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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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## STAATSKOERANT

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1280.

20 July 1993

No. 1280.

20 Julie 1993

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

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

No. 113 of 1993: Income Tax Act, 1993.

No. 113 van 1993: Inkomstebelastingwet, 1993.

**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.

**ACT**

To fix the rates of normal tax payable by persons other than companies in respect of taxable incomes for the years of assessment ending on 28 February 1994 and 30 June 1994, and by companies in respect of taxable incomes for years of assessment ending during the period of 12 months ending on 31 March 1994; to amend the Income Tax Act, 1962; to withdraw a Government Notice; to provide for special provisions with regard to unbundling transactions; to provide for agreements for the settlement of certain disputes; to provide that the Commissioner for Inland Revenue shall refrain from taking steps for the assessment of certain additional taxes; to amend the Insurance Act, 1943, to impose restrictions on certain policies issued by insurers who carry on long-term insurance business, to amend the restrictions on sinking fund business and to provide for matters connected therewith; and to provide for incidental matters.

*(English text signed by the State President.)*  
*(Assented to 9 July 1993.)*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

**Rates of normal tax**

1. The rates of normal tax to be levied in terms of section 5(2) of the Income Tax Act, 1962 (Act No. 58 of 1962) (hereinafter referred to as the principal Act), in respect of— 5

- (a) the taxable income of any person other than a company for the year of assessment ending on 28 February 1994 or 30 June 1994; and
- (b) the taxable income of any company for any year of assessment ending during the period of 12 months ending on 31 March 1994, 10

shall be as set forth in the Schedule to this Act.

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, 15

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 and section 2 of Act 141 of 1992 5

2.(1) Section 1 of the principal Act is hereby amended—

- (a) by the insertion after the definition of “building society” of the following definition:  
 “ ‘business day’ means any day which is not a Saturday, Sunday or public holiday;”;
- (b) by the insertion after the definition of “company” of the following definition:  
 “ ‘connected person’ means—
- (a) in relation to a natural person— 15  
 (i) any relative; and  
 (ii) any trust of which such natural person or such relative is a beneficiary;
- (b) in relation to a trust— 20  
 (i) any beneficiary of such trust; and  
 (ii) any connected person in relation to such beneficiary;
- (c) in relation to a member of any partnership—  
 (i) any other member; and  
 (ii) any connected person in relation to any member of such partnership; 25
- (d) in relation to a company—  
 (i) its holding company as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973);  
 (ii) its subsidiary as so defined;  
 (iii) any other company where both such companies are subsidiaries (as so defined) of the same holding company; 30  
 (iv) any person who individually or jointly with any connected person in relation to himself, holds, directly or indirectly, at least 20 per cent of the company’s equity share capital, members’ interest or voting rights; 35  
 (v) any other company if at least 40 per cent of the equity share capital, members’ interest or voting rights of both such companies is held by the same persons; and  
 (vi) where such company is a close corporation— 40  
 (aa) any member;  
 (bb) any relative of such member or any trust which is a connected person in relation to such member; and  
 (cc) any other close corporation which is a connected person in relation to the relative or trust contemplated in item (bb); and 45
- (e) in relation to any person who is a connected person in relation to any other person in terms of the foregoing provisions of this definition, such other person,  
 and in this definition the expression ‘beneficiary’ means any person who has been named in the will or deed of trust concerned— 50  
 (i) as a beneficiary; or  
 (ii) as a person upon whom the trustee of the trust has the power to confer a benefit from such trust;”;
- (c) by the substitution for the words preceding the proviso to paragraph (g) of the definition of “dividend” of the following words: 55  
 “so much of the nominal value of any capitalization shares awarded to shareholders on or before 30 June 1975 as part of the equity share capital of a company by a company which during the period of

- 10 years ending the day before the date of such award has made any partial reduction of its paid-up share capital involving a distribution to shareholders of cash or other assets, as exceeds the sum of the amounts which **[in the opinion of the Commissioner]** were available for distribution to shareholders on each and every date on which the company made a partial reduction of its paid-up share capital during the said period, less the sum of so much of the nominal values of all capitalization shares awarded by such company during that period (excluding any portion of that period occurring prior to 1 July 1957) as constituted dividends for the purposes of this definition or the definition of 'dividend' in section 1 of the Income Tax Act, 1941:"
- (d) by the substitution for the fourth proviso to the definition of "dividend" of the following proviso:
- "Provided further that a reserve of any company which consists of or includes any amount transferred from the share premium account of the company shall, except to the extent to which **[the Commissioner is satisfied that]** such reserve consists of any other amount, be deemed for the purposes of this definition to be a share premium account of, or share premium received by, such company;"
- (e) by the substitution for paragraph (a) of the definition of "gross income" of the following paragraph:
- "(a) any amount received or accrued by way of annuity, including any amount contemplated in the definition of 'annuity amount' in section 10A(1);"
- (f) by the deletion of paragraph (eA) of the definition of "gross income";
- (g) by the substitution for subparagraph (ii) of paragraph (h) of the definition of "gross income" of the following subparagraph:
- "(ii) if no amount is so stipulated, an amount representing **[in the opinion of the Commissioner]** the fair and reasonable value of the improvements;"
- (h) by the substitution for paragraph (l) of the definition of "gross income" of the following paragraph:
- "(l) any amount received or accrued by way of grant or subsidy in respect of any soil erosion works referred to in section 17A(1) or any of the matters mentioned in items (a) to **[(j)] (i)**, inclusive, of paragraph 12(1) of the First Schedule;"
- (i) by the substitution in subparagraph (dd) of paragraph (ii) of the proviso to paragraph (c) of the definition of "pension fund" for the expression "R600" of the expression "R1 800";
- (j) by the substitution in paragraph (a) of the definition of "prescribed rate" for the expression "14 per cent" of the expression "12 per cent";
- (k) by the substitution in subparagraph (ii) of paragraph (b) of the definition of "retirement annuity fund" for the expression "R600" of the expression "R1 800";
- (l) by the substitution for subparagraph (i) of paragraph (a) of the definition of "retirement-funding employment" of the following subparagraph:
- "(i) in the case of such employee, derives in respect of his employment any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule (but leaving out of account the provisions of paragraph **[(iv)] (vii)** of that definition) and is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived; or"; and



(m) by the substitution for the definition of "trading stock" of the following definition:

" 'trading stock' includes anything produced, manufactured, purchased or in any other manner acquired by a taxpayer for purposes of manufacture, sale or exchange by him or on his behalf, or the proceeds from the disposal of which forms or will form part of his gross income, or any consumable stores and spare parts acquired by him to be used or consumed in the course of his trade, but does not include a foreign currency option contract and a forward exchange contract as defined in section 24I(1);"

(2)(a) Subsection (1)(b) shall be deemed to have come into operation on 21 June 1993.

(b) Subsection (1)(e) and (f) shall be deemed to have come into operation on 1 March 1993 and shall apply to any amount received or accrued on or after that date.

(c) Subsection (1)(j) shall be deemed to have come into operation on 1 July 1993.

**Amendment of section 7A of Act 58 of 1962, as inserted by section 6 of Act 69 of 1975 and amended by section 7 of Act 103 of 1976, section 6 of Act 96 of 1981, section 4 of Act 65 of 1986 and section 8 of Act 129 of 1991**

3. Section 7A of the principal Act is hereby amended by the substitution for subparagraph (i) of paragraph (d) of subsection (4A) of the following subparagraph:

"(i) the termination or impending termination of the taxpayer's services is due to his employer having ceased to carry on or intending to cease carrying on the trade in respect of which the taxpayer was employed or to the taxpayer having become redundant in consequence of his employer having effected a general reduction in personnel or a reduction in personnel of a particular class; and"

**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 and section 6 of Act 141 of 1992**

4.(1) Section 8 of the principal Act is hereby amended by the addition of the following paragraph to subsection (4):

"(k) For the purposes of paragraph (a), where during any year of assessment any person has donated or distributed by way of a dividend, any asset 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, 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 or distribution."

(2) Subsection (1) shall be deemed to have come into operation on 21 June 1993 and shall apply to any asset donated or distributed as a dividend on or after that date.

**Amendment of section 9 of Act 58 of 1962, as amended by section 7 of Act 90 of 1962, section 6 of Act 72 of 1963, section 7 of Act 90 of 1964, section 9 of Act 95 of 1967, section 12 of Act 89 of 1969, section 6 of Act 65 of 1973, section 9 of Act 85 of 1974, section 8 of Act 103 of 1976, section 9 of Act 121 of 1984, section 5 of Act 96 of 1985, section 6 of Act 65 of 1986, section 2 of Act 108 of 1986, section 7 of Act 85 of 1987, section 10 of Act 129 of 1991 and section 7 of Act 141 of 1992**

5. Section 9 of the principal Act is hereby amended by the addition to paragraph (f) of subsection (1) of the following proviso:

"Provided that the provisions of this paragraph shall not apply if any such

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

**Amendment of section 9B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1990 and amended by section 11 of Act 129 of 1991 and section 9 of Act 141 of 1992**

6. Section 9B of the principal Act is hereby amended by the addition of the following subsection: 5

“(8) For the purposes of this section any amount included in the income of any company in terms of the provisions of the second proviso to section 22(8) as a result of the distribution of any affected share, shall be deemed to be an amount which has accrued to such company as a result of the disposal of such affected share.”. 10

**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 and section 10 of Act 141 of 1992** 15 20

7. (1) Section 10 of the principal Act is hereby amended—

(a) by the substitution for subparagraph (v) of paragraph (cC) of subsection (1) of the following subparagraph: 25

“(v) in the case of an association to which the provisions of item (bb) of subparagraph (i) apply, the directors of the association are independent persons who do not derive any remuneration for their services to the association (or, if such remuneration is in fact derived by any such director, it does not in any one year exceed an amount [notified to the association by the Commissioner as being] which is reasonable in the circumstances) and at least one of those directors is a person nominated by a Minister responsible for housing matters;” 30 35

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

“(cD) the receipts and accruals of any [association which in the opinion of the Commissioner is an] amateur sporting association;”

(c) by the substitution for item (aa) of subparagraph (i) of paragraph (cI) of subsection (1) of the following item: 40

“(aa) to acquire, hold, develop or improve land or any right to land in the Republic or in any country the territory of which formerly formed part of the Republic [and] with a view to enabling any community, in the Republic or such country, of which [all] at least 75 per cent of the adult members [or the majority of the members] are persons who earn less than [R1 000] R1 500 per month, to acquire such land, or right thereto, so as to occupy that land wholly or mainly for residential purposes;” 45

(d) by the substitution for item (bb) of subparagraph (i) of paragraph (cJ) of subsection (1) of the following item: 50

“(bb) to lend or donate money to any company, association or trust contemplated in paragraph (cC), [or] (cI) or this paragraph;”

provide funds for any company, society, association of persons or trust contemplated in paragraph (cF), if such fund—

- (i) has been approved by the Commissioner subject to such conditions as he may deem necessary to ensure that no benefits are allocated by the fund for purposes other than the provision of residential accommodation contemplated in paragraph (cF);
- (ii) has submitted to the Commissioner a copy of the written constitution, will or any other written instrument under which it has been established and in terms of which it is—
  - (aa) not permitted to distribute any of its funds to any person, other than a company, society, association of persons or trust contemplated in paragraph (cF);
  - (bb) required to utilize its funds solely for the object for which it has been established or to invest such funds—
    - (A) with a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984);
    - (B) in securities listed on a licensed stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
    - (C) in such other financial instruments as the Commissioner may approve;
  - (cc) required to distribute, unless the Commissioner otherwise directs, at least 75 per cent of its net revenue (being the gross income of such fund less the costs of its administration) to any company, society, other association of persons or trust contemplated in paragraph (cF) within a period of 12 months from the end of the financial year during which such net revenue was derived;
  - (dd) required on dissolution to transfer its assets to any company, society, other association of persons or trust which is exempt from tax under paragraph (cF);
  - (ee) not permitted, except to the extent that the Commissioner directs, to carry on any business;
  - (ff) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established; and
  - (gg) not permitted to accept any donation which is not irrevocable and unconditional:

Provided that—

- (a) where such constitution, will or other written instrument does not comply with the provisions of this subparagraph, it shall be deemed so to comply if—
  - (i) in the case of a fund established under the terms of a will; or
  - (ii) in the case of a fund established prior to 21 June 1993 under a constitution or other written instrument which cannot be amended to comply with the said provisions, the trustee of the fund furnishes the Commissioner with a written undertaking that the fund will be administered in compliance with the said provisions; and
- (b) notwithstanding the provisions of items (bb) and (ee), any asset or business undertaking acquired by such

- discretion under this paragraph shall be subject to objection and appeal];”;
- (i) by the insertion after paragraph (f) of subsection (1) of the following paragraph:
- “(fA) the receipts and accruals of any fund the sole object of which is to provide funds for any religious, charitable or educational institution contemplated in paragraph (f), if such fund—
- (i) has been approved by the Commissioner subject to such conditions as he may deem necessary to ensure that no benefits are allocated by the fund for purposes other than the provision of funds for a religious, charitable or educational institution contemplated in paragraph (f);
  - (ii) has submitted to the Commissioner a copy of the written constitution, will or any other written instrument under which it has been established and in terms of which it is—
    - (aa) not permitted to distribute any of its funds to any person other than an institution contemplated in paragraph (f);
    - (bb) required to utilize its funds solely for the object for which it has been established or to invest such funds—
      - (A) with a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984);
      - (B) in securities listed on a licensed stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
      - (C) in such other financial instruments as the Commissioner may approve;
    - (cc) required to distribute, unless the Commissioner otherwise directs, at least 75 per cent of its net revenue (being the gross income of such fund less the costs of its administration) to any religious, charitable or educational institution contemplated in paragraph (f) within a period of 12 months from the end of the financial year during which such net revenue was derived;
    - (dd) required on dissolution to transfer its assets to any religious, charitable or educational institution which is exempt from tax under paragraph (f);
    - (ee) not permitted, except to the extent that the Commissioner directs, to carry on any business;
    - (ff) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established;
    - (gg) not permitted to accept any donation which is not irrevocable and unconditional; and
    - (hh) required to apply its net revenue, unless the Minister of Finance otherwise directs, for the furtherance of its sole object in the Republic or in any country the territory of which formerly formed part of the Republic:
- Provided that—
- (a) where such constitution, will or other written instrument does not comply with the provisions of this subparagraph, it shall be deemed so to comply if—
    - (i) in the case of a fund established under the terms of a will; or

