976, section 15 of Act 104 of 1979, section 19 of Act 96 of 1985, section 16 of Act 70 of 1989, section 36 of Act 129 of 1991, section 36 of Act 113 of 1993, section 30 of Act 28 of 1997 and section 45 of Act 30 of 2000

54. (1) Section 83 of the Income Tax Act, 1962, is hereby amended—

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

“Appeals to [specially constituted] tax court against [Commissioner’s decision] assessment”;

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

“(1) Any person entitled to [make an objection who is dissatisfied with any decision of the Commissioner as notified to him in terms of section 81 (4)] object to an assessment, may, subject to the provisions of section 83A, appeal [therefrom] against such assessment to [a special] the tax court [for hearing income tax appeals constituted] established in [accordance with] terms of the provisions of this section in the manner and under the terms and within the period prescribed by this Act and the rules promulgated in terms of section 107A.”;

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

“(1A) The period prescribed in the rules within which appeal must be noted may be extended by the Commissioner where the Commissioner is satisfied that reasonable grounds exist for the delay in noting the appeal: Provided that any decision by the Commissioner in the exercise of his or her discretion under this subsection shall be subject to objection and appeal.

(1B) No notice of appeal shall be of any force or effect whatsoever which is not delivered at the Commissioner’s office within the period prescribed for noting an appeal, or within such extended period as contemplated in subsection (1A).”;

(d) by the substitution for subsections (2), (3) and (4) of the following subsections:

“(2) There shall be a court to be known as the tax court which shall be a court of record.

(3) The President of the Republic may, by proclamation in the *Gazette*, [constitute such] establish a tax court or courts for [such] any area or areas as he may think fit, and may from time to time by [such] proclamation abolish any existing court or courts or [constitute such] establish additional courts as circumstances may require.

(4) Subject to subsection (4B), every tax court established in terms of this Act shall consist of a judge or an acting judge of the High Court, who shall be the President of the court, an accountant and a representative of the commercial community who shall be of good standing and who have appropriate experience: Provided that—

(a) in all cases relating to the business of mining such third member shall, if the President of the court, the Commissioner or the appellant so desires, be a qualified mining engineer;

(b) where any such appeal relates to the valuation of immovable property, or of both movable and immovable property, such third member shall, if the President of the court, the Commissioner or the appellant so desires, be a person appointed by the Commissioner from amongst persons approved by the President of the Republic, an additional member who shall be a person appointed and carrying on business as sworn appraiser who has skills or knowledge relating to the purpose for which the property is utilised; and

- (c) when an appeal before the court involves a matter of law only or constitutes an application for condonation, the court shall consist of the President of the court sitting alone.”;
- (e) by the insertion after subsection (4) of the following subsections:
- “**(4A)** Any question as to whether a matter for decision involves a matter of fact or a matter of law, as contemplated in subsection (4)(c), shall be decided by the President of the court sitting alone.
- (4B)** The Judge President of the Provincial Division of the High Court having jurisdiction in the area where the tax court to hear the appeal is situated, may, where—
- (a) the amount which is the subject of the dispute exceeds R50 million; or
- (b) the Commissioner and the appellant agree thereto and have jointly applied to that Judge President,
- direct that the tax court hearing that appeal shall consist of three judges or acting judges of the High Court, one of whom shall be the President of the tax court, and the members of the court, as contemplated in subsection (4).”;
- (f) by the substitution in subsection (5) for the words preceding the proviso to paragraph (a) of the following words:
- “The members of any **[such]** tax court other than judges shall be appointed by the President of the Republic by proclamation in the *Gazette*, and shall hold office for five years from the date of the relevant proclamation.”;
- (g) by the substitution for paragraph (c) of subsection (5) of the following subparagraph:
- “(c) The members **[of any Special Court for the hearing of income tax appeals constituted under the Income Tax Act, 1941]** appointed under this section as on the date that the amendments to this section are introduced by the Second Revenue Laws Amendment Act, 2001, come into operation, shall be deemed to have been appointed under the provisions of this subsection until the expiry of the term of office of that member, as contemplated in subsection (5)(a).”;
- (h) by the substitution for subsections (6), (7) and (8) of the following subsections:
- “(6) The Judge-President of the Provincial Division of the High Court having jurisdiction in the area for which a tax court has been constituted shall nominate and second a judge or an acting judge of **[such]** that division to be the President of **[such]** that tax court, and **[such]** that secondment shall be for such period or for the hearing of such cases as the said Judge-President shall determine.
- (7) Any court established under the provisions of this Act may hear and determine any appeal lodged under the provisions of this Act, or any other Act administered by the Commissioner which provides that the objection and appeal procedures contained in this Part shall apply, whether or not the appellant is resident or carries on business within the area for which that court is established and whether or not the dispute arose within that area.
- (8) If an assessment has been altered **[or reduced]**, the assessment as altered **[or reduced]** shall be deemed to be the assessment against which the appeal is made.”;
- (i) by the deletion of subsections (9) and (10);
- (j) by the substitution for subsection (11) of the following subsection:
- “(11) The sittings of the tax court **[for the hearing of such appeals]** shall not be public, and the court shall at any time on the application of the appellant exclude **[from such sitting]** or require to withdraw **[therefrom]** from such sitting all or any persons whomsoever whose attendance is not necessary for the hearing of the appeal under consideration.”;
- (k) by the substitution for paragraphs (a) and (b) of subsection (13) of the following paragraphs:
- “(a) in the case of any assessment under appeal—
- (i) confirm the assessment; or

- (ii) order **[such]** that assessment to be **[amended, reduced or confirmed]** altered; or
- (iii) **[may]** if it thinks fit, refer the assessment back to the Commissioner for further investigation and assessment;
- (b) in the case of any appeal against the amount of **[the] any additional [charge] tax** imposed by the Commissioner **[under subsection (1) of section seventy-six]**, reduce, confirm or increase the amount of the additional **[charge] tax** so imposed, subject to the maximum amount chargeable in terms of this Act;”;
- (l) by the substitution for subsection (14) of the following subsection: 10
 “(14) Any altered assessment made by the Commissioner **[on reference under subsection (13)]** as a result of a referral of an assessment back to the Commissioner, as contemplated in subsection (13)(a)(iii), shall be subject to objection and appeal as provided in this Part **[provided]** and the rules promulgated in terms of section 107A.”; 15
- (m) by the deletion of subsections (15) and (16);
- (n) by the substitution for subsection (17) of the following subsection:
 “(17) Where—
 (a) the claim of the Commissioner is held to be unreasonable;
 (b) the grounds of appeal of the appellant are held to be frivolous; 20
 (c) the decision of the tax board contemplated in section 83A is substantially confirmed;
 (d) the hearing of the appeal is postponed at the request of one of the parties; or
 (e) the appeal has been withdrawn or conceded by one of the parties 25
 after a date of hearing has been allocated by the registrar, the tax court may, on application by the aggrieved party, grant an order for costs in favour of that aggrieved party, which costs shall be determined in accordance with the fees prescribed by the rules of the High Court.”; 30
- (o) by the substitution for subsection (19) of the following subsection:
 “(19)**[(a)]** The President of the court may indicate which judgments or decisions of the court **[he considers ought to]** must be published for general information, in such form as does not reveal the identity of the appellant.”; and 35
- (p) by the addition of the following subsections:
 “(20) There shall be a registrar of the tax court, who shall be appointed by the Commissioner.
 (21) A person appointed as registrar shall become an employee of the South African Revenue Service. 40
 (22) The registrar shall exercise his or her functions in terms of the Act and the rules independently and impartially.
 (23) Any reference in this Part and the rules to ‘day’ means any day other than a Saturday, Sunday or public holiday: Provided that the days between 16 December of a year and 15 January of the following year, 45
 both inclusive, shall not be taken into account in determining days or the period allowed for complying with any provision in this Part or the rules.”.
- (2) Subsection (1) shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*. 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, Government Notice R.1245 of 26 September 1997, section 47 of Act 59 of 2000 and section 28 of Act 5 of 2001

55. (1) Section 83A of the Income Tax Act, 1962 is hereby amended— 55
 (a) by the substitution for the heading of the following heading:
 “**Appeals to [specially constituted] tax board**”;

- (b) by the substitution for the proviso in subsection (1) of the following proviso:
 “Provided that where the Commissioner, at any time prior to the hearing of such appeal, or the **[Chairman]** Chairperson of the board, at any time prior to or during the hearing of such appeal, is of the opinion that on the ground of the disputes or legal principles arising or that may arise out of such appeal, such appeal should rather be heard by the **[special]** tax court, such appeal shall be set down for hearing de novo before the **[special]** tax court referred to in section 83.”;
- (c) by the substitution for subsections (2) and (3) of the following subsections:
 “(2) A **[special]** board, **[hereinafter referred to]** to be known as the tax board, is hereby established for the hearing of an appeal referred to in subsection (1).
 (3) The board shall consist of an advocate or attorney referred to in subsection (4), who shall be the **[Chairman]** Chairperson of the board, and, if the **[Chairman]** Chairperson, the Commissioner or the taxpayer considers it necessary, an accountant or a representative of the commercial community referred to in section 83 **[(2)]** **(4)**.”;
- (d) by the substitution for paragraph (a) of subsection (4) of the following paragraph:
 “(a) The Minister of Finance shall in consultation with the Judge-President of the Provincial Division within whose area of jurisdiction the board is to sit, appoint, by notice in the *Gazette*, advocates and attorneys to a panel, from which a **[Chairman]** Chairperson of the board shall be nominated from time to time or as required, and such persons shall hold office for five years from the date of the relevant notice: Provided that the appointment of such a person may at any time be terminated by the said Minister for any reason which he considers good and sufficient.”;
- (e) by the substitution in subsection (7) for the words preceding subparagraph (i) of paragraph (b) of the following words:
 “(b) within **[21 business]** 30 days before the date of the hearing of the appeal, furnish the members of the board and the appellant with a written notice of the time and place of the hearing of the appeal and a dossier containing copies of—”;
- (f) by the substitution for subparagraphs (i) and (ii) of paragraph (b) of subsection (9) of the following subparagraphs:
 “(i) the appellant or his or her representative taxpayer may, together with his notice of appeal **[under section 83(7)(a)]** or within such further period as the **[Chairman]** Chairperson may allow, request permission to present his or her case otherwise than as contemplated in this subsection;
 (ii) the **[Chairman]** Chairperson may as he or she deems fit permit the appellant to present his or her case in such manner as the **[Chairman]** Chairperson sees fit.”;
- (g) by the substitution for paragraphs (a), (b) and (c) of subsection (10) of the following paragraphs:
 “(a) During the hearing of the appeal the **[Chairman]** Chairperson shall determine the procedures as he or she sees fit, subject to each party having the opportunity to put his or her case to the board in a reasonable manner.
 (b) The board shall not be required to record its proceedings, but the decision of the board shall be recorded in writing by the **[Chairman]** Chairperson, with a short statement of the facts of the case as found by the board and the reasons for its decision.
 (c) The hearing of an appeal may be adjourned by the **[Chairman]** Chairperson to any time and place that may seem convenient.”;
- (h) by the substitution for paragraphs (e) and (f) of subsection (10) of the following paragraphs:
 “(e) (i) If neither the appellant nor anyone authorized to appear on his or her behalf appears before the board at the time and place appointed for the purpose, the board may, at the request of the Commissioner’s representative and on proof that the prescribed notice of the sitting of the board had been submitted to the appellant, confirm the assessment in respect of which the appeal has been lodged, and thereafter such

appellant shall not be entitled to request that the appeal be referred to the [special] tax court in terms of subsection (13)(a).

(ii) If the Commissioner's representative fails to appear before the board at the time and place appointed for the purpose the board may, at the request of the appellant, allow the appellant's appeal and thereafter the Commissioner shall not be entitled to refer the appeal to the [special] tax court in terms of subsection (13)(b). 5

(f) The provisions of paragraph (e) shall not apply where the [Chairman] Chairperson is satisfied that sound reasons exist for the non-appearance and such reasons are advanced by the appellant or the Commissioner (as the case may be) within seven days after the date on which the appeal was set down for hearing."; and 10

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

"(11) For the purposes of this section the provisions of sections 82, 83[(7)](1B), (8), (11) and (13) [and (15)], 87 and 88 shall *mutatis mutandis* apply."; and 15

(j) by the substitution for subsections (13) and (14) of the following subsection:

"(13) (a) Where an appellant is not satisfied with the decision of the board, he may, within 30 days (or within such further period as the [Chairman] Chairperson may on good cause shown allow) after the date of the notice referred to in subsection (10)(d), require that the appeal be referred to the [special] tax court for hearing. 20

(b) Where the Commissioner is not satisfied with the decision of the board, he may [decide to] refer the appeal to the [special] tax court for hearing and he shall notify the appellant thereof within 30 days (or within such further period as the [Chairman] Chairperson may on good cause shown allow) after the date of the notice referred to in subsection (10)(d). 25

(14) An appeal which has been heard by the board and has been referred to the [special] tax court by virtue of subsection (13)(a) or (b), shall be heard *de novo* by the [special] tax court." 30

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

Amendment of section 84 of Act 58 of 1962, as amended by section 46 of Act 30 of 2000

56. (1) Section 84 of the Income Tax Act, 1962 is hereby amended— 35

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

"(1) The Commissioner, the appellant or the President of a [special] tax court may procure the attendance of any witness (whether residing or for the time being within the area of jurisdiction of that court or not) in the manner prescribed in the [regulations] rules."; and 40

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

"(6) A penalty imposed under subsection (2) or (3) shall be enforced *mutatis mutandis* as if it were a penalty imposed by a [magistrate's court] High Court in circumstances such as are described in the relevant subsection, and the provisions of any law which are applicable in respect of such a penalty imposed by a [magistrate's court] High Court shall *mutatis mutandis* apply in respect of a penalty imposed under either of the said subsections." 45

(2) Subsection (1) shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*. 50

Amendment of section 85 of Act 58 of 1962, as amended by section 47 of Act 30 of 2000

57. (1) Section 85 of the Income Tax Act, 1962, is hereby amended—

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

"Contempt of [special] tax court"; and 55

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

"(1) If during the sitting of a [special] tax court, any person wilfully insults a member of the court or any officer of the court attending at the sitting, or wilfully interrupts the proceedings of the court or otherwise

misbehaves [**himself**] in the place where the court is held, the President of the court may make an order committing that person to imprisonment for any period not exceeding three months or order that person to pay a fine or in default of payment thereof to be imprisoned for such a period.”.

(2) Subsection (1) shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*. 5

Amendment of section 86A of Act 58 of 1962, as inserted by section 24 of Act 103 of 1976 and amended by section 39 of Act 113 of 1993 and section 31 of Act 28 of 1997

58. (1) Section 86A of the Income Tax Act, 1962 is hereby amended—

- (a) by the substitution for the heading of the following heading: 10
 “**Appeals against decisions of a [special] tax court**”;
- (b) by the substitution for subsection (1) of the following subsection:
 “(1) The appellant in a **[special] tax court** or the Commissioner may in the manner hereinafter provided appeal under this section against any decision of that court.”; 15
- (c) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
 “(b) where—
 (i) the President of the **[special] tax court** has granted leave under subsection (5); or 20
 (ii) the appeal was heard by the tax court constituted in terms of section 83(4B),
 to the Supreme Court of Appeal, without any intermediate appeal to such provincial division.”;
- (d) by the substitution for subsection (3) of the following subsection: 25
 “(3) Any party who in terms of subsection (1) has a right to appeal against a decision of a **[special] tax court** and intends to lodge an appeal against such decision under this section shall, within 21 **[business]** days after the date of the notice issued by the registrar of the **[special] tax court** notifying such decision or within such further period as the 30
 President of that court may on good cause shown allow, lodge with the said registrar and the opposite party or his attorney or agent a notice of his intention to appeal against such decision.”;
- (e) by the substitution for paragraph (c) of subsection (4) of the following paragraph: 35
 “(c) whether, for the purposes of preparing the record on appeal, a transcript is required of the evidence given at the hearing of the case by the **[special] tax court** or, if only a part of such evidence is required, what part is required.”;
- (f) by the substitution for subsections (5) and (6) of the following subsections: 40
 “(5) If an intending appellant wishes his appeal against a decision of the **[special] tax court** to be heard by the Supreme Court of Appeal, the registrar of the **[special] tax court** shall submit the notice or notices of intention to appeal lodged under subsection (3) to the President of the **[special] tax court** who shall, having regard to the contemplated grounds 45
 of the intended appeal or appeals as indicated in the said notice or notices, make an order granting or refusing, as he sees fit, leave to appeal against such decision to the said Court, and the order so made shall be final.
 (6) If the person nominated as President of the **[special] tax court** 50
 cannot act in that capacity for the purposes of this section by reason of his having ceased to be a judge or acting judge or if such person has died or if it is inconvenient for such person to act in the said capacity by reason of his absence or illness or for some other reason, the Judge President of the provincial division of the High Court having jurisdiction in the area 55
 for which the **[special] tax court** has been constituted may nominate and

- second another judge or acting judge to act as President of the **[special]** tax court for the purposes of this section in the place of the said person.”;
- (g) by the substitution for subsections (8) and (9) for the following subsections:
- “(8) Any person who was entitled under this section to appeal against a decision of the **[special]** tax court but has not within the time allowed by subsection (3) lodged a notice of his intention to appeal against such decision as required by that subsection, shall be deemed to have abandoned his right of appeal against such decision: Provided that he shall be entitled as the respondent in an appeal noted by the opposite party in the same case, to note in the manner hereinafter provided a cross-appeal in that case. 5
- (9) Any person who has in terms of subsection (3) lodged a notice of his intention to appeal against a decision of the **[special]** tax court but has subsequently withdrawn such notice shall be deemed to have abandoned his right to note any appeal or cross-appeal against such decision.”; 10 15
- (h) by the substitution for the words preceding subparagraph (i) of paragraph (a) of subsection (10) of the following words:
- “(a) After the expiry of the time allowed under subsection (3) for the lodging of a notice of intention to appeal against a decision of the **[special]** tax court the registrar of that court shall—”; 20
- (i) by the substitution for subparagraphs (i) and (ii) of paragraph (a) of subsection (10) of the following subparagraphs:
- “(i) give notice to any person who has lodged a notice of intention in terms of the said subsection and has not withdrawn such notice, that if it is decided to appeal the appeal should be noted within 21 **[business]** days after the date of the registrar’s notice; 25
- (ii) supply to such person a certified copy of any order made by the President of the **[special]** tax court under subsection (5) in relation to the intended appeal against the said decision; and”;
- (j) by the substitution for paragraph (b) of subsection (10) of the following paragraph: 30
- “(b) Where it appears that an order be made by the President of the **[special]** tax court under subsection (5) or where an intending appellant requires a transcript of evidence given at the hearing of the case by the **[special]** tax court to enable him to prepare the record on appeal, the registrar of that court shall not give notice under paragraph (a)(i) until such order has been made and such transcript has been completed.”; 35
- (k) by the substitution for subsection (11) of the following subsection:
- “(11) Any appeal under this section against a decision of a **[special]** tax court shall be noted by lodging a written notice of such appeal with the registrar of the **[special]** tax court, the opposite party or his attorney and the registrar of the appeal court.”; 40
- (l) by the substitution for subsections (13) and (14) of the following subsections:
- “(13) Any cross-appeal against a decision of the **[special]** tax court in any case in which an appeal has been lodged under this section shall be noted by lodging a written notice of such cross-appeal with the registrar of the **[special]** tax court, the opposite party or his attorney and the registrar of the appeal court. 45
- (14) Such notice of cross-appeal shall be lodged within 21 **[business]** days after the date of the noting of the appeal or within such longer period as may be allowed under the rules of the appeal court.”; 50
- (m) by the substitution for paragraph (a) of subsection (16) for the following subparagraph:
- “(a) A party may, by notice in writing lodged with the opposite party or his attorney or agent and the registrar of the **[special]** tax court, abandon the whole or any part of a judgment of that court in his favour.”; 55

- (n) by the substitution for subsections (17), (18) and (19) of the following subsections:

“(17) The record lodged with an appeal court in an appeal against a decision of a [special] tax court shall include any documents placed before the [special] tax court in terms of the [regulations] rules: 5
Provided that merely formal documents and, if the parties consent, such other documents as do not relate to the matters in dispute in the appeal, may be excluded from the record.

(18) Any application or notice which may in terms of this section be lodged with the registrar of the [special] tax court shall be delivered to the registrar [or assistant registrar] of that court [personally] during office hours. 10

(19) Service of any notice which the registrar of the [special] tax court is required to give to any person under this section or of any notice which any party may under this section lodge with an opposite party or his or her attorney or agent shall be effected by the registrar or the party lodging the notice, as the case may be, or by some person acting on the instructions of the registrar or such party, in the manner prescribed by law for the service of process of the High Court, or by dispatching such notice to the person to whom it is addressed by registered post addressed to such person’s residential or business address.”; and 15 20

- (o) by the substitution for paragraph (b) of subsection (20) for the following paragraph:

“(b) any notice served by or on behalf of the Commissioner or the registrar of the [special] tax court upon the public officer of a company in his capacity as such shall be deemed to have been served upon the company;” 25

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

Substitution of section 87 of Act 58 of 1962, as amended by section 32 of Act 28 of 1997 30

59. (1) Section 87 of the Income Tax Act, 1962 is hereby substituted by the following section:

“Members of courts not disqualified from adjudicating

87. A member of any [special] tax court or a judge of any division of the High Court of South Africa shall not solely on account of his or her liability to be assessed under this Act be deemed to be interested in any matter upon which he or she may be called upon to adjudicate thereunder.” 35

- (2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 40

Amendment of section 88 of Act 58 of 1962, as amended by section 12 of Act 6 of 1963, section 44 of Act 85 of 1974, section 25 of Act 103 of 1976, section 24 of Act 91 of 1982, section 30 of Act 121 of 1984, section 17 of Act 70 of 1989, section 40 of Act 113 of 1993 and section 14 of Act 140 of 1993

60. (1) Section 88 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection: 45

“(1) The obligation to pay and the right to receive and recover any tax chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law under section 86A, but if any assessment is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the [special] tax board or the [special] tax court or such court of law, a due adjustment shall be made, amounts paid in excess being refunded with interest at the prescribed rate, such interest being calculated from the date proved to the satisfaction of the 50

Commissioner to be the date on which such excess was received and amounts short-paid being recoverable with interest calculated as provided in section 89.”.

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

Amendment of section 102 of Act 58 of 1962, as substituted by section 28 of Act 69 of 1975 and amended by section 27 of Act 91 of 1982 and section 44 of Act 30 of 1998 5

61. (1) Section 102 of the Income Tax Act, 1962 is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:

“(1) If it is proved to the satisfaction of the Commissioner that any amount paid by a taxpayer was in excess of the amount properly chargeable under this Act, the Commissioner may, notwithstanding the provisions of section 81(5), but subject to the provisions of subsection (4), authorize a refund to such taxpayer of any tax overpaid:”.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 15

Amendment of section 107 of Act 58 of 1962, as amended by section 26 of Act 65 of 1973, section 46 of Act 97 of 1986, section 29 of Act 21 of 1994, section 37 of Act 28 of 1997, section 46 of Act 30 of 1998 and section 34 of Act 5 of 2001

62. Section 107 of the Income Tax Act, 1962 is hereby amended by the deletion of paragraph (e) of subsection (1). 20

Insertion of sections 107A and 107B in Act 58 of 1962

63. (1) The following sections are hereby inserted in the Income Tax Act, 1962, after section 107:

“Rules of tax court 25

107A. (1) The Minister may, after consultation with the Minister of Justice, promulgate rules prescribing the procedures to be observed in lodging an objection and noting appeal against an assessment and the conduct and hearing of an appeal before a tax court.

(2) The rules contemplated in subsection (1) may provide for alternative dispute resolution procedures in terms of which the Commissioner and the person aggrieved by an assessment may resolve a dispute. 30

Settlement of dispute

107B. (1) The Minister may by regulation prescribe the circumstances under which the Commissioner may, for purposes of the settlement of a dispute between the Commissioner and a taxpayer, waive any claim against that taxpayer in whole or in part, where such a settlement would be to the best advantage of the state. 35

(2) The Minister must prescribe the requirements for the reporting by the Commissioner of any claim against a taxpayer which has been waived in whole or in part by the Commissioner, as contemplated in subsection (1).”.

(2) The provisions contained in the regulations prescribing the circumstances under which the Commissioner may waive any claim for purposes of the settlement of any dispute and the reporting requirements, as contemplated in section 107B of the Income Tax Act, 1962, must be incorporated into the Income Tax Act, 1962, within a period of 12 months from the date that the regulations come into operation. 40 45

Amendment of paragraph 2B of Second Schedule to Act 58 of 1962, as inserted by section 42 of Act 53 of 1999

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

“2B. For the purposes of paragraph 2, where **[any endorsement has been made in the records of the fund of which such person is or was a member, which provides]** a court granting an decree of divorce in respect of any member of a pension fund, provident fund or retirement annuity fund, has made an order that any part of the pension interest of that member shall be paid to the former spouse of such member, as provided for in section 7(8) of the Divorce Act, 1979 (Act 70 of 1979), the amount of such part shall be deemed to be an amount that accrues to such person on the date on which the pension interest, of which such amount forms part, accrues to such person.”

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any pension interest which accrues to a member on or after that date.

Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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

(a) by the substitution for the definition of “pre-valuation date asset” of the following definition:

“ ‘pre-valuation date asset’ means an asset acquired prior to valuation date by a person and which **[is still held]** has not been disposed of by that person [on] before valuation date;”;

(b) by the insertion after the definition of “residence” of the following definition:

“ ‘ruling price’ means—

(a) in the case of a financial instrument listed on a recognised exchange in the Republic, the last sale price of that financial instrument at close of business of the exchange, unless there is a higher bid or a lower offer on that day subsequent to the last sale in which case the price of that higher bid or lower offer will prevail; or

(b) in the case of a financial instrument listed on a recognised exchange outside the Republic, the ruling price of that financial instrument as determined in item (a) and if the ruling price is not determined in this manner by that exchange, the last price quoted in respect of that financial instrument at close of business of that exchange.”; and

(c) by the substitution for paragraphs (a) and (b) of the definition of “value-shifting arrangement” of the following paragraphs:

“(a) the value of the interest of **[another]** a connected person in relation to that person held directly or indirectly in that company, trust or partnership increases; or

(b) **[another]** a connected person in relation to that person acquires a direct or indirect interest in that company, trust or partnership.”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 2 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, and amended by section 25 of Act 19 of 2001

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

“(2) For purposes of subparagraph (1)(b)(i), an interest in immovable property situated in the Republic includes a direct or indirect interest of at least 20 per cent held by a person (alone or together with any connected person in relation to that

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person) in the equity share capital of a company or in any other entity, where 80 per cent or more of the value of the net assets of that company or other entity, determined on the market value basis, is, at the time of disposal of shares in that company or interest in that other entity, attributable directly or indirectly to immovable property situated in the Republic, other than immovable property held by that company or other entity as trading stock." 5

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

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

67. (1) Paragraph 3 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (a) of the following subparagraph: 10

“(a) during that year, is equal to the amount by which the proceeds received or accrued in [consequence] respect of that disposal exceed the base cost of that asset; or”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 15

Amendment of paragraph 4 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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

(a) by the substitution for subparagraph (a) of the following subparagraph: 20

“(a) during that year, is equal to the amount by which the proceeds received or accrued in [consequence] respect of that disposal exceed the base cost of that asset; or”; and

(b) by the substitution in item (i) of subparagraph (b) for the words preceding sub-item (aa) of the following words: 25

“(i) so much of the proceeds received or accrued in [consequence] respect of the disposal of that asset that have been taken into account during any year in determining the capital gain or capital loss in respect of that disposal—”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 30

Amendment of paragraph 6 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

69. (1) Paragraph 6 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words preceding subparagraph (a) of the following words: 35

“A person’s aggregate capital gain for a year of assessment is the amount by which the sum of that person’s capital gains for that year and any other capital gains which are required to be taken into account in the determination of that person’s aggregate capital gain or aggregate capital loss for that year, exceeds the sum of—”; and 40

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

“(b) in the case of a natural person or special trust, that person’s or special trust’s annual exclusion for that year.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 45

Amendment of paragraph 7 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

70. (1) Paragraph 7 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraphs (a) and (b) of the following subparagraphs: 50

“(a) that person’s capital gains for that year and any other capital gains which are required to be taken into account in the determination of that person’s aggregate capital gain or aggregate capital loss for that year; and

(b) in the case of a natural person or a special trust, that person’s or special trust’s annual exclusion for that year.”. 55

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

71. (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 5

- (a) by the substitution for item (b) of subparagraph (2) of the following item: 5
 “(b) by a company in respect of the issue or cancellation of a share in the company, or by a company in respect of the granting of an option to acquire a share or debenture in that company;”;
- (b) by the deletion of item (f) of subparagraph (2); and 10
- (c) by the addition to subparagraph (2) of the following item:
 “(i) by a person where that asset vests in the Master of the High Court or in a trustee, in consequence of the sequestration of the estate of the spouse of that person, as contemplated in section 21 of the Insolvency Act, 1936 (Act No. 24 of 1936), and where that asset is subsequently released by the Master or that trustee as contemplated in that section.” 15

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

72. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 20

- (a) by the substitution for subparagraph (1) of the following subparagraph:
 “(1) Where an event described in subparagraph (2) occurs, a person will be treated for the purposes of this Schedule as having disposed of an asset described in that subparagraph for proceeds equal to the market value of the asset at the time of the event and to have immediately re-acquired the asset at an expenditure equal to that market value, which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).” and 25
- (b) by the substitution for subparagraphs (3) and (4) of the following subparagraphs: 30
 “(3) Where assets that are held by a person as trading stock cease to be held by that person as trading stock, otherwise than by way of a disposal contemplated in paragraph 11, that person will be treated as having disposed of those assets for a consideration equal to the amount included in that person’s income in terms of section 22(8) and to have immediately reacquired those assets for a cost equal to that amount, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a). 35
 (4) A person who commences to be a resident must, subject to paragraph 24, be treated as having disposed of each of that person’s assets, other than assets in the Republic listed in paragraph 2(1)(b)(i) and (ii), and as having acquired each of those assets at a cost equal to the market value of each of those assets, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”; and 45
- (c) by the substitution in subparagraph (5) for the words preceding item (a) of the following words:
 “Where a debt owed by a person to a creditor has been reduced or discharged by that creditor without full consideration for that reduction or discharge, that person will, to the extent that that reduction or discharge did not constitute a capital gain in terms of paragraph 3(b)(ii) or has not been taken into account in terms of paragraph 20(3), be treated as having—”. 50

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 55

Amendment of paragraph 15 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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

- (a) by the deletion of the word “or” at the end of subparagraph (d); 5
 - (b) by the substitution for subparagraph (e) of the following subparagraph:
 - “(e) any—
 - (i) time-sharing interest as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act No. 75 of 1983); or
 - (ii) share in a share block company, as defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), 10
 - with a fixed life, the value of which decreases over time; or”; and
 - (c) by the addition of the following subparagraph:
 - (f) any right or interest of whatever nature to or in an asset contemplated in items (a), (b), (c), (d) or (e).” 15
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 18 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

74. (1) Paragraph 18 of the Eighth Schedule of the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for the words preceding item (a) of following words: 20

“Subparagraph (1) does not apply in respect of an option to acquire or dispose of—”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, and amended by section 26 of Act 19 of 2001 25

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

- (a) by the substitution for the words in subparagraph (1) preceding item (a) of the following words: 30
 - “(1) Despite section 23(b) and (f), but subject to paragraphs 24, [and] 25 and 32 and subparagraphs (2) and (3), the base cost of an asset acquired by a person is the sum of—”;
- (b) by the substitution for item (f) of subparagraph (1) of the following item: 35
 - “(f) if that asset was acquired or disposed of by the exercise after valuation date of an option acquired prior to the valuation date, the valuation date value of the option, which value must be treated to be expenditure actually incurred in respect of that asset on valuation date for the purposes of this Part;”;
- (c) by the substitution for sub-items (i), (ii) and (iii) of item (h) of subparagraph (1) of the following sub-items: 40
 - “(i) a marketable security, [**any gain in respect of that acquisition that was included**] the acquisition of which resulted in the determination of any gain to be included in that person’s income in terms of section 8A, [as has not otherwise been included in the cost of that marketable security] the market value of that marketable security that was taken into account in determining the amount of that gain or, where the gain so determined was nil, the amount of the consideration taken into account under section 8A in respect of that acquisition; 45
 - (ii) any other asset, so much of an amount that has been included in that person’s income in terms of section 8(5), [**or is**] as having been applied towards the reduction of the purchase price of that asset or, where an amount has been included in that person’s gross income in terms of paragraph (i) of the definition of ‘gross income’ in section 1, [as has not otherwise been included in the cost of that asset] the value placed on 50 55

- the asset under the Seventh Schedule for purposes of determining the amount so included in that person's gross income;
- (iii) an interest in a controlled foreign entity as defined in section 9D, the proportional amount of the net income of that entity which was included in the income of that person in terms of section 9D during any year of assessment (other than such portion of that proportional amount which relates to the amount of any taxable capital gain included in that net income) plus the proportional amount of the net capital gains of that controlled foreign entity, less the amount of any foreign dividend distributed by that entity to that person during any year of assessment which was exempt from tax in terms of section 9E(7)(e)(i);”
- (d) by the substitution in subparagraph (3) for the words preceding item (a) of the following words:
“(3) The expenditure contemplated in subparagraph (1)(a) to (g), incurred by a person in respect of an asset must be reduced by any amount which—”;
- (e) by the substitution for item (b) of subparagraph (3) of the following item:
“(b) has for any reason been reduced or recovered or become recoverable from or has been paid by any other person (whether prior to or after the incurral of the expense to which it relates), to the extent which such amount—
(i) is not taken into account as a recoupment in terms of section 8(4)(a) or paragraph (j) of the definition of ‘gross income’ of an amount contemplated in item (a); or
(ii) does not represent the recovery or reduction of an amount contemplated in item (c).”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 24 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

76. (1) Paragraph 24 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the heading of the following heading:
“**Base cost of asset of a person who becomes a resident on or after valuation date**”;
- (b) by the substitution for subparagraph (1) of the following paragraph:
“(1) The base cost of an asset, other than an asset situated in the Republic listed in paragraph 2(1)(b)(i) and (ii), acquired by a person before [a] the date on which that person became a resident, is the sum of the value of that asset determined in terms of subparagraphs (2) or (3) and the expenditure allowable in terms of paragraph 20 incurred after [the valuation] that date in respect of that asset.”;
- (c) by the addition of the following subparagraph:
“(4) The provisions of this paragraph do not apply in respect of any asset of a person who became a resident before valuation date.”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of paragraph 25 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

77. (1) Paragraph 25 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

“Determination of base cost of pre-valuation date assets 50

25. The base cost of a pre-valuation date asset (other than an identical asset in respect of which paragraph 32(3A) has been applied), is, the sum of the valuation date value of that asset, as determined terms of paragraph 26,

[or] 27 or 28 and the expenditure allowable in terms of paragraph 20 incurred after the valuation date in respect of that asset.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 26 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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78. (1) Paragraph 26 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by substitution in subparagraph (1) of the words preceding item (a) of the following words:

“[Subject to paragraph 32(5)] Where the proceeds from the disposal of a pre-valuation date asset (other than an asset contemplated in paragraph 28 or in respect of which paragraph 32(3A) has been applied) exceed the expenditure allowable in terms of paragraph 20 incurred both before and after the valuation date in respect of that asset, the person who disposed of that asset must, subject to subparagraph (3), adopt any of the following as the valuation date value of that asset—”: and

(b) by the substitution for subparagraph (3) of the following subparagraph:

“(3) Where a person has adopted the market value as the valuation date value of an asset, as contemplated in subparagraph (1)(a), and the proceeds from the disposal of that asset do not exceed that market value, that person must substitute as the valuation date value of that asset, those proceeds less the expenditure allowable in terms of paragraph 20 incurred after the valuation date in respect of that asset.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of paragraph 27 of Eighth Schedule to Act 58 of 1962, as inserted by Act 5 of 2001

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79. (1) Paragraph 27 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

“Valuation date value where proceeds do not exceed expenditure

27. (1) Subject to subparagraph (2), where the proceeds from the disposal of a pre-valuation date asset do not exceed the expenditure allowable in terms of paragraph 20 incurred both before and after the valuation date in respect of that asset, the valuation date value of that asset must be determined in terms of this paragraph.

(2) This paragraph does not apply in respect of any asset contemplated in paragraph 28 or in respect of which paragraph 32(3A) has been applied.

(3) Where a person has determined the market value of an asset on the valuation date, as contemplated in paragraph 29, or the market value of an asset has been published in terms of that paragraph, and—

(a) the expenditure allowable in terms of paragraph 20 incurred before the valuation date in respect of that asset—

(i) is equal to or exceeds the proceeds from the disposal of that asset; and

(ii) exceeds the market value of that asset on valuation date, the valuation date value of that asset must be the higher of—

(aa) that market value; or

(bb) those proceeds less the expenditure allowable in terms of paragraph 20 incurred after the valuation date in respect of that asset; or

(b) the provisions of item (a) do not apply, the valuation date value of that asset must be the lower of—

(i) that market value; or

(ii) the time-apportionment base cost of that asset as contemplated in paragraph 30.

(4) Where the provisions of subparagraph (3) do not apply, the valuation date value of that asset is the time-apportionment base cost of that asset, as contemplated in paragraph 30.”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 28 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

80. (1) Paragraph 28 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“Despite paragraph 29, the valuation date value of an instrument as defined in section 24J must be—”;

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

“(b) **market value of that instrument determined in terms of paragraph 31** the price which could have been obtained upon a sale of that instrument between a willing buyer and a willing seller dealing at arm's length in an open market—

(i) in the case of an instrument which is listed on a recognised exchange, on the last trading day before valuation date; or

(ii) in any other case, on valuation date; and

(c) by the addition of the following subparagraph:

“(2) Where a person has adopted the adjusted initial amount as the valuation date value of an instrument (other than an instrument listed on a recognised exchange), as contemplated in subparagraph (1)(a), and the proceeds from the disposal of that instrument are less than that adjusted initial amount, the valuation date value of that instrument must be the time-apportionment base cost of that instrument, as contemplated in paragraph 30.”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 29 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

81. (1) Paragraph 29 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words in item (a) of subparagraph (1) preceding sub-item (i) of the following words:

“(a) a financial instrument listed on a recognised exchange and for which a price was quoted on that exchange both before and after valuation date is, subject to subparagraphs (2) and (2A), in the case of a financial instrument listed on an exchange—”;

(b) by the substitution for sub-items (i) and (ii) of item (a) of subparagraph (1) of the following sub-items:

(i) in the Republic, the price published by the Commissioner in the *Gazette*, which is the **[average of the last price quoted in respect of] aggregate value of all transactions in that financial instrument [instruments quoted]** as traded on **[the] that** recognised exchange **[on each of] during** the five business days **[of trading]** preceding the valuation date, **divided by the total quantity of that financial instrument traded during the same period;** and

(ii) outside the Republic, and is not listed on any exchange in the Republic, the **[last] ruling price [quoted]** in respect of that financial instrument on that recognised exchange on the last **[trading] business** day before valuation date.”;

(c) by the substitution for item (b) of subparagraph (2) of the following item:

“(b) the price per share for which that controlling interest has been so

disposed of deviates from the **[last ruling price [quoted]** in respect of that share on that date prior to the announcement of the transaction.”;

(d) by the substitution in subparagraph (2) for the words following item (b) of the following words:

“the valuation date market value of that share so disposed of, as determined in subparagraph (1)(a), must be increased or decreased, as the case may be, by an amount which bears to that market value the same ratio as the deviation bears to **[the last] that ruling price [so quoted]**.”;

(e) by the insertion after subparagraph (2) of the following subparagraph:

“(2A) Where—

- (i) a financial instrument listed on an exchange in the Republic was not traded during the last five business days preceding valuation date;
- (ii) a financial instrument listed on an exchange in the Republic is suspended for any period during September 2001; or
- (iii) the market value of a financial instrument determined in terms of subparagraph (1)(a)(i), exceeds the average of the ruling price of that financial instrument, determined for the first 14 business days of the month of September 2001, by five per cent or more.

the Commissioner must, after consultation with the recognised exchange and the Financial Services Board established in terms of the Financial Services Board Act, 1990 (Act No. 97 of 1990), determine the market value of that financial instrument having regard to the value of the financial instrument, circumstances surrounding the suspension of that financial instrument or reasons for the increase in the value of that **financial instrument**.”; and

(f) by the substitution in item (b) of subparagraph (3) for the expression “50 per cent” of the expression “35 per cent”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 30 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

82. (1) Paragraph 30 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

$$Y = B + \frac{(P - B) \times N}{T + N};$$

(b) by the substitution for item (b) of subparagraph (1) of the following item:

“‘B’ represents the amount of expenditure allowable in terms of paragraph 20 in respect of that asset that is attributable to the period **[of ownership] from the date that the asset was acquired to the day before valuation date**.”; and

(c) by the substitution for items (d) and (e) of subparagraph (1) of the following items:

(d) ‘N’ represents the number of years **[or part thereof] determined from the date that the asset was [owned prior] acquired to the day before valuation date**, which number of years may not exceed 20 in the case where the expenditure allowable in terms of paragraph 20 in respect of that asset was incurred in more than one year of assessment prior to the valuation date;

(e) ‘T’ represents the number of years **[or part thereof] determined from valuation date until the date the asset was [owned] disposed of after valuation date**.”;

(d) by the addition to subparagraph (1) of the following proviso:

“**Provided that for purposes of items (d) and (e) a part of a year must be treated as a full year**.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 31 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

83. (1) Paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for item (a) of subparagraph (1) of the following item: 5
 “(a) an asset which is a financial instrument listed on a recognised exchange and for which a price was quoted on that exchange, is **[the average of the buying and selling prices]** the ruling price in respect of that financial instrument on that recognised exchange **[quoted]** at close of business on the last **[trading]** business day before disposal of that financial instrument.”; and 10
- (b) by the substitution for item (d) of subparagraph (1) of the following item:
 “(d) a fiduciary, usufructuary or other similar interest in any property, an amount determined by capitalizing at 12 per cent the annual value of the right of enjoyment of the property subject to that fiduciary, usufructuary or other like interest, as determined in terms of subparagraph (2), over the expectation of life of the person **[entitled to]** to whom that interest was granted, or if that right of enjoyment is to be held for a lesser period than the life of that person, over that lesser period.” 15

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 20

Amendment of paragraph 32 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, and amended by section 28 of Act 19 of 2001

84. (1) Paragraph 32 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph: 25
 “(1) This paragraph applies to **[the disposal of]** assets which form part of a holding of identical assets.”;
- (b) by the substitution for subparagraph (3) of the following subparagraph:
 “(3) Subject to subparagraph (3A), the base cost of identical assets must be determined by using one of the following methods— 30
 (a) specific identification; or
 (b) the first in first out method [or
 (c) **weighted average**].”;
- (c) by the insertion after subparagraph (3) of the following subparagraph: 35
 “(3A) Despite the provisions of subparagraph (3), the weighted average method of determining base cost of assets, as contemplated in subparagraph (4), may be used for identical assets which—
 (a) from the date of acquisition to the date of disposal constituted assets contemplated in paragraph 31(1)(a);
 (b) constitute assets contemplated in paragraph 31(1)(c), where the prices of these units, shares or interests are regularly published in a national or international newspaper; or 40
 (c) constitute coins made mainly from gold or platinum, where the prices of these coins are regularly published in a national or international newspaper, 45
 and where a person uses the weighted average method for any identical asset contemplated in item (a), (b) or (c), that method must be used for all identical assets, contemplated in that item, held by that person.”;
- (d) by the substitution for subparagraph (4) of the following subparagraph: 50
 “(4) In applying the weighted average method of determining base cost—
 (a) the weighed average base cost, on valuation date, of identical assets acquired and not disposed of before valuation date is equal to the valuation date value of those identical assets, as contemplated in paragraph 28, or the market value of those identical assets, as 55

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contemplated in paragraph 29, divided by the number of those identical assets; and

- (b) the weighted average base cost, thereafter, of identical assets [shall] must be calculated [after each acquisition of an asset] by—
- (i) adding [the] expenditure allowable in terms of paragraph 20 in respect of identical assets to the base cost of [the] identical assets [on hand] acquired and not disposed of before that expenditure was incurred; and
 - (ii) dividing that amount by the [new total] number of identical assets acquired and not disposed of after that expenditure was incurred.”;

(e) by the deletion of subparagraph (5); and

(f) by the substitution for subparagraph (6) of the following subparagraph:

“(6) Once a person has adopted one of the methods specified in [subparagraph (3)] this paragraph in respect of a [holding] class of identical assets contemplated in subparagraph (3A), that method must be used until all those identical assets have been disposed of.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of paragraph 34 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

85. (1) Paragraph 34 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

“Debt Substitution

34. Where a person reduces or discharges a debt owed by that person to a creditor by disposing of an asset to that creditor, that asset must be treated as having been acquired by the creditor at a cost equal to the market value of that asset at the time of that disposal, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 35 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

86. (1) Paragraph 35 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words in subparagraph (1) preceding item (a) of the following words:

“(1) Subject to subparagraphs (2), (3), and (4), the proceeds from the disposal of an asset by a person are equal to the amount received by or accrued to, or which is treated as having been received by, or accrued to or in favour of, that person in [consequence] respect of that disposal, and includes—”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 38 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

87. (1) Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words preceding item (a) of the following words:
- “(1) Subject to subparagraph (2) and paragraph 67, where a person disposed of an asset by means of a donation or for a consideration not measurable in money or to a person who is a connected person in relation to that person for a consideration which does not reflect an arm’s length price—”;

- (b) by the substitution for item (b) of the following item:
 “(b) the person who acquired that asset must be treated as having acquired that asset at a cost equal to that market value, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”; and 5
- (c) by the addition of the following subparagraph:
 “(2) Subparagraph (1) does not apply in respect of the disposal of—
 (a) a right contemplated in section 8A; or
 (b) an asset in the circumstances contemplated in section 10(1)(nE).”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 10

Amendment of paragraph 39 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

88. (1) Paragraph 39 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph: 15
- “(3) For the purposes of this paragraph, a connected person in relation to—
- (a) a natural person does not include a relative of that person other than a [spouse] parent, child, stepchild, brother, sister, grandchild or grandparent of that person; or
- (b) a fund of an insurer contemplated in section 29A does not include another such fund of that insurer in respect of the disposal of an asset in terms of section 29A(6) or (7).”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 20

Amendment of paragraph 40 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

89. (1) Paragraph 40 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 25
- (a) by the addition to subparagraph (1) of the following item:
 “(d) an interest in a pension, provident or retirement annuity fund in the Republic or a fund, arrangement or instrument situated outside the Republic which provides benefits similar to a pension, provident or retirement annuity fund which if the proceeds thereof had been received by or accrued to the deceased, the capital gain or capital loss determined in respect of the disposal of the interest would have been disregarded in terms of paragraph 54.”.
- (b) by the substitution in subparagraph (1) for the words following item (c) of the following words: 35
- “to his or her deceased estate for proceeds equal to the market value of those assets at the date of that person’s death, and the deceased estate must be treated as having acquired those assets at a cost equal to that market value, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”; and 40
- (c) by the substitution for item (b) of subparagraph (2) of the following item:
 “(b) the heir, legatee or trustee must be treated as having acquired that asset at a cost equal to the base cost of the deceased estate in respect of that asset, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 45

Amendment of paragraph 42 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

90. (1) Paragraph 42 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for item (b) of subparagraph (1) for the following item: 5
 “(b) the person who acquired the financial instrument of the same kind and of the same or equivalent quality must be treated as having acquired that financial instrument at a cost equal to the total of—
 (i) any amount allowable in terms of paragraph 20: **[plus] and** 10
 (ii) the amount of any capital loss which would have arisen in the hands of the person who disposed of the asset, were it not for the operation of item (a),
which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”; and
 (b) by the substitution for subparagraph (3) of the following subparagraph: 15
 “(3) For the purposes of this paragraph, a connected person in relation to—
 (a) a natural person does not include a relative of that person other than a **[spouse]** parent, child, stepchild, brother, sister, grandchild or grandparent of that person; or 20
 (b) a fund of an insurer contemplated in section 29A does not include another such fund of that insurer in respect of the disposal of an asset in terms of section 29A(6) or (7).”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 25

91. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph: 30
 “(1) Where a person disposes of an asset, other than a foreign equity instrument, for proceeds denominated in a foreign currency after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal by translating both proceeds and the **[expenditure incurred]** base cost into the currency of the Republic at the ruling exchange rate on the date of disposal.”; 35
 (b) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:
 “Where a person disposes of an asset, other than a foreign equity instrument, for proceeds denominated in any currency (hereinafter referred to as the ‘currency of disposal’) after having incurred expenditure in respect of that asset in another currency (hereinafter referred to as the ‘currency of expenditure’), that person must—”; 40
 (c) by the substitution for item (a) in subparagraph (2) of the following item: 45
 “(a) determine the capital gain or capital loss on the disposal by translating both proceeds and the **[expenditure incurred]** base cost into the currency of expenditure at the ruling exchange rate on the date of disposal; and”;
 (d) by the addition of the following subparagraph: 50
 “(4) Despite section 25D, where a person disposes of any foreign equity instrument, that person must determine the capital gain or capital loss on the disposal by translating—
 (a) the proceeds into the currency of the Republic at the ruling exchange rate on the date of disposal;
 (b) the valuation date value of that foreign equity instrument which is a pre-valuation date asset into the currency of the Republic at the ruling exchange rate on valuation date; and 55

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(c) the expenditure incurred after valuation date in respect of that foreign equity instrument into the currency of the Republic at the ruling exchange rate on the date of incurral of that expenditure.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 44 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 5

92. (1) Paragraph 44 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words following subparagraph (c) of the definition of “an interest” for the following words: 10

“but excluding—

(i) a right under a mortgage bond; or

(ii) [an] a right or interest of whatever nature in a trust or an asset of a trust, other than a right of a lessee who is not a connected person in relation to that trust;” and 15

(b) by the substitution in item (b) of the definition of “primary residence” for the words preceding sub-item (i) of the following words:

“(b) which that person or a beneficiary of that special trust or a spouse of that person or beneficiary—”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 20

Amendment of paragraph 45 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, and amended by section 29 of Act 19 of 2001

93. (1) Paragraph 45 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) Subject to subparagraphs (2) and (3), a natural person or a special trust 25 must, when determining an aggregate capital gain or aggregate capital loss, disregard so much of a capital gain or capital loss determined in respect of the disposal of the primary residence of that person or that special trust as does not exceed R1 million.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 30

Amendment of paragraph 47 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

94. (1) Paragraph 47 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (b) of the following subparagraph:

“(b) that person or a beneficiary of that special trust or a spouse of that person or 35 beneficiary, was not ordinarily resident in that residence throughout the period on or after the valuation date during which that person or special trust held that interest.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 49 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 40

95. (1) Paragraph 49 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for item (ii) of subparagraph (a) of the following item:

“(ii) disposes of an interest in a residence that was a primary residence for a 45 part of the period on or after the valuation date during which that person or special trust held that interest; and” and

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

“(b) where that person or a beneficiary of that special trust used the residence 50 referred to in subparagraph (a) or a part thereof for the purposes of carrying on a trade for any portion of the period on or after the valuation date during which that person or special trust held that interest.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 51 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

96. (1) Paragraph 51 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for sub-item (i) of item (b) of subparagraph (2) of the following sub-item: 5

“(i) alone or together with his or her spouse directly held all the share capital or members’ interest in that company from 5 April 2001 to the date of registration in the deeds registry of that residence in the name of that natural person or his or her spouse or in their names jointly; or”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 10

Amendment of paragraph 53 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

97. (1) Paragraph 53 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph: 15

“(4) For the purposes of subparagraph (2), an asset of a natural person or a special trust to whom an allowance is or was paid or payable in respect of the use of that asset for business purposes, must be treated as being used mainly for purposes other than the carrying on of a trade.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 55 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, and amended by section 32 of Act 19 of 2001 20

98. (1) Paragraph 55 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subitem (ii) of item (a) of subparagraph (1) of the following subitem: 25

“(ii) is the spouse, nominee, dependant as contemplated in the Pension Funds Act, 1956 (Act No. 24 of 1956), or deceased estate of the original beneficial owner of the relevant policy and no amount was paid or is payable or will become payable, whether directly or indirectly, in respect of [the] any cession of that policy from the beneficial owner of that policy to that spouse, nominee or dependant; or”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 30

Substitution of paragraph 56 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

99. (1) Paragraph 56 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph: 35

“Disposal by creditor of debt owed by connected person

56. (1) Where a creditor disposes of a claim owed by a debtor, who is a connected person in relation to that creditor, that creditor must disregard any capital loss determined in consequence of that disposal.

