

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

Vol. 353

KAAPSTAD, 25 NOVEMBER 1994

No. 16104

CAPE TOWN, 25 NOVEMBER 1994

KANTOOR VAN DIE PRESIDENT

OFFICE OF THE PRESIDENT

No. 2009.

25 November 1994

No. 2009.

25 November 1994

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

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

No. 20 van 1994: Wysigingswet op Belastingwette, 1994.

No. 20 of 1994: Taxation Laws Amendment Act, 1994.

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 amend the Marketable Securities Tax Act, 1948, so as to delete an obsolete section; to amend the Transfer Duty Act, 1949, so as to provide for a reduction of the transfer duty payable under certain circumstances; to amend the Estate Duty Act, 1955, so as to provide for certain deductions; to amend the Stamp Duties Act, 1968, so as to provide for the insertion of a definition of "instalment credit agreement"; to increase the validating penalty; to provide for a credit in respect of stamp duty paid in terms of certain laws to be repealed; to provide for the deletion of a reference to a definition in the Value-Added Tax Act, 1991; and to provide for an exemption in the case of the original issue of shares in a share block company; to amend the Value-Added Tax Act, 1991, so as to further define certain expressions; to exclude certain activities from "financial services"; to deem certain supplies of goods or services to be made or not made; to make further or other provision in respect of the value of supplies of certain goods or services, the supply of an enterprise as a going concern, the supply of services to non-residents, the supply of services in respect of intellectual property rights, the supply of goods or services necessary for the supply of financial services, the deductions allowable in respect of input tax, the calculation of output tax, the deduction allowable in respect of the redemption of tokens, vouchers or stamps, the input tax denied to a medical scheme, the adjustment in respect of change in use or consumption of goods or services, an adjustment in respect of the reduction in the price of second-hand goods, the adjustment to be made in respect of an enterprise acquired as a going concern but wholly or partially otherwise than for the purposes of making taxable supplies, the cancellation of a vendor's registration, the payment of interest in respect of appeals conceded by the Commissioner for Inland Revenue, additional tax and delayed refunds, tax relief allowable to diplomats, arrangements and directions which may be made or given by the Commissioner for Inland Revenue to overcome difficulties, anomalies or incongruities, amendments to the Act when Parliament is or is not in session; to provide for the conclusion of international tax agreements; to provide for exemptions in respect of certain importations of goods; and to effect certain textual alterations; to amend and extend certain special provisions with regard to unbundling transactions; to provide for a once-off exemption from stamp duty in respect of the issue of shares by Rooibos Tea Natural Products Limited, Chicory SA Limited and SA Mohair Brokers Limited, respectively; to provide for an exemption from stamp duty and transfer duty in respect of certain acquisitions of marketable securities or property consequent upon the rationalisation of a group of companies and for the assessment of companies in any such group for income tax purposes in certain circumstances; to provide for the repeal of certain laws of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei, and for the

extension of the application of certain laws in the territories of the said former Republics; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)
(Assented to 16 November 1994.)

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

Repeal of section 11 of Act 32 of 1948

1. Section 11 of the Marketable Securities Tax Act, 1948, is hereby repealed.

5 **Amendment of section 5 of Act 40 of 1949, as amended by section 2 of Act 31 of 1953, section 6 of Act 103 of 1969, section 2 of Act 86 of 1987 and section 3 of Act 136 of 1992**

2. Section 5 of the Transfer Duty Act, 1949, is hereby amended by the addition of the following subsection:

- 10 “(11) Where any person has acquired any property and any consideration
 has in terms of section 6(1)(c) been added to the consideration payable by
 such person in respect of such property, the value of that property shall be
 reduced by an amount equal to the value which constitutes consideration of
 any supply of such property made to the person acquiring that property, if
 15 in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991)—
 (a) value-added tax in respect of such supply has been paid or will be
 accounted for; or
 (b) such supply is subject to value-added tax at the rate of zero per cent.”.

20 **Amendment of section 4 of Act 45 of 1955, as amended by section 2 of Act 59 of 1957, section 3 of Act 65 of 1960, section 9 of Act 71 of 1961, section 9 of Act 77 of 1964, section 3 of Act 81 of 1965, section 2 of Act 94 of 1967, section 5 of Act 92 of 1971, section 2 of Act 70 of 1975, section 1 of Act 104 of 1976, section 4 of Act 102 of 1979, section 11 of Act 106 of 1980, section 3 of Act 99 of 1981, section 5 of Act 81 of 1985, section 6 of Act 86 of 1987, section 10 of Act 87 of 1988 and**
 25 **section 8 of Act 97 of 1993**

3.(1) Section 4 of the Estate Duty Act, 1955, is hereby amended—

- (a) by the addition of the word “or” at the end of subparagraph (iv) of
 paragraph (h); and
 (b) by the addition to paragraph (h) of the following subparagraph:
 30 “(v) any fund which has been approved by the Commissioner in terms
 of section 10(1)(cL) of the said Act;”.