- (ii) in the case of a fund established prior to 21 June 1993 under a constitution or other written instrument which cannot be amended to comply with the said provisions,  
the trustee of the fund furnishes the Commissioner with a written undertaking that the fund will be administered in compliance with the said provisions; and
- (b) notwithstanding the provisions of items (bb) and (ee), any asset or business undertaking acquired by such fund by way of donation, inheritance or bequest, may be retained or continued, as the case may be, in the form so acquired:
- Provided that—
- (a) where the Commissioner is satisfied that any such fund has during any year of assessment failed to comply with the provisions of this paragraph, he may withdraw his approval of the fund with effect from the commencement of that year of assessment;
- (b) where the Commissioner has withdrawn his approval of such fund, it shall, within two months from the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any religious, charitable or educational institution which is exempt from tax under paragraph (f);
- (c) where a fund fails to transfer, or take reasonable steps to transfer, its remaining assets as contemplated in paragraph (b) of this proviso, the accumulated net revenue which has not been distributed shall be deemed for the purposes of this Act to be an amount of taxable income which accrued to such fund during the year of assessment referred to in paragraph (a) of this proviso; and
- (d) any decision of the Commissioner in the exercise of his discretion under this paragraph shall be subject to objection and appeal;”;
- (j) by the deletion of the word “and” at the end of paragraph (i) of the proviso to paragraph (hA) of subsection (1);
- (k) by the addition of the word “and” at the end of paragraph (ii) of the proviso to paragraph (hA) of subsection (1);
- (l) by the addition to the proviso to paragraph (hA) of subsection (1) of the following paragraph:  
“(iii) for the purposes of this paragraph, so much of any dividend as has been distributed by any unit portfolio constituting a company in terms of paragraph (e) of the definition of ‘company’ in section 1 out of interest derived by such unit portfolio which is exempt from tax in the hands of such unit portfolio under the provisions of paragraph (iA), shall be deemed to be interest;”;
- (m) by the substitution for paragraph (bb) of the proviso to subparagraph (i) of paragraph (k) of subsection (1) of the following paragraph:  
“(bb) to so much of any dividend as has been distributed by any unit portfolio constituting a company in terms of paragraph (e) of the definition of ‘company’ in section 1—  
(A) out of interest derived by such unit portfolio which is exempt from tax in the hands of such unit portfolio under the provisions of paragraph (iA); and  
(B) out of amounts received by or accrued to such unit portfolio by way of dividends referred to in section 11(s);”;
- (n) by the addition to paragraph (t) of subsection (1) of the following subparagraph:  
“(xv) of a recognized company as contemplated in section 2 of the Provision of Special Funds for Tertiary Training and Education Act, 1993, which has been approved by the Commissioner;”;



- (o) by the substitution for subparagraph (ii) of paragraph (w) of subsection (1) of the following subparagraph:
- “(ii) such loan or deposit has been made for the purposes of any business carried on by such person or company outside the Republic or [that] such loan or deposit was made by such person before he became ordinarily resident in the Republic for the first time, out of funds which were derived by such person entirely from sources outside the Republic; and”;
- (p) by the addition of the word “or” at the end of paragraph (iii) of the first proviso to paragraph (x) of subsection (1); and
- (q) by the addition to the first proviso to paragraph (x) of subsection (1) of the following paragraph:
- “(iv) the termination or impending termination of such person’s services is due to his employer having ceased to carry on or intending to cease carrying on the trade in respect of which such person was employed or to such person having become redundant in consequence of his employer having effected a general reduction in personnel or a reduction in personnel of a particular class and, where such person’s employer is a company, such person was not at any time a director of such company and did not at any time hold more than five per cent of the issued share capital or members’ interest in such company:”.
- (2)(a) Subsection (1)(j), (k) and (l) shall be deemed to have come into operation on 3 June 1992 and shall apply to any amount received or accrued on or after that date.
- (b) Subsection (1)(n) shall come into operation on the date on which section 2 of the Provision of Special Funds for Tertiary Training and Education Act, 1993, comes into operation.
- (c) Subsection (1)(p) and (q) shall be deemed to have come into operation on 1 March 1992 and shall apply to any amount received or accrued on or after that date.

**Amendment of section 10A of Act 58 of 1962, as inserted by section 8 of Act 65 of 1973 and amended by section 11 of Act 85 of 1974**

8. Section 10A of the principal Act is hereby amended—
- (a) by the substitution for the definition of “annuity amount” in subsection (1) of the following definition:
- “‘annuity amount’ means an amount payable by way of annuity under an annuity contract and any amount payable in consequence of the commutation or termination of any such annuity contract;”;
- (b) by the addition of the word “or” at the end of paragraph (b) of subsection (3); and
- (c) by the addition to subsection (3) of the following paragraph:
- “(c) where such annuity amount is payable in consequence of the commutation or termination of the annuity contract concerned, an amount determined in accordance with the formula
- $$X = A - D$$
- in which formula—
- (i) ‘X’ represents the amount to be determined;
- (ii) ‘A’ represents the amount of the total cash consideration given by the purchaser under the annuity contract concerned as contemplated in paragraph (b) of the definition of ‘annuity contract’ in subsection (1); and
- (iii) ‘D’ represents the sum of the amounts determined in accordance with paragraphs (a) and (b) as representing the capital element of all annuity amounts payable under the annuity contract prior to the commutation or termination thereof.”.

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 and section 11 of Act 141 of 1992

9. (1) Section 11 of the principal Act is hereby amended—

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

“(viii) where in respect of any machinery, implement, utensil or article acquired by the taxpayer on or after 21 June 1993, a deduction or allowance was previously granted to a connected person in relation to the taxpayer under this paragraph or section 12B(1) or 12C(1), or under section 27(2)(d) prior to the deletion thereof by section 28(b) of the Income Tax Act, 1991 (Act No. 129 of 1991), the allowance under this paragraph shall be calculated on the lesser of the cost of such machinery, implement, utensil or article to such connected person or the market value thereof as determined on the date upon which it was acquired by the taxpayer;”;

(b) by the substitution for subparagraph (iii) of paragraph (gA) of the following subparagraph:

“(iii) in acquiring by assignment from any other person any such patent, design, trade mark or copyright or in acquiring any other property [which in the opinion of the Commissioner is] of a similar nature or any knowledge connected with the use of such patent, design, trade mark, copyright or other property or the right to have such knowledge imparted,”;

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

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

(d) by the addition to the proviso to paragraph (gA) of the following paragraph:

“(dd) where any such invention, patent, design, trade mark, copyright or other property or knowledge was so acquired or obtained by the taxpayer on or after 1 July 1993 from any other person who is a resident of the Republic or a neighbouring country (or, in the case of a company, a domestic company or a company incorporated, managed or controlled in a neighbouring country), and who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on the lesser of the cost of such invention, patent, design, trade mark, copyright or other property or knowledge to such connected person or the market value thereof as determined on the date upon which such invention, patent, design, trade mark, copyright

- or other property or knowledge was acquired or obtained by the taxpayer;”;
- (e) by the substitution for paragraph (i) of the following paragraph:
- “(i) the amount of any debts due to the taxpayer **[to the extent to which they are proved to the satisfaction of the Commissioner to be]** have during the year of assessment become bad, provided such amount is included in the current year of assessment or was included in previous years of assessment in the taxpayer’s income;”
- (f) by the substitution for subparagraph (ii) of paragraph (m) of the following subparagraph:
- “(ii) to a person who was for a period of at least five years a partner in an undertaking carried on by the taxpayer and who retired from the partnership in respect of that undertaking on grounds of old age, ill health or infirmity, provided **[the Commissioner is satisfied]** that the amount so paid to such person is reasonable, having regard to the services rendered by such person as a partner in such undertaking prior to his retirement and the profits made in such undertaking, and that the said amount does not represent consideration payable to such person in respect of his interest in the partnership; or”;
- (g) by the substitution for item (A) of subparagraph (aa) of paragraph (n) of the following item:
- “(A) 15 per cent of an amount equal to the amount remaining after deducting from the income derived by the taxpayer during the year of assessment (excluding income derived from any retirement-funding employment (being the income or part thereof referred to in the definition of ‘retirement-funding employment’ in section 1)) the deductions admissible against such income under this Act (excluding this paragraph, sections 17A, 18, 18A and 19(3) of this Act and paragraph 12(1)(c) to **[(j) (i)]**, inclusive, of the First Schedule); or”;
- (h) by the substitution for paragraph (ii) of the proviso to subparagraph (bb) of paragraph (n) of the following paragraph:
- “(ii) the deductions in terms of subparagraph (aa) shall not exceed an amount equal to the amount remaining after deducting from the income derived by the taxpayer during the year of assessment the deductions admissible against such income under this Act (excluding the said subparagraph, sections 17A and 19(3) of this Act and paragraph 12(1)(c) to **[(j) (i)]**, inclusive, of the First Schedule);”;
- (i) by the substitution for the words preceding the proviso to paragraph (q) of the following words:
- “save as provided in paragraph 12(2) of the First Schedule, if **[the Commissioner is satisfied that]** expenditure of a capital nature (other than expenditure in respect of which any deduction or allowance has been or will be granted under any other provision of this Act) has been incurred by a taxpayer for the purpose of scientific research undertaken by him for the development of his business, and the Council for Scientific and Industrial Research certifies to the Commissioner that during the year of assessment in question such research was carried on and was financed by such expenditure, an amount in respect of the year of assessment in which such research commenced and of any succeeding year of assessment calculated at the rate of 25 per cent of such expenditure;”;
- (j) by the substitution for the words preceding subparagraph (aa) of paragraph (ii) of the proviso to paragraph (u) of the following words:
- “no deduction shall be made under this paragraph in respect of any

such expenditure as is incurred in connection with any employment or office in respect of which the taxpayer derives remuneration as defined in paragraph 1 of the Fourth Schedule or any amount referred to in paragraph [(iv) or] (vii) of that definition, unless—

(2)(a) Subsection (1)(a) shall be deemed to have come into operation on 21 June 1993. 5

(b) Subsection (1)(c) and (d) shall be deemed to have come into operation on 1 July 1993.

**Amendment of section 12B of Act 58 of 1962, as inserted by section 11 of Act 90 of 1988 and amended by section 13 of Act 101 of 1990** 10

10.(1) Section 12B of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (4A) of the following paragraph:

“(b) such asset was previously brought into use by any connected person [(as defined in section 12C(6))] in relation to such person; and” 15

(2) Subsection (1) shall be deemed to have come into operation on 21 June 1993 and shall apply to any asset acquired on or after that date.

**Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990**

11.(1) Section 12C of the principal Act is hereby amended by the deletion of subsection (6). 20

(2) Subsection (1) shall be deemed to have come into operation on 21 June 1993 and shall apply to any asset acquired on or after that date.

**Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962, section 5 of Act 6 of 1963, section 11 of Act 72 of 1963, section 12 of Act 90 of 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971, section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974, section 13 of Act 69 of 1975, section 7 of Act 101 of 1978, section 10 of Act 104 of 1980, section 14 of Act 96 of 1981, section 10 of Act 96 of 1985, section 12 of Act 85 of 1987 and section 12 of Act 90 of 1988** 25 30

12. Section 13 of the principal Act is hereby amended by the deletion of subsections (4), (4)*bis*, (5), (6), (6A), (7) and (7A).

**Amendment of section 13*bis* of Act 58 of 1962, as inserted by section 15 of Act 88 of 1965 and amended by section 18 of Act 55 of 1966, section 14 of Act 95 of 1967, section 14 of Act 88 of 1971, section 14 of Act 69 of 1975, section 13 of Act 94 of 1983, section 46 of Act 97 of 1986 and section 13 of Act 90 of 1988** 35

13. (1) Section 13*bis* of the principal Act is hereby amended—

(a) by the substitution for the words preceding subparagraph (aa) of paragraph (d) of subsection (1) of the following word: 40

“as [the Commissioner is satisfied]—”;

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

“(e) of such portion of any building improvements (other than repairs and other than improvements in respect of the cost of which, or of any portion thereof, an allowance under the preceding provisions of this subsection is or was deductible from the income of the taxpayer for the current or any previous year of assessment) commenced on or after 1 January 1964, as [the Commissioner is satisfied] was during the year of assessment in question used by the taxpayer for the purposes of his trade of hotelkeeper or was during the year of assessment in question let by the taxpayer and used by the lessee for the purposes of the lessee’s trade of hotelkeeper, provided the building (or a portion 45 50

thereof) to which such improvements were effected was during the year of assessment in question registered as an hotel under the Hotels Act, 1965"; and

(c) by the addition to subsection (1) of the following further proviso:

"Provided further that to the extent to which any portion of any such improvements which have or are commenced on or after 17 March 1993 does not extend the existing exterior framework of the building, the allowance under this subsection shall be increased to 20 per cent of the cost of such portion."

(2) Subsection (1)(c) shall be deemed to have come into operation as from the commencement of years of assessment ending on or after 17 March 1993.

**Amendment of section 14 of Act 58 of 1962, as substituted by section 19 of Act 55 of 1966 and amended by section 17 of Act 85 of 1974, section 12 of Act 103 of 1976, section 11 of Act 104 of 1979 and section 10 of Act 65 of 1986**

14. (1) Section 14 of the principal Act is hereby amended by the addition of the following subsection:

"(4) Where any person is entitled to an allowance under this section in respect of any ship acquired by him on or after 21 June 1993 from a connected person, and a deduction under this section was previously granted to such connected person in respect of the ship concerned, whether in the current or any previous year of assessment, the deduction under this section shall be calculated on the lesser of the adjustable cost of the ship concerned to such connected person or the market value thereof as determined on the date upon which the ship was acquired by such person."

(2) Subsection (1) shall be deemed to have come into operation on 21 June 1993.

**Amendment of section 14bis of Act 58 of 1962, as inserted by section 16 of Act 88 of 1965 and amended by section 15 of Act 141 of 1992**

15. (1) Section 14bis of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) Where any person is entitled to an allowance under this section in respect of any aircraft acquired by him from a connected person [(as defined in section 12C(6))], and a deduction under this section was previously granted to such connected person in respect of such aircraft, whether in the current or any previous year of assessment, the deduction under this section shall be calculated on the lesser of the cost of the aircraft concerned to such connected person or the market value thereof as determined on the date upon which the aircraft was brought into use by such person."

(2) Subsection (1) shall be deemed to have come into operation on 21 June 1993 and shall apply to any aircraft acquired on or after that date.