(2) Subparagraph (1) does not apply in respect of any capital loss determined in consequence of the disposal by a creditor of a claim owed by a debtor, to the extent that the amount of that claim so disposed of represents a capital gain which is included in the determination of the aggregate capital gain or aggregate capital loss of that debtor by virtue of paragraph 12(5).”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 45

Act No. 60, 2001 SECOND REVENUE LAWS AMENDMENT ACT, 2001

Substitution of paragraph 58 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

100. (1) Paragraph 58 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

“Exercise of an option

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58. Where, as a result of the exercise by a person of an option, that person acquires or disposes of an asset in respect of which that option was granted, that person must disregard any [A] capital gain or capital loss [of a person] determined in respect of the [termination] exercise of [the] that option [as a result of the exercise by that person of an option, must be disregarded].” 10

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of paragraph 59 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

101. (1) Paragraph 59 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph: 15

“Compensation for personal injury, illness or defamation

59. A natural person or a special trust must disregard a capital gain or a capital loss determined in respect of a disposal that resulted in that person or that special trust, as the case may be, receiving compensation for personal injury, illness or defamation of that person or a beneficiary of that special trust.” 20

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of paragraph 61 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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102. (1) Paragraph 61 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

“Unit trust funds

61. A unit portfolio [comprised in any unit trust scheme managed or carried on by a management company under section 4 or 30 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981),] contemplated in paragraph (e)(i) of the definition of “company” in section 1, must disregard any capital gain or capital loss.” 30

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 65 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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103. (1) Paragraph 65 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for items (a) and (b) of subparagraph (1) of the following items:

“(a) a person disposes of an asset, other than a financial instrument, by way of expropriation, loss or destruction, or where the Master of the High Court or an appointed trustee disposes of an asset, other than a financial instrument, of a person in consequence of the sequestration of the estate of the spouse of that person, as contemplated in section 21 of the Insolvency Act, 1936 (Act No. 24 of 1936), and that person obtains an order in which the proceeds are declared to be those of that person; 40 45

- (b) proceeds accrue to that person by way of compensation for that expropriation, loss or destruction, or in consequence of the disposal by the Master of the High Court or the appointed trustee, as contemplated in item (a);”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

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

104. (1) Paragraph 67 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph: 10
 “(1) (a) Subject to subparagraph (3), a person (hereinafter referred to as ‘the transferor’) must disregard any capital gain or capital loss determined in respect of the disposal of an asset to his or her spouse (hereinafter referred to as ‘the transferee’).
 (b) The transferee must be treated as having— 15
 (i) acquired the asset on the same date that such asset was acquired by the transferor;
 (ii) acquired the asset for an amount equal to the expenditure contemplated in paragraph 20 that was incurred by that transferor prior to that disposal;
 (iii) incurred that expenditure on the same date that it was incurred 20
 by the transferor; and
 (iv) used the asset in the same manner that it was used by the transferor in respect of the period prior to that disposal.”; and
 (b) by the addition of the following subparagraph: 25
 “(3) Subparagraph (1) shall not apply in respect of the disposal of an asset by a person to his or her spouse who is not a resident, unless the asset disposed of is an asset contemplated in paragraph 2(1)(b).”
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Insertion of paragraph 67A in Eighth Schedule to Act 58 of 1962

105. (1) The following paragraph is hereby inserted in the Eighth Schedule after paragraph 67: 30

“Capital gains and capital losses in respect of interests in unit trust funds

67A. (1) A holder of a unit in a unit portfolio comprised in any unit trust scheme managed or carried on by any company registered as a management company under section 30 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), must determine a capital gain or capital loss in respect of any interest in that unit portfolio only upon the disposal of that unit. 35
 (2) The capital gain or capital loss to be determined in terms of subparagraph (1) must be determined with reference to the proceeds from the disposal of that unit and its base cost.” 40

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

106. (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “share” of the following definition: 45

“‘share’ in relation to a company means any [issued] share capital [in relation to a] of, or member’s interest in, that company [(or any fraction thereof) regardless of] and any right or interest in or to such share capital or member’s interest,

whether or not that **[issued]** share capital or member's interest carries a right to participate in dividends or a capital distribution.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 5

107. (1) Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph: 10
 “(1) Subject to subparagraph (4), where a capital distribution of cash or assets *in specie* is received by or accrues to a person in respect of a share, that person must reduce the base cost of that share by the amount of that capital distribution prior to disposing of that share.”;
- (b) by the substitution for subparagraph (4) of the following subparagraph: 15
 “(4) Where a shareholder disposes of a share that qualifies as a pre-valuation date asset and has adopted the time-apportionment base cost for that share—
 (a) the expenditure incurred in respect of that share must be reduced to the extent of any capital distribution of cash or assets *in specie* received by or accrued to that shareholder in respect of that share **[before the valuation date]**; and 20
 (b) where the capital distribution exceeds that expenditure, the shareholder must add the excess to the proceeds.” 25

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 80 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 25

108. (1) Paragraph 80 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

- “**(3) Where during any year of assessment any resident acquires a vested right to any amount representing capital of any trust which is not a resident, and—** 30
 (a) that capital arose from—
 (i) a capital gain of that trust determined in any previous year of assessment during which that resident had a contingent right to that capital; or
 (ii) any amount which would have constituted a capital gain of that trust had that trust been a resident; and
 (b) that capital gain has not been subject to tax in the Republic in terms of the provisions of this Act, 35
 that amount must be taken into account for the purposes of calculating the aggregate capital gain or aggregate capital loss of that resident that year of assessment.” 40

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 81 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

109. (1) Paragraph 81 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph: 45
 “**[(1)]** Despite paragraph 38(b), a person's interest in a discretionary trust must **[subject to subparagraph (2)]** be treated as having a base cost of nil.”; and
 (b) by the deletion of subparagraph (2).

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001. 50

Amendment of paragraph 84 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, and amended by section 34 of Act 19 of 2001

110. (1) Paragraph 84 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for the words preceding item (a) of the following words: 5
 “The Minister must, by way of notice in the *Gazette*, issue regulations to determine a capital gain or capital loss of persons (other than trusts carrying on any trade, natural persons who hold any foreign currency asset, foreign currency option contract or forward exchange contract as trading stock, or companies) in respect of—”;
- (b) by the substitution for item (b) of subparagraph (3) of the following item: 10
 “(b) [acquiring an] exchanging or converting a foreign currency asset [or incurring an expenditure] into another foreign currency asset which is denominated in the same currency [as the currency of acquisition or incurral]; and 15
- (c) by the deletion of item (c) of subparagraph (3);
- (d) by the deletion of item (a) of subparagraph (4); and
- (e) by the addition of the following subparagraph: 20
 “(5) For the purposes of this paragraph ‘foreign currency asset’ means—
 (a) any foreign currency; and
 (b) any—
 (i) loan, advance or debt;
 (ii) stock, bond, debenture, bill, promissory note, certificate or similar arrangement; or 25
 (iii) deposit with a bank or other financial institution, the value of which is denominated in and primarily determined with reference to any foreign currency, (but excluding any policy or right in a pension fund which gives rise to any benefit contemplated in paragraph 54 or an amount contemplated in section 10(1)(gC)).” 30
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Repeal of paragraph 85 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

111. (1) Paragraph 85 of the Eighth Schedule to the Income Tax Act, 1962, is hereby repealed. 35

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 86 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

112. (1) Paragraph 86 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 40

- (a) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:
 “(2) Subject to subparagraph (3), where a person—”;
- (b) by the addition of the following subparagraph: 45
 “(3) The provisions of this paragraph do not apply to any disposal of an asset by a fund contemplated in section 29A(4) to any other such fund in terms of section 29A(6) or (7).”
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

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, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000 and section 60 of Act 59 of 2000

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

- (a) by the substitution for the definition of “container operator” of the following definition: 10
 “ ‘container operator’ means any person providing international transportation of containerised goods, and approved by the Commissioner, under section 96A, for operating containers in the Republic, and includes any agent appointed by such container operator as contemplated in section 97;”;
- (b) by the substitution for the definition of “container terminal” of the following definition: 15
 “ ‘container terminal’ means any container terminal contemplated in section 6(1)(hA) and licensed in terms of the provisions of this Act;”;
- (c) by the insertion after the definition of “container terminal” of the following definition: 20
 “ ‘container terminal operator’ means the licensee of a container terminal;”;
- (d) by the insertion after the definition of “customs duty” of the following definitions: 25
 “ ‘degrouper depot’ means any degrouper depot for air cargo contemplated in section 6(1)(hC) and licensed under the provisions of this Act; and
 ‘degrouper operator’ means the licensee of a degrouper depot;”;
- (e) by the substitution for the definition of “fuel levy goods” of the following definition: 30
 “ ‘fuel levy goods’ means any goods specified in Part 5 of Schedule No. 1, except any goods specified in any item of that Part for which a free rate of duty is prescribed as contemplated in section 37A(1)(a), which have been manufactured in or imported into the Republic;”;
- (f) by the substitution for the definition of “master” of the following definition: 35
 “ ‘master’ in relation to any ship, means any person (other than a pilot) having charge of such ship and includes any agent appointed by such master as contemplated in section 97;”;
- (g) by the substitution for the definition of “pilot” of the following definition: 40
 “ ‘pilot’ in relation to any aircraft, means any person having charge of such aircraft and includes any agent appointed by such pilot as contemplated in section 97(1);”;
- (h) by the insertion after the definition of “this Act” of the following definitions: 45
 “ ‘transit shed’ means any transit shed contemplated in section 6(1)(g) and licensed under the provisions of this Act; and
 ‘transit shed operator’ means the licensee of a transit shed;”;
- (i) by the insertion after the definition of “vehicle” of the following definition: 50
 “ ‘wharf operator’ means the licensee in control of any goods on any wharf contemplated in section 6(1)(gA) and licensed in terms of the provisions of this Act where any imported or exported goods which are not containerised including goods in bulk are landed from or loaded into any ship;”.
- (2) (a) The amendment in paragraph (e) in respect of the definition of “fuel levy goods” shall be deemed to have come into operation on 24 November 1999. 55
 (b) The amendments in paragraphs (a) to (d) and (f) to (i) shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*.

Amendment of section 3 of Act 91 of 1964

114. Section 3 of the Customs and Excise Act, 1964, is hereby amended by the addition of the following subsection:

“(3) Any decision or determination made or any other act performed by the Commissioner or an officer under the provisions of this Act, including any amendment or withdrawal thereof, shall be deemed to be effective from the date any notice or communication in respect of such decision, determination or act is issued in writing.”

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998 and section 47 of Act 53 of 1999

115. (1) Section 4 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for subsections (3) and (3A) of the following subsections:

“(3) [No] The Commissioner or any officer shall not disclose any information relating to any person, firm or business acquired in the performance of his duties, except—

(a) for the purposes of this Act; or

(b) when required to do so as a witness in a court of law [or]:

[(c) such information in relation to any person as may be required by the Chief of the Central Statistical Services in connection with the collection of statistics in complying with the provisions of the Statistics Act, 1976 (Act No. 66 of 1976), or any regulation thereunder.]

Provided that the provisions of this subsection shall not be construed as preventing the Commissioner (in such form and under such procedural arrangements as the Commissioner may prescribe) from, on good cause shown—

(i) disclosing such information in relation to any person as may be required by the Chief of the Central Statistical Services in connection with the collection of statistics in complying with the provisions of the Statistics Act, 1976 (Act No. 66 of 1976), or any regulation thereunder;

(ii) disclosing to the Director-General of the Department of Trade and Industry such information in relation to imports and exports and importers and exporters as may be required by such Director-General for the determination of any trade policy;

(iii) applying *ex parte* to a judge in chambers for an order allowing the Commissioner to disclose to the National Commissioner of the South African Police Service, contemplated in section 6(1) of the South African Police Service Act, 1955 (Act No. 68 of 1955), or the National Director of Public Prosecutions, contemplated in section 5(2)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), such information the disclosure of which may reveal evidence—

(a) that an offence, other than an offence in terms of this Act or any other Act administered by the Commissioner or any other officer in respect of which the Commissioner is a complainant, has been or may be committed, or where such information may be relevant to the investigation or prosecution of such an offence, and such offence is a serious offence in respect of which a court may impose a sentence exceeding five years imprisonment; or

(b) of an imminent and serious public safety or environmental risk,

and where the public interest in the disclosure of the information outweighs any potential harm to the person concerned should such information be disclosed: Provided that any information or document provided by any person in terms of this Act which is disclosed

in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such person, to the extent that such information or document constitutes an admission by such person of the commission of an offence contemplated in paragraph (a); or

- (iv) disclosing such information in the records of any office under the control of the Commissioner in relation to imports and exports and importers and exporters as may be required by the Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank, contemplated in section 4 or 6(1)(a) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), for purposes of exercising any power or performance of any duty or function in connection with foreign transactions under the provisions of the Exchange Control Regulations, 1961:

Provided further that the Commissioner shall disclose information in respect of any class of persons to the Director-General of the National Treasury, to the extent necessary for the purposes of tax policy design or revenue estimation.

(3A) The Chief of the Central Statistical Services or the Director-General of the Department of Trade and Industry or the Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank or the National Commissioner of the South African Police Service or the National Director of Public Prosecutions or the Director-General of the National Treasury or any person acting under the direction and control of such Chief of the Central Statistical Services or Director-General of the Department of Trade and Industry or Governor of the South African Reserve Bank or National Commissioner of the South African Police Service or National Director of Public Prosecutions or the Director-General of the National Treasury, shall not disclose any information supplied under the proviso to subsection (3)[(c)] to any person or permit any person to have access thereto, except in the exercise of [that Chief's] his powers or the carrying out of [that person's] his duties under [the direction and control of such Chief, to collect statistics or to publish statistics in any anonymous form] any Act from which such powers or duties are derived.”;

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

“(3C) For the purposes of the proviso to subsection (3), the Commissioner may, subject to the provisions of section 3(2), delegate the powers vested in him by that proviso, to any officer.

(3D) The provisions of this section shall not apply in respect of any information relating to any person, where that person has consented that such information may be published or made known to any other person.”.

- (2) Subsection (1) shall in so far as it—

- (a) inserts paragraph (iv) of the proviso to subsection (3), come into operation on a date to be determined by the President by proclamation in the *Gazette*; and
 (b) amends the rest of section 4, come into operation on the date of promulgation of this Act.

Amendment of section 6 of Act 91 of 1964, as amended by section 2 of Act 71 of 1975, section 1 of Act 52 of 1986, section 6 of Act 59 of 1990 and section 3 of Act 45 of 1995

- 116.** (1) Section 6 of the Customs and Excise Act, 1964, is hereby amended—

Act No. 60, 2001 SECOND REVENUE LAWS AMENDMENT ACT, 2001

- (a) by the substitution for paragraph (g) of subsection (1) of the following paragraph:
 “(g) places where [sheds as] transit sheds may be established into which goods, before due entry thereof, may be removed from a ship, aircraft or vehicle or to which such goods may be removed after removal from such ship, aircraft or vehicle;” 5
- (b) by the insertion after paragraph (g) of subsection (1) of the following paragraph:
 “(gA) wharfs on which goods imported or exported which are not containerised, including goods in bulk, may be landed from or loaded into any ship by, and be under the control of, a wharf operator;” 10
- (c) by the insertion after paragraph (hB) of subsection (1) of the following paragraph:
 “(hC) places where degrouping depots may be established to which air cargo may be removed from a transit shed before due entry thereof for the storage, detention, unpacking or examination of consolidated packing or its contents, for the removal to another transit shed or the delivery to importers of such contents after due entry thereof, or for the consolidation of air cargo for export and such other purposes as may be specified by rule;” and 15
 20
- (d) by the addition of the following subsection:
 “(6) No person may be in control of, or receive, deliver, remove, store or otherwise deal with any imported goods landed from any ship, aircraft or other vehicle before due entry thereof unless such person is an approved container operator as contemplated in section 96A or is in control of or receives, delivers, removes, stores or otherwise deals with such goods in accordance with a licence issued under the provisions of the Notes to the item of Schedule No. 8 in which such licence is specified, the provisions of such Notes, the rules contemplated in section 60(1)(b) and any other provision of this Act relating to such goods, except if the Commissioner otherwise determines by rule.” 25
 30
- (2) (a) Subsection (1)(a), (b) and (c) shall come into operation on the date of promulgation of this Act.
 (b) Subsection (1)(d) shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 35

Amendment of section 8 of Act 91 of 1964

117. (1) Section 8 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution of the words preceding paragraph (a) of subsection (1) of the following words:
 “(1) Notwithstanding the provisions of sections 7 and 12, the Commissioner may by rule prescribe that—” 40
- (b) by the substitution for paragraph (c) of the following paragraph:
 “(c) any outturn report or other report in respect of any imported goods unpacked while under the control of any person after landing thereof [**at any place approved by the Commissioner**] as contemplated in section 11;” 45
- (c) by the insertion of the following subsections:
 “(2) (a) Any such outturn report or other report shall reflect full particulars concerning any excess or deficiency in respect of any goods landed, received, unpacked, packed or loaded, as the case may be, according to any manifest or other report contemplated in subsection (1)(a) or any subsequent outturn report or other report by any other person in accordance with to the sequence prescribed in the rules. 50
 (b) Whenever any imported goods reported in any manifest or other report are not landed or any such goods not reported are landed or any container or package is landed with visible evidence of tampering or any deficiency is suspected, any person completing any outturn report on landing of the goods shall examine such goods in the presence of the 55

carrier or any agent of the carrier who shall confirm the result of the examination and furnish an explanation of the condition of such goods.

(c) Any person who fails to report cargo landed or makes any false or misleading statement in connection with any report to which this section relates, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or both such fine and imprisonment and the goods in respect of which such offence was committed shall be liable to forfeiture under this Act.”

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

Amendment of section 11 of Act 91 of 1964, as amended by section 2 of Act 105 of 1976 and section 6 of Act 45 of 1995

118. (1) Section 11 of the Customs and Excise Act, 1964, is hereby substituted by the following section:

“Landing of unentered goods and delivery thereof

11. (1) All goods imported into the Republic by ship, aircraft or other vehicle shall if landed before due entry thereof be—

- (a) landed on a licensed wharf under the control of a wharf operator; or
- (b) placed into or delivered to any licensed—
 - (i) container terminal;
 - (ii) container depot;
 - (iii) transit shed; or
 - (iv) degrouping depot; or
- (c) delivered to—
 - (i) any container operator approved under the provisions of section 96A;
 - (ii) any other premises licensed under the provisions of this Act;
 - (iii) the State warehouse; or
 - (iv) any other place approved by the Commissioner on furnishing such security as the Commissioner may require.

(2) Where any carrier fails to deal with goods landed before due entry as contemplated in subsection (1) such carrier shall—

- (a) be liable for the duty on the goods concerned until they are duly entered for the purposes of this Act;
- (b) be guilty of an offence and liable on conviction to a fine of R100 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or both such fine and imprisonment and the goods in respect of which such offence was committed shall be liable to forfeiture under this Act.

(3) The Commissioner may, subject to the provisions of section 6(6), licence any wharf, container terminal, transit shed or degrouping depot as a special customs and excise storage warehouse contemplated in section 21.”

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

Amendment of section 18 of Act 91 of 1964, as amended by section 2 of Act 95 of 1965, section 6 of Act 105 of 1969, section 4 of Act 71 of 1975, section 3 of Act 105 of 1976, section 3 of Act 112 of 1977, section 4 of Act 84 of 1987, section 13 of Act 59 of 1990, section 11 of Act 45 of 1995 and section 48 of Act 53 of 1999

119. (1) Section 18 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the insertion of the following subsection:

“(1B) Any imported goods landed in the Republic when removed in bond to a destination in the Republic may, except where the Commissioner otherwise determines by rule, only be so removed to any premises licensed under the provisions of this Act.”; and

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

“(b) in the case of goods which were destined for a place beyond the borders of the common customs area, that such goods have been duly taken out of that area or, in circumstances and in accordance with procedures which the Commissioner may determine by rule, that the goods have been duly accounted for in the country of destination.”.

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

Amendment of section 18A of Act 91 of 1964

120. Section 18A of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subject to the provisions of subsection (3), any liability for duty in terms of subsection (1) shall cease when it is proved by the exporter that the said goods have been duly taken out of the common customs area or, in circumstances and in accordance with procedures which the Commissioner may determine by rule, that the goods have been duly accounted for in the country of destination.”.

Insertion of section 21A in Act 91 of 1964

121. (1) The following section is hereby inserted after section 21 of the Customs and Excise Act, 1964:

“Provisions for the customs and excise administration of industrial development zones

21A. (1) (a) For the purposes of this Act, Industrial Development Zone or the abbreviation IDZ, and any other expression relating thereto shall, unless otherwise specified in this Act or the context of any provision of this Act otherwise indicates, have the meaning assigned thereto in the regulations made by the Minister of Trade and Industry under section 10(1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993), and published in Government Notice R1224 of 1 December 2000 (Regulation *Gazette* No. 6936).

(b) (i) Any reference in this section and its rules to ‘the regulations’ or any regulation, shall, unless otherwise specified, be a reference to the regulations or a regulation published in Government Notice R1224 of 1 December 2000.

(ii) Where any provision of the Manufacturing Development Act, 1993, or any regulation is inconsistent or in conflict with any provision of this Act governing the administration of industrial development zones including any matter relating to the liability or levying of duty or any rebate, refund or drawback of duty, the provision of this Act shall prevail over the provision of the Manufacturing Development Act, 1993, or the regulation.

(2) (a) (i) The customs secured area (CSA) of an IDZ shall, notwithstanding anything to the contrary contained in this Act or in any regulation and subject to the provisions of this section or any Schedule or rule, be deemed to be a special customs and excise manufacturing and storage warehouse contemplated in section 21.

(ii) Before such warehouse is licensed the IDZ operator applying for the licence shall furnish such security as the Commissioner may require.

(iii) The Commissioner may at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as he may determine.

(b) (i) The CSA must be licensed as such a warehouse by the IDZ operator.

(ii) The Commissioner may after consultation with the Manufacturing Development Board established under section 2 of the Manufacturing Development Act, 1993, refuse any application for a licence or cancel or suspend any such licence. 5

(iii) The provisions of section 60(2) and of the regulations shall apply *mutatis mutandis* for the purposes of paragraph (ii).

(c) The IDZ operator shall be liable for the duty on any goods which:

(i) the IDZ operator, the IDZ enterprise or any other person bring into the CSA; 10
(ii) are manufactured or produced in the CSA.

(d) The person who actually brings the goods into the CSA and the IDZ operator shall be jointly and severally liable for the duty on such goods and the provisions of section 44A shall apply *mutatis mutandis* to such liability. 15

(e) The liability for duty of the IDZ operator as contemplated in paragraph (c), shall cease—

- (i) if the IDZ operator proves that, as the case may be—
- (aa) the duty on the goods concerned has been paid;
 - (bb) the goods have been consumed within the CSA; 20
 - (cc) the goods have been duly used in the manufacture or production of any goods by the IDZ enterprise in accordance with any IDZ enterprise permit and any relevant provision in any Schedule of this Act;
 - (dd) the goods have been duly exported; 25
 - (ee) the goods have been removed and received in any other premises licensed under the provisions of this Act;
 - (ff) any goods brought temporarily into the CSA are removed therefrom in accordance with the provisions of this Act and any conditions imposed by the Commissioner; 30
- (ii) where the goods are abandoned or destroyed under the provisions of this Act.