(2) Subsection (1) shall be deemed to have come into operation on 20 July 1993 and shall apply in respect of the estate of any person who died or dies on or after that date.

35 **Amendment of section 1 of Act 77 of 1968, as amended by section 16 of Act 103 of 1969, section 5 of Act 66 of 1973, section 7 of Act 88 of 1974, section 19 of Act 106 of 1980, section 3 of Act 118 of 1984, section 17 of Act 87 of 1988, section 36 of Act 9 of 1989, section 3 of Act 69 of 1989 and section 5 of Act 136 of 1991**

4. Section 1 of the Stamp Duties Act, 1968, is hereby amended by the insertion
 40 before the definition of “instrument” of the following definition:

“instalment credit agreement” means any agreement entered into whereby any goods consisting of corporeal movable goods or of any machinery or plant, whether movable or immovable—

- (a) are supplied under a sale under which—
- 5 (i) the goods are sold by the seller to the purchaser against payment by the purchaser to the seller of a stated or determinable sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future; and
 - 10 (ii) such sum of money includes finance charges stipulated in the agreement of sale; and
 - (iii) the aggregate of the amounts payable by the purchaser to the seller under such agreement exceeds the cash value of the supply; and
 - 15 (iv) (aa) the purchaser does not become the owner of those goods merely by virtue of the delivery to or the use, possession or enjoyment by him thereof; or
(bb) the seller is entitled to the return of those goods if the purchaser fails to comply with any term of that agreement; or
- (b) are supplied under a lease under which—
- 20 (i) the rent consists of a stated or determinable sum of money payable at a stated or determinable future date or periodically in whole or in part in instalments over a period in the future; and
 - (ii) such sum of money includes finance charges stipulated in the lease; and
 - 25 (iii) the aggregate of the amounts payable under such lease by the lessee to the lessor for the period of such lease (disregarding the right of any party thereto to terminate the lease before the end of such period) and any residual value of the leased goods on termination of the lease, as stipulated in the lease, exceeds the cash value of the supply; and
 - 30 (iv) the lessee is entitled to the possession, use or enjoyment of those goods for a period of at least 12 months; and
 - 35 (v) the lessee accepts the full risk of destruction or loss of, or other disadvantage to, those goods and assumes all obligations of whatever nature arising in connection with the insurance, maintenance and repair of those goods while the agreement remains in force.”.

Amendment of section 9 of Act 77 of 1968, as amended by section 21 of Act 87 of 1988

- 40 5. Section 9 of the Stamp Duties Act, 1968, is hereby amended by the substitution in the proviso to paragraph (a) of subsection (1) for the expression “R2 000” of the expression “R4 000”.

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

- 45 6. (1) Section 22 of the Stamp Duties Act, 1968, is hereby amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:
- 50 “(a) Any instrument whereby a lease (including any lease or agreement of lease chargeable with stamp duty under any previous Act of Parliament or under any law which was in force in the territories of the former Republics of Transkei, Bophuthatswana, Venda or Ciskei immediately prior to the date of the repeal thereof under the Taxation Laws Amendment Act, 1994) is continued, renewed or extended beyond the period for which

such lease (or any previous continuance, renewal or extension thereof) was required to be stamped, shall be chargeable with the duty payable in respect of a lease for a period equal to the entire period of the aforesaid lease (including any periods for which it has been continued, renewed or extended), less the sum of the amounts of stamp duty previously payable in respect of such lease and any earlier continuations, renewals or extensions thereof, whether under this Act or any previous Act of Parliament or any law which was in force in the territories of the former Republics of Transkei, Bophuthatswana, Venda or Ciskei immediately prior to the date of the repeal thereof under the Taxation Laws Amendment Act, 1994.”

(2) Subsection (1) shall come into operation on the date of the repeal of the relevant laws of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei as contemplated in section 41(1) of this Act.

Amendment of Item 13A of Schedule 1 to Act 77 of 1968, as substituted by section 8 of Act 136 of 1991

7. Item 13A of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution for the words following upon the tariffs of the following words:

“Notwithstanding anything to the contrary in this Act contained, an instrument which is signed by a person in connection with the sale, disposal or lease to him of any goods, wares or merchandise (other than livestock or agricultural produce) and which, if signed by the other party to the transaction, would be an instalment credit agreement in respect of such goods, wares or merchandise, shall for the purposes of this Item be regarded as an instalment credit agreement executed on the date on which it was signed by such person.

[For the purposes of this item—

‘instalment credit agreement’ means any instalment credit agreement as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).]”

Amendment of Item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 of 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993 and section 17 of Act 140 of 1993

8. Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the insertion under the heading “*Exemptions from the duty under paragraph (1) or (2):*” after subparagraph (d) of the following subparagraph:

“(e) The original issue of any share in a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), which confers a right to or an interest in the use of immovable property, where such issue of such share constitutes a supply in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and in terms of that Act value-added tax has been or will be paid by such company in respect of such supply, or such supply is in terms of that Act subject to value-added tax at the rate of zero per cent.”