**Amendment of section 20 of Act 58 of 1962, as amended by section 13 of Act 90 of 1964, section 18 of Act 88 of 1965, section 13 of Act 76 of 1968, section 18 of Act 89 of 1969, section 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983 and section 19 of Act 101 of 1990**

16. Section 20 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) For the purposes of this section 'assessed loss' means any amount [as established to the satisfaction of the Commissioner] by which the deductions admissible under sections 11 to 19, inclusive, [or the corresponding provisions of any previous Income Tax Act] exceeded the income in respect of which they are so admissible, or, if the context so requires, means an assessed



loss as determined under the provisions of section 30 [or the corresponding provisions of any previous Income Tax Act].”.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990 and section 22 of Act 129 of 1991

17. (1) Section 22 of the principal Act is hereby amended—

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

“(a) For the purposes of this section the cost price at any date of any trading stock in relation to any person shall be the cost incurred by such person, whether in the current or any previous year of assessment, in acquiring such trading stock, plus, subject to the provisions of paragraph (b), any further costs incurred by him up to and including the said date in getting such trading stock into its then existing condition and location, but excluding any exchange difference as defined in section 241(1) relating to the acquisition of such trading stock.”;

(b) by the deletion of paragraphs (c) and (d) of subsection (3);

(c) by the substitution for the words preceding the first proviso to subsection (4) of the following words:

“If any trading stock has been acquired by any person for no consideration or for a consideration which is not measurable in terms of money, such person shall for the purposes of subsection (3) be deemed to have acquired such trading stock at a cost equal to **[the price which in the opinion of the Commissioner was]** the current market price of such trading stock on the date on which it was acquired by such person.”; and

(d) by the substitution for the second proviso to subsection (8) of the following proviso:

“Provided further that where any trading stock (other than livestock or produce) of any company has on or after **[12 June 1990]** **21 June 1993** been distributed in specie (whether such distribution occurred by means of a dividend, including a liquidation dividend, a total or partial reduction of capital or a redemption of redeemable preference shares) to any **[person by way of a dividend]** shareholder of that company, there shall be included in the income of such company during the year of assessment in which such **[dividend]** trading stock was distributed an amount equal to the market value of such trading stock.”.

(2) Subsection (1) shall be deemed to have come into operation as from the commencement of years of assessment ending on or after 21 June 1993 and shall apply to any trading stock distributed on or after that date.

Amendment of section 23 of Act 58 of 1962, as amended by section 18 of Act 65 of 1973, section 20 of Act 121 of 1984, section 23 of Act 129 of 1991 and section 20 of Act 141 of 1992

18. (1) Section 23 of the principal Act is hereby amended—

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

“Provided that—

(a) such part shall not be deemed to have been occupied for the purposes of trade, unless such part is specifically equipped for purposes of the taxpayer's trade and regularly and exclusively used for such purposes; and

(b) no deduction shall in any event be granted where the taxpayer's trade constitutes any employment or office unless—

(i) his income from such employment or office is derived

- mainly from commission or other variable payments which are based on the taxpayer's work performance; and
- (ii) his duties are mainly performed otherwise than in an office which is provided to him by his employer;"; and
- (b) by the substitution for the words preceding subparagraph (i) of paragraph (i) of the following words: 5  
 "entertainment expenditure incurred by a taxpayer relating to any employment or office held by him in respect of which he derives remuneration as defined in paragraph 1 of the Fourth Schedule or any amount referred to in paragraph [(iv) or] (vii) of that definition, 10  
 except—".
- (2) Subsection (1)(a) shall come into operation as from the commencement of years of assessment commencing on or after 1 March 1994.

#### Insertion of sections 23D and 23E in Act 58 of 1962

19. (1) The following sections are hereby inserted in the principal Act after section 23C: 15

#### "Limitation of allowances granted in respect of certain assets

##### 23D. (1) For the purposes of this section, 'asset' means—

- (a) any machinery, plant, implements, utensils or articles contemplated in section 11(e); 20  
 (b) any building or improvements contemplated in section 13;  
 (c) any ship contemplated in section 14; or  
 (d) any aircraft contemplated in section 14bis.

(2) Where any asset which has been let by a taxpayer to a lessee was acquired by the taxpayer on or after 21 June 1993, whether directly or indirectly from such lessee or a person who is a connected person in relation to such lessee, and a deduction was previously granted to such lessee or such connected person under section 11(e), 12B, 12C, 13, 14 or 14bis or section 12 prior to the repeal thereof by section 16 of the Income Tax Act, 1991 (Act No. 129 of 1991), or section 27(2)(d) prior to the deletion thereof by section 28(b) of that Act, whether in the current or any previous year of assessment, any deduction or allowance claimed by such lessor in respect of such asset in terms of section 11(e) or (o), 13, 14 or 14bis shall be calculated on the lesser of the cost or adjustable cost, as the case may be, of such asset to such lessee or such connected person or the market value thereof as determined on the date upon which the asset was acquired by the taxpayer. 35

#### Provisions relating to leave pay

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

- 'employee' includes the holder of any office; 40  
 'leave pay' means any amount which a taxpayer has during any year of assessment become liable to pay to his employee in consequence of the employee having during such year become entitled to any period of leave which had not been taken by him during that year; 45  
 'leave pay provision' means an amount equal to the lesser of—  
 (a) the amount included in the taxpayer's income in terms of the provisions of subsection (5); and  
 (b) an amount determined in relation to all periods of leave to which the taxpayer's employees were entitled as at the end of the last year of assessment of the taxpayer ending before 1 January 1994, and calculated by applying, in the case of each such employee, the 50

employee's rate of earnings as at the end of such year to the period of leave to which such employee was so entitled.

(2) For the purposes of this Act, where in consequence of any leave to which an employee of the taxpayer became entitled during any year of assessment of the taxpayer ending on or after 1 January 1994, the taxpayer has become liable to pay any amount of leave pay—

(a) the taxpayer shall be deemed not to have incurred expenditure in respect of such leave pay until it is actually paid by him or becomes due and payable by him; and

(b) such leave pay shall be deemed to accrue to the employee concerned on the date upon which such expenditure is deemed to have been incurred by the taxpayer.

(3) Where any taxpayer has in any return of income submitted by him to the Commissioner before 1 March 1993 claimed a deduction of an amount determined in accordance with a practice consistently applied by him and in the *bona fide* belief that such amount constituted leave pay which was lawfully allowable as a deduction in the determination of his taxable income (whether such amount exceeds or is less than the amount which was lawfully deductible), there shall be allowed as a deduction in the determination of his taxable income for such year and for each subsequent year of assessment ending before 1 January 1994 an amount determined in accordance with the said practice: Provided that where in his return of income for any year of assessment ending before 1 January 1994 the taxpayer has amended such practice and the deduction determined in accordance with such amended practice is less than the deduction which would have been determined in accordance with his previous practice, the amount to be allowed as a deduction under this subsection in that year of assessment and in each subsequent year of assessment ending before 1 January 1994 shall be determined in accordance with such amended practice.

(4) Where in respect of any year of assessment of a taxpayer ending before 1 January 1994, the Commissioner has not prior to the date of commencement of the Income Tax Act, 1993, issued an assessment, a deduction in respect of leave pay shall not be granted for such year otherwise than as may be permitted under the provisions of subsection (3).

(5) There shall be included in the income of any taxpayer in his first year of assessment ending on or after 1 January 1994 the sum of all amounts allowed to be deducted in the determination of his taxable income in all years of assessment ending before that date in respect of leave pay relating to all periods of leave to which his employees were entitled at the end of the last year of assessment ending before the said date.

(6) Where an amount has under the provisions of subsection (5) been included in the income of any taxpayer, any amount of leave pay which becomes due and payable by him to an employee in respect of any period of leave taken into account in the determination of such amount shall, notwithstanding the provisions of subsection (3), be allowed to be deducted from his income in the year of assessment during which such leave pay becomes due and payable.

(7) There shall in the case of any taxpayer to whom the provisions of subsection (5) are applicable, be allowed to be deducted in the determination of his taxable income for his first year of assessment ending on or after 1 January 1994 and for each of the four succeeding years of assessment (such succeeding years of assessment hereinafter being referred to as the second to fifth years, in chronological order) a deduction equal to—

- (a) in the said first year, 100 per cent;  
 (b) in the second year, 85 per cent;  
 (c) in the third year, 70 per cent;  
 (d) in the fourth year, 50 per cent; and  
 (e) in the fifth year, 25 per cent,  
 of the amount of the leave pay provision determined in relation to the taxpayer: Provided that—
- (i) the deduction so allowed in any year of assessment shall be included in the taxpayer's taxable income in the following year of assessment; and
- (ii) no deduction shall be allowed under this subsection if the taxpayer has during the current or any previous year of assessment commencing on or after 1 January 1994 ceased to carry on trade.”

(2) Section 23E of the principal Act, as inserted by subsection (1), shall come into operation on the date of commencement of this Act.

**Amendment of section 24B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1978 and substituted by section 13 of Act 104 of 1979**

20. Section 24B of the principal Act is hereby amended by the insertion after subsection (7) of the following subsection:

“(7A) The provisions of this section shall not apply in respect of any gain realised, loss sustained or premium or other consideration paid during any year of assessment ending on or after 1 January 1994.”

**Insertion of section 24I in Act 58 of 1962**

21. The following section is hereby inserted in the principal Act after section 24H:

**“Gains or losses on foreign exchange transactions**

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

‘acquisition rate’ means the exchange rate in respect of an exchange item obtained by dividing the amount of the expenditure incurred for the acquisition of such exchange item by the foreign currency amount in respect of such exchange item;

‘disposal rate’ means the exchange rate in respect of an exchange item obtained by dividing the amount received or accrued in respect of the disposal of such exchange item by the foreign currency amount in respect of such exchange item;

‘exchange difference’ means the foreign exchange gain or foreign exchange loss in respect of an exchange item during any year of assessment determined by multiplying such exchange item by the difference between—

- (a) the ruling exchange rate on transaction date in respect of such exchange item during that year of assessment, and—
- (i) the ruling exchange rate at which such exchange item is realised during that year of assessment; or
- (ii) the ruling exchange rate at which such exchange item is translated at the end of that year of assessment; or
- (b) the ruling exchange rate at which such exchange item was translated at the end of the immediately preceding year of assessment or at which it would have been translated had this section been applicable at the end of that immediately preceding year of assessment, and—
- (i) the ruling exchange rate at which such exchange item is realised during that year of assessment; or

- (ii) the ruling exchange rate at which such exchange item is translated at the end of that year of assessment;
- 'exchange item' means an amount in a foreign currency—
- (a) owing by a person in respect of a loan or advance or a debt incurred by such person; 5
  - (b) owing to a person in respect of a loan or advance or a debt payable by another person to such person;
  - (c) owed by or to a person in respect of a forward exchange contract; or
  - (d) in respect of which a person has the right or contingent obligation to buy or sell it in terms of a foreign currency option contract; 10
- 'foreign currency' means any currency which is not legal tender in the Republic;
- 'foreign currency option contract' means any agreement in terms of which any person acquires or grants the right to buy from or to sell to any other person a certain amount of a nominated foreign currency on or before a future expiry date at a specified exchange rate; 15
- 'forward exchange contract' means any agreement in terms of which any person agrees with another person to exchange an amount of currency for another currency at some future date at a specified exchange rate; 20
- 'forward rate' means the specified exchange rate as referred to in the definition of 'forward exchange contract';
- 'intrinsic value', in relation to a foreign currency option contract, means the value for the holder or writer thereof, as the case may be, determined by applying the difference between— 25
- (a) the spot rate on translation date or the date on which the foreign currency option contract is realised, as the case may be; and
  - (b) the option strike rate,
- to the amount of foreign currency as specified in such foreign currency option contract: Provided that such foreign currency option contract shall have a nil value for the holder or writer thereof if such holder thereof would have sustained a loss had he exercised his right in terms of such foreign currency option contract on such translation date or date realised due to the unfavourable difference between the option strike rate and the spot rate on such translation date or date realised; 30
- 'market value', in relation to a foreign currency option contract, means— 35
- (a) in the case of a person who for accounting purposes uses a market-related valuation method in terms of a practice consistently applied by him to determine the value of all his foreign currency option contracts, the market-related value so determined; or 40
  - (b) in the case of any other person, the intrinsic value of such foreign currency option contract; 45
- 'option strike rate' means the specified exchange rate as referred to in the definition of 'foreign currency option contract';
- 'premium or discount on a forward exchange contract' means the amount obtained by applying the difference between the forward rate in respect of a forward exchange contract and the spot rate on the date on which such forward exchange contract was entered into, to the foreign currency amount specified in such forward exchange contract; 50
- 'realised' means, in relation to an exchange item, where such exchange item is—
- (a) a loan or advance or debt in any foreign currency, when and to the extent to which payment is received or made in respect of such loan, advance or debt, or when and to the extent to which such loan, advance or debt is settled or disposed of in any other manner; 55
  - (b) a forward exchange contract, when payment is received or made in respect of such forward exchange contract; or 60
  - (c) a foreign currency option contract, when payment is received or made in respect of the right in terms of such foreign currency option contract having been exercised, or when such foreign



- currency option contract expires without such right having been exercised;
- 'ruling exchange rate' means, in relation to an exchange item, where such exchange item is—
- (a) a loan or advance or debt in a foreign currency on—
- (i) transaction date, the spot rate on such date, or in the case where a related or matching forward exchange contract has been entered into to hedge such loan, advance or debt and the forward rate has been used to record for accounting purposes such loan, advance or debt in accordance with generally accepted accounting practice, the forward rate in terms of such forward exchange contract;
- (ii) the date it is translated, the spot rate on such date, or in the case where a related or matching forward exchange contract has been entered into to hedge such loan, advance or debt and the forward rate has been used to translate for accounting purposes such loan, advance or debt in accordance with generally accepted accounting practice, the forward rate in terms of such forward exchange contract; or
- (iii) the date it is realised, the spot rate on such date:
- Provided that where the rate prescribed in respect of a loan or advance or debt in terms of this definition is the spot rate on transaction date or the spot rate on the date on which such loan or advance or debt is realised, and any consideration paid or payable or received or receivable in respect of the acquisition or disposal of such loan or advance or debt was determined by applying a rate other than such spot rate on transaction date or date realised, such spot rate shall be deemed to be the acquisition rate or disposal rate, as the case may be;
- (b) a forward exchange contract on—
- (i) transaction date, the forward rate in terms of such forward exchange contract;
- (ii) the date it is translated, the market-related forward rate available for the remaining period of such forward exchange contract, or in the case where the forward rate in terms of such forward exchange contract has been used to translate a loan, advance or debt as contemplated in paragraph (a)(ii), the forward rate in terms of such contract;
- (iii) the date it is realised, the spot rate on such date; or
- (c) a foreign currency option contract on—
- (i) transaction date, a nil rate;
- (ii) the date it is translated, the rate obtained by dividing the market value of such foreign currency option contract on that date by the foreign currency amount as specified in such foreign currency option contract;
- (iii) the date it is realised, the rate obtained by dividing the market value of such foreign currency option contract on that date by the foreign currency amount as specified in such foreign currency option contract;
- (iv) the date it is disposed of, the rate obtained by dividing the amount received or accrued as a result of the disposal of such foreign currency option contract by the foreign currency amount as specified in such foreign currency option contract;
- 'spot rate' means the appropriate quoted exchange rate for the delivery of currency within a period of two business days;
- 'transaction date' means, in relation to—
- (a) a loan or advance owing by a person, the date on which the amount payable in respect of such loan or advance was received by such person;
- (b) a debt owing by a person, the date on which such debt was actually incurred;
- (c) a loan or advance owing to a person, the date on which the amount payable in respect of such loan or advance was paid to