(3) Any goods manufactured or produced in the CSA shall be deemed to be imported goods for the purposes of entry for home consumption.

(4) (a) Notwithstanding anything to the contrary contained in this Act or the Manufacturing Development Act, 1993, or any regulation or any other law, the Minister may, at the request of the Minister of Trade and Industry, in respect of any goods produced or manufactured in or removed for home consumption or exported from or brought into or used in any activity in the CSA, by notice in the *Gazette*— 40

- (i) in a schedule which shall be deemed to be incorporated in Schedule No. 1 as Part 9 thereof and to constitute an amendment of Schedule No. 1, specify the duty leviable on goods manufactured or produced in, or any other goods brought into, the CSA on entry for home consumption; 45
- (ii) in any item in a separate Part of each of Schedule No. 3, 4, 5 or 6, as the case may be, which shall be deemed to be an amendment of such Schedule, provide for a rebate, refund or drawback of duty in respect of any goods brought into, produced or manufactured or used in or removed from the CSA in the circumstances and for the purposes and on compliance with any conditions that may be specified in such Part or item. 50

(b) Any amendment contemplated in paragraph (a) may be made with retrospective effect from such date as may be specified in such notice. 55

(c) Notwithstanding the provisions of sections 48 and 75(15) any amendment to the said Part 9 or Schedule No. 3, 4, 5 or 6 shall be made under the provisions of this section.

(d) The provisions of section 48(6) shall apply *mutatis mutandis* to the provisions of this subsection. 60

(e) 'Manufactured or produced' shall have the meaning applied in terms of this Act to goods imported into the Republic, and in determining the duty leviable in Part 9, the Minister shall take into account the preferential rates of duty in operation in Part 1 of Schedule No. 1 in respect of goods originating in a country which is entitled to such preferential rates.

(5) The provisions of sections 65, 66 and 67 shall, subject to the rules, *mutatis mutandis* apply in respect of the valuation of such goods.

(6) The Commissioner may make rules—

(a) in addition to or in substitution of any power, duty or function relating to the South African Revenue Service or any officer thereof or any procedure or process prescribed in the regulations;

(b) regarding duties or functions of the IDZ operator or IDZ enterprise;

(c) to ensure the security and control of the CSA;

(d) to regulate the customs and excise administration of the CSA in connection with goods received or removed or manufactured or produced or consumed or any other activity to which this Act relates;

(e) requiring the registration and prescribing conditions and procedures regulating such registration in respect of any enterprise or any other person operating in or having access to the IDZ;

(f) any other matter which may be necessary and useful for the purpose of the effective and efficient administration of the CSA.

(7) (a) The Commissioner may after consultation with the Manufacturing Development Board referred to in subsection (2)(b)(ii), refuse any application for registration required by any rule contemplated in subsection (6)(e) or cancel or suspend any such registration.

(b) The provisions of section 60(2) and of the regulations shall apply *mutatis mutandis* for the purposes of paragraph (a)."

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

Amendment of section 37A of Act 91 of 1964, as amended by section 8 of Act 95 of 1965, section 12 of Act 105 of 1969, sections 7 and 15 of Act 98 of 1980, section 8 of Act 84 of 1987, section 17 of Act 59 of 1990, section 27 of Act 45 of 1995 and section 61 of Act 30 of 1998

122. (1) Section 37A of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for subparagraph (vi) of paragraph (a) of subsection (4) of the following paragraph:

"(vi) be in possession of or sell any marked goods mixed in any proportion with distillate fuel or petrol;" and

(b) by the substitution for the definition of "engine" in subsection (12) of the following definition:

" 'engine' referred to in subsection (4)(a) and (c)(ii), (5)(a)(i) and (6)(a) [includes] means any engine [of] in any machine, machinery, plant, equipment, apparatus, vehicle or ship, classifiable under any heading or subheading of Chapters 84 to 87 and 89 of Part 1 of Schedule No. 1;"

(2) Subsection (1)(b) shall be deemed to have come into operation on 24 November 1999.

Amendment of section 38 of Act 91 of 1964, as amended by section 13 of Act 105 of 1969, section 5 of Act 71 of 1975, section 4 of Act 105 of 1976, section 2 of Act 89 of 1983, section 18 of Act 59 of 1990, section 28 of Act 45 of 1995 and section 42 of Act 19 of 2001

123. Section 38 of the Customs and Excise Act, 1964, is hereby amended—

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

"Every importer of goods shall within seven days of the date on which such goods are, in terms of section ten deemed to have been imported except in respect of goods in a container depot as provided for in section

43(1)(a) or within such [further] time as the Commissioner may [allow] prescribe by rule in respect of any means of carriage or any person having control thereof after landing, make due entry of those goods [in the form prescribed, and declare to the truth of such entry:] as contemplated in section 39.”;

- (b) by the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(aA) The Commissioner may, in respect of dutiable goods imported by air of a value for duty purposes not exceeding R500 and for which immediate clearance is requested, allow a licensee of any premises licensed under the provisions of this Act to remove such goods for home consumption and to pay the duties due at such time on compliance with such conditions as the Commissioner may specify by rule and impose in each case.”; and

- (c) by the deletion of subsection (2).

Amendment of section 43 of Act 91 of 1964

124. Section 43 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections:

“Disposal of goods on failure to make due entry, goods imported in contravention of any other law and seized and abandoned goods

43. (1) If entry of any imported goods has not been made under the provisions of section 38—

- (a) in the case of goods in a container depot within 28 days from the date the goods were landed; or

- (b) in the case of any other goods, on expiry of the period stated in, or prescribed in any rule contemplated in, subsection (1) of the said section,

the master, pilot or other carrier, container terminal, container operator, depot operator, person in control of a transit shed or other person who has control of such goods in terms of any provision of this Act shall furnish a list thereof together with all available documents to the Controller and shall remove the goods to—

- (i) the State warehouse; or
(ii) such other place indicated by the Controller; or

- (c) the Controller may—

- (i) where any such person fails to remove the goods as required in terms of subparagraph (i) or (ii), at the risk and expense of such person, so remove the goods; or

- (ii) allow the goods, subject to such conditions as the Controller may impose, to remain under the control of such person.

(2) (a) Whenever any goods are so removed to or allowed to remain at any place other than the State warehouse such a place shall, subject to the provisions of this section, be deemed to be a State warehouse for the purposes of this Act.

- (b) Any person who has control of any premises where such goods are stored shall—

- (i) be responsible for such goods as if the goods were kept in a State warehouse from the date the Controller so indicates or so allows the goods to remain at such place;

- (ii) be liable for the duty on such goods as long as the goods remain at such place;

- (iii) be entitled to payment of State warehouse rent as prescribed in the rules for section 17 to the extent that any amount becomes payable from the proceeds of sale as charges due to the Commissioner according to the order contemplated in subsection (3) or, if the goods

are entered and delivery granted by the Controller before such sale, 50 per cent of any such rent paid on entry of the goods.

(c) (i) The Commissioner shall compile a list of all the goods in the State warehouse or deemed to be in the State warehouse as provided in this section reflecting the date of importation, the distinguishing marks and numbers, a description of the goods, the name and address of the importer, if known, the name of the carrier and any other relevant person contemplated in subparagraph (ee), the location of the goods and any other information available and shall—

(aa) obtain and keep a copy of the manifest, transport document, outturn report and any other document available relating to the exportation, carriage and importation of the goods;

(bb) update the list weekly;

(cc) display the list on a notice board in the office of the Controller and at the State warehouse;

(dd) place the list on the SARS website specified by rule and keep a printout of such list and every amendment thereof;

(ee) notify by facsimile transmission or other means the importer, where the importer and the importer's address are known, and any other person known to the Commissioner to be involved or who may reasonably be expected to be involved in the exportation or importation including, where relevant, the container operator, any port authority, a transit shed operator, any other person in control of freight landed from any carrier, the carrier or agent for the carrier, the clearing agent and the exporter or supplier of the goods.

(ii) The contents of the list so displayed and included in the website shall be deemed to be sufficient notification to the importer or any other person who has any right or interest in the goods concerned that unless the goods are duly entered in accordance with the provisions of this Act they will be disposed of in terms of this section.”;

(b) by the insertion of the following subsection:

“(2A) The Commissioner may—

(a) by rule amend or substitute any requirement or prescribe any additional requirement relating to any document or procedure contemplated in subsection (2);

(b) notwithstanding anything to the contrary contained in section 4(3) or in any other law, for the purposes of this section, disclose by publication or otherwise any information acquired regarding any person, goods, firm or business to which this section relates.”;

(c) by the substitution in subsection (3) for the words preceding paragraph (c) of the proviso of that subsection of the following words:

“If after the expiration of 60 days from the date of removal to the State warehouse or other place indicated by the Controller or, where no such removal has taken place, from the date of expiry of the period prescribed in section 38(1), any goods remain unentered the Commissioner may cause them, except if they have been imported in contravention of any law, to be sold, and if so sold the proceeds thereof shall be applied in discharge of any duty, expenses incurred by the Commissioner, charges due to the Commissioner (including any State warehouse rent referred to in subsection (2)), a port or railway authority, the Department of Transport, a container operator or a depot operator, and freight, in that order, and the surplus if any, shall, upon application be paid to the owner of the said goods: Provided that—

(a) if any goods cannot be sold at a price regarded by the Commissioner as reasonable having regard to the duty, expenses and charges in respect of such goods, the Commissioner may direct that the goods concerned be destroyed or appropriated to the State without payment of any duty;

(b) where any goods are sold at a price which is insufficient to cover the duty, such expenses, charges and freight, the Commissioner may apply the proceeds in discharge thereof in the order mentioned.”; and

(d) by the addition of the following subsections:

“(5) (a) Where the Commissioner on reasonable grounds determines that any goods to which this section relates or any goods which are detained as contemplated in section 113(8), have been imported or exported in contravention of any law, the Commissioner may, except in the case of goods detained under section 113(8) for the purposes of the Counterfeit Goods Act, 1997 (Act No. 37 of 1997), request the South African Police Service or the authority administering such law—

- (i) to take delivery of such goods for the purposes of instituting any civil proceedings or criminal prosecution or to take any other action in terms of such law within 60 days or such further time as the Commissioner may specify in such request;
- (ii) if it is not intended to act as contemplated in subparagraph (i) to advise the reasons therefor within such period; or
- (iii) to authorise the Commissioner, as contemplated in paragraph (e), to deal with such goods under the provisions of this section.

(b) When delivery is taken as contemplated in paragraph (a), such goods shall not be allowed to enter into home consumption in the Republic unless they have been duly entered, and any duty and value-added tax payable thereon have been paid to the Controller under whose control they were at the time of such delivery.

(c) (i) The Commissioner shall at the time of such request notify any relevant person contemplated in subsection (2)(c)(i)(ee) of such request and that if delivery of the goods is not taken the goods will be disposed of as provided for in this section.

(ii) (aa) Particulars of such goods shall be included in a separate section of the list contemplated in subsection (2)(c)(i) and cross-referenced to any other unentered goods included in such list.

(bb) The provisions of subsection (2)(c)(i) shall otherwise *mutatis mutandis* apply to the goods to which this subsection relates.

(cc) Notwithstanding subparagraph (i), the contents of the list so displayed and placed on the website shall be deemed to be sufficient notification to the importer or any other person who has any right or interest in the goods concerned that the goods will be disposed of in terms of this section.

(d) If the South African Police Service or such authority fails to take such delivery or after taking delivery does not institute civil proceedings or criminal prosecution or take any other action under the relevant law within any reasonable period allowed by the Commissioner or has authorised the Commissioner to deal with such goods under the provisions of this section as contemplated in paragraph (e) and no person has given notice of intention to claim release of the goods within 60 days after inclusion thereof in the list referred to in paragraph (c), such goods shall notwithstanding anything to the contrary in this Act or in the relevant other law contained, be deemed to be condemned and forfeited under the provisions of this Act and the Commissioner may dispose thereof as provided in this section.

(e) Notwithstanding the provisions of any other law, the authority administering such other law or the South African Police, may authorise the Commissioner to deal with any goods imported or exported in contravention of such law in terms of the provisions of this section.

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(6) (a) Whenever any officer has reasonable grounds to suspect that any imported goods are counterfeit goods as contemplated in the Counterfeit Goods Act, 1997, the officer may detain such goods for the purposes of that Act under section 113(8).

(b) Where any such goods are seized under the provisions of the Counterfeit Goods Act, 1997, and the importer is not known and no criminal prosecution or civil proceedings is instituted or no instruction is received for the release of the goods as contemplated in section 9(2) of that Act, such goods shall, notwithstanding anything to the contrary in this Act or the said Counterfeit Goods Act contained, be subject to the provisions of this section.

(c) The provisions of subsection (5)(c) shall apply *mutatis mutandis* in respect of any goods to which this paragraph relates.

(d) If no person gives any notice of the intention to claim release of the goods within 60 days after inclusion in the list referred to in paragraph (c), such goods shall be deemed to be condemned and forfeited under the provisions of this Act.

(7) (a) Any goods appropriated to the State as contemplated in subsection (3)(a), any goods condemned and forfeited as contemplated in subsections (5) and (6), any goods condemned and forfeited as contemplated in sections 89 and 90 and any goods referred to in subsection (10)(a), may be disposed of as provided in paragraph (b) by the Commissioner in consultation with the Directors-General of the National Treasury and of Trade and Industry or, where appropriate, with a Director-General of any other department.

(b) Such goods may—

- (i) (aa) except any goods appropriated to the State or goods which have been imported in contravention of any other law, be sold by public auction or by tender for home consumption in the Republic;
- (bb) be sold by public auction or by tender for export to a destination outside the common customs area;
- (ii) be destroyed;
- (iii) be transferred for use to any organ of State on payment of any expenses incurred by the Commissioner in connection with such goods;
- (iv) be made available at the premises where they are kept to the Department of Welfare or any other body determined by the Commissioner for the purposes of providing disaster relief or basic human necessities for indigent persons in the Republic or for donation to any country in need of aid for such persons; or
- (v) be disposed of for any other purpose or in any other manner which the Commissioner considers to be in the public interest.

(c) If the Commissioner so determines, the importer or exporter, as the case may be, or if the importer or exporter cannot be found or is unable to pay, the South African Police Service or any authority administering the other laws referred to in subsection (5) shall reimburse the Commissioner for expenses incurred in storing and disposing of or otherwise dealing with such goods.

(d) No duty shall be payable on any goods to which this subsection relates on disposal as contemplated in paragraph (b), but any duty paid on such goods shall not be refundable.

(8) The provisions of subsections (5), (6) and (7) shall, subject to the provisions of sections 89 and 90, *mutatis mutandis* apply to any goods

detained or seized under this Act that were imported, exported, manufactured or used, or otherwise dealt with in contravention of the provisions of this Act and any other law: Provided that where the Commissioner is satisfied on reasonable grounds that the owner did not know that the goods were imported in contravention of this Act and such other law and the Commissioner is satisfied that the goods do not constitute a danger to public health or the public and complies with any compulsory specification contemplated in the Standards Act, 1993, the Commissioner may, instead of

disposing of the goods as contemplated in subsection (7), deliver the goods to the owner in accordance with the provisions of section 93.

(9) The provisions of subsection (7)(b)(iv) shall apply to any goods donated to the Commissioner by the owner of any intellectual property right after an appropriate order of court as contemplated in section 10 of the Counterfeit Goods Act, 1997.

(10) (a) The provisions of subsection (3), (4), (5) or (6), as the case may be, and subsection (7) shall *mutatis mutandis* apply in respect of any goods abandoned to the Commissioner under any provision of this Act and any goods referred to in section 42 or 107(1)(b).

(b) The provisions of sections 89, 90 and 96 shall notwithstanding anything to the contrary contained in the laws concerned, *mutatis mutandis* apply in respect of any claim for the release of goods to which subsection (5) or (6) relates.

(11) The Commissioner may make rules—

- (a) to delegate or assign, subject to section 3(2), any of the powers that may be exercised or assign any of the duties that shall be performed by the Commissioner under this section to any officer;
- (b) regarding all matters which are required or permitted in this section to be prescribed by rule;
- (c) to regulate any matter that the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this section.”.

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995, section 51 of Act 53 of 1999 and section 43 of Act 19 of 2001

125. (1) Section 44 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for subsections (4) and (5) of the following subsections:
 - “(4) The master, pilot or carrier concerned shall be liable for the duty on all goods deemed in terms of section 10 to have been imported, except goods in respect of which a bill of lading, air consignment note or other document was issued on loading of such goods onto the ship, aircraft or vehicle by means of which they were imported stating that the said goods were accepted for conveyance at the risk of the owner thereof in all respects and not only as regards risk in respect of damage to such goods, provided such goods have not been landed [and placed in a transit shed appointed or prescribed under section 6(1)].

(5) (a) The liability of the master or pilot or other carrier for duty in terms of subsection (4) shall cease—

- [(a)] (i) upon lawful delivery of the goods, after due entry thereof has been made, to the importer or his agent; or
- [(b)] (ii) if due entry of the goods has not been made, upon delivery thereof to the State warehouse **[or other] or any licensed place [indicated for the purposes of this section by the Controller] or, with the permission of the Commissioner, any other place contemplated in section 11;** 5
- [(c)] (iii) upon delivery of the goods, if containerised, to a container terminal or a container operator; or 10
- [(d)] (iv) in respect of such goods for which an air cargo transfer manifest has been completed, upon delivery thereof to **[the South African Airways] any licensed place contemplated in section 11.** 15
- (b) (i) The container terminal operator shall be liable for the duty on any containerised goods received in the container terminal on delivery thereof as contemplated in paragraph (a)(iii).
- (ii) The liability of the terminal operator for duty in terms of subparagraph (i) shall cease on delivery thereof to: 20
- (aa) a container operator;
- (bb) a depot operator;
- (cc) after due entry, to the importer or the importer's agent; or
- (dd) the State warehouse or other place approved by the Commissioner.”;
- (b) by the substitution for paragraph (c) of subsection (5A) of the following paragraph: 25
- “(c) in respect of any of such goods of which due entry has not been made, upon delivery thereof to the State warehouse or **[other] any licensed place [indicated for the purposes of this section by the Controller] or, with the permission of the Commissioner, any other place contemplated in section 11.**” 30
- (c) by the substitution for paragraph (b) of subsection (5B) of the following paragraph:
- “(b) in respect of any of such goods of which due entry has not been made, upon delivery thereof to the State warehouse or **[other] any licensed place [indicated for the purposes of this section by the Controller] or, with the permission of the Commissioner, any other place contemplated in section 11.**” 35
- (d) by the insertion after subsection (5B) of the following subsection: 40
- “(5C) (a) Subject to the provisions of this section, the liability of the master, pilot or other carrier for the duty on imported goods shall cease on receipt of such goods in any licensed or other place contemplated in section 11.
- (b) The liability for duty in respect of such goods of any licensee of such licensed place contemplated in section 11 shall cease— 45
- (i) on receipt of such goods in any other such licensed place on removal thereto in accordance with the procedures prescribed by rule;
- (ii) upon lawful delivery after due entry thereof to the importer or the importer's agent; 50
- (iii) in respect of any of such goods of which due entry has not been made upon delivery thereof to the state warehouse, or with the permission of the Commissioner, any other place contemplated in section 11.
- (c) (i) Any licensee shall issue a receipt in respect of any goods received in such place to the person delivering such goods. 55
- (ii) Any outturn report or any discrepant report duly completed in accordance with section 8 and its rules shall, in respect of the goods concerned, be regarded to be a correct report of goods landed or received in a container, consolidated package or other package in such place, as the case may be. 60
- (d) Subject to compliance with any procedure prescribed by rule in respect of any goods or means of transport, the liability for duty of the

master, pilot or other carrier, wharf operator, terminal operator, container operator or transit shed operator, on any imported goods not consigned to a place in the Republic which are landed in the Republic, shall cease when it is proved that the goods have been duly taken out of the common customs area.”

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

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

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126. (1) Section 47 of the Customs and Excise Act, 1964, is hereby amended— 15

(a) by the substitution for subsections (7) and (8) of the following subsections:

“(7) To the extent that any goods, classifiable under any tariff heading or subheading of Part 1 of Schedule No. 1 that is expressly quoted in any tariff item or fuel levy item or item of Part 2, 5 or 6 of the said Schedule or in any item in Schedule No. 2, are specified in any such tariff item or fuel levy item or item, the item concerned shall be deemed to include only such goods classifiable under such tariff heading or subheading.

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(8) (a) The interpretation of—

(i) any tariff heading or tariff subheading in Part 1 of Schedule No. 1;

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(ii) (aa) any tariff item or fuel levy item or item specified in Part 2, 5 or 6 of the said Schedule, and

(bb) any item specified in Schedule No. 2, 3, 4, 5 or 6;

(iii) the general rules for the interpretation of Schedule No. 1; and
(iv) every section note and chapter note in Part 1 of Schedule No. 1, shall be subject to the Explanatory Notes to the Harmonised System issued by the Customs Co-operation Council, Brussels (now known as the World Customs Organisation) from time to time: Provided that where the application of any part of such Notes or any addendum thereto or any explanation thereof is optional the application of such part, addendum or explanation shall be in the discretion of the Commissioner.”;

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(b) by the substitution for paragraph (a)(i) of subsection (9) of the following paragraph:

“(a) (i) The Commissioner may in writing determine— 40

(aa) the tariff headings, tariff subheadings or tariff items or other items of any Schedule under which any imported goods, goods manufactured in the Republic or goods exported shall be classified; or

(bb) whether goods so classified under such tariff headings, tariff subheadings, tariff items or other items of Schedule No. 3, 4, 5 or 6 may be used, manufactured, exported or otherwise disposed of or have been used, manufactured, exported or otherwise disposed of as provided in such tariff items or other items specified in any such Schedule.”;

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

“(iii) Any determination made under this subsection shall operate—

(aa) only in respect of the goods mentioned therein and the person in whose name it is issued; and

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(bb) subject to the provisions of section 44(11)(c) and 76B and subsections (10) and (11), from the date the determination is issued.”;

(d) by the substitution for paragraphs (b) to (d) of subsection (9) of the following paragraphs:

“(b) (i) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under paragraph (d), any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been filed as contemplated in section 95A or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown, suspend such payment until the date the appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal.

(ii) Such determination, amendment of a determination or new determination shall cease to be in force from the date—

(aa) of the amendment of or the withdrawal and insertion of any Schedule or any amendment of the Explanatory Notes as contemplated in subsection (8)(b) with the result that the said determination, amended determination or new determination no longer conforms to the interpretation of the relevant provisions of such Schedule or Explanatory Notes;

(bb) when it is no longer compatible with a final judgment by the High Court or a judgment by the Supreme Court of Appeal, from the date of such judgment; or

(cc) any amendment of a determination or new determination is made effective under paragraph (d) or section 95A.

(c) Whenever a court amends or orders the Commissioner to amend any determination made under subsection (9)(a) or (d) or any determination is amended or a new determination is made under paragraph (d) or section 95A, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (b)(i) for any period during which such determination remained in force.

(d) (i) The Commissioner shall—

(aa) amend any determination or withdraw it and make a new determination with effect from the date it is no longer in force as provided in paragraph (b)(ii)(aa) or (bb);

(bb) except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed, before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Administrative Justice Act, 2000 (Act No. 3 of 2000).

(ii) Any such amendment or new determination contemplated in paragraph (i)(bb) may be made with effect from—

(aa) subject to the provisions of section 44(11)(c), the date of first entry of the goods in question in circumstances where a false declaration is made for the purposes of this Act;

(bb) the date of first entry, if the determination was made—
(A) by an officer who was biased or reasonably suspected of bias; or
(B) for an ulterior purpose or motive, arbitrarily or capriciously or in bad faith;

(cc) subject to subsection (12), the date of the determination made under paragraph (a) in circumstances where such determination was made in *bona fide* error of law or of fact; or

(dd) the date of the amendment of the previous determination or the date of the new determination:

Provided that whenever any amendment of a determination or a new determination is effective from a date resulting in the person to whom the determination was issued—

- (a) being entitled to a refund of duty, such refund shall be subject to the provisions of section 76B;
- (b) retrospectively incurring an increased liability for duty, such liability shall, subject to the provisions of section 44(11)(c), be limited to goods entered for home consumption during a period of two years immediately preceding the date of such amendment or new determination.”;
- (e) by the substitution for subsections (10) and (11) of the following subsections:
- “(10) Save where—
- (a) a determination has been made under subsection (9)(a) or (d); or
- (b) subject to section 44(11)(c), any false declaration is made for the purposes of [subsection (9)] this Act,
- there shall be no liability for any underpayment in duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect tariff heading, tariff subheading or tariff item or other item of any Schedule, after a period of two years from the date of entry of such goods.
- (11) (a) Notwithstanding the provisions of subsection (10), any determination made under subsection (9)(a) as a result of or during the course of or following upon an inspection of the books, accounts and other documents of an importer, exporter, manufacturer or user of goods, shall, subject to the provisions of section 44(11)(c), be deemed to have come into operation in respect of the goods in question entered for the purposes of this Act two years prior to the date on which the inspection commenced.
- (b) The expression ‘inspection of any books, accounts and other documents’, or any other reference to an inspection in this Act shall be taken to include any act done by an officer in the exercise of any duty imposed or power conferred by this Act for the purposes of the physical examination of goods and documents upon or after or in the absence of entry, the issue of stop notes or other reports, the making of assessments and any pre- or post-importation audit, investigation, inspection or verification of any such books, accounts and other documents required to be kept under this Act.”; and
- (f) by the insertion of the following subsections:
- “(12) (a) For the purposes of any binding tariff determination provided for in this subsection, unless the context otherwise indicates—
- ‘applicant’ means the person who has applied to the Commissioner for a binding tariff determination;
- ‘binding tariff determination’ means a tariff determination binding on the Commissioner when it is issued to the applicant after compliance with the provisions of this subsection and the rules;
- ‘holder’ means the person in whose name the binding determination is issued.
- (b) (i) An application for a binding tariff determination shall relate to only one type of goods and shall contain the particulars and comply with the requirements specified by rule.
- (ii) Any binding tariff determination is issued in the name of the holder and is operative only in respect of the holder.
- (iii) A binding tariff determination shall be binding on the Commissioner only in respect of—
- (aa) the classification of goods in any heading, subheading, tariff item or other item of any Schedule;
- (bb) goods entered or deemed to have been entered for customs or excise purposes after the date the binding tariff determination is issued.
- (iv) When entering any goods for which a binding tariff determination has been issued the holder must—
- (aa) furnish information of the binding tariff determination issued for the goods concerned;
- (bb) be able to prove that the goods in question conform in all respects to the goods described in the information when application for a binding tariff determination was made.