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992 and section 22 of Act 97 of 1993

9.(1) Section 1 of the Value-Added Tax Act, 1991 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution in the definition of “enterprise” in subparagraph (iv) of paragraph (c) for the words following upon item (cc) of the following words:
 “and, in the case of a regional services council, **[or]** a joint services board or a transitional metropolitan council, any other activities of that council or board **[which] to the extent that they** are financed by levies referred to in section 8(6)(b);”;
- (b) by the substitution in the definition of “enterprise” for paragraph (ii) of the proviso of the following paragraph:
 “(ii) the supply outside the Republic of goods or services by any concern from any branch or main business thereof where
[(aa)] such branch or main business is permanently located at premises outside the Republic, if—
[(A)](aa) the branch or main business can be separately identified; and
[(B)](bb) an independent system of accounting is maintained by the concern in respect of the branch or main business **[or]**
(bb) the person carrying on such concern from such branch or main business is registered as a vendor under a law imposing a value-added tax or similar tax in a specified country],
 shall be deemed not to be effected in the course or furtherance of any enterprise or activity carried on by such concern;”;
- (c) by the addition in the definition of “enterprise” of the following paragraph to the proviso:
 “(vii) the activities of the Multilateral Motor Vehicle Accidents Fund contemplated in the Multilateral Motor Vehicle Accidents Fund Act, 1989 (Act No. 93 of 1989), shall be deemed not to be the carrying on of an enterprise;”;
- (d) by the substitution for the definition of “export country” of the following definition:
 “‘export country’ means any country other than the Republic **[and any specified country]** and includes any place which is not situated in the Republic **[or in any specified country]**: Provided that the President may by notice in the Gazette determine that a specific country or territory shall from a date and to the extent indicated in the notice, be deemed not to be an export country;”;
- (e) by the substitution in the definition of “exported” for paragraph (d) of the following paragraph:
 “(d) removed from the Republic by the recipient for conveyance to an export country **[if—**
 (i) the recipient is ordinarily resident or carries on business in such country except where such goods are removed as contemplated in subparagraph (ii) of this paragraph;
 (ii) the removal of such goods from the Republic is effected in a manner prescribed in terms of an export incentive scheme approved by the Minister;
 (iii) the vendor has been authorized by the Commissioner to participate in such scheme;
 (iv) the goods are of a kind to which such scheme applies; and
 (v) any conditions prescribed under such scheme have been complied with] in accordance with the provisions of an export incentive scheme approved by the Minister;”;

- (f) by the substitution for the definition of "foreign-going aircraft" of the following definition:
" 'foreign-going aircraft' means any aircraft engaged in the transportation for reward of passengers or goods wholly or mainly on flights between airports in the Republic [or a specified country] and airports in export countries or between airports in export countries;";
- (g) by the substitution for the definition of "foreign-going ship" of the following definition:
" 'foreign-going ship' means—
- (a) any ship or other vessel engaged in the transportation for reward of passengers or goods wholly or mainly on voyages between ports in the Republic [or a specified country] and ports in export countries or between ports in export countries; or
- (b) any ship or other vessel registered in an export country where such ship or vessel is utilized for the purposes of a commercial, fishing or other concern conducted outside the Republic [and any specified country] by a person who is not a vendor and is not a resident of the Republic [or any specified country];";
- (h) by the substitution in the definition of "input tax" for paragraph (b) of the following paragraph:
"(b) an amount equal to the tax fraction (being the tax fraction applicable at the time of payment) of [any amount paid, which payment reduces or discharges any obligation (whether an existing obligation or an obligation which will arise in the future) in respect of the purchase price, in respect] the lesser of any consideration in money given by the vendor for or the open market value of the supply (not being a taxable supply) to him by way of a sale on or after the commencement date by a resident of the Republic [or a specified country] of any second-hand goods situated in the Republic [or a specified country]: Provided that where [in relation to such supply, the parties are connected persons, such consideration in money shall be deemed to be the amount paid for the goods to the extent that it does not exceed the open market value of such goods] such second-hand goods consist of—
- (i) fixed property in respect of the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable or would have been payable had an exemption from transfer duty (whether in terms of the Transfer Duty Act or any other Act of Parliament) not been applicable; or
- (ii) a share in a share block company in respect of the original issue or registration of transfer of which stamp duty is, in terms of the Stamp Duties Act, payable or would have been payable had an exemption from stamp duty (whether in terms of the Stamp Duties Act or any other Act of Parliament) not been applicable, such amount shall not exceed the amount of transfer duty or stamp duty, as the case may be, which is or would have been payable in respect of such acquisition, original issue or registration of transfer, as the case may be; and";
- (i) by the substitution in the definition of "prescribed rate" for paragraph (a) of the following paragraph:
"(a) in the case of interest payable in terms of the provisions of section 39(1)(a)(ii), (2)(b), (3)(b), (4)(b), (5)(b), [and] (6)(b) and (6A), a rate of 1,2 per cent for each month or part of a month contemplated in the said provisions; or";
- (j) by the substitution for the definition of "second-hand goods" of the following definition:
" 'second-hand goods' means—
- (a) goods which were previously owned and used; or
- (b) in respect of the transfer of a unit in the circumstances referred to in Item 8 of Schedule 1 to the Share Blocks Control Act, such unit, but does not include [excluding]—
- (i) [livestock] animals; and
- (ii) gold coins contemplated in section 11(1)(k);";