- another person or the date on which such loan or advance was acquired by such person in any other manner;
- (d) a debt owing to a person, the date on which the amount payable in respect of such debt accrued to such person or the date on which such debt was acquired by such person in any other manner; 5
- (e) a forward exchange contract, the date on which such contract was entered into; and
- (f) a foreign currency option contract, the date on which such contract was entered into or acquired; 10
- 'transitional exchange difference' means the foreign exchange gain or foreign exchange loss in respect of an exchange item (other than an exchange item contemplated in paragraph (b) of the definition of 'exchange item' which is of a capital nature) determined by multiplying such exchange item by the difference between— 15
- (a) the ruling exchange rate on transaction date in respect of such exchange item during any year of assessment preceding the first year of assessment ending on or after 1 January 1994; and
- (b) the ruling exchange rate at which such exchange item would have been translated at the end of the year of assessment immediately preceding the first year of assessment ending on or after 1 January 1994, 20
- if the provisions of this section had been applicable to that year of assessment: Provided that any foreign exchange gain or foreign exchange loss determined in terms of this definition in respect of such exchange item, shall be adjusted in such a manner that any foreign exchange gain or foreign exchange loss taken into account in terms of any other section of this Act in respect of such exchange item in the determination of taxable income during any year of assessment preceding the first year of assessment ending on or after 1 January 1994, shall not be included in income or allowed as a deduction more than once; 25
- 'translate' means the restatement of an exchange item in the currency of the Republic at the end of any year of assessment by applying the ruling exchange rate to such exchange item. 35
- (2) In determining the taxable income of any person derived from carrying on any trade by him within the Republic in respect of any year of assessment ending on or after 1 January 1994, there shall be included in or deducted from the income so derived, as the case may be, any transitional exchange difference (but subject to the provisions of subsection (3)) and any exchange difference— 40
- (a) arising from a transaction entered into by such person in the course of such trade; or
- (b) arising from a loan or advance owing by such person or a debt

- incurred by such person, where such loan or advance has been utilized or such debt has been incurred in order to finance expenditure incurred by a connected person in relation to such person in the course of the carrying on of any trade within the Republic by such connected person. 5
- (3) For the purposes of subsection (2) any transitional exchange difference in respect of an exchange item—
- (a) which is realised in the first year of assessment ending on or after 1 January 1994, shall be included in or deducted from, as the case may be, the income of such person in such first year of assessment; or 10
- (b) which is not so realised in such first year of assessment, shall be included in or deducted from, as the case may be, the income of such person—
- (i) to the extent of 50 per cent of such transitional exchange difference in such first year of assessment; and 15
- (ii) to the extent of 50 per cent of such transitional exchange difference in the year of assessment succeeding such first year of assessment.
- (4) In determining the taxable income of any person derived from carrying on any trade by him within the Republic, there shall in respect of any year of assessment ending on or after 1 January 1994 be included in or deducted from the income so derived, as the case may be— 20
- (a) any premium or like consideration received or receivable by, or paid or payable by, such person in terms of a foreign currency option contract entered into by such person in the course of such trade; or 25
- (b) any consideration paid or payable by such person in respect of a foreign currency option contract acquired by such person in the course of such trade. 30
- (5) Where during any year of assessment any premium or discount on a forward exchange contract is included in any exchange difference in respect of any loan, advance or debt, where such exchange difference arose by reason of such loan, advance or debt having been— 35
- (a) translated at the forward rate as contemplated in paragraph (a)(ii) of the definition of 'ruling exchange rate'; and
- (b) (i) recorded during that year of assessment at the spot rate on transaction date as contemplated in paragraph (a)(i) of that definition; or 40
- (ii) translated at the end of the immediately preceding year of assessment at the spot rate on translation date as contemplated in paragraph (a)(ii) of that definition; or
- (iii) translated at the end of the immediately preceding year of assessment at the forward rate as contemplated in paragraph (a)(ii) of that definition, but such forward rate differs from the forward rate contemplated in paragraph (a) of this definition, 45
- such premium or discount on such forward exchange contract which is so included in such exchange difference, shall be deemed to have been incurred or accrued, as the case may be, on a day to day basis during the period of such forward exchange contract and such premium or discount shall, for the purposes of subsection (2), be included in or deducted from a person's income on such basis. 50
- (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 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. 55 60

- (7) Notwithstanding the provisions of subsections (2) and (4), but subject to the provisions of section 37E—
- (a) any exchange difference arising from a loan, advance or debt having been utilized by a person in respect of—
- (i) the acquisition, installation, erection or construction of any machinery, plant, implement, utensil, building or improvements to any building, as the case may be; or
  - (ii) the devising, developing, creation, production, acquisition or restoration of any invention, patent, design, trade mark, copyright or other similar property or knowledge contemplated in section 11(gA), as the case may be;
- (b) any exchange difference arising from a forward exchange contract or a foreign currency option contract which has been entered into by a person contemplated in paragraph (a) to serve as a hedge in respect of a loan, advance or debt contemplated in paragraph (a), to the extent to which the amount of such exchange difference does not exceed the amount of the exchange difference contemplated in paragraph (a); and
- (c) any premium or other consideration paid or payable in respect of or in terms of a foreign currency option contract entered into or acquired by a person contemplated in paragraph (a) in order to serve as a hedge in respect of a loan, advance or debt contemplated in paragraph (a),
- shall be taken into account in the determination of the taxable income of such person in the year of assessment during which such machinery, plant, implement, utensil, building, improvements to any building, invention, patent, design, trade mark, copyright or other similar property or knowledge was or is brought into use for the purposes of such person's trade.
- (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), 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.”.

#### Substitution of section 25 of Act 58 of 1962

22. The following section is hereby substituted for section 25 of the principal Act:

#### “Income of beneficiaries and estates of deceased persons

25. (1) Any income received by or accrued to or in favour of any person in his capacity as the executor of the estate of a deceased person, and any amount so received or accrued which would have been income in the hands of the deceased person had it been received by or accrued to or in favour of such deceased person during his lifetime, shall, to the extent to which such income or amount has been derived for the immediate or future benefit of any ascertained heir or legatee of such deceased person, be deemed to be income received by or accrued to such heir or legatee, and shall, to the extent to which such income or amount is not so derived, be deemed to be income of the estate of such deceased person.

(2) Any deduction or allowance which may be granted under the provisions of this Act in the determination of the taxable income derived by way of any income or amount referred to in subsection (1) shall, to the extent to which such income or amount is under the provisions of that subsection deemed to be income which has accrued

to an heir or legatee or the estate of such deceased person, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by such heir or legatee or such estate, as the case may be.”

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

23. Section 27 of the principal Act is hereby amended—

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

“Provided that the amounts allowed as deductions under this paragraph shall not in the aggregate exceed an amount **[equal]** which bears to the taxable income of such agricultural co-operative for the year of assessment (as calculated before allowing any deductions under this paragraph and sections 11*bis*, **[13(5)]** 13*bis*(7) and 21*ter* and before setting off any balance of assessed loss brought forward from a previous year of assessment) the same ratio as the aggregate value of the business conducted by such agricultural co-operative with its members during such year bears to the aggregate value of all business conducted by it during such year;”

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

“(a) an allowance may in the appropriate circumstances be granted under subsection (2)(b) to the new co-operative in respect of such building or any improvements (other than repairs) thereto if **[the Commissioner is satisfied that]** such allowance would have been granted to the other co-operative if the amalgamation had not been effected;” and

(c) by the substitution for the definition of “primary process” in subsection (9) of the following definition:

“‘primary process’, in relation to any product produced in the course of pastoral, agricultural or other farming operations, means the first process to which such product is subjected by an agricultural co-operative in order to render such product marketable or to convert such product into a marketable commodity, and includes any further process carried on by such co-operative which is **[shown to the satisfaction of the Commissioner to be]** so connected with the said first process that such first process and such further process or processes may be regarded as one process and to be necessary to convert such product into a marketable commodity;”

Amendment of section 28 of Act 58 of 1962, as amended by section 17 of Act 90 of 1962, section 22 of Act 55 of 1966, section 24 of Act 89 of 1969, section 21 of Act 88 of 1971, section 19 of Act 65 of 1973, section 16 of Act 103 of 1976, section 19 of Act 91 of 1982, section 22 of Act 94 of 1983, section 17 of Act 65 of 1986, section 23 of Act 90 of 1988, section 13 of Act 70 of 1989, section 25 of Act 101 of 1990 and section 29 of Act 129 of 1991

24. Section 28 of the principal Act is hereby amended—

(a) by the substitution for item (A) of subparagraph (i) of paragraph (b) of subsection (1) of the following item:

“(A) amounts proved to the satisfaction of the Commissioner to have been derived by the taxpayer from the investment of funds



- attributable to any long-term insurance business carried on by him in the Republic with any benefit fund, pension fund, provident fund or retirement annuity fund or to any long-term insurance business carried on by the taxpayer in the territory or in any country the territory of which formerly formed part of the Republic with any fund the receipts and accruals of which are exempt from tax under the provisions of section 10(1)(dA);” and
- (b) by the insertion after subsection (1B) of the following subsection:
- “(1C) The provisions of subsection (1) shall—
- (a) in the first and second years of assessment of the taxpayer commencing on or after 1 July 1993, be applied subject to the provisions of section 29(17); and
- (b) not apply in any succeeding year of assessment.”.

#### Insertion of section 29 in Act 58 of 1962

25. (1) The following section is hereby inserted in the principal Act after section 28bis:

#### **“Taxable income of companies carrying on long-term insurance business**

##### **29. (1) For the purposes of this section—**

‘Insurance Act’ means the Insurance Act, 1943 (Act No. 27 of 1943);

‘insurer’ means any company carrying on long-term insurance business as defined in section 1 of the Insurance Act;

‘market value’, in relation to any asset, means the sum which a person having the right freely to dispose of such asset might reasonably expect to obtain from a sale of such asset in the open market;

‘owner’, in relation to a policy, means the person who is entitled to enforce any benefit provided for in the policy;

‘policy’ means a policy as defined in section 1 of the Insurance Act, the assumption of obligations under which constitutes long-term insurance business as so defined;

‘policyholder fund’ means any fund contemplated in subsection (4)(a), (b) or (c);

‘prescribed value’, in relation to the assets required to be held at any time by an insurer in a policyholder fund, means an amount equal to the net liabilities of the insurer in respect of the business conducted by it in the fund concerned in the Republic or in any country the territory of which formerly formed part of the Republic, determined in the manner as contemplated in section 1(2)(a) of the Insurance Act, but subject to such modifications as may from time to time be determined for the purposes of this section by the Chief Actuary of the Financial Services Board.

(2) The taxable income derived by any insurer shall be determined in accordance with the provisions of this Act, but subject to the provisions of this section.

(3) Every insurer shall, not later than the commencement of its first year of assessment commencing on or after 1 July 1996, establish four separate funds as contemplated in subsection (4), and shall thereafter maintain such funds in accordance with the provisions of this section.

(4) The funds referred to in subsection (3) shall be—

(a) a fund, to be known as the untaxed policyholder fund, in which shall be placed assets having a market value equal to the prescribed value determined in relation to, and liabilities (other than those taken into account in the determination of such prescribed value) relating to—

(i) business carried on by the insurer with, and any policy of

- which the owner is, any pension fund, provident fund, retirement annuity fund or benefit fund;
- (ii) any policy of which the owner is a person or body the entire receipts and accruals of whom or of which are exempt from tax under any provision of section 10: Provided that an insurer shall not deal with a policy in terms of the provisions of this subparagraph unless it has satisfied itself beyond all reasonable doubt that the owner of such policy is a person or body contemplated herein;
- (iii) any annuity contracts entered into by it in respect of which annuities are being paid;
- (b) a fund, to be known as the individual policyholder fund, in which shall be placed assets having a market value equal to the prescribed value determined in relation to, and liabilities (other than those taken into account in the determination of such prescribed value) relating to, any policy (other than a policy contemplated in paragraph (a)) of which the owner is any person other than a company;
- (c) a fund, to be known as the company policyholder fund, in which shall be placed assets having a market value equal to the prescribed value determined in relation to, and liabilities (other than those taken into account in the determination of such prescribed value) relating to, any policy (other than a policy contemplated in paragraph (a)) of which the owner is a company; and
- (d) a fund, to be known as the corporate fund, in which shall be placed all the assets (if any) held by the insurer, and all liabilities owed by it, other than those contemplated in paragraphs (a), (b) and (c) and those relating to business conducted by it elsewhere than in the Republic or any country the territory of which formerly formed part of the Republic.
- (5) For the purposes of subsection (4), where the owner of a policy is the trustee of any trust or where two or more owners jointly own a policy—
- (a) if all the beneficiaries in such trust or all such owners are funds, persons or bodies contemplated in subsection (4)(a), the owner of such policy shall be deemed to be such a fund, person or body, as the case may be; or
- (b) where paragraph (a) is not applicable and all the beneficiaries in such trust or all such owners are persons other than a company, the owner of such policy shall be deemed to be a person other than a company; or
- (c) where paragraphs (a) and (b) are not applicable, the owner of such policy shall be deemed to be a company.
- (6) Every insurer shall within a period of six months after the end of every year of assessment redetermine the prescribed value in relation to each of its policyholder funds as at the last day of such year, and—
- (a) where the market value of the assets actually held by it in any such fund exceeds the prescribed value, it shall, subject to the provisions of subsection (8), within the said period transfer from such fund to its corporate fund assets having a market value equal to such excess; or
- (b) where the market value of the assets actually held by it in any such fund is less than the prescribed value, it shall within the said period transfer from its corporate fund to such fund assets having a market value equal to the shortfall.
- (7)(a) An insurer who becomes aware that, in consequence of a change of ownership of any policy issued by it, the assets held by it in relation to such policy should in terms of the provisions of subsection (4) be held in a policyholder fund other than the policyholder fund in which such assets are actually held, may at its option forthwith

transfer from such lastmentioned fund to such firstmentioned fund assets having a market value equal to the prescribed value determined on the date of such transfer in relation to the said policy.