(c) (i) A binding tariff determination shall be annulled by the Commissioner if it is found that it was issued on the basis of incorrect or incomplete information.

(ii) Such annulment shall be effective from the date the determination was made.

(d) (i) A binding tariff determination shall be valid for a period of six years, but shall cease to be valid in the circumstances and from the dates contemplated in section 47(9)(b)(ii).

(ii) The provisions of subsection (9)(d) shall apply *mutatis mutandis* whenever the Commissioner amends any binding tariff determination or withdraws it and makes a new determination.

(iii) Notwithstanding the provisions of subparagraphs (i) and (ii), if the Commissioner so permits, the holder of a binding tariff determination may still use such determination for a period of six months from the date specified therein, or until the period of six years expires, whichever is the earlier date provided—

(aa) such holder concluded binding contracts for the purchase or sale of the goods in question on the basis of such determination before any such date;

(bb) such determination is used solely for determining duties;

(cc) it relates to any certificate under which the goods concerned are allowed to be imported under rebate or free of duty.

(iv) Any holder who wishes to make use of the possibility of invoking such determination as provided in subparagraph (iii), shall notify the Commissioner and provide the necessary supporting documents to enable a check to be made whether the conditions specified in the said subparagraph (iii) have been satisfied.

(13) The Commissioner may make rules in respect of—

(i) all matters which are required or permitted in terms of this section to be prescribed by rule;

(ii) any other matter which the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this section.”

(2) (a) Subsection (1)(a) to (e) shall come into operation on the date of promulgation of this Act.

(b) Subsection (1)(f) shall—

(i) in so far as it inserts subsection (12) come into operation on a date fixed by the President by proclamation in the *Gazette*; and

(ii) in so far as it inserts subsection (13), come into operation on the date of promulgation of this Act.

Amendment of section 49 of Act 91 of 1964, as amended by section 60 of Act 30 of 2000

127. Section 49 of the Customs and Excise Act, 1964, is hereby amended—

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

“Whenever [Parliament has approved] any international agreement which binds the Republic as contemplated in section 231 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), [any] is an agreement with the government of any country or countries or group of countries—”;

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

“(c) In this section and in sections 47 and 48 ‘agreement’ includes, unless the context otherwise indicates, any international agreement, treaty or convention.”

Amendment of section 65 of Act 91 of 1964, as amended by section 5 of Act 85 of 1968, section 21 of Act 105 of 1969, section 20 of Act 112 of 1977, section 5 of Act 93 of 1978, section 7 of Act 110 of 1979, as substituted by section 13 of Act 86 of 1982, section 8 of Act 101 of 1985, as inserted by section 8 of Act 52 of 1986, as substituted

by section 48 of Act 45 of 1995, section 5 of Act 44 of 1996 and section 59 of Act 53 of 1999

128. Section 65 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (4) of the following paragraph: 5
- “(a)(i) The Commissioner may in writing determine the transaction value of any imported goods, which is required to be ascertained and may be determined as provided in section 66 [**and such determined value shall, subject to a right of appeal to the court, be deemed to be the value for customs duty purposes of the goods**]. 10
- (ii) Any determination made under this subsection shall operate—
- (aa) only in respect of the goods mentioned therein and the person in whose name it is issued; and
- (bb) subject to the provisions of sections 44(11)(c) and 76B and subsections (7) and (7A), from the date of the determination is issued.”; 15
- (b) by the substitution for paragraph (c) of subsection (4) of the following paragraph:
- “(c)(i) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under subsection (5), any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been filed as contemplated in section 95A or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: 20
Provided that the Commissioner may suspend such payment until the administrative appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal. 25
- (ii) Such determination, amendment of a determination or new determination shall cease to be in force from the date— 30
- (aa) of any amendment of this section or sections 66 and 67 or any instrument contemplated in section 74A with the result that the said determination, amended determination or new determination no longer conforms to the interpretation of the relevant provisions of such section or sections or such instrument; 35
- (bb) of a final judgment by the High Court or a judgment by the Supreme Court of Appeal; or
- (cc) any amendment of a determination or new determination is made effective under subsection (5) or section 95A. 40
- (iii) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (5) or any determination is amended or a new determination is made under subsection (5) or section 95A, the Commissioner shall not be liable to pay interest on any amount which remained payable in terms of the provisions of paragraph (c)(i) for any period during which such determination remained in force.”; 45
- (c) by the substitution for subsection (5) of the following subsection:
- “(5) (a) the Commissioner shall—
- (i) amend any determination or withdraw it and make a new determination with effect from the date it is no longer in force as provided in subsection (4)(c)(ii)(aa) or (bb); 50
- (ii) except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Administrative Justice Act, 2000 (Act No. 3 of 2000). 55
- (b) Any such amendment or new determination contemplated in paragraph (a)(ii) may be made with effect from— 60

- (i) subject to the provisions of section 44(11)(c), the date of first entry of the goods in question in circumstances where a false declaration is made for the purposes of this Act;
- (ii) the date of first entry, if the determination was made—
 - (aa) by an officer who was biased or reasonably suspected of bias; or
 - (bb) for an ulterior purpose or motive, arbitrarily or capriciously or in bad faith;
- (iii) the date of the determination made under subsection (4) in circumstances where such determination was made in *bona fide* error of law or of fact;
- (iv) the date of the amendment of the previous determination or the date of the new determination:

Provided that whenever any amendment of a determination or a new determination is effective from a date resulting in the person to whom the determination was issued—

- (a) being entitled to a refund of duty, such refund shall be subject to the provisions of section 76B;
- (b) retrospectively incurring an increased liability for duty, such liability shall, subject to the provisions of section 44(11)(c), be limited to goods entered for home consumption during a period of two years immediately preceding the date of such amendment or new determination.”; and
- (d) by the substitution for subsections (7) and (7A) of the following subsections:
 - “(7) Save where—
 - (a) a determination has been made under subsection (4)(a) or (5); or
 - (b) subject to section 44(11)(c), any false declaration is made for the purposes of this Act,

there shall be no liability for any underpayment of customs duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect customs value, after a period of two years from the date of entry of such goods.

(7A) Notwithstanding the provisions of subsection (7), any determination made under subsection (4)(a) as a result of or during the course of or following upon an inspection of the books, accounts and other documents of any importer shall, subject to the provisions of section 44(11)(c), be deemed to have come into operation in respect of the goods in question entered for the purposes of this Act two years prior to the date on which the inspection commenced.

(b) The expression 'inspection of any books and documents', or any other reference to an inspection in this Act shall be taken to include any act done by an officer in the exercise of any duty imposed or power conferred by this Act for the purposes of the physical examination of goods and documents upon or after or in the absence of entry, the issue of stop notes or other reports, the making of assessments and any pre- or post-importation audit, investigation, inspection or verification of any such books, accounts and other documents required to be kept under this Act.”.

Amendment of section 69 of Act 91 of 1964, as section 22 of Act 105 of 1969, section 6 of Act 93 of 1978, section 9 of Act 101 of 1985, section 7 of Act 69 of 1988, as substituted by section 12 of Act 68 of 1989, section 1 of Act 111 of 1991, as amended by section 3 of Act 105 of 1992, section 6 of Act 98 of 1993, and as amended by section 6 of Act 44 of 1996, section 61 of Act 53 of 1999 and section 49 of Act 19 of 2001

129. Section 69 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for subsections (3) and (4) of the following subsections:
 - “(3) (a) Where goods are sold or otherwise disposed of under such conditions that the value thereof cannot be ascertained or has been incorrectly ascertained in terms of subsection (1) or (2), as the case may be, the Commissioner may, having regard to the relevant provisions of subsection (1) or (2), in writing determine a value.

- (b) Any determination made under this subsection shall operate—
- (i) only in respect of the goods mentioned therein and the person in whose name it is issued;
 - (ii) subject to the provisions of sections 44(11)(c) and 76B and subsections (6) and (7), from the date the determination is issued. 5
- (c) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under subsection (4), any amount due in terms thereof shall, notwithstanding that an administrative appeal has been filed as contemplated in section 95A or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the date the administrative appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal. 10 15
- (d) Such determination, amendment of a determination or new determination shall cease to be in force from the date—
- (i) of any amendment of this section or the rules with the result that the said determination, amended determination or new determination no longer conforms to the interpretation of the relevant provisions of this section or such rules. 20
 - (ii) of a final judgment by the High Court or a judgment by the Supreme Court of Appeal; or
 - (iii) any amendment of a determination or new determination is made effective under subsection (4) or section 95A. 25
- (e) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (4) or any determination is amended or a new determination is made under subsection (4) or section 95A, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (c) for any period during which such determination remained in force. 30
- (4) (a) the Commissioner shall—
- (i) amend any determination or withdraw it and make a new determination with effect from the date it is no longer in force as provided in subsection (3)(d)(i) or (ii): 35
 - (ii) except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Administrative Justice Act, 2000 (Act No. 3 of 2000). 40
- (b) Any such amendment or new determination contemplated in paragraph (a)(ii) may be made with effect from— 45
- (i) subject to the provisions of section 44(11)(c), the date of first entry of the goods in question in circumstances where a false declaration is made for the purposes of this Act;
 - (ii) the date of first entry, if the determination was made— 50
 - (aa) by an officer who was biased or reasonably suspected of bias; or
 - (bb) for an ulterior purpose or motive, arbitrarily or capriciously or in bad faith;
 - (iii) the date of the determination made under subsection (3)(a) in circumstances where such determination was made in *bona fide* error of law or of fact; 55
 - (iv) the date of the amendment of the previous determination or the date of the new determination: 60
- Provided that whenever any amendment of a determination or a new determination is effective from a date resulting in the person to whom the determination was issued—

- (a) being entitled to a refund of duty, such refund shall be subject to the provisions of section 76B;
- (b) retrospectively incurring an increased liability for duty, such liability shall, subject to the provisions of section 44(11)(c), be limited to goods entered for home consumption during a period of two years immediately preceding the date of such amendment or new determination.”; and
- (b) by the substitution for subsections (6) and (7) of the following subsections:
- “(6) Save where—
- (a) a determination has been made under subsection (3)(a) or (4); or
- (b) subject to section 44(11)(c), any false declaration is made for the purposes of this Act,
- there shall be no liability for any underpayment in duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect value for excise duty purposes, after a period of two years from the date of entry of such goods.
- (7) (a) Notwithstanding the provisions of subsection (6), any determination made under subsection (3)(a) as a result of or during the course of or following upon an inspection of the books, accounts and other documents of any manufacturer, wholesaler or purchaser or any seller or buyer contemplated in subsection (1) or (2) shall, subject to the provisions of section 44(11)(c), be deemed to have come into operation in respect of the goods in question entered for the purposes of this Act two years prior to the date on which the inspection commenced.
- (b) The expression ‘inspection of any books, accounts and other documents’, or any other reference to an inspection in this Act shall be taken to include any act done by an officer in the exercise of any duty imposed or power conferred by this Act for the purposes of the physical examination of goods and documents upon or after or in the absence of entry, the issue of stop notes or other reports, the making of assessments and any pre- or post-production audit, investigation, inspection or verification of any such books, accounts and other documents required to be kept under this Act.”.

Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 25 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 28 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000 and section 50 of Act 19 of 2001

- 130.** (1) Section 75 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
- “(b) any imported goods described in Schedule No. 4 shall be admitted under rebate of any customs duties or fuel levy applicable in respect of such goods at the time of entry for home consumption thereof, or if duly entered for export and exported in accordance with such entry, to the extent stated in, and subject to compliance with the provisions of, the item of Schedule No. 4 in which such goods are specified;”;
- (b) by the substitution for paragraph (d) of subsection (1) of the following paragraph:
- “(d) in respect of any excisable goods or fuel levy goods described in Schedule No. 6, a rebate of the excise duty specified in Part 2 of Schedule No. 1 or of the fuel levy specified in Part 5 of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof, or if duly entered for export and exported in accordance with such entry, or a refund of the excise duty or fuel levy actually paid at the time of entry for

- home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule No. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6:" 5
- (c) by the substitution for subparagraph (i) of paragraph (b) of subsection (1C) of the following subparagraph:
- "(i) 'user' shall mean, according to the context and subject to any note in the said Schedule No. 5 or 6, the person registered for a diesel refund as contemplated in subsection (1A) **[and as a user as provided in subsection (4A)]**:" 10
- (d) by the substitution for paragraphs (a) and (b) of subsection (4A) of the following paragraphs:
- "(a) Any person who registers for a diesel refund as contemplated in subsection (1) shall **[in addition register as a user under the provisions of this Act]** be deemed to have registered in addition for the purposes of section 59A. 15
- (b) (i) Any return for refund of such levies shall be in such form and shall declare such particulars and shall be for such quantities and for such periods **[and shall be submitted within such period]** as may be determined by the Commissioner. 20
- (ii) Any return for refund of such levies shall be submitted within two years from the date of purchase of such fuel."
- (e) by the substitution for paragraph (h) of subsection (4A) of the following paragraph: 25
- "(h) (i) Any person to whom a refund of levies has been granted in accordance with the provisions of this section and of item 540.02 of Schedule No. 5 or item 640.03 of Schedule No. 6 who falsely applied for such refund or who uses or disposes of such fuel contrary to such provisions, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or double the amount of any levies refunded, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment and the fuel in respect of which the offence has been committed shall be liable to forfeiture under this Act. 30 35
- (ii) For the purposes of paragraph (i), where any person falsely applies for such refund without having purchased such fuel, any forfeiture amount shall be calculated on the basis of the usual retail price thereof on the date the false application was submitted or on the date of assessment of such amount, whichever is the greater." 40
- (f) by the substitution for subsection (8) of the following subsection:
- "(8) To the extent that any goods, classifiable under any tariff heading or subheading or any tariff item or subitem of Schedule No. 1 that is expressly quoted in any item of Schedule No. 3, 4, 5 or 6, are specified in any item of Schedule No. 3, 4, 5 or 6, such item shall be deemed to include only such goods classifiable under such tariff heading or subheading or tariff item or subitem." 45
- (g) by the substitution for subparagraph (i) of paragraph (b) of subsection (14) of the following paragraph:
- "(i) in respect of any refund referred to in subsection (1A) within **[a] the** period **[determined by the Commissioner as]** contemplated in subsection (4A)(b)(ii);" 50
- (h) by the substitution in subsection (18) for the words preceding paragraph (a) and paragraphs (a), (b) and (bA) of the following words and paragraphs: 55
- "Subject to the provisions of the proviso to section 20(5) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 615.01, 615.02 and 615.03 of Schedules Nos. 4, 5 and 6 no rebate or refund of duty in respect of any loss or deficiency of any nature of any goods shall be allowed, but the Commissioner may allow a deduction from the dutiable quantity of the undermentioned goods of a quantity **[equal to] not exceeding** the percentage stated below in each case, namely— 60

- (a) in the case of wine spirits (ethyl alcohol) manufactured in the Republic and entered for **[storage]** use and used in a customs and excise **[storage]** manufacturing warehouse, excluding spirits specified in paragraph (bA), **[1,5 per cent]** in the manufacture of spirituous beverages, the actual manufacturing loss of **[the] any** quantity so entered and used or 1,5 per cent thereof, whichever is the least; 5
- (b) in the case of spirits (ethyl alcohol), other than wine spirits, manufactured in the Republic **[1,5 per cent, of the quantity so manufactured]** and entered for use and used in a customs and excise manufacturing warehouse in **[making]** the manufacture of spirituous beverages, the actual manufacturing loss of any quantity so entered and used or 1,5 per cent thereof, whichever is the least; 10
- (bA) in the case of unpacked excisable spirits intended for export and which are removed in bond from a customs and excise manufacturing warehouse for temporary storage in a customs and excise warehouse **[approved]** licensed for that purpose as contemplated in section 19A(1)(a)(i)(cc), such percentage, but not exceeding 1,25 per cent, of the quantity so removed as may represent a loss incurred while the spirits in question are so removed and stored for such period and subject to such conditions as the Commissioner may determine;"; and 15
- (i) by the substitution for paragraphs (d), (dA), (e) and (f) of subsection (18) of the following paragraphs: 20
- “(d) (i) in the case of imported crude petroleum naphtha for use in the refining of petroleum products or imported petrol, 0,25 per cent of the quantity landed and entered for storage in a customs and excise warehouse; 25
- (ii) in the case of imported petroleum naphtha entered for use as fuel in the manufacture of ammonia, 0,25 per cent of the quantity landed and entered for storage in a customs and excise warehouse; 30
- (iii) in the case of imported distillate fuel, 0,15 per cent of the quantity landed and entered for storage in a customs and excise warehouse; 35
- (e) (i) in the case of petrol manufactured in the Republic, 0,25 per cent of any quantity entered for removal and removed from a customs and excise manufacturing warehouse; 35
- (ii) in the case of distillate fuel manufactured in the Republic, 0,15 per cent of any quantity entered for removal and removed from a customs and excise manufacturing warehouse.”. 40
- (2) Subsection (1)(h) and (i) shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 40

Amendment of section 89 of Act 91 of 1964, as amended by section 13 of Act 85 of 1968

131. The following section is hereby substituted for section 89 of the Customs and Excise Act, 1964: 45

- “(1) Whenever any proceedings are instituted to claim any ship, vehicle, container or other transport equipment, plant, material or goods (in this section, section 43 and section 90 referred to as ‘goods’), which have been seized under this Act, such claim must be instituted by the person from whom they were seized or the owner or the owner’s authorised agent (in this section referred to as ‘the litigant’). 50
- (2) Any litigant must give notice to the Commissioner in writing before serving any process for instituting any proceedings as contemplated in section 96(1)(a)—
- (a) within 90 days after the date of seizure; or
- (b) in the case of an administrative appeal, where such appeal is unsuccessful, within 90 days from the date contemplated in subsection 95A(7). 55
- (3) Any proceedings must be instituted within 90 days of such notice.

- (4) Whenever goods are seized and in consequence of the seizure—
- (a) delivery thereof under section 93 is refused or the terms of delivery thereunder are not accepted;
- (b) no internal administrative appeal under section 95A is filed or is filed and is not successful; 5
- (c) no proceedings are instituted as contemplated in this section or have been instituted and have been dismissed in a final judgment of the High Court or a judgment by the Supreme Court of Appeal, 10
- the goods concerned shall, subject to the provisions of section 90, be deemed to be condemned and forfeited.
- (5) The provisions of section 96(1)(c) shall apply *mutatis mutandis* to any period contemplated in subsections (2) and (3).”

Amendment of section 90 of Act 91 of 1964

132. Section 90 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution for paragraph (b) of the following paragraph: 15
- “(b) Where any seized goods are of a perishable or dangerous nature, the Commissioner may, whenever it is not reasonably possible to obtain storage or according to the circumstances not possible to obtain storage at a reasonable cost for the preservation or safe keeping of such goods, cause such goods before being condemned and forfeited as contemplated in section 89(4) to be sold by any appropriate procedure or destroyed, whichever is, and at the time is, reasonably practicable in the circumstances.”; and 20
- (b) by the insertion of the following paragraphs: 25
- “(c) Notwithstanding the provisions of section 89, the provisions of section 43(5), (6), (7) and (8) shall *mutatis mutandis* apply in respect of goods which are imported, exported, manufactured or used, or otherwise dealt with in contravention of this Act and any other law: Provided that such goods shall be deemed to be condemned and forfeited in accordance with the relevant provisions of section 43(5) or (6) and the provisions of section 89(4). 30
- (d) Any person claiming the goods which were imported, exported or manufactured in contravention of any other law shall, for the purposes of sections 43, 89 and 96, join the authority administering such law in any proceedings. 35
- (e) The provisions of section 43(7) shall *mutatis mutandis* apply in respect of goods which are condemned and forfeited as contemplated in section 89(4).
- (f) The provisions of section 89(4) shall not affect the operation of section 93 in respect of the goods concerned which are condemned and forfeited as contemplated in that section.” 40

Amendment of section 91 of Act 91 of 1964

133. Section 91 of the Customs and Excise Act, 1964, is hereby amended by the deletion of subsection (2).

Insertion of section 93A in Act 91 of 1964 45

134. (1) The following section is hereby inserted in the Customs and Excise Act, 1964, after section 93:

“Commissioner may settle or waive claims

93A. (1) The Minister may by regulation prescribe the circumstances under which the Commissioner may, for purposes of the settlement of a dispute between the Commissioner and any person concerning any amount which may include duty, forfeiture, penalty, interest or charges payable under the provisions of this Act, waive any claim against such a person in whole or in part, where such a settlement would be to the best advantage of the state. 50 55

(2) The Minister must so prescribe the requirements for the reporting by the Commissioner of any claim against such person which has been waived in whole or in part by the Commissioner, as contemplated in subsection (1).”

(2) The provisions contained in the regulations prescribing the circumstances under which the Commissioner may waive any claim for purposes of the settlement of any dispute and the reporting requirements, as contemplated in section 93A of the Customs and Excise Act, 1964, must be incorporated into that Act within a period of 12 months from the date that the regulations come into operation.

Insertion of section 95A in Act 91 of 1964

135. (1) The following section is hereby inserted in the Customs and Excise Act, 1964, after section 95:

“Internal Administrative Appeal

95A. (1) For the purposes of this section—

‘Commissioner’ includes, except with regard to the decision or determination referred to in the wording preceding subsection (2)(a), any committee to which the Commissioner has delegated any power or assigned any duty as contemplated in subsection (11).

(2) Any person who may institute proceedings in respect of any decision or determination by the Commissioner, a Controller or an officer made under this Act may file a notice of internal administrative appeal to the Commissioner—

- (a) within 90 days from the date such person was notified of such decision or determination; or
- (b) within 90 days after the date any such person became aware, or the date such person might reasonably be expected to have become aware of such decision or determination; or
- (c) where the Commissioner is on good cause shown satisfied that such person was prevented from filing an internal administrative appeal as required in subparagraphs (a) and (b), within a further period of 90 days.

(3) Any such internal administrative appeal may be brought by the appellant or by a duly authorised representative.

(4) Such appeal shall be in writing and must set forth specifically—

- (a) the name and address of the person who brings the appeal;
- (b) if the appeal is brought by an authorised representative, the name and address of such representative and proof of the authority to act on behalf of the appellant;
- (c) full particulars of the decision or determination appealed against;
- (d) the nature of the appeal and the reasons therefor including where appropriate—
 - (i) arguments and submissions relating to relevant factual matters supported by technical specifications, descriptive literature and statements or affidavits by technical experts;
 - (ii) arguments and submissions relating to the applicable legal provisions and principles;
 - (iii) any other relevant matter which such appellant considers appropriate; and
 - (iv) such other requirements as the Commissioner may prescribe by rule.

(5) An internal administrative appeal shall be considered by the Commissioner within 90 days after the date of the filing of the notice and he shall notify the appellant of the final determination or decision in writing.

(6) (a) No internal administrative appeal shall be considered by the Commissioner later than 180 days after an appealable decision or determination, unless the period is on good cause shown extended by the Commissioner.

(b) Where the Commissioner refuses to extend the said period it may be extended on application by the person concerned by the High Court.

(7) Whenever an internal administrative appeal has been considered by the Commissioner any period within which any person may prosecute an appeal against or institute any judicial proceedings in connection with such decision or determination shall commence on the date on which the Commissioner in writing advises the appellant of the final determination or decision of such appeal.

(8) The Commissioner may in respect of each internal administrative appeal considered as provided for in this section and notwithstanding the provisions of section 4(3)—

- (a) maintain a public record of the proceedings containing at least—
- (i) copies of all submissions and contentions by interested parties;
 - (ii) statements of essential facts relating to the appeal;
 - (iii) copies of correspondence relevant to the matter;
 - (iv) a copy of the final decision or determination, as the case may be;
- (b) advise all parties of the existence of the record and their right to inspect that record;
- (c) place any new determination or amendment of a previous determination or decision made consequent to such appeal on the SARS website as prescribed by rule.

(9) (a) Where the information submitted for purposes of an internal administrative appeal is on good cause shown claimed to be privileged or confidential and that the publication thereof would adversely affect a party's interests, a summary of that information may be supplied to the Commissioner for inclusion in the public record, which—

- (i) contains sufficient detail to allow a reasonable understanding of the matter; but
- (ii) does not breach the claimed privilege or confidentiality or adversely affect such interests.