- (k) by the substitution for the definition of "share block company" of the following definition:
 " 'share block company' means a share block company as defined in section 1 of the Share Blocks Control Act [1980 (Act No. 59 of 1980)];";
- 5 (l) by the insertion after the definition of "share block company" of the following definition:
 " 'Share Blocks Control Act' means the Share Blocks Control Act, 1980 (Act No. 59 of 1980);";
- (m) by the deletion of the definition of "specified country";
- 10 (n) by the insertion before the definition of "supplier" of the following definition:
 " 'Stamp Duties Act' means the Stamp Duties Act, 1968 (Act No. 77 of 1968);";
- (o) by the insertion after the definition of "this Act" of the following definition:
 15 " 'Transfer Duty Act' means the Transfer Duty Act, 1949 (Act No. 40 of 1949);"; and
- (p) by the insertion after the definition of "transfer payment" of the following definition:
 20 " 'transitional metropolitan council' means a transitional metropolitan council as defined in section 1 of the Local Government Transition Act, 1993 (Act No. 209 of 1993);".
- (2) Subsection (1)(c) shall be deemed to have come into operation on 30 September 1991.

25 **Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, Government Notice 2695 of 8 November 1991 and section 13 of Act 136 of 1992**

10. (1) Section 2 of the principal Act is hereby amended—
- (a) by the deletion in subsection (1) of paragraph (m);
- 30 (b) by the substitution in subsection (1) for paragraph (n) of the following paragraph:
 "(n) agreeing to do [or arranging] any of the activities specified in paragraphs (a) to [(m)] (l): Provided that the service of providing advice directly in connection with any of the activities specified in paragraphs (a) to [(m)] (l), for which a separate fee is charged, shall not be deemed to be a financial service.";
- 35 (c) by the substitution in subsection (2) for the definition of "cheque" of the following definition:
 " 'cheque' means a cheque as defined in section 1 of the Stamp Duties Act, [1968 (Act No. 77 of 1968)] a postal order, a money order, a traveller's cheque, or any order or authorization (whether in writing, by electronic means, or otherwise) to a financial institution to credit or debit any account;";
- 40 (d) by the substitution in subsection (2) for the definition of "superannuation scheme" of the following definition:
 45 " 'superannuation scheme' means a scheme whereby provision is made for the payment or granting of benefits by a benefit fund, pension fund, provident fund or retirement annuity fund as defined in section 1 of the Income Tax Act."; and
- (e) by the substitution in subsection (4) for paragraph (c) of the following paragraph:
 50 " (c) the transfer of any interest in or right to be paid money that is, or is to be, owing by a share block company under its loan obligation, as defined in section 1 of the Share Blocks Control Act, [1980 (Act No. 59 of 1980)] to any person who is or will be a shareholder of such share block company.";
- 55 (2) Subsection (1)(a) and (b) shall come into operation on 1 April 1995.

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992 and section 24 of Act 97 of 1993

- 60 11. Section 8 of the principal Act is hereby amended—

- (a) by the substitution in subsection (6) for paragraph (b) of the following paragraph:
- 5 “(b) a regional services council, **[or]** joint services board or transitional metropolitan council shall be deemed to supply services to a person in respect of the other activities of that council or board referred to in paragraph (c) of the said definition where any amount of any levy is payable by that person to such council or board in terms of the Regional Services Councils Act, 1985 (Act No. 109 of 1985), or the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), as the case may be, or where any amount of such levy may in terms of the Local Government Transition Act, 1993, be levied and claimed by a transitional metropolitan council.”;
- 10
- (b) by the addition to subsection (8) of the following further proviso:
- 15 “Provided further that this subsection shall not apply in respect of any indemnity payment received by a vendor under a contract of insurance to the extent that such payment relates to the total reinstatement of goods, stolen or damaged beyond economic repair, in respect of the acquisition of which by the vendor a deduction of input tax under section 16(3) was denied in terms of section 17(2) or would have been denied if these sections had been applicable prior to the commencement date.”;
- 20
- (c) by the substitution in subsection (17) for paragraph (a) of the following paragraph:
- 25 “(a) For the purposes of this Act, where, together with the supply of a share referred to in the definition of ‘fixed property’ in section 1, any amount of the loan obligation, as defined in section 1 of the Share Blocks Control Act, **[1980 (Act No. 59 of 1980)]** of the share block company is allocated as contemplated in section 14 of that Act, or any amount of the loan obligation thus allocated is delegated, or any interest in or right to be paid money that is, or is to be, owing by the share block company under its loan obligation is transferred to any person who is or will be a shareholder of such share block company, such allocation, delegation or transfer, as the case may be, shall be deemed to form part of the supply of such share.”;
- 30
- (d) by the substitution in subsection (18) for the words preceding paragraph (a) of the following words:
- 35 “For the purposes of the definition of ‘input tax’ in section 1 and section 18(4) and (5), as applicable to any share block company, any taxable supply of a share referred to in subsection (17) made on or after a date fixed by the Minister by notice in the Gazette by a share block developer where such share is a share in a share block scheme in respect of which that developer is a share block developer, as contemplated in section 1 of the Share Blocks Control Act, **[1980]** shall be deemed to have been made by the share block company in relation to which that developer is a share block developer, to the extent that—”; and
- 40
- (e) by the addition of the following subsection:
- 45 “(19) For the purposes of this Act, where any supply of—
- 50 (a) goods consisting of a unit is made by a share block company; or
- (b) services comprising the waiving of rights against a share block company is made to that share block company,
- 55 in the circumstances referred to in Item 8 of Schedule 1 to the Share Blocks Control Act, such supply shall be deemed to have been made otherwise than in the course or furtherance of an enterprise.”.