(b) Any transfer of an asset effected by an insurer between one policyholder fund and another policyholder fund otherwise than in terms of the provisions of paragraph (a), shall be effected by way of a sale of such asset at the market value thereof and shall for the purposes of this section be treated as a purchase or sale of such asset, as the case may be, in each such fund.

(8) An insurer shall, in addition to assets having a market value equal to the prescribed value, be permitted to retain in each of its policyholder funds at the end of any year of assessment assets having a market value not exceeding the sum of—

- (a) 80 per cent of the residual surplus arising in the fund concerned during such year;
- (b) 60 per cent of the residual surplus so arising in the year of assessment immediately preceding the year referred to in paragraph (a);
- (c) 40 per cent of the residual surplus so arising in the year of assessment immediately preceding the year referred to in paragraph (b); and
- (d) 20 per cent of the residual surplus so arising in the year of assessment immediately preceding the year referred to in paragraph (c):

Provided that where in any case the year of assessment first mentioned in paragraph (b), (c) or (d) is a year of assessment which commenced before 1 July 1993, the provisions of that paragraph shall not apply.

(9) For the purposes of subsection (8), the residual surplus arising in any fund during a year of assessment shall be an amount determined in accordance with the formula—

$$S = A - B + C - D$$

in which formula—

- (a) 'S' represents the residual surplus to be determined;
- (b) 'A' represents the amount of the excess (if any) contemplated in subsection (6)(a) determined in respect of the fund concerned at the end of the said year of assessment;
- (c) 'B' represents the amount of the excess (if any) contemplated in subsection (6)(a) determined in respect of the fund concerned at the end of the immediately preceding year of assessment;
- (d) 'C' represents the amount (if any) actually transferred from the fund concerned to the corporate fund in respect of the said immediately preceding year of assessment in terms of the provisions of subsection (6)(a); and
- (e) 'D' represents the amount (if any) actually transferred from the corporate fund to the fund concerned in respect of the said immediately preceding year of assessment in terms of the provisions of subsection (6)(b).

(10)(a) Where—

- (i) the market value of the assets actually held by an insurer in its individual policyholder fund or its company policyholder fund at the end of any year of assessment is less than the prescribed value in relation to the fund concerned and the insurer is required in terms of the provisions of subsection (6)(b) to transfer assets from its corporate fund to make good the shortfall; and
- (ii) the taxable income derived by the insurer in its corporate fund in such year, as determined before deducting the transfer contemplated in subparagraph (i), is less than the amount of such transfer,

the insurer may designate so much of the amount of such transfer as exceeds its taxable income (determined as contemplated in subparagraph (ii)) to be a special transfer for the purposes of subsection (14).

(b) Where any amount has been designated as a special transfer under the provisions of paragraph (a), so much of any subsequent transfer made from the insurer's individual policyholder fund or company policyholder fund, as the case may be, to its corporate fund under the provisions of subsection (6)(a) as does not exceed the amount of the said special transfer, shall be a special transfer for the purposes of subsection (14).

(11)(a) An insurer may as at the commencement of the first year of assessment in which it establishes separate funds as contemplated in subsection (3) calculate in respect of each of its policyholder funds, in a manner determined for the purposes of this section by the Chief Actuary of the Financial Services Board, an amount representing unrecouped new business expenses.

(b) The amount calculated by an insurer under paragraph (a) shall be advised to the Commissioner in the return of income rendered by the insurer in respect of the said first year of assessment.

(c) So much of any amount transferred by an insurer from any policyholder fund to its corporate fund as does not exceed the sum of—

- (i) 12,5 per cent of the amount calculated under paragraph (a) in relation to such policyholder fund; and
- (ii) any amount carried forward from the preceding year of assessment in terms of the provisions of paragraph (d),

shall for the purposes of subsection (14) constitute a special transfer.

(d) Where in relation to any year of assessment the sum referred to in paragraph (c) exceeds the amount transferred from the policyholder fund concerned to the corporate fund, the excess shall be carried forward and be included for the purposes of determining the amount which may constitute a special transfer in relation to the succeeding year of assessment.

(e) The amounts constituting special transfers in relation to any policyholder fund in terms of the provisions of this subsection shall not in the aggregate exceed the amount calculated under paragraph (a) in respect of that fund.

(12) There shall be exempt from tax—

- (a) any income received by or accrued to an insurer from assets held by it in, and business conducted by it in relation to, its untaxed policyholder fund; and
- (b) any amount transferred to that fund in terms of subsection (6)(b).

(13) 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.

(14) In the determination of the taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund—

- (a) the amount to be allowed as a deduction in respect of selling expenses shall be the annual average of such expenses incurred during the current year of assessment and the immediately preceding four years of assessment;
- (b) any amount received or accrued from a source outside the Republic in respect of business conducted by the insurer in the Republic or in any country the territory of which formerly formed part of the Republic, shall be deemed to have been received or accrued from a source within the Republic;

- (c) there shall be exempt from tax income derived by the insurer from assets held by it in the Republic in respect of business conducted by it in Namibia;
- (d) any amount transferred in terms of the provisions of subsection (6) shall be deducted from the income of the fund from which it is transferred and included in the income of the fund to which it is transferred; 5
- (e) the amount of any transfer contemplated in subsection (7)(a) and of any special transfer contemplated in subsection (10) or (11) shall not be deducted from the income of the fund from which it is transferred and shall not be included in the income of the fund to which it is transferred; and 10
- (f) premiums and reinsurance claims received and claims and reinsurance premiums paid shall be disregarded.
- (15) Where any insurer is in its first year of assessment to which the provisions of this section apply entitled in terms of section 20(1)(a) to set off a balance of assessed loss carried forward from the preceding year of assessment, such balance of assessed loss shall be allowed to be set off against the income derived in its individual policyholder fund, its company policyholder fund and its corporate fund in the ratio which the assets held in each such fund at the commencement of such first year of assessment bears to the total assets held in the said funds. 15 20
- (16) In the allocation of any asset, expenditure or liability to any fund contemplated in subsection (4), an insurer shall, when establishing such fund and at all times thereafter— 25
- (a) to the extent to which such asset, expenditure or liability relates exclusively to business conducted by it in any one fund, allocate such asset, expenditure or liability to that fund; and
- (b) to the extent to which such asset, liability or expenditure does not relate exclusively to business conducted by it in any one fund, allocate such asset, expenditure or liability in a manner which is consistent with and appropriate to the manner in which its business is conducted. 30
- (17) Notwithstanding the provisions of this section and of section 28, the tax payable by an insurer in respect of its first and second years of assessment commencing on or after 1 July 1993, shall be equal to the greater of the tax payable in respect of the year concerned as determined by applying the provisions of section 28 and— 35
- (a) in respect of the said first year, an amount equal to two-thirds of the tax payable as determined by applying the provisions of section 28 and one-third of the tax payable as determined by applying the provisions of this section; and 40
- (b) in respect of the said second year, an amount equal to one-third of the tax payable as determined by applying the provisions of section 28 and two-thirds of the tax payable as determined by applying the provisions of this section. 45
- (18) For the purposes of subsection (17), the tax payable on taxable income determined in terms of section 28 in respect of any year of assessment ending during the period of 12 months ending on 31 March of any calendar year shall be calculated at the highest marginal rate of tax fixed under section 5(2) for the year of assessment ending on the last day of February of that calendar year in respect of taxable income received by or accrued to a married person. 50
- (19) An insurer who as at the commencement of its first year of assessment commencing on or after 1 July 1993 has not established the 55



separate funds contemplated in subsection (4) shall as at the commencement of that year determine the prescribed value required in respect of each of its policyholder funds, and shall be deemed for the purposes of applying this section in that year and in any succeeding year of assessment in which it has not yet established such funds, to have established and maintained such funds in accordance with the provisions of this section.

(20) For the purposes of subsection (19)—

- (a) an appropriate portion of all the assets and liabilities of an insurer shall be deemed to have been placed by it in each of its funds in accordance with the provisions of this section;
- (b) an appropriate portion of any income received by or accrued to an insurer and any expenditure incurred by it shall be deemed to have been received by or to have accrued to, or to have been incurred by, as the case may be, each of its funds; and
- (c) any amount which would have been required to be transferred in terms of the provisions of subsection (6)(a) or (b) had such separate funds been so established and maintained, shall be deemed to have been so transferred.”.

(2) Subsection (1) shall be deemed to have come into operation on 17 March 1993.

#### Amendment of section 30 of Act 58 of 1962

26. Section 30 of the principal Act is hereby amended by the substitution for the proviso of the following proviso:

“Provided that if satisfactory accounts [**satisfactory to the Commissioner**] can reasonably be furnished, the Commissioner or the taxpayer may claim that the actual taxable income derived from sources within the Republic or loss incurred within the Republic shall be assessed in the manner otherwise provided in this Act.”.

#### Amendment of section 32 of Act 58 of 1962

27. Section 32 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The provisions of this section shall not apply to any person so carrying on business who renders accounts which [**in the opinion of the Commissioner**] satisfactorily disclose the taxable income derived by such person from the business carried on by him in the Republic.”.

#### Amendment of section 33 of Act 58 of 1962, as amended by section 26 of Act 85 of 1974

28. Section 33 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person (not being a person ordinarily resident in the Republic or a domestic company) who embarks passengers or loads livestock, mails or goods in the Republic, as an owner or charterer of any ship or aircraft, shall be deemed to have derived therefrom (apart from any taxable income derived by him from other sources) a taxable income of [**R20 for every R200**] 10 per cent of the amount payable to him or to any agent on his behalf, whether the amount be payable in or outside the Republic, in respect of passengers, livestock, mails and goods so embarked or loaded, but the provisions of this section shall not apply to any such person who renders accounts which [**in the opinion of the Commissioner**] satisfactorily disclose the taxable income derived by him from the embarking of passengers or the loading of livestock, mails and goods as aforesaid.”.

Amendment of section 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 and section 24 of Act 141 of 1992 5

29. Section 36 of the principal Act is hereby amended by the substitution for subsection (7C) of the following subsection:

“(7C) Subject to the provisions of subsections (7E), (7F) and (7G), the amounts to be deducted under section 15(a) from income derived from the working of any producing mine shall be the amount of capital expenditure incurred.”. 10

Substitution of section 37E of Act 58 of 1962, as inserted by section 3 of Act 136 of 1991 and amended by section 26 of Act 141 of 1992 15

30.(1) The following section is hereby substituted for section 37E of the principal Act:

“Application of certain provisions where taxpayer carries on value-added process

**37E. (1) For the purposes of this section—** 20

‘commencement date’ means 12 September 1991;

‘committee’ means the committee appointed in terms of subsection (2);

‘intermediate product’ means any substance or material which is produced by any person in order to be subjected to further processing by any other person; 25

‘local country’ means the Republic, Botswana, Lesotho, Namibia, Swaziland or any country the territory of which formerly formed part of the Republic;

‘value-added process’ means any process approved by the committee whereby any raw material or any intermediate product is processed to yield any intermediate product or final product, if in the opinion of the committee— 30

(a) such process will add at least 35 per cent to the value of the raw material or intermediate product processed, such added value being determined in accordance with the formula— 35

$$\frac{A - (B + C)}{A} \times \frac{100}{1}$$

in which formula—

(i) ‘A’ represents the ex-factory price of the intermediate product or final product produced by the taxpayer; 40

(ii) ‘B’ represents the cost of raw materials and intermediate products used by him in the production of such intermediate product or final product; and

(iii) ‘C’ represents the cost of electricity consumed by him in such production; 45

(b) such process will be carried on on a scale which makes it internationally competitive; and

(c) where the taxpayer intends acquiring any imported capital goods for use in such process, he will make use of any foreign term credits which may be available for the purpose of financing the acquisition of such capital goods, 50

but excludes any process which is either a simple purification process in consequence of which the raw material or intermediate product in question remains unchanged except for the removal of impurities or a physical process resulting merely in a change of shape and any process 55

which is a mining operation or any operation which is normally carried on in the course of mining operations.

(2) The Minister of Finance shall with the concurrence of the Minister of Trade and Industry appoint a committee which shall have power to—

(a) approve any process as a value-added process for the purposes of this section, subject to such requirements and conditions as the committee considers necessary to ensure that the provisions of this section are applied in such a manner as to promote the carrying on of value-added processes;

(b) direct that where the provisions of this section are applicable to any taxpayer, the taxpayer shall be excluded from such further assistance from the State as the committee may determine; and

(c) perform such other functions as are assigned to it under the provisions of this section.

(3) In deciding whether a process is to be approved as a value-added process, the committee shall have regard to—

(a) the degree to which the production of an intermediate product will encourage further processing of such intermediate product by industries situated in a local country;

(b) the effect on the Exchequer;

(c) the degree of preference which will be granted to products and skills from a local country; and

(d) the effect of such process on small and medium size enterprises in a local country.

(4) Where any taxpayer incurs expenditure for the purpose of his trade on or in connection with—

(a) any new or unused machinery or plant referred to in section 12C(1)(a) which the committee is satisfied will—

(i) be brought into use by the taxpayer within a period determined by the committee; and

(ii) be used by the taxpayer directly in a value-added process carried on by him; or

(b) any building referred to in section 13(1)(b) which the committee is satisfied will—

(i) be brought into use by the taxpayer within a period determined by the committee; and

(ii) be used by the taxpayer for the purpose of carrying on therein any value-added process,

the provisions of sections 11(bA), 12C and 13(1) shall, notwithstanding the fact that such machinery, plant or building may not have been brought into use or used as contemplated in those sections, be applied in accordance with the provisions of subsection (5), but subject to the provisions of subsection (6).

(5) Where any expenditure referred to in subsection (4)—

(a) constitutes an amount of interest or related finance charges referred to in section 11(bA) which has been incurred by the taxpayer in respect of the cost of any machinery or plant referred to in subsection (4)(a) or any building referred to in subsection (4)(b), the deduction under section 11(bA) shall be allowed in the year of assessment in which such expenditure is incurred;

(b) constitutes the whole or a portion of the cost to the taxpayer of any machinery or plant referred to in subsection (4)(a), the deduction under section 12C shall be allowed in the year of assessment in which such expenditure is incurred and in each of the four succeeding years of assessment; or

(c) constitutes the whole or a portion of the cost to the taxpayer of any building referred to in subsection (4)(b), the deduction under section 13(1) shall be allowed in the year of assessment in which such expenditure is incurred and in each applicable succeeding year of assessment.