(b) Whenever information is given orally the Commissioner may only include it in the public record if it is reduced to writing and if privileged or confidential conforms to the requirements of paragraph (a).

(10) (a) The Commissioner may, whenever he considers an internal administrative appeal—

- (i) confirm; or
- (ii) amend such decision or determination or withdraw it and make a new decision or determination as the case may be with effect from—
 - (aa) the date of the first entry of goods in question;
 - (bb) the date of the determination or decision appealed against; or
 - (cc) the date of the amendment of such determination or decision.

(b) Whenever any amendment of a determination or a new determination is effective from a date resulting in the person to whom the determination was issued—

- (i) being entitled to a refund of duty, such refund shall be subject to the provisions of section 76B;
- (ii) retrospectively incurring an increased liability for duty, such liability shall, subject to the provisions of section 44(11)(c), be limited to goods entered for home consumption during a period of two years immediately preceding the date of such amendment or new determination.

(11) The Commissioner may make rules—

- (a) to delegate any of the powers that may be exercised or assign any of the duties that shall be performed by the Commissioner in accordance with the provisions of this section and any other provision of this Act

- to any committee composed of officers or officers and other persons as may be determined in such rule;
- (b) in respect of all matters which are required or permitted in terms of this section to be prescribed by rule;
- (c) any other matter which the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this section;
- (d) prescribing such forms as may be required to be completed for purposes of this section.

(12) The provisions of this section shall not be construed as preventing the Commissioner, any controller or any officer from appealing against or instituting any judicial proceedings in connection with any decision or determination contemplated in subsection (11)(a)."

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

Amendment of section 96 of Act 91 of 1964

136. The following section is hereby substituted for section 96 of the Customs and Excise Act, 1964:

"Notice of action and period for bringing action

96. (1)(a) No process by which any legal proceedings are instituted against the State, the Minister, the Commissioner or an officer for anything done in pursuance of this Act may be served before the expiry of a period of one month after delivery of a notice in writing setting forth clearly and explicitly the cause of action, the name and place of abode of the person who is to institute such proceedings (in this section referred to as the 'litigant') and the name and address of his or her attorney or agent, if any.

(b) Subject to the provisions of section 89, the period of extinctive prescription in respect of legal proceedings against the State, the Minister, the Commissioner or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall, subject to the provisions of section 95A(7), begin to run on the date when the right of action first arose.

(c)(i) The State, the Minister, the Commissioner or an officer may on good cause shown reduce the period specified in paragraph (a) or extend the period specified in paragraph (b) by agreement with the litigant.

(ii) If the State, the Minister, the Commissioner or an officer refuses to reduce or to extend any period as contemplated in subparagraph (i), a High Court having jurisdiction may, upon application of the litigant, reduce or extend any such period where the interest of justice so requires.

(2) This section does not apply to the recovery of a debt contemplated in any law providing for the recovery from an organ of state of a debt described in such law."

Amendment of section 97 of Act 91 of 1964

137. (1) The Customs and Excise Act, 1964, is hereby amended by the substitution for section 97 of the following section:

"Master, container operator or pilot may appoint agent

97. (1) Notwithstanding anything to the contrary in this Act contained—

(a) any container operator, master, pilot or other carrier may, and shall in the circumstances specified in paragraph (b), instead of himself or herself performing any act, including the answering of questions

required by or under any provision of this Act, appoint an agent registered under the provisions of this Act to perform any such act;

- (b) where any means of carriage is not owned or chartered by, or the container operator is not, a legal person registered in the Republic in accordance with the laws of the Republic and which has its place of effective management in the Republic or by a natural person who is ordinarily resident in the Republic, such master, pilot or other carrier or container operator shall appoint an agent as contemplated in paragraph (a).

(2)(a) Any such agent shall be a legal person registered in the Republic in accordance with the laws of the Republic and which has its place of effective management in the Republic or a natural person ordinarily resident in the Republic.

(b) Any act performed by such agent on behalf of such master, pilot or other carrier or container operator shall in all respects for the purposes of this Act be deemed to be the act of such master, pilot or other carrier or container operator.”

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

Amendment of section 99 of Act 91 of 1964, as amended by section 15 of Act 95 of 1965, section 17 of Act 85 of 1968, section 7 of Act 98 of 1970, section 34 of Act 112 of 1977, section 12 of Act 110 of 1979, section 24 of Act 86 of 1982, section 62 of Act 45 of 1995, section 71 of Act 30 of 1998 and section 68 of Act 53 of 1999

138. Section 99 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An agent appointed by any master, container operator or pilot or other carrier, and any person who represents himself or herself to any officer as the agent of any master, container operator or pilot or other carrier, and is accepted as such by that officer, shall be liable for the fulfilment, in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such master, container operator or pilot or other carrier by this Act and to any penalties or amounts demanded under section 88(2)(a) which may be incurred in respect of that matter.”

Amendment of section 109 of Act 91 of 1964, as amended by section 12 of Act 93 of 1978 and section 68 of Act 45 of 1995

139. Section 109 of the Customs and Excise Act, 1964, is hereby amended by the substitution for the words preceding paragraph (a) in subsection (1) of the following words:

“If it is necessary to give effect to any law for the safeguarding of public health or for the safety of the public or the State, the Commissioner may in concurrence with the authority administering such law at any time, and at the expense and risk of the importer, exporter, owner, master or pilot concerned, according as the Commissioner may determine—”

Amendment of section 114 of Act 91 of 1964, as substituted by section 33 of Act 105 of 1969, section 12 of Act 71 of 1975, as inserted by section 36 of Act 112 of 1977, as substituted by section 13 of Act 101 of 1985, section 32 of Act 84 of 1987, section 37 of Act 59 of 1990, section 34 of Act 34 of 1997 and section 71 of Act 53 of 1999

140. Section 114 of the Customs and Excise Act, 1964, is hereby amended by the addition to subsection (1) after paragraph (bB) of the following paragraph:

“(aC) Any dutiable goods of whatever nature, which are stored in any customs and excise warehouse licensed for any purpose under this Act shall be subject to a lien, as if the goods are detained in accordance with the provisions of subsection (2), as security for the duty on such goods from the time of receipt of such goods in such warehouse until such goods have been duly entered for any purpose under this Act

and any liability for duty of the licensee of such warehouse in respect of such goods |
has ceased in terms of this Act.”.

Amendment of section 1 of Act 77 of 1968, as amended by section 16 of Act 103 of 1969, section 5 of Act 66 of 1973, section 7 of Act 88 of 1974, section 19 of Act 106 of 1980, section 3 of Act 118 of 1984, section 17 of Act 87 of 1988, section 36 of Act 9 of 1989, section 3 of Act 69 of 1989, section 5 of Act 136 of 1991, section 4 of Act 20 of 1994, section 77 of Act 30 of 1998, section 74 of Act 53 of 1999, section 40 of Act 5 of 2001 and section 54 of Act 19 of 2001 5

141. Section 1 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the definition 10
of “authorized revenue officer” of the following paragraphs:

“authorised [revenue] officer” means—

(a) the Commissioner, and any [receiver of revenue] officer or class of 15
officers designated by the Commissioner [and any magistrate in an
area in which there is not an office of a receiver of revenue];

(b) any officer in the public service authorised by the Minister by notice in 20
the *Gazette* to act as an authorised [revenue] branch officer for the
purposes of this Act, either in respect of all instruments generally or in
respect of such classes of instruments as may be specified in the notice;”;
and

(b) by the substitution in subsection (1) for the definition of “public officer” of 25
the following definition:

“‘public officer’ means a person in the employ of the Government or a
provincial administration and includes an authorised [revenue] branch
officer;”.

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

142. Section 9 of the Stamp Duties Act, 1968, is hereby amended by the substitution 30
for subsection (3) of the following subsection:

“(3) Whenever an authorised [revenue] branch officer deems it necessary, he 30
may require evidence on oath or other satisfactory proof to be furnished to him of
the date of affixing of any adhesive revenue stamp to any instrument or of the date
of execution of any instrument or, if any instrument was executed outside the
Republic, of the date when it was first received in the Republic.”.

Amendment of section 24 of Act 77 of 1968, as amended by section 21 of Act 103 of 1969, section 1 of Act 88 of 1974, section 4 of Act 70 of 1975, section 12 of Act 114 of 1977, section 6 of Act 92 of 1983, section 26 of Act 87 of 1988, section 9 of Act 69 of 1989, section 82 of Act 89 of 1991, section 14 of Act 97 of 1993 and section 14 of Act 37 of 1996 35

143. Section 24 of the Stamp Duties Act, 1968, is hereby amended— 40

(a) by the substitution for the words preceding subparagraphs (i) and (ii) in 45
paragraph (a) of subsection (4) for the following words:

“(a) deliver to [a receiver of revenue] the Commissioner a statement in such 45
form as the Commissioner may prescribe, reflecting dutiable premiums
for the said period of three months, being—”;

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

“(b) pay to [such receiver of revenue] the Commissioner an amount of duty 50
calculated at the rate prescribed in Item 18(6) of Schedule 1 on the
amount of such dutiable premiums.”; and

(c) by the substitution of paragraphs (a) and (c) of subsection (11) for the 55
following paragraphs:

“(a) The total amount of duty chargeable in respect of policies of such class 55
issued by the insurer during any payment period referred to in paragraph
(b), as calculated by means of the computer, shall be determined and paid
to [a receiver of revenue] the Commissioner within 21 days after the end
of such payment period or within such further period as the Commis-

- sioner, having regard to the special circumstances of the case, may approve;
- (c) when payment of duty is made under this subsection the insurer shall at the same time furnish the [receiver of revenue] Commissioner with a statement in such form as the Commissioner may prescribe and an auditor's certificate testifying to the accuracy of the statement.”. 5

Amendment of section 31 of Act 77 of 1968, as substituted by section 18 of Act 46 of 1996 and amended by section 81 of Act 30 of 1998

144. Section 31 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for the definition of “authorisation letter” of the following definition: 10
 “ ‘authorisation letter’ means a written authorisation granted by the Commissioner, or by any [chief director or chief revenue inspector under the control, direction or supervision of the Commissioner] person designated by the Commissioner for this purpose or occupying a post designated by the Commissioner for this purpose, to an officer to inspect, audit, examine or obtain, as contemplated in section 31B, any information, documents or things;” 15

Insertion of section 32B in Act 77 of 1968

145. (1) The following section is hereby inserted in the Stamp Duties Act, 1968, after section 32A:

“Objection and Appeal procedures” 20

32B. (1) Any person aggrieved by a decision of the Commissioner in terms of this Act may object and appeal against that decision to the tax board or the tax court, as the case may be, established in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), in the manner and under the terms and within the period prescribed by that Act and the rules promulgated thereunder. 25

(2) The provisions of the Income Tax Act, 1962, relating to objections and appeals, as provided for in Part III of Chapter III and the rules promulgated thereunder, shall *mutatis mutandis* apply in respect of any decision issued in terms of this Act. 30

(3) Any decision of the Commissioner, contemplated in subsection (1) shall be deemed to be an assessment for purposes of the application of the provisions of the Income Tax Act, 1962, as contemplated in subsection (2).” 35

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

Amendment of Item 6 of Schedule 1 to Act 77 of 1968, as inserted by section 10 of Act 118 of 1984 and amended by section 4 of Act 71 of 1986, section 32 of Act 87 of 1988, section 7 of Act 136 of 1992, section 15 of Act 37 of 1996, section 78 of Act 53 of 1999 and section 62 of Act 19 of 2001 40

146. (1) Item 6 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution in paragraph (c) for the words following subparagraph (ii) of the following words:

“into which the depositor may deposit money and from which the institution or the Postbank where the account is held, may make a payment to any other person or electronically transfer an amount to any other account of such depositor held at any other institution contemplated in subparagraph (i) or to the account of any other person.”. 45

- (2) Subsection (1) shall be deemed to have come into operation on 27 July 2001.

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

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

(a) by the addition to *Exemptions from the duty under paragraph (1) or (2)* of the following paragraph:

“(g) The original issue of any share by a company to any other company in terms of an intra-group transaction contemplated in section 44 of the Income Tax Act, 1962 (Act No. 58 of 1962), where the public officer of that company has made a sworn affidavit or solemn declaration that such intra-group transaction complies with the provisions contained in section 44 of that Act;”;

(b) by the addition to the *Exemptions from the duty under paragraph (3)* of the following paragraph:

“(x) Any registration of transfer of any marketable security acquired by a company in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962), a share-for-share transaction contemplated in section 43 of that Act, an intra-group transfer contemplated in section 44 of that Act, in pursuance of a distribution *in specie* in the course of an unbundling transaction contemplated in section 45 of that Act, or in terms of a liquidation distribution contemplated in section 46 of that Act, where the public officer of that company has made a sworn affidavit or solemn declaration that such company formation transaction, share-for-share transaction, intra-group transfer, unbundling transaction or liquidation distribution complies with the provisions contained in section 42, 43, 44, 45 or 46, as the case may be, of that Act.”.

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 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, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000 and section 65 of Act 19 of 2001

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

(a) by the substitution for the definition of “commercial accommodation” of the following definition:

“‘commercial accommodation’ means—

(a) [accommodation] lodging or board and lodging, [including] together with domestic goods and services, in any house, flat, apartment, room, hotel, motel, inn, guesthouse, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat, or similar establishment, which is regularly or systematically [let] supplied and where the total annual receipts from the [letting] supply thereof exceeds R48 000 per annum or is reasonably expected to exceed R48 000 per annum but excluding a dwelling supplied in terms of an agreement for the letting and hiring thereof;

(b) [accommodation] lodging or board and lodging in a home for the aged, children, physically or mentally handicapped persons; and

(c) lodging or board and lodging in a hospice;”;

- (b) by the insertion of the following definition after the definition of “Customs and Excise Act”:
“ ‘customs secured area’ has the meaning assigned thereto in the regulations made by the Minister of Trade and Industry under section 10(1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993);”; 5
- (c) by the substitution for the definition of “domestic goods and services” of the following definition:
“ ‘domestic goods and services’ means [the provision to a natural person of the right to occupy for residential purposes the whole or part of the accommodation] goods and services provided in any enterprise supplying commercial accommodation, including [where it is provided as part of the right of occupation, the provision of]—
 (a) cleaning and maintenance;
 (b) electricity, gas, air conditioning or heating;
 (c) a telephone, television set, radio or other similar article; 15
 (d) furniture and other fittings; or
 (e) meals;”;
- (d) by the substitution for the definition of “dwelling” of the following definition:
“ ‘dwelling’ means, except where it is used in the supply of commercial accommodation, any building, premises, structure, or any other place, or any part thereof, used predominantly as a place of residence or abode of any natural person or which is intended for use predominantly as a place of residence or abode of any natural person, [together with any appurtenances] including fixtures and fittings belonging thereto and enjoyed therewith [but does not include the supply of domestic goods and services in an enterprise supplying commercial accommodation];”; 20 25
- (e) by the insertion of the following definition after the definition of “Income Tax:
“ ‘Industrial Development Zone’ has the meaning assigned thereto in the regulations made by the Minister of Trade and Industry under section 10(1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993);”; 30
- (f) by the substitution for the definition of “public authority” of the following definition:
“ ‘public authority’ means any department or division of the public service (including a provincial administration, the South African National Defence Force, the South African Police Service and [the South African Prisons Services] Correctional Services);”; 35
- (g) by the substitution for the definition of “transfer payment” of the following definition:
“ ‘transfer payment’ means a transfer payment as contemplated in [paragraph 1.2.9.3 of the Manual on Financial Planning and Budgeting System of the State] regulation 8.4 of the Treasury Regulations published in [terms of section 39 of the Exchequer Act, 1975 (Act No. 66 of 1975) terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999)];”; and 40
- (h) by the substitution for the definition of “welfare organisation” of the following definition:
“ ‘welfare organisation’ means any association not for gain which is registered under the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997) and is exempt from income tax in terms of section 30 of the Income Tax Act, if it carries on or intends to carry on any welfare activity determined by the Minister for purposes of this Act to be of a philanthropic or benevolent nature, having regard to the needs, interests and well-being of the general public, relating to those activities that fall under the headings—
 (a) welfare and humanitarian;
 (b) health care; 50
 (c) land and housing;
 (d) education and development; or
 (e) conservation, environment and animal welfare.”. 55

(2)(a) Subsection (1)(a), (c) and (d) shall come into operation on 7 November 2001.

(b) Subsection (1)(b) and (e) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, section 13 of Act 136 of 1992, section 10 of Act 20 of 1994, section 19 of Act 37 of 1996, section 24 of Act 27 of 1997, section 87 of Act 30 of 1998 and section 82 of Act 53 of 1999 5

149. Section 2 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (iii) of subsection (2) of the following paragraph:

- “(iii) ‘debt security’ means— 10
 (aa) [any] an interest in or right to be paid money; or
 (bb) an obligation or liability to pay money
 that is, or is to be, owing by any person, but does not include a cheque;”.

Amendment of section 6 of Act 89 of 1991, as amended by section 20 of Act 37 of 1996, section 34 of Act 34 of 1997, section 88 of Act 30 of 1998 and section 66 of Act 19 of 2001 15

150. Section 6 of the Value-Added Tax Act, 1991 is hereby amended—

- (a) by the substitution for the proviso to subsection (1) of the following proviso:
 “Provided that—
 (i) the Auditor-General in the performance of his duties in terms of section 20
 3 of the Auditor-General Act, 1995 (Act 12 of 1995), shall have access to
 all records and documents in the possession or custody of the
 Commissioner for the purposes of this Act; and
 (ii) the Commissioner shall disclose information in respect of any class of
persons to the Director-General of the National Treasury, to the extent 25
necessary for the purposes of tax policy design or revenue estimation.”;
- (b) by the insertion after subsection (2) of the following subsections:
 “(2A) The Commissioner may apply ex parte to a judge in chambers for an
 order allowing him or her to disclose to the National Commissioner of the
 South African Police Service, contemplated in section 6(1) of the South 30
 African Police Service Act, 1995 (Act No. 68 of 1995), or the National
 Director of Public Prosecutions, contemplated in section 5(2)(a) of the
 National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), such
 information, which may reveal evidence—
 (a) that an offence, other than an offence in terms of this Act or any other Act 35
 administered by the Commissioner or any other offence in respect of
 which the Commissioner is a complainant, has been or may be
 committed, or where such information may be relevant to the investiga-
 tion or prosecution of such an offence, and such offence is a serious
 offence in respect of which a court may impose a sentence of 40
 imprisonment exceeding five years; or
 (b) of an imminent and serious public safety or environmental risk,
 and where the public interest in the disclosure of the information outweighs
 any potential harm to the taxpayer concerned should such information be
 disclosed: Provided that— 45
 (i) any information, document or thing obtained in terms of section
 57C(17)(a) may not be disclosed in terms of this subsection; and
 (ii) any information, document or thing provided by a taxpayer in any return
 or document, or obtained from a taxpayer in terms of section 57A or 57B,

which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such taxpayer, to the extent that such information, document or thing constitutes an admission by such taxpayer of the commission of an offence contemplated in paragraph (a).

(2B) For the purposes of subsection (2A), the Commissioner may delegate the powers vested in him or her by that subsection, to any other officer.

(2C) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (2A) to any other person or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties for purposes of any investigation of, or prosecution for, an offence contemplated in subsection (2A).

(2D) The Director-General or any person acting under the direction and control of such Director-General, as contemplated in subsection (2)(e), shall not disclose any information supplied under to subsection (2)(e) to any other person or permit any other person to have access thereto.”;

(c) by the substitution for subsection (3) of the following subsection: 20

“(3) ~~[No]~~ A person [shall] may not in any manner publish or make known to any other person (not being an officer performing his or her duties under the control, direction or supervision of the Commissioner or the **[Postmaster-General] Managing Director of the South African Post Office Limited**) the contents or tenor of any instruction or communication given or made by the Commissioner or the **[Postmaster-General] Managing Director of the South African Post Office Limited** or any such officer in the performance of his or her or their duties in terms of this Act for or concerning the examination or investigation of the affairs of any person or class of persons or the fact that such instruction or communication has been given or made, or any information concerning the tax matters of a person or class of persons: Provided that the provisions of this subsection shall not be construed—

(a) as preventing any person or [his] a representative of such person who is or may be affected by any such examination, investigation or furnishing of information from publishing or making known information concerning [his] that person's own tax matters; or

(b) subject to the provisions of subsections (1) and (4), as in any way limiting the duties or powers of the Commissioner or the **[Postmaster-General] Managing Director of the South African Post Office Limited** or any such officer; or

(c) as preventing any person from publishing or making known anything which has been published or made known by that person or [his] a representative of that person as contemplated in paragraph (a) or by the Commissioner or the **[Postmaster-General] Managing Director of the South African Post Office Limited** or any such officer in the exercise of [his] the officer's duties or powers.”; and

(d) by the insertion after subsection (3) of the following subsection: 45

“(3A) The provisions of this section shall not apply in respect of any information relating to any person, where that person has consented that such information may be published or made known to any other person.” 50

(c) by the addition to subsection (1) of the following paragraph:

“(m) a registered vendor supplies goods in terms of a sale or instalment credit agreement to a registered vendor in the customs secured area of an Industrial Development Zone and consigns or delivers the goods to that vendor in that area;”.

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

Amendment of section 12 of the Act 89 of 1991 as amended by section 28 of Act 136 of 1992, section 18 of Act 136 of 1992, section 28 of Act 97 of 1993, section 14 of Act 20 of 1994, section 22 of Act 37 of 1996, section 29 of Act 27 of 1997 and section 69 of Act 19 of 2001

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154. (1) Section 12 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(c) the supply of [**any accommodation in**] a dwelling under an agreement for the letting and hiring [**of the accommodation**] thereof;”;

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

“(h)(i) the supply of educational services—

(aa) provided by the State or a school registered under the South African Schools Act, 1996 (Act No 84 of 1996), or a further education and training institution established by the State or such institution registered under the Further Education and Training Act, 1998 (Act No. 98 of 1998);

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(bb) by an institution that provides higher education on a full time, part-time or distance basis and which is established or deemed to be established as a public higher education institution under the Higher Education Act, 1997 (Act No. 101 of 1997), or is declared as a public higher education institution under that Act, or is registered or conditionally registered as a private higher education institution under that Act; or

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“(cc) by an institution in the Republic which is exempt from income tax in terms of section 30 of the Income Tax Act and which has been formed for the—

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(A) promotion of adult basic education and training including literacy and numeracy education, registered under the Adult Basic Education and Training Act, 2000 (Act No 52 of 2000), vocational training or technical education;

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(B) promotion of the education and training of religious or social workers;

(C) training or education of persons with a permanent physical or mental impairment;

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(D) training of unemployed persons with the purpose of enabling them to obtain employment; or

(E) provision of bridging courses to enable indigent persons to enter a higher education institution as envisaged in subparagraph (bb); or

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(ii) the supply by a school, university, technikon or college solely or mainly for the benefit of its learners or students of goods or services (including domestic goods and services) necessary for and subordinate and incidental to the supply of services referred to in subparagraph (i) of this paragraph, if such goods or services are supplied for a consideration in the form of school fees, tuition fees or board and lodging;

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Provided that vocational or technical training provided by an employer to his employees and employees of an employer who is a connected person in relation to that employer does not constitute the supply of an educational service for the purposes of this paragraph;” and

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(c) by the addition of the following paragraph:

“(j) the service of caring for children by a crèche or an after-school care centre.”.

- (2)(a) Subsection (1)(a) shall come into operation on 7 November 2001.
 (b) Subsection (1)(b) and (c) shall come into operation on 1 March 2002.

Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 86 of Act 53 of 1999 and section 70 of Act 19 of 2001 5

155. Section 13 of the Value-Added Tax Act, 1991 is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection: 10
 “(3) The importation of the goods set forth in Schedule 1 to this Act [shall be] is exempt from the tax imposed in terms of section 7(1)(b) [Provided that the exemption in respect of the importation of goods contemplated in paragraphs 1.11 and 1.15 of Schedule 1 shall apply only to the extent of the value of the goods sent from the Republic on the day they left the Republic]. ”;
- (b) by the substitution for subsection (4) in its entirety of the following subsection: 15
 “(4) Where tax is payable in respect of the importation of goods into the Republic but is not paid when the goods are imported, the importer must within 7 days of the importation of the goods—
 (a) furnish the Commissioner with a declaration in the form the Commissioner may prescribe containing the information that may be required ; and 20
 (b) calculate the tax payable on the relevant value at the rate of tax in force on the date of importation of the goods and pay such tax to the Commissioner.”; and
- (c) by the substitution for paragraph (a)(ii) of subsection (5) of the following paragraph: 25
 “(ii) [the postal company] Managing Director of the South African Post Office Limited on behalf of the Commissioner.”

Amendment of section 16 of Act 89 of 1991, as amended by section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act No. 20 of 1994, section 23 of Act No. 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999 and section 71 of Act 19 of 2001 30

156. Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (2) of the following paragraph: 35
 “(a) a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with section 20 or 21 and is held by the vendor making that deduction at the time that any return in respect of that supply is furnished: Provided that where the consideration for the supply exceeds R1 000, such invoice or debit or credit note must be in the legal or trading name of the vendor;”;
- (b) by the insertion of the expression “(b)” immediately after the expression “section 54(3)” in paragraph (d) and the addition of the word “or” at the end of the paragraph; and
- (c) the addition to subsection (2) of the following paragraph: 45
 “(e) a tax invoice or debit or credit note has been provided as contemplated in section 54(2), and a statement as contemplated in section 54(3)(a) is held by the vendor at the time a return in respect of the supply to the vendor is furnished: Provided that where the consideration for the supply exceeds R1 000, such invoice or debit or credit note must be in the legal or trading name of the agent;”;
- and 50
- (d) by the addition of the following paragraph to subsection (3):
 “(l) an amount as determined by the Commissioner in lieu of a refund in respect of the purchase and use of diesel paid by a vendor to a supplier of pastoral, agricultural or other farming products who is not a vendor, in terms of a scheme operated by the controlling body 55

of an industry for the development of small-scale farmers approved by the Minister with the concurrence of the Minister of Agriculture and Land Affairs to compensate that supplier for an amount refundable in the production of such goods;”.