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 16 of Act 136 of 1992 and section 26 of Act 97 of 1993

12. Section 10 of the principal Act is hereby amended—

- 5 (a) by the substitution for subsection (20) of the following subsection:
 “(20) Where any token, voucher or stamp is issued by any vendor for no consideration and the holder thereof is entitled on surrender thereof to **[a] another person, being the supplier of goods or services, to a discount on the price of goods or services** supplied to the holder, the **[value of] consideration in money for the supply of such goods or services shall be deemed to ~~exclude~~ include the monetary value stated on such token, voucher or stamp: Provided that such monetary value shall be deemed to include tax.**”; and
- 10
- 15 (b) by the substitution for subsection (21A) of the following subsection:
 “(21A) Where any supply of medical or dental services or other goods or services is made as contemplated in section 17(2)(d) by a **[fund] scheme** referred to in that section, the value of such supply shall be deemed to be nil.”

20 **Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992 and section 27 of Act 97 of 1993**

13. Section 11 of the principal Act is hereby amended—

- 25 (a) by the substitution in subsection (1) for paragraph (e) of the following paragraph:
 “(e) the supply is to a registered vendor of an enterprise or of a part of an enterprise which is capable of separate operation, where **the supplier and the recipient have agreed in writing that such enterprise or part, as the case may be, is disposed of as a going concern: Provided that—**
- 30 (i) such enterprise or part, as the case may be, shall not be disposed of as a going concern unless—
 (aa) such supplier and such recipient have, at the time of the conclusion of the agreement for the disposal of the enterprise or part, as the case may be, agreed in writing that such enterprise or part, as the case may be, will be an income-earning activity on the date of transfer thereof; and
 (bb) the assets which are necessary for carrying on such enterprise or part, as the case may be, are disposed of by such supplier to such recipient;
- 35 (ii) where the enterprise or part, as the case may be, is disposed of as a going concern has been carried on in, on or in relation to goods or services applied mainly for purposes of such enterprise or part, as the case may be, and partly for other purposes, such goods or services shall, where disposed of to such recipient, for the purposes of this paragraph and section 18A be deemed to form part of such enterprise or part, as the case may be, notwithstanding the provisions of paragraph (v) of the proviso to the definition of ‘enterprise’ in section 1; or”;
- 40
- 45
- 50 (b) by the substitution in subsection (1) for paragraph (f) of the following paragraph:
 “(f) the supply is to the South African Reserve Bank, the South African Mint Company (Proprietary) Limited or any **[deposit-taking institution] bank** registered under the **[Deposit-taking Institutions] Banks Act, 1990 (Act No. 94 of 1990)**, of gold in the
- 55

- form of bars, blank coins, ingots, buttons, wire, plate or granules or in solution, which has not undergone any manufacturing process other than the refining thereof or the manufacture or production of such bars, blank coins, ingots, buttons, wire, plate, granules or solution; or”;
- 5 (c) by the substitution in subsection (2) for subparagraphs (i), (ii) and (iii) of paragraph (a) of the following paragraphs, respectively:
- “(i) from a place outside the Republic **[and specified countries]** to another place outside the Republic **[and such countries]**; or
- 10 (ii) from a place in the Republic **[or a specified country]** to a place in an export country; or
- (iii) from a place in an export country to a place in the Republic **[or a specified country]**; or”;
- (d) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
- 15 “(b) the services comprise the transport of passengers from a place in the Republic **[or a specified country]** to another place in the Republic **[or a specified country]** to the extent that that transport is by aircraft and constitutes ‘international carriage’ as defined in Article 1 of the Convention set out in the Schedule to the Carriage by Air Act, 1946 (Act No. 17 of 1946); or”;
- (e) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
- 25 “(c) the services (including any ancillary transport services) comprise the transport of goods from a place in the Republic **[or a specified country]** to another place in the Republic **[or a specified country]** to the extent that those services are supplied by the same supplier as part of the supply of services to which paragraph (a) applies; or”;
- 30 (f) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
- “(e) the services comprise the transport of goods or any ancillary transport services supplied directly in connection with the exportation from or the importation into the Republic **[or a specified country]** of goods or the movement of goods through the Republic **[or any specified country]** from one export country to another export country, where such services are supplied directly to a person who is not a resident of the Republic **[is not resident nor carrying on business in a specified country]** and is not a vendor, otherwise than through an agent or other person; or”;
- 35 (g) by the substitution in subsection (2) for subparagraph (i) of paragraph (h) of the following subparagraph:
- 45 “(i) the handling, pilotage, salvage or towage of any foreign-going ship or foreign-going aircraft while situated in the Republic **[or a specified country]**; or”;
- (h) by the substitution in subsection (2) for the words in paragraph (h) following upon subparagraph (iii) of the following words:
- 50 “where the services are supplied directly to a person who is not a resident of the Republic **[is not resident nor carrying on business in a specified country]** and is not a vendor, otherwise than through an agent or other person; or”;
- (i) by the substitution in subsection (2) for subparagraph (iii) of paragraph (i) and the words following upon that subparagraph of the following subparagraph and words, respectively:
- 55 “(iii) the transport of goods (including ancillary transport services) within the Republic **[and the specified countries]**, for a person who is not a resident of the Republic **[is not resident nor carrying on business in a specified country]** and is not a vendor; or”;
- 60 (j) by the substitution in subsection (2) for paragraph (j) of the following paragraph:

“(j) the services comprise the repair, maintenance, cleaning or reconditioning of a railway train operated by a person who is not a resident of the Republic **[is not resident nor carrying on business in a specified country]** and is not a vendor; or”;

5 (k) by the substitution in subsection (2) for paragraph (k) of the following paragraph:

“(k) the services are physically rendered elsewhere than in the Republic **[or a specified country]**; or”;

10 (l) by the substitution in subsection (2) for paragraph (l) of the following paragraph:

“(l) the services are supplied for and to a person who is not a resident of the Republic **[or a specified country]** and who is outside the Republic **[and the specified countries]** at the time the services are rendered, not being services which are supplied directly in connection with—

15 (i) land or any improvement thereto situated inside the Republic **[or a specified country]**; or

(ii) movable property situated inside the Republic **[or a specified country]** at the time the services are rendered, except movable property which—

20 (aa) is exported to the said person subsequent to the supply of such services; or

25 (bb) forms part of a supply by the said person to a registered vendor and such services are supplied to the said person for purposes of such supply to the registered vendor,

and not being services which are the acceptance by any person of an obligation to refrain from carrying on any enterprise, to the extent that the carrying on of that enterprise would have occurred within the Republic **[or a specified country]**; or”;

30 (m) by the substitution in subsection (2) for subparagraph (i) of paragraph (m) of the following subparagraph:

35 “(i) the filing, prosecution, granting, maintenance, transfer, assignment, licensing or enforcement, including the incidental supply by the supplier of such services of any other services which are necessary for the supply of such services, of intellectual property rights, including patents, designs, trade marks, copyrights, know-how, confidential information, trade secrets or similar rights; or”;

40 (n) by the substitution in subsection (2) for the words in paragraph (m) following upon subparagraph (ii) of the following words:

“where and to the extent that those rights are for use outside the Republic **[and a specified country]**; or”.

45 Amendment of section 12 of Act 89 of 1991, as amended by section 28 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 18 of Act 136 of 1992 and section 28 of Act 97 of 1993

14. Section 12 of the principal Act is hereby amended—

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

50 “(a) The supply of any financial services, including the incidental supply of any other goods or services supplied by the supplier of those financial services where the supply of such other goods or services is necessary for the supply of those financial services but excluding a supply of financial services or such incidental supply of other goods or services which, but for this paragraph, would be charged with tax at the rate of zero per cent under section **[11(2) 11]**”; and

(b) by the substitution in paragraph (h) for item (bb) of subparagraph (i) of the following item:

5 “(bb) in any technikon established or deemed to have been established or declared to be such under **[the Advanced Technical Education Act, 1967 (Act No. 40 of 1967), or]** any **[other]** Act of Parliament; or”.

Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992 and section 29 of Act 97 of 1993

15. Section 13 of the principal Act is hereby amended—

10 (a) by the substitution in subsection (1) of the Afrikaans text for the third proviso of the following proviso:

15 “Met dien verstande voorts dat goed wat van Botswana, Lesotho, Swaziland en Namibië ingevoer word, by binnekoms in die Republiek ooreenkomstig die prosedures en op die plek wat **[genoemde]** die Kommissaris van Doeane en Aksyns by reël voorskryf, verklaar word en belasting aan ’n beamppte aangewys deur **[die]** genoemde Kommissaris **[van Doeane en Aksyns]** betaal word.”; and

(b) by the deletion in subsection (3) of paragraph (ii) of the proviso.