(6) The provisions of this section shall apply to any taxpayer who on the commencement date has not yet commenced the erection of a value-added plant, if the process to be carried on by the taxpayer is approved by the committee as a value-added process within two years (or such shorter period as the committee in any case determines) after the commencement date.

(7) For the purposes of subsection (6), a taxpayer shall be deemed to have commenced the erection of a value-added plant on the date upon which he concludes an agreement for the acquisition of any machinery or plant referred to in subsection (4)(a) or on the date upon which he concludes an agreement for the erection of a building referred to in subsection (4)(b), whichever date is the earlier.

(8) Where a taxpayer fails to comply with any of the requirements or conditions imposed by the committee, no deduction shall be granted under the provisions of this section unless the committee otherwise directs.

(9) Where the sum of the deductions to which the taxpayer is entitled in any year of assessment under the provisions of sections 11(bA), 12C and 13(1), as applied in terms of the provisions of this section, in respect of expenditure referred to in subsection (4) exceeds the taxable income of the taxpayer for such year as determined before allowing the said deductions, the Commissioner may on application made to him by the taxpayer—

(a) disallow as a deduction in the determination of the taxpayer's taxable income for such year an amount equal to so much of such sum as would, had such amount been allowed as a deduction, have created or increased an assessed loss as defined in section 20(2); and

(b) issue, subject to such terms and conditions as he may determine, to the taxpayer a negotiable tax credit certificate for such amount as, having regard to the rate of normal tax applicable to the taxpayer in such year, represents the amount of normal tax which would be payable in respect of a taxable income equal to the amount disallowed under the provisions of paragraph (a).

(10) A negotiable tax credit certificate issued to any taxpayer under the provisions of subsection (9) or (11) may be disposed of by such taxpayer or subsequent holder to any other taxpayer, and may in such case be utilized by such other taxpayer in payment of any normal tax, secondary tax on companies or provisional tax due by him.

(11) Where a negotiable tax credit certificate is utilized by any taxpayer and the value thereof is in excess of the amount of normal tax, secondary tax on companies or provisional tax due by such taxpayer, the Commissioner shall not be required to make a refund of such excess if such excess exceeds R5 000, but he may issue to such taxpayer a replacement negotiable tax credit certificate in respect of such excess.

(12) The utilization by the taxpayer of a negotiable tax credit certificate or a refund by the Commissioner of any excess of a negotiable tax credit certificate shall be treated as a drawback from revenue charged to the State Revenue Fund.

(13) For the purposes of section 8(4)(a), any amount disallowed under subsection (9)(a) shall be deemed to be an amount allowed to be deducted or set off as contemplated in that section."

(2) Subsection (1) shall be deemed to have come into operation on 12 September 1992.

**Insertion of section 40B in Act 58 of 1962**

31. The following section is hereby inserted in Part II of Chapter II of the principal Act after section 40A:

**“Conversion of co-operative to company**

**40B.** Where any co-operative incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), is incorporated as a company in accordance with the provisions of section 161A or 161C of that Act, such co-operative and such company shall for the purposes of this Act be deemed to be and to have been one and the same company.”

Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 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 and section 28 of Act 141 of 1992

32.(1) Section 56 of the principal Act is hereby amended—

- (a) by the deletion of paragraph (f) of subsection (1); and
- (b) by the substitution for paragraph (h) of subsection (1) of the following paragraph:

“(h) by or to any person (including any government) referred to in section 10(1)(a), (b), (cA), (cB), (cC), (cD), (cE), (cF), (cI), (cJ), (cL), (d), [or] (e) or (fA);”

(2) Subsection (1)(a) shall be deemed to have come into operation on 21 June 1993 and shall apply to any insurance policy ceded on or after that date.

Amendment of section 64A of Act 58 of 1962, as inserted by section 4 of Act 136 of 1991 and substituted by section 29 of Act 141 of 1992

33. Section 64A of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding the proviso to paragraph (a) of the definition of “leviable amount” of the following words:

“in relation to a [deposit-taking institution] bank as defined in section 1(1) of the [Deposit-taking Institutions] Banks Act, 1990 (Act No. 94 of 1990), an amount equal to 50 per cent of the minimum share capital and unimpaired reserve funds required to be maintained by the [deposit-taking institution] bank and determined in respect of each calendar quarter, in accordance with the provisions of section 70(2)(b) of the said Act;”

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

“(a) in the case of a [deposit-taking institution] bank within the meaning of the [Deposit-taking Institutions] Banks Act, 1990 (Act No. 94 of 1990), or a permanent society registered in terms of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), the leviable amount as determined in relation to every calendar quarter commencing on or after 1 October 1991; and”

**Addition of Part VII to Chapter II of Act 58 of 1962**

34. (1) The following Part is hereby added to Chapter II of the principal Act:



## "PART VII

## Secondary Tax on Companies

## Levy and recovery of secondary tax on companies

- 64B.(1)** For the purposes of this section—
- 'declared', in relation to any dividend (including a dividend *in specie*), means the approval of the payment or distribution thereof by the directors of the company or by some other person under authority conferred by the memorandum and articles of association of the company; 5
- 'dividend cycle' means— 10
- (a) in relation to the first dividend declared by a company on or after 17 March 1993, the period commencing on the later of—
- (i) 1 September 1992; and
- (ii) the day following the date of declaration of the last dividend (other than a dividend *in specie* or a dividend payable on a preference share) declared by the company prior to 17 March 1993, and ending on the date on which such first dividend accrues to the shareholder concerned; and 15
- (b) in relation to any subsequent dividend declared by that company, the period commencing immediately after the previous dividend cycle of the company and ending on the date on which such dividend accrues to the shareholder concerned. 20
- (2) There shall be levied and paid for the benefit of the State Revenue Fund a tax, to be known as the secondary tax on companies, which is calculated at the rate of 15 per cent of the net amount, as determined in terms of subsection (3), of any dividend declared by any company on or after 17 March 1993. 25
- (3) The net amount of any dividend referred to in subsection (2) shall be the amount by which such dividend declared by a company exceeds the sum of any dividends (other than any dividends contemplated in subsection (5)(b), (c) and (d)) which have during the dividend cycle in relation to such firstmentioned dividend accrued to the company: Provided that— 30
- (a) where the sum of such dividends accrued exceeds such dividend declared, the excess shall be carried forward and be deemed to be a dividend which accrued to the company during the succeeding dividend cycle of the company; and 35
- (b) in the determination of the net amount of any dividend distributed in the course of the liquidation or winding up of a company, there shall be allowed as a deduction any dividend contemplated in subsection (5)(c) which has during the current or any previous dividend cycle accrued to the company. 40
- (4)(a) Where any dividend is declared by a company subject to the condition that it will be payable to shareholders registered in the company's share register on a specified date, such dividend or interim dividend shall for the purposes of this section be deemed to accrue to the shareholders on that date. 45
- (b) Any interim dividend declared by a company otherwise than as contemplated in paragraph (a), shall for the purposes of this section be deemed to accrue to the shareholders on the date upon which it is declared. 50
- (c) Where any cash or assets is or are given—
- (i) by a company to shareholders of that company otherwise than by way of a formal declaration of a dividend; or 55

- (ii) by the liquidator of a company to the shareholders of that company in the course of the winding up or liquidation of that company,  
and the amount of such cash or the value of such assets, in whole or in part constitutes a dividend, such dividend shall for the purposes of this section be deemed to have been declared by the company and to have accrued to the shareholders on the date on which the shareholders became entitled to such cash or assets. 5
- (5) There shall be exempt from the secondary tax on companies—
- (a) dividends declared by any company the entire receipts and accruals of which, or so much of the receipts and accruals of which as are derived otherwise than from investments, are exempt from tax under the provisions of section 10; 10
- (b) any dividend declared by a fixed property company contemplated in section 11(s) which may be allowed as a deduction in the determination of the taxable income of such company in terms of the provisions of that section; 15
- (c) so much of any dividend distributed in the course of the liquidation or winding up of a company, as is shown by the company to be a distribution of profits derived during any year of assessment which ended not later than 31 March 1993, other than any such profits derived by way of the revaluation of trading stock held by such company; and 20
- (d) so much of any dividend declared by a unit portfolio referred to in paragraph (e) of the definition of 'company' in section 1 as represents a distribution of interest or of dividends referred to in section 11(s) received by or accrued to such unit portfolio. 25
- (6)(a) If any dividend subject to the payment of secondary tax on companies has been declared by a company which derives profits from sources within and outside the Republic, the secondary tax on companies in respect of that dividend shall be calculated on an amount which bears to the net amount of that dividend the same ratio as the sum of the net annual profits of the company derived from sources within the Republic bears to the total sum of its net annual profits derived from all sources. 30
- (b) For the purposes of paragraph (a)— 35
- (i) the net annual profits of a company shall be determined by excluding profits derived by way of dividends; and
- (ii) the said ratio shall, subject to the provisions of paragraph (c), be determined on the basis of the last year of assessment of the company which ended prior to the declaration of the dividend concerned. 40
- (c) If the Commissioner is in any case satisfied that the ratio determined in the manner contemplated in paragraph (b)(ii) does not reasonably represent the ratio in which the company's profits are normally derived from sources within and outside the Republic, he may direct that such ratio be determined in such other manner as appears to him to be fair and reasonable. 45
- (d) Any exercise by the Commissioner of his discretion under paragraph (c) shall be subject to objection and appeal. 50
- (7) The secondary tax on companies shall be paid to the Commissioner by the company liable therefor—
- (a) where such tax is payable in respect of any dividend declared on or before 30 June 1993—
- (i) if a year of assessment of the company ended during the period from 1 December 1992 to 31 March 1993, by not later than 31 December 1993; and 55

- (ii) in any other case, by not later than 31 July 1993; and
- (b) where such tax is payable in respect of any dividend declared after 30 June 1993, by not later than the last day of the month following the month in which the dividend cycle relevant to such dividend ends, 5
- and each payment of such tax shall be accompanied by a return in such form as the Commissioner may require: Provided that—
- (i) the Commissioner may in any case extend the applicable date of payment; and
- (ii) for the purposes of paragraph (b) the expression 'month' means any of the twelve portions into which any calendar year is divided. 10
- (8) Where the Commissioner is satisfied that any amount of secondary tax on companies has not been paid in full, he may estimate the unpaid amount and issue to the company concerned a notice of assessment of the unpaid amount. 15
- (9) If any company fails to pay any amount of secondary tax on companies in full within the period concerned contemplated in subsection (7), interest shall be paid by such company on the balance of the tax outstanding at the prescribed rate reckoned from the end of the period concerned. 20
- (10) Where any company has declared a dividend prior to 17 March 1993 and—
- (a) in the case of a company which is listed on a recognized stock exchange or a subsidiary (as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973)), of any such company, it had not prior to that date paid the dividend to the shareholders concerned or publicly announced the declaration thereof; or 25
- (b) in the case of any other company, it had not prior to that date paid the dividend to the shareholders concerned, 30
- such dividend shall for the purposes of this section be deemed to have been declared by the company on the said date: Provided that the provisions of this subsection shall not apply to any such dividend in respect of which the company had prior to the said date taken reasonable steps to pay.
- (11) The provisions of this Act relating to the assessment and recovery of normal tax shall *mutatis mutandis* apply for the purposes of the assessment and recovery of secondary tax on companies. 35
- (12)(a) Any company which on 17 March 1993 was engaged in mining for gold, may by notice in writing furnished to the Commissioner not later than 31 August 1993, elect to be exempt from the payment of secondary tax on companies. 40
- (b) Any company which after 17 March 1993 commences mining for gold may by notice in writing furnished to the Commissioner not later than six months after the date on which it so commences, elect to be exempt from the payment of secondary tax on companies. 45
- (c) An election made in terms of paragraph (a) or (b) shall, subject to the provisions of paragraph (e), be binding upon the company in respect of all future dividends declared by it.
- (d) The exemption under this subsection shall apply to all dividends declared by the company concerned, whether payable out of profits derived from mining for gold or otherwise. 50
- (e) Where any company which has made an election in terms of paragraph (a) or (b) ceases mining for gold during any year of assessment, the exemption under this subsection shall not apply to any dividend declared by such company during any subsequent year of assessment. 55

- (13) In the determination of the net amount of any dividend declared by a company which carries on long-term insurance business, the amount to be taken into account in terms of subsection (3) in respect of dividends accrued to the company shall be limited—
- (a) where the company has established or deemed to have established separate funds as contemplated in section 29, to dividends accrued on shares constituting an asset in its corporate fund; or
  - (b) where the company has not established such separate funds, to an amount which bears to the total dividends which accrued to the company during the dividend cycle concerned the same ratio as the company's free reserves (calculated as provided in subsection (14) as at the end of the last year of assessment of the insurer which ended prior to the declaration of the firstmentioned dividend) bears to the market value of the total assets held by the insurer as at the end of that year.
- (14) For the purposes of subsection (13) the free reserves of an insurer shall be the amount by which the market value of the total assets held by the insurer exceeds the prescribed value determinable in terms of section 29 in relation to business and policies contemplated in subsection (4)(a), (b) and (c) of that section.