Amendment of section 20 of Act 89 of 1991, as amended by section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998 and section 91 of Act 53 of 1999.

157. Section 20 of the Value-Added Tax Act, 1991 is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection: 10
“(1A) Notwithstanding anything in subsection (1) a vendor must, whether requested to do so or not, issue a tax invoice as contemplated in subsection (4) or (5), where the consideration for a supply exceeds R1 000;”;
- (b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 15
“(4) Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice (full tax invoice) shall be in the currency of the Republic and shall contain the following particulars:”;
- (c) by the substitution for paragraph (e) of subsection (4) of the following paragraph: 20
“(e)[a] full and proper description of the goods or services supplied;”;
- (d) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 25
“Notwithstanding anything in subsection (4), where the consideration in money for a supply does not exceed [R500] R1 000, a tax invoice (abridged tax invoice) shall be in the currency of the Republic and shall contain the particulars specified in that subsection or the following particulars:”; and
- (e) by the substitution for the amount “R20” in subsection (6) of the amount “R50”.

Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992, section 79 of Act 30 of 2000 and section 44 of Act 17 of 2001

158. Section 28 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following paragraph to the proviso to subsection (1):

- “(iii) a vendor registered with the Commissioner to submit returns and payments electronically, must furnish the return within the period ending on the last business day of the month during which that twenty-fifth day falls.”.

Amendment of section 32 of Act 89 of 1991, as amended by section 38 of Act 27 of 1997, section 97 of Act 30 of 1998 and section 95 of Act 53 of 1999.

159. Section 32 of the Value-Added Tax Act, 1991, is hereby amended— 40

- (a) by the insertion after subsection (2) of the following subsection: 40
“(2A) The period prescribed in the rules issued in terms of section 107A of the Income Tax Act within which objections must be made may be extended by the Commissioner where the Commissioner is satisfied that reasonable grounds exist for the delay in lodging the objection.”; 45
 and
- (b) by the substitution for subsections (3), (4) and (5) of the following subsections: 50
“(3) A decision by the Commissioner in the exercise of his or her discretion under subsection (2A) is subject to objection and appeal.
(4) The Commissioner may on receipt of a notice of objection to an assessment alter the assessment or may disallow the objection and must

send the taxpayer notice of such alteration or disallowance, and record any alteration or disallowance made in the assessment.

(5) Where no objection is lodged against any decision or assessment by the Commissioner as contemplated in subsection (1), or where any objection has been disallowed or withdrawn or any decision has been altered or any assessment has been altered [or reduced], as the case may be, such decision or altered decision or such assessment or altered [or reduced] assessment, as the case may be, is [subject to the right of appeal hereinafter provided] final and conclusive.”

Amendment of section 33 of Act 89 of 1991, as amended by section 35 of Act 136 of 1991.

160. Section 33 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Appeal to [special] tax court”;
- (b) by the substitution for subsection (1) of the following subsection: 15
 “(1) Subject to the provisions of section 33A, an appeal against any decision or assessment of the Commissioner, as notified in terms of section 32(4), shall lie to the [special] tax court [for hearing income tax appeals] constituted under the provisions of section 83 of the Income Tax Act within the period prescribed and the rules issued in terms of section 107A of the Income Tax Act for the area in which the appellant resides or carries on business or, if the appellant and the Commissioner agree for any other area.”;
- (c) by the insertion after subsection (1) of the following subsections: 25
 “(1A) The period prescribed in the rules promulgated in terms of section 107A of the Income Tax Act within which appeal must be noted may be extended by the Commissioner where the Commissioner is satisfied that reasonable grounds exist for the delay in noting the appeal: Provided that any decision by the Commissioner in the exercise of his or her discretion under this is subject to objection and appeal. 30
 (1B) A notice of appeal is of no force or effect whatsoever which is not delivered at the Commissioner’s office or posted in sufficient time to reach the Commissioner within the period prescribed for noting appeal or within such extended period as contemplated in subsection (1A).”;
- (d) by the deletion of subsection (2); 35
- (e) by the substitution for subsection (3) of the following subsection:
 “(3) At the hearing by the tax court of any appeal to that court, the tax court may inquire into and consider the matter before it and may confirm, cancel or vary any decision of the Commissioner under appeal or make any other decision which the Commissioner was empowered to make at the time the Commissioner made the decision under appeal or, in the case of any assessment order that assessment to be altered or confirm the assessment or, if it thinks fit, refer such matter back to the Commissioner for further investigation and reconsideration in the light of principles laid down by the court.”; and 40 45
- (f) by the substitution for subsection (4) of the following subsection:
 “(4) The provisions of sections 83(8), [(9), (10),] (11), (12), (14), [(15), (16),] (17), (18), [and] (19), [and] 84, [and] 85 and 107A of the Income Tax Act and any regulations under that Act relating to any appeal to the [special] tax court shall *mutatis mutandis* apply with reference to any appeal under this section which is or is to be heard by that court.” 50

Amendment of section 33A of Act 89 of 1991, as amended by section 36 of Act 136 of 1991 and section 96 of Act 53 of 1999

161. Section 33A of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that where the Commissioner at any time prior to the hearing of such appeal, or the [Chairman] Chairperson of the Board at any time prior to or during the hearing of such appeal, is of the opinion that on the ground of the disputes or legal principles arising or that may arise out of such appeal, such appeal should rather be heard by the [special] tax court referred to in section 33, such appeal [shall] must be set down for hearing *de novo* before the [special] tax court.”.

Amendment of section 34 of Act 89 of 1991

162. Section 34 of the Value-Added Tax Act, 1991 is hereby amended—

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

“**Appeals against decisions of [special] tax court**”; and

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

“(1) The appellant in proceedings before the [special] tax court referred to in section 33 or the Commissioner may in the manner provided in section 86A of the Income Tax Act appeal against any decision of that court.”.

Amendment of section 35 of Act 89 of 1991

163. Section 35 of the Value-Added Tax Act, 1991, is hereby amended—

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

“**Members of [special] tax court not disqualified from adjudicating**”; and

(b) by the substitution for section 35 of the following section:

“35. A member of a [special] tax court referred to in section 33 [shall] will not solely on account of any liability imposed upon him under this Act be [deemed to be] regarded as interested in any matter upon which he may be called upon to adjudicate thereunder.”.

Amendment of section 36 of Act 89 of 1991 as amended by section 2 of Act 61 of 1993, section 18 of Act 140 of 1993, section 22 of Act 20 of 1994, section 33 of Act 37 of 1996 and section 39 of Act 27 of 1997

164. Section 36 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The obligation to pay and the right to receive and recover any tax, additional tax, penalty or interest chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law, but if any assessment is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the [special] tax board or the [special] tax court or such court of law, a due adjustment [shall] must be made, amounts paid in excess being refunded with interest at the prescribed rate (but subject to the provisions of sections 45(1) and 45A)) and calculated from the date proved to the satisfaction of the Commissioner to be the date on which such excess was received and amounts short-paid being recoverable with penalty and interest calculated as provided in section 39(1).”.

Amendment of section 38 of Act 89 of 1991

165. Section 38 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of section 7(3)[(c) and] (d) and section 13(5) and (6), the tax payable under this Act [shall] must be paid in full within the time allowed by section 13(4) or section 14 or section 28 or section 29, whichever is applicable.”. 5

Amendment of section 39 of Act 89 of 1991, as amended by section 37 of Act 136 of 1991, section 30 of Act 136 of 1992, section 3 of Act 61 of 1993, section 23 of Act 20 of 1994, section 40 of Act 27 of 1997 10

166. Section 39 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (5).

Amendment of section 41 of Act 89 of 1991, as amended by section 32 of Act 136 of 1992, section 36 of Act 97 of 1993, section 41 of Act 27 of 1997 and section 98 of Act 30 of 1998 15

167. Section 41 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph (d) for the words preceding subparagraph (aa) of the following words:

“and in consequence thereof an amount of tax which should have been paid to the Commissioner [the Commissioner for Customs and Excise] or the [Postmaster-General] Managing Director of the South African Post Office Limited in terms of this Act has not been paid, that amount shall not be recoverable by the Commissioner after the expiration of a period of five years reckoned from the date on which that amount became payable in terms of this Act, if it is shown—”. 20 25

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996, section 42 of Act 27 of 1997 section 100 of Act 30 of 1998 and section 98 of Act 53 of 1999

168. Section 44(3) of the Value-Added Tax Act, 1991 is hereby amended— (a) by the addition of the word “or” at the end of paragraph (c); and (b) the addition of the following paragraph: 30

“(d) the vendor has furnished the Commissioner in writing with particulars of the enterprise’s banking account or account with a similar institution to enable the Commissioner to transfer a refund or other amount due to the vendor to such account: Provided that should the vendor request that a refund or other amount be transferred to a bank account or an account with a similar institution other than that of the vendor, the vendor must notify the Commissioner in writing and must indemnify the Commissioner against any loss by the vendor or the State as a result of such instruction.”. 35 40

Amendment of section 45 of Act 89 of 1991, as amended by section 33 of Act 136 of 1992, section 4 of Act 61 of 1993, section 19 of Act 140 of 1993, section 24 of Act 20 of 1994, section 33 of Act 37 of 1996, section 43 of Act 27 of 1997 and section 101 of Act 30 of 1998

169. Section 45 of the Value-Added Tax Act, 1991, is hereby amended— (a) by the substitution for the words preceding proviso (i) of subsection (1) of the following words: 45

“(1) Where the Commissioner does not within the period of 21 business days after the date on which the vendor’s return in respect of a tax period is received by [a Receiver of Revenue] an office of the South African Revenue Service [who is under the control, direction or 50

supervision of the Commissioner] refund any amount refundable in terms of section 44(1), interest shall be paid on such amount at the prescribed rate (but subject to the provisions of section 45A) and calculated for the period commencing at the end of the first-mentioned period to the date of payment of the amount so refundable: Provided that—”; and 5

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

“(iA) where the vendor is in default in respect of any of his obligations under this Act or any other Act administered by the Commissioner, to furnish a return **[for any tax period]** as required by **[this]** such Act, the said period of 21 business days shall be reckoned from the date on which any such outstanding return or returns furnished by the vendor as required by **[this]** such Act are received by **[such a Receiver of Revenue]** an office of the South African Revenue Service;” 10 15

Amendment of section 47 of Act 89 of 1991

170. Section 47 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following proviso:

“Provided that a person so declared an agent who, is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.” 20

Amendment of section 52 of Act 89 of 1991, as amended by section 39 of Act 136 of 1991 and section 45 of Act 27 of 1997.

171. Section 52 of the Value-Added Tax Act, 1991, is hereby amended— 25

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

“(1) Any pool managed by any **[board or]** body for the sale of agricultural, pastoral or other farming products, being a pool contemplated in section 17 of the Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996) may on written application by such **[board or]** body, for the purposes of this Act be deemed to be an enterprise or part of an enterprise carried on by that **[board or]** body separately from the members of such **[board or]** body: Provided that such **[board or]** body may— 30

- (i) elect in writing that the pool be treated as a separate enterprise for the purposes of this Act and may apply for such pool to be registered separately in terms of section 50; and 35
(ii) notwithstanding the provisions of section 54(1) and (2), if it makes an election in writing, be treated for the purposes of this Act as a principal and not as an agent of its members.”; and 40

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

“(2) Notwithstanding the provisions of section 54, any rental pool scheme operated and managed by any person for the benefit of some or all of—

(a) the owners of time-sharing interests in a property time-sharing scheme as defined in section 1 of the Property Timesharing Control Act, 1983 (Act 75 of 1983); 45

(b) the owners of sectional title interests in a sectional title scheme as defined in section 1 of the Sectional Title Act, 1986 (Act No. 95 of 1986); or 50

(c) the shareholders in a Shareblock Company as defined in section 1 of the Shareblocks Control Act, 1980 (Act No 59 of 1980),

[shall be deemed] is regarded for the purposes of this Act **[to be]** as a separate enterprise carried on by such person separately from the owners and shall be registered separately under section 50: Provided that— 55

- (i) the owners or shareholders must elect in writing that the rental pool be treated separately; and

- (ii) such a rental pool scheme [shall] is, notwithstanding the provisions of section 54(1) and (2), [be] treated for the purposes of this Act as a principal and not as an agent of the owners or shareholders.”.

Amendment of section 57 of Act 89 of 1991, as amended by section 24 of Act 46 of 1996 and section 47 of Act 27 of 1997. 5

172. Section 57 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for the definition of “authorisation letter” of the following definition:

“ ‘authorisation letter’ means a written authorisation granted by the Commissioner, or any [chief director, receiver of revenue or chief revenue inspector] General Manager, South African Revenue Service under the control, direction or supervision of the Commissioner, to an officer to inspect, audit, examine or obtain, as contemplated in section 57B, any information, documents or things;”.

Amendment of Section 58 of Act 89 of 1991, as amended by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993, section 25 of Act 46 of 1996, section 102 of Act 53 of 1999 and section 72 of Act 19 of 2001

173. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following paragraphs:

- “(n) issues a document purporting to be a tax invoice, or bearing the words ‘tax invoice’, if that document does not meet the requirements of section 20(4), (5) or (7), as the case may be; or
 (o) without lawful cause fails to comply with a notice of appointment as agent in terms of section 47 within the period specified in such notice.”.

Amendment of Section 65 of Act 89 of 1991, as amended by section 37 of Act 136 of 1992

174. Section 65 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following paragraph to the proviso thereto:

- “(iv) a vendor may not state or imply that any form of trade, cash or any other form of discount or refund is in lieu of the tax chargeable in terms of section 7(1)(a).”.

Amendment of Section 66 of Act 89 of 1991

175. The following section is hereby substituted for section 66 of the Value-Added Tax Act, 1991:

“Rounding-off [tables] of the tax

66. [Any] An amount of tax determinable under this Act [shall] must be calculated [in accordance with such rounding-off tables as the Commissioner may from time to time prescribe] by—

- (a) where the tax fraction is expressed as—
- (i) a proportion, rounding it off to the fifth decimal place namely 0,12280; or
 - (ii) a percentage, rounding it off to the third decimal place, namely 12,280; and
- (b) rounding fractions of—
- (i) less than half a cent, down to the last cent; or
 - (ii) half a cent or more, up to the next cent.”.

Insertion of section 86A into Act 89 of 1991

176. The Value-Added Tax Act, 1991 is hereby amended by insertion of the following section:

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“Provisions relating to industrial development zones

86A. Where a provision of the Customs and Excise Act, or the Manufacturing Development Act, 1993 (Act No. 187 of 1993), or a regulation made thereunder governing the administration of industrial development zones including a matter relating to the liability for or levying of value-added tax or a refund thereof or a supply of goods or services subject to tax at the zero-rate is inconsistent or in conflict with a provision of this Act, the provision of this Act will prevail.” 5

Substitution of Schedule 1 to the Value-Added Tax Act, 1991, as amended by section 48 of Act 136 of 1991, paragraph 24 of Government Notice 2695 of 8 November 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 31 July 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996 and section 53 of Act 27 of 1997 10

177. The following Schedule is hereby substituted for Schedule 1 to the Value-Added Tax Act, 1991: 15

“Schedule 1**(SECTION 13(3) OF THIS ACT)***Exemption: Certain Goods Imported into the Republic*

Goods imported, as contemplated in section 13(1), including imports from or via Botswana, Lesotho, Namibia or Swaziland, into the Republic and in respect of which the exemption under the provisions of section 13(3) applies, are set forth below. 20

1. Any of the following items imported into the Republic in respect of which the Controller of Customs and Excise has, in terms of the proviso to section 38(1)(a) of the Customs and Excise Act and which shall apply also to imports from or via Botswana, Lesotho, Namibia or Swaziland, granted permission that entry need not be made: 25
 - (i) Containers temporarily imported;
 - (ii) human remains; 30
 - (iii) goods which in the opinion of the Commissioner are of no commercial value;
 - (iv) goods imported under an international carnet; and
 - (v) goods of a value for customs duty purposes not exceeding R500.00, and on which no such duty is payable in terms of Schedule 1 to the said Act. 35
2. Goods, being printed books, newspapers, journals and periodicals, imported into the Republic by post of a value not exceeding R100 per parcel.
3. Goods, being gold coins imported as such and which the Reserve Bank has issued in the Republic in accordance with the provisions of section 14 of the South African Reserve Bank Act, 1989 (Act 90 of 1989), or which remain in circulation as contemplated in the proviso to subsection (1) of that section. 40
4. Goods temporarily exported from the Republic which are, at the time of export, registered as such with the Controller of Customs and Excise, in such form as the Commissioner may prescribe, and thereafter returned to the exporter, no change of ownership having taken place, and which can be identified on re-importation. 45

5. Goods forwarded unsolicited and free of charge by a non-resident to—
 (a) a public authority or a local authority; or
 (b) any association not for gain which satisfies the Commissioner that such goods will be used by that association exclusively—
 (i) for educational, religious or welfare purposes; or 5
 (ii) in the furtherance of that association's objectives directed to the provision of educational, medical or welfare services or medical or scientific research; or
 (iii) for issue to or treatment of indigent persons, free of charge.
6. Goods which are shipped or conveyed to the Republic for trans- 10
 shipment or conveyance to any export country: Provided that the Controller of Customs and Excise ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01(c) of 15
 Chapter XIII A of the Rules under the Customs and Excise Act. If proof is not furnished to the Commissioner that the goods have been duly taken out of the Republic within a period of 30 days or within such further period as the Commissioner may in exceptional circumstances allow, this exemption shall be withdrawn and tax, penalty and interest 20
 must be paid.
7. Goods consisting of such foodstuffs as are set forth in Part B of Schedule 2 to this Act, but subject to such conditions as may be prescribed in the said Part.
8. In this paragraph, goods exempt from the levying of tax, are identified 25
 by heading numbers or rebate items and the descriptions as contemplated in Schedule 1 and Schedule 4 to the Customs and Excise Act, respectively. In some instances the exemptions below contain additional requirements or limitations or relaxations which differ from the Customs and Excise Act. Where any provisions of the Customs and 30
 Excise Act and the Schedules thereto provide otherwise, the provisions of this Schedule shall prevail.
- In order to qualify for an exemption—
 (i) the goods must fall under one of the descriptions below; 35
 (ii) any requirements or limitations contained in that particular description must be complied with; and
 (iii) the Notes below must be complied with,
 regardless of whether or not the goods are required to be entered,
 customs duty is payable or a rebate of customs duty is granted in terms 40
 of the Customs and Excise Act.

SUBHEADING**DESCRIPTION****NOTES:**

1. The following exemptions, identified by Subheadings, shall be subject to the Notes as contemplated in Schedule 1 to the Customs and Excise Act. 45

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|------------|--|----|
| 2709.00 | Petroleum oils and oils obtained from bituminous minerals, crude | |
| 2710.00.12 | Petrol | 50 |

Act No. 60, 2001 SECOND REVENUE LAWS AMENDMENT ACT, 2001

| | | |
|------------|---|---|
| 2710.00.16 | Distillate fuels | |
| 3811.11 | Anti-knock preparations: based on lead compounds | |
| 4907.00.30 | Travellers' cheques and bills of exchange, denominated in a foreign currency | 5 |
| 4911.10.20 | Publications and other advertising matter relating to fairs, exhibitions and tourism in foreign countries | |

| ITEM NO. | DESCRIPTION | |
|----------|--|----|
| 406.00 | GOODS FOR DIPLOMATIC AND OTHER FOREIGN REPRESENTATIVES: | 10 |

NOTES:

1. This exemption (excluding item 406.03) is conditional upon reciprocal treatment accorded by the government of the mission or person requiring this exemption. 15
2. This exemption (excluding item 406.03) is allowed only if the Director-General: Foreign Affairs has certified that a person requiring this exemption is listed in the register maintained by the Department of Foreign Affairs in accordance with the Diplomatic Immunities and Privileges Act, 1989. 20 25
3. For the purposes of item 406.03, "an organisation or institution" means an organisation which the Director-General: Foreign Affairs has certified as an organisation or institution with which the Republic has concluded a formal agreement, which provides, *inter alia*, for the granting of such exemption. 30 35
4. This exemption is not allowed to South African citizens or permanent residents of the Republic, unless the Government of the Republic has, by agreement with an organisation or institution contemplated in Note 3, undertaken to grant an exemption to a South African citizen who is a representative, member, agent or officer, but excluding a delegate, with or to such organisation or institution. 40 45

5. A motor vehicle exempted in terms of items 406.02, 406.03, 406.05 or 406.07, may not be offered, advertised, lent, hired, leased, pledged, given away, exchanged, sold or otherwise disposed of within a period of two years from the date of importation: Provided that any of the foregoing acts with this vehicle within a period of two years from the date of importation renders the importer of the vehicle liable to pay tax as determined by the Commissioner in consultation with the Director-General: Foreign Affairs. 5 10 15
6. For the purposes of items 406.02, 406.03 and 406.05 “members of their families” means the spouse, any unmarried child under the age of 21 years, any unmarried child between the ages of 21 and 23 years who is undertaking full-time studies at an educational institution, and any unmarried child who is due to physical or mental disability incapable of self-support, and any other relative specially approved by the Minister of Foreign Affairs, who forms part of the household of any such member or person, as the case may be, or who joins any such household during visits to the Republic. 20 25 30
7. For the purposes of Note 6 “spouse” means the partner of such person—
- (a) in a marriage or customary union recognised in terms of the laws of the Republic; 35
- (b) in a union recognised as a marriage in accordance with the tenets of any religion; or 40
- (c) in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent.
- 406.02/00.00/01.00 Goods for the official use by a diplomatic mission and goods for the personal or official use by diplomatic representatives accredited to a diplomatic mission and members of their families 45

Act No. 60, 2001

SECOND REVENUE LAWS AMENDMENT ACT, 2001

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|--------------------|---|-----------|
| 406.03/00.00/01.00 | Goods for the personal or official use by members, agents, officers, delegates or permanent representatives of, to, or with an organisation or institution, and members of their families | 5 |
| 406.05/00.00/01.00 | Goods for the official use by a consular mission and goods for the personal or official use by consular representatives accredited to a consular mission and foreign representatives (excluding those referred to in items 406.02 and 406.03), and members of their families | 10 |
| 406.06/00.00/01.00 | Stationery, uniforms, furniture and equipment for the official use by a consular post headed by an honorary consular officer | 15 |
| 406.07/00.00/01.00 | Goods (excluding food, drink and tobacco in any form) imported by administrative and technical representatives accredited to diplomatic or consular missions, on their first entry on appointment by their governments, for their personal or official use, provided the said goods are imported with the approval of the Director-General: Foreign Affairs | 20 |
| 407.00 | GOODS IMPORTED BY IMMIGRANTS, TOURISTS, RETURNING RESIDENTS AND OTHER PASSENGERS, FOR THEIR PERSONAL USE: | 25 |

NOTES:

1. The exemption in terms of item 407.01/00.00/01.02 is allowed only if the goods can be identified as being the same goods which were taken from the Republic. 30
2. The exemption in terms of item 407.02 is not allowed for firearms acquired abroad or at any duty-free shop and imported by residents of the Republic returning after an absence of less than 6 months. 40
3. (a) The exemption in terms of item 407.02 is allowed only once per person during a period of 30 days and is not allowed for goods imported by persons returning after an absence of less than 48 hours. 45

- (b) The exemption in terms of item 407.02, with the exception of the exemption in respect of tobacco and alcoholic products, is allowed to children under 18 years of age, whether or not they are accompanied by their parents or guardians, provided the goods are for use by the children themselves. 5
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4. A member of the crew of a ship or aircraft (including the master or pilot) is, subject to the conditions laid down by the Commissioner—
- (a) only entitled to the exemptions in terms of items 407.02/22.00/01.00, 407.02/22.00/02.00, 407.02/24.02/01.00, 407.02/24.03/01.00 and 407.02/33.03/01.00 if such member returns to the Republic permanently; and 15
20
- (b) only entitled to the exemption in terms of item 407.02/00.00/01.00 if the total value of the goods declared under this item does not exceed R200. 25
5. For the purposes of item 407.04/87.00/01.00 (i) the vehicle in question shall not be deemed to be personally owned and used personally by the importer unless such importer was, at all reasonable times, personally present at the place where the vehicle was used by him, and the importer shall be deemed to have used that vehicle from the date on which he took physical delivery of the vehicle until the date on which the vehicle was delivered by him to the shippers or other agent for the purpose of shipment or dispatch. 30
35
40
6. For the purposes of item 407.04, the importer shall, if he is absent for a continuous period of longer than 3 months from the place where the vehicle is usually used in the Republic, not be deemed to have imported the vehicle for his personal or own use, and tax as determined by the Commissioner is payable as from the date of such absence. 45
50
7. The exemption in terms of item

407.04 is allowed only once per family during a period of 3 years.