#### Certain amounts distributed deemed to be dividends

**64C.** (1) For the purposes of this section 'recipient', in relation to any company, means—

- (a) any shareholder of such company;
  - (b) any relative of such shareholder; or
  - (c) any trust of which such shareholder or relative is a beneficiary.
- (2) For the purposes of section 64B any amount which is in terms of subsection (3) deemed to have been distributed by a company to a recipient, shall, subject to the provisions of subsection (4), be deemed to be a dividend declared by such company, notwithstanding the fact that such amount may have been so distributed by way of a loan or credit to the recipient or that the recipient may in consequence of such distribution have assumed any other form of obligation to make a future payment to the company.
- (3) For the purposes of subsection (2) an amount shall be deemed to have been distributed by a company to a recipient if—
- (a) any cash or asset is distributed by the company to or for the benefit of such recipient;
  - (b) the recipient is released from any obligation measurable in money which is owed to the company by the recipient;
  - (c) any debt owed by the recipient to any third party is paid or settled by the company; or
  - (d) any amount is used or applied by the company in any other manner for the benefit of the recipient.
- (4) The provisions of subsection (3) shall not apply—
- (a) where the distribution of such amount constitutes a dividend or would have constituted a dividend but for the provisions of paragraphs (e) to (h), inclusive, of the definition of "dividend" in section 1;
  - (b) where such amount distributed constitutes remuneration in the hands of the recipient or the settlement of any debt owed by the company to the recipient;
  - (c) to so much of any such amount distributed as exceeds the company's profits and reserves which are available for distribution, including any amount deemed in terms of the definition of 'dividend' in section 1 to be a profit available for distribution:

- Provided that any prohibition or limitation on any such distribution contained in the company's memorandum and articles of association or founding statement or any agreement shall be disregarded in the application of this paragraph;
- (d) to any loan granted in respect of which a market-related rate of interest is payable by the recipient; 5
- (e) to any loan granted to the recipient if the recipient is an employee of the company and such loan is granted under, and in compliance with the normal terms and conditions of, a loan scheme generally available to employees of the company who are not shareholders; 10
- (f) to any loan or credit granted to a shareholder of the company during any year of assessment, if—
- (i) such loan or credit is repaid or otherwise extinguished by not later than the end of the immediately succeeding year of assessment; 15
- (ii) the amount thereof is not included in any subsequent loan or credit granted to the shareholder; and
- (iii) the provisions of this paragraph have not been applied in the case of the company in any previous year of assessment; 20
- (g) to a loan made by any company to any other company, if such loan is utilized by such other company in the Republic and the equity share capital of—
- (i) one of such companies is held by the other such company; or
- (ii) both such companies is held by the same person or persons; 25
- and
- (h) to so much of any amount distributed as constitutes a profit of a capital nature, if the liquidation or winding up of the distributing company is commenced within such reasonable period as the Commissioner may allow.
- (5) Where any loan granted by a company to a shareholder— 30
- (a) was deemed to be a dividend declared by the company in terms of this section; and
- (b) is thereafter wholly or partly repaid by the shareholder, the amount so repaid shall for the purposes of section 64B be deemed to be a dividend which accrued to the company concerned on the date on which such amount was repaid.” 35
- (2) Subsection (1) shall be deemed to have come into operation on 17 March 1993.

**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 and section 30 of Act 141 of 1992** 40

35. Section 75 of the principal Act is hereby amended by the substitution in paragraph (f) of subsection (1) for the expression “five years” of the expression “four years”.

**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 and section 36 of Act 129 of 1991** 45

36. Section 83 of the principal Act is hereby amended—

(a) by the substitution for subsection (9) of the following subsection:

“(9) At least **[ten]** 21 business days (or such shorter number of business days as may be agreed upon by the Commissioner and the 50



taxpayer or his duly authorised representative) before the date fixed for the hearing of an appeal the Commissioner shall send to the [person who made the objection] taxpayer or to his duly authorised [attorney or] representative a written notice of the time and place appointed for the hearing of such appeal.”; and

- (b) by the substitution for subsection (18) of the following subsection:  
“(18) Any decision of the court under this section shall, subject to the provisions of [sections 86 and] section 86A, be final.”.

**Amendment of section 83A of Act 58 of 1962, as inserted by section 37 of Act 129 of 1991**

37. Section 83A of the principal Act is hereby amended—

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

“(3) The Board shall consist of an advocate or attorney referred to in subsection (4), who shall be the Chairman of the Board, and, if the Chairman, the Commissioner or the taxpayer considers it necessary, an accountant or a representative of the commercial community referred to in section 83(2).”; and

- (b) by the substitution in paragraph (b) of subsection (7) for the expression “30 days” of the expression “21 business days”.

**Repeal of section 86 of Act 58 of 1962**

38. Section 86 of the principal Act is hereby repealed.

**Amendment of section 86A of Act 58 of 1962, as inserted by section 24 of Act 103 of 1976**

39. Section 86A of the principal Act is hereby amended—

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

“(1) The appellant in a special court or the Commissioner may in the manner hereinafter provided appeal under this section against any decision of that court [in any case in which judgment is delivered on or after the date of commencement of section 24 of the Income Tax Act, of 1976].”; and

- (b) by the deletion of paragraph (c) of subsection (20).

**Substitution of section 88 of Act 58 of 1962, as substituted by section 17 of Act 70 of 1989**

40. The following section is hereby substituted for section 88 of the principal Act:

**“Payment of tax pending appeal**

88. 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 [86 or] 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 board or the special 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 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.”.

**Amendment of section 89ter of Act 58 of 1962, as inserted by section 14 of Act 6 of 1963 and amended by section 22 of Act 90 of 1964, section 22 of Act 95 of 1967, section 37 of Act 89 of 1969, section 36 of Act 94 of 1983 and section 33 of Act 121 of 1984**

41. Section 89ter of the principal Act is hereby amended by the insertion after subsection (1) of the following subsections: 5

“(1A) Where, in addition to any amount of tax or additional tax which is payable by any person in terms of this Act, an amount of penalty is payable by him in terms of the provisions of the Fourth or Seventh Schedule, or interest is payable by him in terms of any provision of this Act, any payment made by that person on or after 1 April 1994 in respect of such tax, additional tax, penalty or interest which is less than the total amount due by him in respect of such tax, additional tax, penalty and interest shall for the purposes of this Act be deemed to be made—

- (a) in respect of such penalty; 15
- (b) to the extent to which such payment exceeds the amount of such penalty, in respect of such interest; and
- (c) to the extent to which such payment exceeds the sum of the amounts of such penalty and interest, in respect of such tax or additional tax. 20

(1B)(a) Any practice generally applied by the Commissioner prior to 1 April 1994 in the allocation of payments shall be deemed to have had the force of law. 25

(b) Any agreement concluded prior to 1 April 1994 between the Commissioner and a taxpayer which provides for the allocation of any payment contemplated in subsection (1A) to be made on or after that date otherwise than in accordance with the provisions of subsection (1A) shall, in so far as it provides for such allocation, cease to have effect.” 25

**Amendment of section 89quat of Act 58 of 1962, as inserted by section 34 of Act 121 of 1984 and substituted by section 22 of Act 65 of 1986 and amended by section 18 of Act 70 of 1989** 30

42.(1) Section 89quat of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (c) of the definition of “credit amount”;
- (b) by the deletion in subsection (1) of paragraph (d) of the definition of “credit amount”;

(c) by the addition to subsection (1) of the following definition: 35  
“ ‘normal tax’ includes any additional amounts payable in terms of section 76 and paragraphs 20 and 20A of the Fourth Schedule.”;

(d) by the insertion after subsection (3) of the following subsection: 40  
“(3A) Where any natural person has, in respect of the year of assessment during which he for the first time became a provisional taxpayer, become liable for the payment of interest under subsection (2), the Commissioner may, if he is satisfied that the circumstances warrant such action, direct that interest shall not be paid by such person in respect of such year of assessment.”; 45

(e) by the substitution for the words preceding the proviso to subsection (4) of the following words:

“If in the case of any provisional taxpayer the credit amount in relation to any year of assessment exceeds the normal tax payable in respect of his taxable income as finally determined for that year and—

- (a) the amount of that excess exceeds R10 000; or
- (b) such taxable income exceeds R20 000 in the case of a company or R50 000 in the case of any person other than a company, interest shall be payable to the taxpayer at the prescribed rate 55

on the difference between the credit amount and such normal tax, such interest being calculated from the effective date in relation to the said year until the date on which such difference is refunded to the taxpayer.”; and

(f) by the addition of the following subsection: 5

“(5) Any decision of the Commissioner in the exercise of his discretion under subsection (3) or (3A) shall be subject to objection and appeal.”

(2)(a) Subsection (1)(d) and (f) shall be deemed to have come into operation from the commencement of years of assessment ending on or after 28 February 1991. 10

(b) Subsection (1)(e) shall come into operation on 1 September 1993 and shall apply to any assessment bearing a date of assessment falling on or after that date.

**Amendment of paragraph 4 of 1st Schedule to Act 58 of 1962, as amended by section 17 of Act 72 of 1963, section 41 of Act 89 of 1969 and section 42 of Act 94 of 1983** 15

43. Paragraph 4 of the First Schedule to the principal Act is hereby amended—

(a) by the substitution for subitem (ii) of item (a) of subparagraph (1) of the following subitem:

“(ii) **[such] the market value [as the Commissioner may allow in respect] of livestock or produce acquired by such farmer during the current year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations; or**”; and 20

(b) by the substitution for subitem (ii) of item (b) of subparagraph (1) of the following subitem: 25

“(ii) **[such] the market value [as the Commissioner may allow in respect] of livestock or produce (other than livestock or produce to which subitem (i) refers) acquired by such person during the year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations.**” 30

**Amendment of paragraph 11 of 1st Schedule to Act 58 of 1962, as substituted by section 42 of Act 101 of 1990**

44. (1) The following paragraph is hereby substituted for paragraph 11 of the First Schedule to the principal Act:

“11. If during any year of assessment livestock or produce has been donated by any farmer or has, for purposes other than that of the production to him of income from sources within the Republic, been removed by him from the Republic or where the farmer is a company and any livestock or produce has on or after **[12 June 1990] 21 June 1993** been distributed **[by] in specie (whether such distribution occurred by means of a dividend, including a liquidation dividend, a total or partial reduction of capital or a redemption of redeemable preference shares) to a shareholder of such company [by way of a dividend]**, there shall be included in the income of such farmer for that year of assessment an amount equal to the current market value of such livestock or produce.” 35 40 45

(2) Subsection (1) shall be deemed to have come into operation as from the commencement of years of assessment ending on or after 21 June 1993 and shall apply to any livestock or produce distributed on or after that date.

**Amendment of paragraph 12 of 1st Schedule to Act 58 of 1962, as amended by section 27 of Act 55 of 1966, section 42 of Act 89 of 1969, section 24 of Act 113 of 1977, section 24 of Act 104 of 1980, section 27 of Act 96 of 1981, section 28 of Act 91 of 1982 and section 39 of Act 90 of 1988** 50

45. Paragraph 12 of the First Schedule to the principal Act is hereby amended—

(a) by the deletion of item (j) of subparagraph (1);

(b) by the deletion of subparagraph (1A); 55

- (c) by the deletion of item (c) of subparagraph (1B); and  
 (d) by the substitution for subparagraph (1C) of the following subparagraph:

“(1C) For the purposes of this paragraph, where any asset in respect of which any deduction has been allowed to a farmer under the provisions of subparagraph (1) or (1A) (whether in the current or any previous year of assessment) and which is or has become a movable asset, is disposed of by the farmer to any other person by way of donation or for a consideration which **[in the opinion of the Commissioner]** is not an adequate consideration or is not readily capable of valuation, a consideration equal in value to **[an amount determined by the Commissioner as]** the fair value of such asset shall be deemed to have been received by the farmer in respect of his disposal of the asset and to have been paid by such other person in respect of his acquisition of the asset: Provided that the **[amount so determined]** lastmentioned consideration shall not exceed the cost to the farmer of such asset.”

**Amendment of paragraph 13A of 1st Schedule to Act 58 of 1962, as inserted by section 44 of Act 94 of 1983 and amended by section 24 of Act 85 of 1987**

46.(1) Paragraph 13A of the First Schedule to the principal Act is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph:  
 “(1) If **[it is proved to the satisfaction of the Commissioner that]** any farmer has on or after 1 March 1982 disposed of any livestock on account of drought, and **[that]** the whole or any portion of the proceeds of such disposal has as soon as possible, but in any case within three months after the receipt thereof by the farmer, been deposited by him in an account in his name with the Land and Agricultural Bank of South Africa, so much of such proceeds as has been so deposited by him shall, notwithstanding the provisions of section 23(e) of this Act but subject to the provisions of subparagraph (3), be deemed not to be gross income derived by such farmer.”;
- (b) by the substitution for item (a) of subparagraph (3) of the following items:  
 “(a) if it is withdrawn from such account before the expiration of a period of six months after the last day of the year of assessment in which such disposal took place, be deemed to be gross income derived by the taxpayer from the disposal of livestock on the date of such disposal; or  
 (aA) if it is withdrawn from such account **[before]** after the expiration of a period of six months but before the expiration of a period of six years after the last day of the year of assessment in which such disposal took place, be deemed to be gross income derived by the taxpayer from the disposal of livestock on the date of such withdrawal; or”; and
- (c) by the deletion of subparagraph (4).

(2) Subsection (1) shall come into operation on 21 June 1993 and shall apply in respect of any amount received on or after that date.

**Amendment of paragraph 15 of 1st Schedule to Act 58 of 1962, as amended by section 25 of Act 88 of 1965, section 26 of Act 95 of 1967, section 31 of Act 88 of 1971 and section 30 of Act 69 of 1975**

47. Paragraph 15 of the First Schedule to the principal Act is hereby amended by the substitution for paragraph (i) of the proviso to subparagraph (3) of the following paragraph:

- “(i) the provisions of this subparagraph shall not apply unless **[the Commissioner is satisfied that]** the disposal of plantations or forest produce forms part of the normal farming operations of the farmer concerned;”.

**Amendment of paragraph 1 of 4th Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991 and section 33 of Act 141 of 1992** 5

48.(1) Paragraph 1 of the Fourth Schedule to the principal Act is hereby amended by the substitution in paragraph (c) of the definition of "remuneration" for the expression "25 per cent" of the expression "35 per cent".

(2) Subsection (1) shall be deemed to have come into operation on 1 July 1993. 10

**Insertion of paragraph 12A in 4th Schedule to Act 58 of 1962**

49. The following paragraph is hereby inserted in the Fourth Schedule to the principal Act after paragraph 12:

**"Annual confirmation of personal particulars of certain employees**

**12A. Every employer who is required to make a determination of Standard Income Tax on Employees in respect of the employees employed by him on the last day of any year of assessment shall on a date falling as shortly before the making of such determination as in the circumstances of the employer is reasonable, issue to each employee who is in standard employment on that date a notice in which the employee is advised—** 15  
**(a) of his personal particulars which the employer intends taking into account in the making of such determination; and** 20  
**(b) in the event that such personal particulars are incorrect, to submit a fresh return of personal particulars in accordance with the provisions of paragraph 12(1) or to apply to the Commissioner for the issue of a directive under the provisions of paragraph 12(2)."** 25

**Amendment of paragraph 18 of 4th Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 28 of Act 90 of 1964, section 42 of Act 88 of 1971, section 49 of Act 85 of 1974, section 19 of Act 104 of 1979, section 26 of Act 65 of 1986, section 9 of Act 108 of 1986 and section 23 of Act 70 of 1989** 30

50. Paragraph 18 of the Fourth Schedule to the principal Act is hereby amended by the substitution in subitem (i) of item (d) of subparagraph (1) for the expression "R25 000" of the expression "R35 000".

**Repeal of 6th Schedule to Act 58 of 1962, as added by section 28 of Act 90 of 1972 and amended by sections 27 to 41, inclusive, of Act 65 of 1973, sections 63 to 68, inclusive, of Act 85 of 1974, section 37 of Act 69 of 1975, section 19 of Act 101 of 1978, section 29 of Act 96 of 1981, sections 58 and 59 of Act 94 of 1983, section 45 of Act 121 of 1984, sections 21 to 25, inclusive, of Act 96 of 1985, sections 31 and 32 of Act 65 of 1986 and sections 26 and 27 of Act 85 of 1987** 35  
 40

51. (1) The Sixth Schedule to the principal Act is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 March 1993.



**Amendment of paragraph 1 of 7th Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 26 of Act 96 of 1985, Government Notice No. R.2706 of 29 November 1985, section 33 of Act 65 of 1986, Government Notice No. R.2683 of 19 December 1986, section 28 of Act 85 of 1987, Government Notice No. R.714 of 14 April 1989, section 24 of Act 70 of 1989, Government Notice No. R.763 of 29 March 1990, section 55 of Act 101 of 1990 and section 35 of Act 141 of 1992** 5

52.(1) Paragraph 1 of the Seventh Schedule to the principal Act is hereby amended by the substitution in the definition of "official rate of interest" for the expression "17 per cent" of the expression "15 per cent". 10

(2) Subsection (1) shall be deemed to have come into operation on 1 January 1993.

**Amendment of paragraph 9 of 7th Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 31 of Act 96 of 1985, section 34 of Act 65 of 1986, section 29 of Act 85 of 1987 and section 59 of Act 101 of 1990** 15

53. Paragraph 9 of the Seventh Schedule to the principal Act is hereby amended by the substitution in subparagraph (1) for the words preceding paragraph (a) of the definition of "remuneration" of the following words:

" 'remuneration', in relation to any employee, means the aggregate of the amounts of remuneration (as determined in accordance with the definition of 'remuneration' in paragraph 1 of the Fourth Schedule but including any amounts referred to in [paragraphs (iv) and] paragraph (vii) of that definition) which have been derived by him from his employer and any companies and funds which are associated institutions in relation to the employer but excluding—". 20 25

**Amendment of paragraph 13A of 7th Schedule to Act 58 of 1962, as inserted by section 36 of Act 96 of 1985**

54. Paragraph 13A of the Seventh Schedule to the principal Act is hereby amended by the substitution for the definition of "remuneration" in subparagraph (1) of the following definition: 30

" 'remuneration', in relation to any employee, means the aggregate of the amounts of remuneration (as determined in accordance with the definition of 'remuneration' in paragraph 1 of the Fourth Schedule but including any amounts referred to in [paragraphs (iv) and] paragraph (vii) of that definition) which have been derived by him from his employer and any companies and funds which are associated institutions in relation to the employer but excluding the value of any taxable benefit contemplated in subparagraph (2) and the amount of any remuneration derived by any employee who is not the controlling shareholder or one of the controlling shareholders of the employer company, from an associated institution in relation to the employer if [it is shown to the satisfaction of the Commissioner that] the employee's employment with the employer is not and was not in any way connected with the employee's employment with such associated institution [(any decision of the Commissioner under this paragraph being subject to objection and appeal)];". 35 40 45

**Withdrawal of Government Notice No. R.3353 of 11 December 1992**

55. (1) Government Notice No. R.3353 of 11 December 1992 is hereby withdrawn.

(2) Subsection (1) shall be deemed to have come into operation on 11 December 1992. 50

**Date of commencement of section 23 of Act 90 of 1988**

56. Section 23 of the Income Tax Act, 1988, shall be deemed to have come into operation from the commencement of years of assessment ending on or after 1 April 1988.

**Amendment of section 25 of Act 129 of 1991**

57. Section 25 of the Income Tax Act, 1991, is hereby amended by the addition of the following subsection:

“(3) Section 23B of the principal Act, as inserted by subsection (1), shall be deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 July 1962.” 5

**Amendment of section 10 of Act 141 of 1992**

58. Section 10 of the Income Tax Act, 1992, is hereby amended by the addition to paragraph (c) of subsection (2) of the following proviso:

“Provided that any interest received or accrued before that date shall be exempt from tax, unless an assessment was raised with a date of assessment before that date and such interest was assessed to tax under such assessment.” 10

**Date of commencement of section 27 of Act 141 of 1992**

59. Section 27 of the Income Tax Act, 1992, shall be deemed to have come into operation on 15 July 1992 and shall apply to any dividends declared on or after that date. 15

**Special provisions in relation to unbundling transactions**

60.(1) In this section, any word or expression to which a meaning has been assigned in the principal Act bears the meaning so assigned, and— 20

“distributable shares” means—

- (a) any shares in one or more listed companies held on 21 June 1993 by an unbundling company or an intermediate company (hereinafter referred to as the holder) for its own benefit if—
  - (i) that holder's interest in at least one of such listed companies constitutes at least 10 per cent of the equity share capital of such listed company; or 25
  - (ii) such shares so held represent at least 70 per cent of the market value of the assets of such holder; and
- (b) any further shares (if any) in listed companies acquired by way of purchase or exchange by such holder for its own benefit after that date in addition to the shares referred to in paragraph (a), if— 30
  - (i) such further shares so acquired and the shares referred to in paragraph (a) are to be distributed *in specie* in the course of an unbundling transaction and the Commissioner is satisfied that such distribution will be effected in the course of or in anticipation of the winding-up or liquidation of such holder, subject to such conditions as the Commissioner may deem necessary; and 35
  - (ii) such further shares so acquired are registered in the name of such holder and stamp duty is duly paid on the registration of transfer of such shares in the name of such holder; 40

“distribution *in specie*”, in relation to an unbundling transaction, means a distribution by an unbundling company or intermediate company of distributable shares in the course of an unbundling transaction whether such distribution occurs by means of a dividend (including a liquidation dividend), a total or partial reduction of capital or a redemption of redeemable preference shares; 45

“intermediate company” means a listed or an unlisted company—

- (a) at least 50 per cent of the equity share capital of which is held by an unbundling company; or 50
- (b) at least 50 per cent of the equity share capital of which is held by a company which is an intermediate company in terms of paragraph (a) of this definition;

- is not; and is not expressly stipulated in the policy or policies to be, an annuity.
- (b) Paragraph (a)(i) shall not apply to a policy benefit which is to be and is provided under the policy—
- (i) upon the death of a life insured; or
  - (ii) upon the birth of a child to a life insured; or
  - (iii) in the event of an occurrence whereby the functional ability of the mind or body of a life insured is impaired; or
  - (iv) in the event of an occurrence necessitating the rendering of services in respect of the health of the mind or body of a life insured.
- (c) Paragraph (a)(i) shall not apply to a policy benefit which is an annuity—
- (i) the payments of which are to be made, and are made, at intervals not exceeding 12 months; and
  - (ii) at least one of the payments of which is to be made and, except due to the prior death of the life insured, is made, after the commencement of the period of 31 days preceding the expiry of the extended restriction period concerned; and
  - (iii) the total amount of the payments of which during any period of 12 months does not differ, by a rate of more than 20 per cent, from the total amount of the payments thereof in the immediately preceding period of 12 months, except in the case of an annuity—
    - (aa) which constitutes a linked benefit, where the difference, during the period concerned, results solely from the determination of the value of the relevant assets; or
    - (bb) payable under a policy with two or more owners or lives insured and where the difference results solely from a reduction in the annuity payable during the period concerned consequent upon the death of one of those owners of the policy or lives insured; or
    - (cc) where the difference results solely from a reduction in the annuity payable during the period concerned consequent upon the surrender of a part of the policy.
- (d) Paragraph (a) shall not apply in the event of—
- (i) the death, placement under curatorship or sequestration of the estate, of an owner of a policy who is a natural person; or
  - (ii) the winding up, liquidation, placement under curatorship or judicial management, by order of court, of an owner of a policy who is a juristic person.
- (e) Paragraph (a)(iii) and (iv) shall not apply to a premium advance made under non-forfeiture provisions in a policy.
- (3) This section shall not apply in respect of anything done, before or after the commencement of this section, in relation to a policy entered into before the commencement of this section if, from a date prior to 1 March 1993, the policy expressly provided, in writing, for it to be done.”

**Amendment of section 76 of Act 27 of 1943, as substituted by section 9 of Act 41 of 1966 and amended by section 13 of Act 101 of 1976, section 11 of Act 86 of 1984, section 9 of Act 106 of 1985, section 18 of Act 54 of 1989, section 7 of Act 64 of 1990, section 11 of Act 82 of 1992 and section 16 of the Financial Institutions Second Amendment Act of 1993**

66. Section 76 of the Insurance Act, 1943, is hereby amended by the insertion after paragraph (aC) of subsection (1) of the following paragraph:

## SCHEDULE

**RATES OF NORMAL TAX PAYABLE BY PERSONS OTHER THAN COMPANIES IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 28 FEBRUARY 1994 AND 30 JUNE 1994, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 1994**

(Section 1 of this Act)

1. The rates of normal tax referred to in section 1 of this Act are as follows:—  
 (a) In respect of the taxable income of any person other than a company, an amount of tax calculated in accordance with the tables below:

## TABLES

Taxable Income	Rates of Tax in respect of Married Persons
Where the taxable income— does not exceed R5 000 .....	17 per cent of each R1 of the taxable income;
exceeds R5 000 but does not exceed R10 000	R850 plus 18 per cent of the amount by which the taxable income exceeds R5 000;
" R10 000 " " " " R15 000	R1 750 plus 19 per cent of the amount by which the taxable income exceeds R10 000;
" R15 000 " " " " R20 000	R2 700 plus 20 per cent of the amount by which the taxable income exceeds R15 000;
" R20 000 " " " " R30 000	R3 700 plus 21 per cent of the amount by which the taxable income exceeds R20 000;
" R30 000 " " " " R40 000	R5 800 plus 28 per cent of the amount by which the taxable income exceeds R30 000;
" R40 000 " " " " R50 000	R8 600 plus 36 per cent of the amount by which the taxable income exceeds R40 000;
" R50 000 " " " " R60 000	R12 200 plus 41 per cent of the amount by which the taxable income exceeds R50 000;
" R60 000 " " " " R80 000	R16 300 plus 42 per cent of the amount by which the taxable income exceeds R60 000;
" R80 000.....	R24 700 plus 43 per cent of the amount by which the taxable income exceeds R80 000;

Taxable Income	Rates of Tax in respect of Persons who are not Married Persons or Married Women
Where the taxable income— does not exceed R5 000 .....	17 per cent of each R1 of the taxable income;
exceeds R5 000 but does not exceed R10 000	R850 plus 19 per cent of the amount by which the taxable income exceeds R5 000;
" R10 000 " " " " R15 000	R1 800 plus 21 per cent of the amount by which the taxable income exceeds R10 000;
" R15 000 " " " " R20 000	R2 850 plus 24 per cent of the amount by which the taxable income exceeds R15 000;
" R20 000 " " " " R30 000	R4 050 plus 28 per cent of the amount by which the taxable income exceeds R20 000;
" R30 000 " " " " R40 000	R6 850 plus 36 per cent of the amount by which the taxable income exceeds R30 000;
" R40 000 " " " " R50 000	R10 450 plus 41 per cent of the amount by which the taxable income exceeds R40 000;
" R50 000 " " " " R56 000	R14 550 plus 42 per cent of the amount by which the taxable income exceeds R50 000;
" R56 000.....	R17 070 plus 43 per cent of the amount by which the taxable income exceeds R56 000;

Taxable Income	Rates of Tax in respect of Married Women
Where the taxable income— does not exceed R5 000 .....	17 per cent of each R1 of the taxable income;
exceeds R5 000 but does not exceed R10 000	R850 plus 19 per cent of the amount by which the taxable income exceeds R5 000;
" R10 000 " " " " R15 000	R1 800 plus 21 per cent of the amount by which the taxable income exceeds R10 000;
" R15 000 " " " " R20 000	R2 850 plus 24 per cent of the amount by which the taxable income exceeds R15 000;
" R20 000 " " " " R30 000	R4 050 plus 28 per cent of the amount by which the taxable income exceeds R20 000;
" R30 000 " " " " R40 000	R6 850 plus 36 per cent of the amount by which the taxable income exceeds R30 000;
" R40 000 " " " " R50 000	R10 450 plus 38 per cent of the amount by which the taxable income exceeds R40 000;
" R50 000.....	R14 250 plus 40 per cent of the amount by which the taxable income exceeds R50 000;

- (b) on each rand of the taxable income of any company (excluding taxable income referred to in subparagraphs (c), (d) and (e)), 40 cents, or, in the case of a company which mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, 48 cents;
- (c) on each rand of the taxable income derived by any company from mining for gold on any gold mine (with the exclusion of so much of the taxable income as the Commissioner determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the principal Act, but after the set-off of any assessed loss in terms of section 20(1) of the principal Act), a percentage determined in accordance with the formula:

$$y = 49 - \frac{245}{x}$$

or, in the case of a company which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, in accordance with the formula:

$$y = 58 - \frac{290}{x}$$

in which formulae y represents such percentage and x the ratio expressed as a percentage which the taxable income so derived (with the said



exclusion, but before the set-off of any assessed loss or deduction which is not attributable to the mining for gold from the said mine) bears to the income so derived (with the said exclusion);

- (d) on each rand of the taxable income of any company the sole or principal business of which in the Republic is, or has been, mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Commissioner determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the principal Act, a rate equal to the average rate of normal tax or 35 cents, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of its aggregate taxable income from gold mining for the period from 1 July 1916 to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;
- (e) on each rand of the taxable income derived by any company from carrying on long-term insurance business—
  - (i) where such taxable income has been determined in terms of the provisions of section 28 of the principal Act, 43 cents; or
  - (ii) where such taxable income has been determined in terms of the provisions of section 29 of the principal Act—
    - (aa) in respect of its individual policyholder fund, 30 cents; and
    - (bb) in respect of its company policyholder fund and corporate fund, 40 cents.

2. (1) For the purposes of paragraph 1 income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold, and any income which, in the opinion of the Commissioner, results directly from mining for gold.

(2) The tax determined in accordance with any of the subparagraphs of paragraph 1 shall be payable in addition to the tax determined in accordance with any other of the said subparagraphs.

3. In this Schedule, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the principal Act, bears the meaning so assigned.