Personal effects and sporting and recreational equipment, new or used:

| | | |
|--------------------|--|----|
| 407.01/00.00/01.01 | Imported either as accompanied or unaccompanied passengers' baggage by non-residents of the Republic for their own use during their stay in the Republic | 5 |
| 407.01/00.00/01.02 | Exported by residents of the Republic for their own use while abroad and subsequently re-imported either as accompanied or unaccompanied passengers' baggage by such residents | 10 |

Goods imported as accompanied passengers' baggage either by non-residents or residents of the Republic and cleared at the place where such persons disembark or enter the Republic:

| | | |
|--------------------|---|----|
| 407.02/22.00/01.00 | Wine not exceeding 2 litres per person | |
| 407.02/22.00/02.00 | Spirituous and other alcoholic beverages, a total quantity not exceeding 1 litre per person | 20 |
| 407.02/24.02/01.00 | Cigarettes not exceeding 400 and cigars not exceeding 50 per person | |
| 407.02/24.03/01.00 | 250g Cigarette or pipe tobacco per person | |
| 407.02/33.03/01.00 | Perfumery not exceeding 50 ml and toilet water not exceeding 250 ml per person | 25 |
| 407.02/00.00/01.00 | Other new or used goods, of a total value not exceeding R1 250 per person | |

Motor vehicles imported by natural persons on change of permanent residence:

| | | |
|--------------------|---|----------|
| 407.04/87.00/01.00 | One motor vehicle per family, imported by a natural person for his or her personal or own use, who permanently changes his or her residence to the Republic and— | 30 |
| | (i) provided the vehicle so imported is the personal property of the importer and has personally been owned and used by him or her for a period of not less than 12 months prior to his or her departure to the Republic; and | 35 |
| | (ii) provided the vehicle is not offered, advertised, lent, hired, leased, pledged, given away, exchanged, sold or otherwise disposed of within a period of 20 months from the date of importation | 40 45 |

Goods imported by natural persons for own use on change of residence to the Republic:

407.06/00.00/01.00 Household furniture, other household effects and other removable articles, including equipment necessary for the exercise of the calling, trade or profession of the person, other than industrial, commercial or agricultural plant and excluding motor vehicles, alcoholic beverages and tobacco goods, the bona fide property of a natural person (including a returning resident of the Republic after an absence of six months or more) and members of his or her family, imported for own use on change of his or her residence to the Republic: Provided that these goods are not disposed of within a period of six months from the date of importation 5
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409.00

RE-IMPORTED GOODS:

NOTES: 20

1. The importer must, at the time of entry of the goods upon re-importation, attach a statement to the bill of entry or other document prescribed in terms of the Customs and Excise Act, which indicates— 25
 - (a) the reasons for the goods being returned;
 - (b) whether any change in the ownership of the goods took place after their exportation from the Republic; 30
 - (c) whether the goods have been subjected to any process of manufacture or manipulation after their exportation from the Republic and if so, to what extent; 35
 - (d) the number and date of the bill of entry or other document prescribed in terms of the Customs and Excise Act, relating to the export of the goods and the place where such entry was made or the document on which the goods were registered prior to export of such goods for the purposes of the subsequent re-importation thereof; and 40
45
 - (e) the place where and the number and date of the bill of entry or other document prescribed in 50

- terms of the Customs and Excise Act, on which tax was paid on the goods upon their first importation into the Republic or other documents, if applicable, to prove that the goods were previously imported and tax due was paid thereon. 5
2. This exemption (excluding item 409.07) is allowed only if the goods can be identified as being the same goods which were exported. 10
3. For the purposes of item 409.07—
- (a) “compensating products” means the products obtained abroad during or as a result of the manufacturing, processing or repair of the goods temporarily exported for outward processing; and 15 20
- (b) “temporarily exported for outward processing” means the customs procedure whereby goods which may be disposed of without customs restriction, are temporarily exported for manufacturing, processing or repair abroad and then re-imported. 25
- 409.01/00.00/01.00 Imported goods (including packing containers) re-exported and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or manipulation, no change of ownership having taken place subsequent to their exportation from the Republic, and which can be identified on re-importation as being the same goods: Provided that this exemption shall not apply if— 30 35
- i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11; or 40
- ii) a refund in terms of section 44(9) is granted
- 409.02/00.00/01.00 Goods (including packing containers) produced or manufactured in the Republic, exported therefrom and thereafter returned to or brought back by the exporter 45

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| | or any other party, without having been subjected to any process of manufacture or manipulation (excluding excisable goods exported ex a customs and excise warehouse), no change of ownership having taken place subsequent to their exportation from the Republic, and which can be identified on re-importation as being the same goods: Provided that this exemption shall not apply if— | 5 10 |
| | i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11; or | |
| | ii) a refund in terms of section 44(9) is granted | 15 |
| 409.04/00.00/01.00 | Imported or locally manufactured articles sent abroad for processing or repair, provided they are exported under customs and excise supervision, retain their essential character, are returned to the exporter, no change of ownership having taken place subsequent to their exportation from the Republic, and can be identified on re-importation: Provided that this exemption shall apply only to the extent of the value of the goods sent from the Republic on the day such goods left the Republic | 20 25 |
| 409.06/00.00/01.00 | Excisable goods exported ex a customs and excise warehouse and thereafter returned to or brought back by the exporter, without having been subjected to any process of manufacture or manipulation and no change of ownership having taken place subsequent to their exportation from the Republic: Provided that this exemption shall not apply if— | 30 35 |
| | i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11; or | |
| | ii) a refund in terms of section 44(9) is granted | 40 |
| 409.07/00.00/01.00 | Compensating products obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the Director-General: Trade and Industry on the recommenda- | 45 |

tion of the Board of Trade and Industry, provided—

- (i) the specific permit is obtained before the temporary exportation of the goods; 5
- (ii) if the ownership of the compensating products is transferred prior to entry for customs purposes, such goods are entered in the name of the person who exported the goods; 10
- (iii) any additional conditions which may be stipulated in the said permit, are complied with; and
- (iv) that this exemption shall apply only to the extent of the value of the goods sent from the Republic on the day such goods left the Republic 15

412.00

GENERAL:

NOTES:

- 1. For the purposes of items 412.03 and 412.04, the bill of entry or other document prescribed in terms of the Customs and Excise Act must be supported by an inventory of the goods and documentary proof that the goods qualify for exemption under these items. 20
25
- 2. For the purposes of items 412.26 and 412.27, such exemptions are subject to compliance with sections 39 and 40 of the Customs and Excise Act and which shall apply also to imports from or via Botswana, Lesotho, Namibia or Swaziland. 30
- 412.03/00.00/01.00 Used personal or household effects (excluding motor vehicles) bequeathed to persons residing in the Republic 35
- 412.04/00.00/01.00 Used property of a person normally resident in the Republic who died while temporarily outside the Republic 40
- 412.10/00.00/01.00 Bona fide unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed R400 (excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco (including cigarettes and cigars)) consigned by 45

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| | natural persons abroad to natural persons in the Republic | |
| 412.11/00.00/01.00 | Goods imported— | |
| | (a) for the relief of distress of persons in cases of famine or other national disaster; | 5 |
| | (b) under any technical assistance agree- ment; or | |
| | (c) in terms of an obligation under any multilateral international agreement to which the Republic is a party: | 10 |
| | Provided that— | |
| | (i) the importation of any goods under this item shall be subject to a certifi- cate issued by the Director-General: Trade and Industry and to such other conditions as may be agreed upon by the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland; and | 15 20 |
| | (ii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the Director-General: Trade and Industry | 25 |
| 412.12/00.00/01.00 | Goods imported for any purpose agreed upon between the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland: Provided that— | 30 |
| | (i) the provisions of this item shall not apply in respect of any consignment or quantity or class of goods unless the prior approval of the Govern- ments of Botswana, Lesotho, Namibia and Swaziland has been obtained for the application of such provisions in respect of every such consignment or quantity or class of goods; | 35 40 |
| | (ii) the importation of any goods under this item shall be subject to a certifi- cate issued by the Director-General: Trade and Industry and to such other conditions as may be agreed upon by | 45 |

- the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland; and
- (iii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the Commissioner 5 10
- 412.26/00.00/01.00 Goods (excluding goods for upgrading) supplied free of charge to replace defective goods which are covered by a warranty agreement: Provided that—
- (a) a copy of the bill of entry or other document prescribed in terms of the Customs and Excise Act and the documents submitted in support of such document under which the goods were originally entered for home consumption are submitted; 15 20
- (b) the goods are supplied by the original supplier; and
- (c) proof that the replaced goods have been exported to the original supplier is submitted or the replaced goods are disposed of as directed by the Commissioner 25
- 412.27/00.00/01.00 Goods for upgrading supplied free of charge to replace parts which are covered by a warranty agreement: Provided that— 30
- (a) a specific permit issued by the Director-General: Trade and Industry, on recommendation of the Board on Tariffs and Trade, is submitted; 35
- (b) a copy of the bill of entry or other document prescribed in terms of the Customs and Excise Act and the documents submitted in support of such document under which the goods were originally entered for home consumption are submitted; 40
- (c) the goods are supplied by the original supplier; and
- (d) proof that the replaced goods have been exported to the original supplier 45

is submitted or the replaced goods are disposed of as directed by the Commissioner

470.00

GOODS TEMPORARILY ADMITTED FOR PROCESSING, REPAIR, CLEANING, RECONDITIONING OR FOR THE MANUFACTURE OF GOODS EXCLUSIVELY FOR EXPORT: 5

NOTES: 10

1. The Commissioner may require the importer to register a rate of yield of the processed or manufactured goods that will be obtained per unit of the imported goods. 15
 2. (a) The exemption in terms of items 470.01 or 470.03 is allowed only for goods to be used for the processing or manufacture of goods for export and the processed or manufactured goods must be exported within 12 months from the date of importation thereof. 20
25
 - (b) The exemption in terms of item 470.02 is allowed only for parts to be used and the goods submitted for repair, cleaning or reconditioning must be exported within 6 months from the date of importation thereof: 30
- Provided that—
- (i) the Commissioner may, in exceptional circumstances, extend the period specified in each case for a further period as deemed reasonable; and 35
 - (ii) the application for such extension is made prior to the expiry of the period of 12 months or 6 months, as the case may be. 40
3. This exemption is allowed only if the Controller of Customs and Excise ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in 45

the circumstances contemplated in rule 120A.01(c) of Chapter XIIA of the Rules under the Customs and Excise Act.

| | | | |
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| | 4. | If proof is not furnished to the Commissioner that the goods imported have been repaired, cleaned, reconditioned, processed or used in repairing, cleaning, reconditioning or processing and have been duly exported within the time period prescribed in note number 2, this exemption shall be withdrawn and tax, penalty and interest must be paid. | 5 10 |
| 470.01/00.00/01.00 | | Goods for processing, provided such goods do not become the property of the importer | 15 |
| 470.02/00.00/01.00 | | Goods (including parts therefore) for repair, cleaning or reconditioning | |
| 470.02/00.00/02.00 | | Parts for goods temporarily imported for repair, cleaning or reconditioning | 20 |
| 470.03/00.00/01.00 | | Goods for use in the manufacturing, processing, finishing, equipping or packing of goods exclusively for export | |

480.00

GOODS TEMPORARILY ADMITTED FOR SPECIFIC PURPOSES: 25**NOTES:**

1. The exemption in terms of item 480.35 is allowed—
 - (a) only if the samples are imported by—
 - (i) commercial travellers and other representatives of firms abroad who visit the Republic temporarily with their samples for the purpose of securing orders; 35
 - (ii) persons or firms established in the Republic, including agents for foreign firms, to whom samples may be sent by firms abroad, free of charge, for the same purpose; or 40
 - (iii) a prospective customer in the Republic to whom a sample is sent on free loans for inspection and demonstration with a view to ob- 45

- taining an order for similar
goods;
- (b) except with the permission of the
Commissioner, for only one
sample of each description, 5
range, type or colour of an ar-
ticle; and
- (c) only if each sample is an article
representative of a particular cat- 10
egory of goods already produced
abroad, imported solely for the
purpose of being shown or dem-
onstrated free of charge to pro-
spective customers.
2. Goods shall be re-exported— 15
- (a) in the case of goods under an
international carnet within the
period of validity of such carnet;
and
- (b) in the case of other goods within 20
6 months from the date of impor-
tation, thereof or within such
further period as the Commis-
sioner may in exceptional cir-
cumstances, allow. 25
3. This exemption is allowed only if the
Controller of Customs and Excise
ensures that the tax is secured, in part
or in full, by the lodging of a provi- 30
sional payment or bond except where
the Commissioner, in exceptional cir-
cumstances, otherwise directs, or in
the circumstances contemplated in
rule 120A.01(c) of Chapter XIIA of 35
the Rules under the Customs and
Excise Act.
4. If proof is not furnished to the Com-
missioner that the goods have been
duly re-exported within the time pe- 40
riod prescribed in note number 2, this
exemption shall be withdrawn and
tax, penalty and interest must be paid.
5. Notwithstanding this exemption, the
importer shall remain liable for tax, 45
until he proves that the goods have
been duly re-exported or that the
goods have been exported under the
supervision of an officer, as defined in

| | | |
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| | section 1 of the Customs and Excise Act. | |
| | 6. On request by the importer, and subject to the permission of the Commissioner, temporary admission may be terminated by entering the goods for home consumption or by abandonment or destruction of the goods whereupon tax must be paid. | 5 |
| 480.05/00.00/01.00 | Containers and other articles used as packing, whether or not filled at the time of importation: Provided that such articles do not become the property of the importer | 10 |
| 480.10/00.00/01.00 | Goods for display or use at exhibitions, fairs, meetings or similar events | 15 |
| 480.15/00.00/01.00 | Professional equipment (including ancillary apparatus and accessories) owned by persons resident abroad, for use solely by or under the supervision of a visiting person | 20 |
| 480.20/00.00/01.00 | Welfare material for seafarers for cultural, educational, recreational, religious or sporting activities | |
| 480.25/00.00/01.00 | Instruments, apparatus and machines (including accessories therefore), for use by institutions approved by the Commissioner, for scientific research or education | 25 |
| 480.30/00.00/01.00 | Models, instruments, apparatus, machines and other pedagogic material (including accessories therefore) imported by institutions approved by the Commissioner, for educational or vocational training | 30 |
| 480.35/00.00/01.00 | Commercial samples owned abroad and imported for the purpose of being shown or demonstrated in the Republic for the soliciting of orders for goods to be supplied from abroad | 35 |
| 490.00 | GOODS TEMPORARILY ADMITTED SUBJECT TO EXPORTATION IN THE SAME STATE: | 40 |

NOTES:

1. Goods shall be re-exported—
 - (a) in the case of goods under an international carnet within the 45

period of validity of such carnet;
and

(b) in the case of other goods within 6 months from the date of importation thereof or within such further period as the Commissioner may in exceptional circumstances, allow. 5

2. This exemption is allowed only if the Controller of Customs and Excise ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01(c) of Chapter XIIA of the Rules under the Customs and Excise Act. 10 15

3. If proof is not furnished to the Commissioner that the goods have been duly re-exported within the time period prescribed in note number 1, this exemption shall be withdrawn and tax, penalty and interest must be paid. 20 25

4. Notwithstanding this exemption, the importer shall remain liable for tax, until he proves that the goods have been duly re-exported or that the goods have been exported under the supervision of an officer, as defined in section 1 of the Customs and Excise Act. 30

5. On request by the importer, and subject to the permission of the Commissioner, temporary admission may be terminated by entering the goods for home consumption or by abandonment or destruction of the goods whereupon tax must be paid. 35 40

490.03/87.00/01.00 Private motor vehicles belonging to a person taking up temporary residence in the Republic

490.05/00.00/01.00 Postcards and other mail matter, imported in bulk, for despatch to addresses beyond the borders of the Republic 45

490.10/00.00/01.00 Models or prototypes, to be used in the manufacture of goods

Act No. 60, 2001

SECOND REVENUE LAWS AMENDMENT ACT, 2001

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|--------------------|--|----|
| 490.11/00.00/01.00 | Matrices, blocks, plates, and similar articles, on loan or hire, for printing illustrations in periodicals or books | |
| 490.12/00.00/01.00 | Matrices, blocks, plates, moulds and similar articles, on loan or hire, to be used in the manufacture of articles that are to be delivered abroad | 5 |
| 490.13/00.00/01.00 | Instruments, apparatus, machines and other articles to be tested by the South African Bureau of Standards | 10 |
| 490.14/00.00/01.00 | Instruments, apparatus and machines, made available free of charge to a customer by or through a supplier, pending delivery or repair of similar goods | |
| 490.15/00.00/01.00 | Costumes, scenery and other theatrical equipment on loan or hire to dramatic societies or theatres | 15 |
| 490.20/00.00/01.00 | Animals and sport requisites (including yachts and motor vehicles) belonging to a person resident abroad, for use by that person or under his supervision in sports contests (including motor car rallies and transcontinental excursions) | 20 |
| 490.25/00.00/01.00 | Photographs and transparencies to be shown in a public exhibition or competition for photographers | 25 |
| 490.30/00.00/01.00 | Specialised equipment arriving by ship and used on shore at ports of call for the loading, unloading or handling of containers of tariff heading No. 86.09 of Schedule No. 1 to the Customs and Excise Act | 30 |
| 490.35/00.00/01.00 | Pallets, whether or not laden with cargo at importation | |
| 490.40/00.00/01.00 | Machinery or plant (excluding tower cranes) for use on contract in civil engineering or construction work, in such quantities and at such times and subject to such conditions as the Commissioner, on the recommendation of the Board of Trade and Industry, may allow by specific permit | 40 |
| 490.50/00.00/01.00 | Motor vehicles, yachts and other removable articles (including spare parts and normal accessories and equipment therefore) imported by foreign tourists and travellers resident in foreign countries for their own use | 45 |

Act No. 60, 2001 SECOND REVENUE LAWS AMENDMENT ACT, 2001

| | | |
|--------------------|--|---------|
| 490.60/00.00/01.00 | Commercial road vehicles used in the conveyance of imported merchandise | |
| 490.90/00.00/01.00 | Machinery or plant (excluding tower cranes) for use on contract other than for purposes of civil engineering or construction work, in such quantities and at such times and subject to such conditions as the Commissioner, on the recommendation of the Board of Trade and Industry, may allow by specific permit | 5 10 |
| 490.90/00.00/02.00 | Goods not specified in items 470.00, 480.00 or 490.00, temporarily admitted for purposes approved by the Commissioner.”. | |

Amendment of section 60 of Act 113 of 1993, as amended by section 20 of Act 140 of 1993, section 4 of Act 168 of 1993, section 34 of Act 20 of 1994, section 6 of Act 37 of 1995, section 34 of Act 37 of 1995, section 55 of Act 27 of 1997, section 105 of Act 30 of 1998, section 107 of Act 53 of 1999 and section 84 of Act 30 of 2000 15

178. Section 60 of the Income Tax Act, 1993, is hereby amended by the substitution for subsection (2) of the following subsection: 20

“(2) The Commissioner may, subject to such conditions as he may deem necessary, approve any proposed transaction as an unbundling transaction for the purposes of this section, if a written application containing such details of the transaction as the Commissioner may require is submitted to him before 1 December 2001 by an unbundling company before the commencement of the implementation of such transaction.”. 25

Amendment of section 39 of Act 20 of 1994, as amended by section 7 of Act 37 of 1995, section 35 of Act 37 of 1996, section 56 of Act 27 of 1997 and section 108 of Act 53 of 1999

179. (1) Section 39 of the Taxation Laws Amendment Act, 1994, is hereby amended— 30

- (a) by the insertion after the definition of “marketable security” of the following definition: 35
- “‘marketable securities tax’ means the marketable securities tax leviable under the Marketable Securities Tax Act, 1948 (Act No. 32 of 1948).”;
- (b) by the addition to subsection (1) of the following definition: 35
- “‘uncertificated securities tax’ means the uncertificated securities tax leviable under the Uncertificated Securities Tax Act, 1998 (Act No. 32 of 1998).”;
- (c) by the substitution for paragraph (c) of subsection (2) of the following paragraph: 40
- “(c) there shall be exempt from—
- (i) duty the consequent registration of transfer to such transferee company of such marketable security or the cession of such bond or the substitution of the debtor in terms of the agreement, in terms of such scheme; 45
- (ii) **[and there shall be exempt from]** transfer duty the acquisition by the transferee company of the property in terms of such scheme, **[as the case may be]**;
- (iii) marketable securities tax the purchase of any marketable security, in terms of such scheme; and 50
- (iv) uncertificated securities tax the change in beneficial owner of any marketable security, in terms of such scheme.”; and
- (d) by the substitution for paragraph (a) of subsection (3) of the following paragraph: 55
- “(a) the agreement referred to in the definition of ‘rationalisation scheme’ and a written statement setting forth details of the

Act No. 60, 2001 SECOND REVENUE LAWS AMENDMENT ACT, 2001

rationalisation scheme and any subsequent variation thereof, have been submitted by or on behalf of the controlling company of the relevant group of companies to the Commissioner before 1 March 2002, together with a mandate from each controlled company in such group which is a party to the agreement to act on its behalf for the purposes of this section, supported by a resolution of the directors or shareholders of such controlled company; and” 5

(2) Subsections (1)(a), (b) and (c) shall be deemed to have come into operation on 1 September 2001.

Amendment of section 6 of Act 31 of 1998, as amended by section 15 of Act 32 of 1999, section 87 of Act 30 of 2000 and section 75 of Act 19 of 2001 10

180. Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the addition to subsection (1) of the following paragraph:

“(ix) if the beneficial ownership is acquired by a company in terms of a a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962), a share-for-share transaction contemplated in section 43 of the Act, an intra-group transaction contemplated in section 44, or in pursuance of a distribution *in specie* in the course of an unbundling transaction or in terms of a liquidation transaction contemplated in section 46 of that Act, where the public officer of that company has made a sworn affidavit or solemn declaration that such company formation transaction, share-for-share transaction, unbundling transaction or liquidation transaction complies with the provisions contained in section 42, 43, 45 or 46, as the case may be, of that Act.” 15 20

Amendment of section 13 of Act 31 of 1998 25

181. Section 13 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for the definition of “authorisation letter” of the following definition:

“‘authorisation letter’ means a written authorisation granted by the Commissioner, or by any [chief director or chief revenue inspector under the control, direction or supervision of the Commissioner] person designated by the Commissioner for this purpose or occupying a post designated by the Commissioner, to an officer to inspect, audit, examine or obtain, as contemplated in section 15, any information, documents or things;” 30

Insertion of section 17A in Act 31 of 1998 35

182. (1) Section 17A is hereby inserted in the Uncertificated Securities Tax Act, 1998 after section 17:

“Objection and Appeal Procedures

17A. (1) Any person aggrieved by a decision of the Commissioner in terms of this Act may object and appeal against that decision to the tax board or the tax court, as the case may be, established in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), in the manner and under the terms and within the period prescribed by that Act and the rules promulgated thereunder. 40

(2) The provisions of the Income Tax Act, 1962, relating to objections and appeals, as provided for in Part III of Chapter III and the rules promulgated thereunder, shall *mutatis mutandis* apply in respect of any decision issued in terms of this Act. 45

(3) Any decision of the Commissioner, contemplated in subsection (1) shall be deemed to be an assessment for the purposes of the application of the provisions of the Income Tax Act, 1962, as contemplated in subsection (2).” 50

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

Amendment of section 85 of Act 53 of 1999

183. Section 85 of the Revenue Laws Amendment Act, 1999, is hereby amended by the deletion of paragraphs (d) and (e) of subsection (1). 5

Amendment of section 86 of Act 53 of 1999

184. Section 86 of the Revenue Laws Amendment Act, 1999, is hereby amended by the deletion of paragraph (c) of subsection (1).

Repeal of section 106 of Act 53 of 1999

185. Section 106 of the Revenue Laws Amendment Act, 1999, is hereby repealed. 10

Amendment of section 15 of Act 5 of 2001

186. Section 15 of the Taxation Laws Amendment Act, 2001, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsections (1)(a) and (b) shall [apply in respect of any year of assessment that commences on or after] come into operation on 1 October 2001.” 15

Repeal of section 43 of Act 19 of 2001

187. Section 43 of the Revenue Laws Amendment Act, 2001, is hereby repealed.

Amendment of section 45 of Act 19 of 2001

188. Section 45 of the Revenue Laws Amendment Act, 2001 (Act No. 19 of 2001), is hereby amended by the substitution for subsection (2) of section 59A of the Customs and Excise Act, 1964, of the following subsection: 20

“(2)(a) The Commissioner may—

(i) before registration require any person or class of persons to furnish such security and enter into such agreement as the Commissioner may determine; 25

(ii) at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as the Commissioner may determine.

(b) The Commissioner may refuse any application for registration or cancel or suspend any registration. 30

(c) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph (a).”

Amendment of section 50 of Act 19 of 2001

189. Section 50 of the Revenue Laws Amendment Act, 2001 (Act No. 19 of 2001), is hereby amended— 35

(a) by the deletion in subsection (1) of paragraphs (h) to (l); and

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

“(2) Subsection (1)(a), (b), (c), (d), (e), (f) and (g) shall be deemed to have come into operation on 4 July 2001.”

Short title 40

190. (1) This Act shall be called the Second Revenue Laws Amendment Act, 2001.

(2) Whenever any provision of any amendment to the Customs and Excise Act, 1964, refers to section 95A or any subsection thereof, such provision shall with regard to the effect of such reference operate from the date section 95A of that Act comes into operation. 45