20. **Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992 and section 30 of Act 97 of 1993**

16. Section 16 of the principal Act is hereby amended—

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

25 “(ii) in respect of supplies of second-hand goods to which paragraph (b) of the definition of ‘input tax’ in section 1 applies, to the extent that payment of consideration, which reduces or discharges any obligation (whether an existing obligation or an obligation which will arise in the future) in respect of or consequent upon, whether directly or indirectly, the purchase price in respect of those supplies, has been made during that tax period: Provided that where such second-hand goods consist of—

35 (aa) fixed property in respect of the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable; or

40 (bb) a share in a share block company in respect of the original issue or registration of transfer of which stamp duty is, in terms of the Stamp Duties Act, payable, such input tax shall be deducted only after such transfer duty or stamp duty, as the case may be, has been paid;”;

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

45 “(i) in respect of supplies of goods and services made to the vendor in respect of which the provisions of section 9(1), 9(3)(a), 9(3)(b), 9(3)(d) or 9(4) apply, to the extent that payments of consideration, which reduce or discharge any obligation (whether an existing obligation or an obligation which will arise in the future) in respect of or consequent upon, whether directly or indirectly, the purchase price in respect of such supplies, have been made during the tax period: Provided that the amount referred to in paragraph (b) of the definition of ‘input tax’ in section 1 in respect of a supply of second-hand goods which consist of—

55 (aa) fixed property in respect of the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable; or

- (bb) a share in a share block company in respect of the original issue or registration of transfer of which stamp duty is, in terms of the Stamp Duties Act, payable, shall be deducted only after such transfer duty or stamp duty, as the case may be, has been paid;"
- 5 (c) by the substitution in subsection (3) for subparagraph (iv) of paragraph (c) of the following subparagraph:
- 10 "(iv) shall not apply where that payment results from a supply of goods or services to that other person where those goods are situated outside the Republic or those services are physically performed elsewhere than in the Republic [or a specified country] at the time of that supply;"
- (d) by the deletion in subsection (3) at the end of paragraph (g) of the word "and";
- 15 (e) by the substitution in subsection (3) for the words in paragraph (h) preceding the formula of the following words:
- 20 "in the case of a vendor who has supplied goods or services [or who is deemed to have supplied goods or services] during that tax period [in terms of section 18(1)], otherwise than in terms of section 18(2), an amount determined in accordance with the formula";
- (f) by the addition in subsection (3) at the end of paragraph (h) of the word "and";
- 25 (g) by the insertion in subsection (3) after paragraph (h) of the following paragraph:
- 30 "(i) an amount equal to the tax fraction of any payment made by the vendor during the tax period in respect of the redemption with him, or his agent, of the monetary value of any token, voucher or stamp contemplated in section 10(20), to a supplier of goods or services who has granted a discount on the surrender to him of such token, voucher or stamp by a recipient of a supply of goods or services;" and
- (h) by the substitution in subsection (4) for subparagraph (i) of paragraph (b) of the following subparagraph:
- 35 "(i) to the extent that payment of consideration, which reduces or discharges any obligation (whether an existing obligation or an obligation which will arise in the future) in respect of or consequent upon, whether directly or indirectly, the purchase price, has been received by the vendor during the tax period
- 40 in respect of a supply of goods or services in respect of which the provisions of section 9(1), 9(3)(a), 9(3)(b), 9(3)(d), 9(4), 21(2)(a) or 21(6) apply;"

45 Amendment of section 17 of Act 89 of 1991, as amended by section 31 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 22 of Act 136 of 1992 and section 31 of Act 97 of 1993

17. Section 17 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph:

- 50 "(d) in respect of any goods or services acquired by a [fund] super-annuation scheme referred to in [paragraph (c) of the definition of 'benefit fund' in section 1 of the Income Tax Act] section 2, for the purposes of the supply by such [fund] scheme of any medical or dental services or services directly connected with such medical or dental services or of any goods necessary for or subordinate or incidental to the supply of any such services."

55 Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 23 of Act 136 of 1992 and section 32 of Act 97 of 1993

18. Section 18 of the principal Act is hereby amended—

- 60 (a) by the substitution in subsection (4) for subparagraphs (i), (ii) and (iii) of paragraph (b) of the following subparagraphs, respectively:

- “(i) goods or services have been supplied to or imported by a person on or after the commencement date and tax has been charged in respect of such supply or importation; or
- 5 (ii) goods have been manufactured, assembled, constructed or produced by him on or after the commencement date and tax has been charged in respect of the supply of goods or services acquired by him for the purpose of such manufacturing, assembling, construction or production; or
- 10 (iii) goods or services are deemed by subsection (1) or section 8(2) to have been supplied [to] by him,”;
- (b) by the substitution in subsection (4) at the end of paragraph (b) for the word “and” of the word “or”;
- (c) by the insertion in subsection (4) after paragraph (b) of the following paragraph:
- 15 “(c) second-hand goods situated in the Republic have been supplied (otherwise than under a taxable supply) to a person under a sale on or after the commencement date by a resident of the Republic and no deduction has been made in respect of section 16(3) in respect of such second-hand goods; and”;
- 20 (d) by the substitution in subsection (4) for the formula “ $A \times B \times C$ ” of the formula “ $A \times B \times C \times D$ ”;
- (e) by the deletion in subsection (4) at the end of subparagraph (ii) of the paragraph defining the meaning of the symbol “B” of the word “and”;
- 25 (f) by the addition in subsection (4) at the end of the paragraph defining the meaning of the symbol “C” of the word “and”;
- (g) by the addition to subsection (4) of the following words:
- “ ‘D’, where paragraph (c) applies, represents the ratio that the amount paid, which payment reduces or discharges any obligation (whether an existing obligation or an obligation which will arise in the future) in respect of or consequent upon, whether directly or indirectly, the consideration in money for the supply of second-hand goods, bears to the total consideration in money, expressed as a percentage:
- 30 Provided that—
- 35 (i) paragraph (b) of this subsection shall not apply where a vendor has, only as a result of not complying with the provisions of section 16(2), not been entitled to make a deduction of input tax in terms of section 16(3);
- 40 (ii) where the second-hand goods referred to in paragraph (c) of this subsection consist of—
- (aa) fixed property in respect of the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable or would have been payable had an exemption from transfer duty (whether in terms of the Transfer Duty Act or any other Act of Parliament) not been applicable; or
- 45 (bb) a share in a share block company in respect of the original issue or registration of transfer of which stamp duty is, in terms of the Stamp Duties Act, payable or would have been payable had an exemption from stamp duty (whether in terms of the Stamp Duties Act or any other Act of Parliament) not been applicable, the amount determined in terms of this subsection shall not exceed the amount of transfer duty or stamp duty, as the case may be, which is or would have been payable in respect of such acquisition, original issue or registration of transfer, as the case may be;
- 50 (iii) where the second-hand goods referred to in paragraph (c) of this subsection consist of—
- 60 (aa) fixed property in respect of the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable; or

- (bb) a share in a share block company in respect of the original issue or registration of transfer of which stamp duty is, in terms of the Stamp Duties Act, payable, the deduction in terms of section 16(3) shall be made only after such transfer duty or stamp duty, as the case may be, has been paid.”; and
- (h) by the addition of the following subsection:
- “(8) Where a deduction of an amount contemplated in paragraph (b) of the definition of ‘input tax’ in section 1 has been made by any vendor in respect of the sale to him of any second-hand goods and subsequently—
- (a) that sale is cancelled; or
- (b) the nature of that sale is fundamentally varied or altered; or
- (c) the previously agreed consideration for that sale is reduced; or
- (d) the second-hand goods or part of the second-hand goods sold are returned to the supplier,
- and, as a result of the occurrence of one or more of the abovementioned events, the input tax actually deducted in relation to such sale exceeds the input tax properly deductible by the vendor, either the amount of that excess shall be deemed to be tax charged in relation to a taxable supply made by that vendor in the tax period during which the said event has occurred, at the rate of tax which applied when the said deduction was made, or the amount of input tax deducted in terms of section 16(3) in the said tax period shall be reduced by the amount of the said excess.”.

Amendment of section 18A of Act 89 of 1991, as inserted by section 24 of Act 136 of 1992

19. Section 18A of the principal Act is hereby amended by the addition to subsection (1) of the following proviso:
- “Provided that where the intended use of such enterprise, part, goods or services, as the case may be, in the course of making taxable supplies is equal to not less than 90 per cent of the total intended use of such enterprise, part, goods or services, as the case may be, the enterprise, part, goods or services concerned may for the purposes of this Act be regarded as having been acquired wholly for the purpose of consumption, use or supply in the course of making taxable supplies.”.

Amendment of section 23 of Act 89 of 1991

20. Section 23 of the principal Act is hereby amended by the substitution in subsection (7) for paragraph (c) of the following paragraph:
- “(c) has not opened a banking account with any [deposit-taking institution] bank, mutual [building society] bank or other similar institution for the purposes of any enterprise carried on by him; or”.

Amendment of section 24 of Act 89 of 1991

21. Section 24 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:
- “(5) Where [any person has applied for registration under section 23(3)(b) and the Commissioner has registered that person in terms of section 23(4), the Commissioner may cancel that person’s registration if that person does not carry on any enterprise on or before the date specified in that person’s application] the Commissioner is satisfied that a vendor is not carrying on any enterprise the Commissioner may cancel such vendor’s registration with

effect from the last day of the tax period during which the Commissioner is so satisfied, or from such other date as may be determined by the Commissioner.”.

Amendment of section 36 of Act 89 of 1991, as substituted by section 2 of Act 61 of 1993 and amended by section 18 of Act 140 of 1993

22. Section 36 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

10 “(1) The obligation to pay and the right to receive and recover any tax chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law, 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 (but subject to the provisions of section 45A) and calculated from the date proved to the satisfaction of the Commissioner to be the date on which such excess was received and amounts short-paid being recoverable with penalty and interest calculated as provided in section 39(1).”.

20 **Amendment of section 39 of Act 89 of 1991, as amended by section 37 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 30 of Act 136 of 1992 and section 3 of Act 61 of 1993**

23. Section 39 of the principal Act is hereby amended—

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

25 “(6A) If any person who is liable for the payment of additional tax in accordance with the provisions of section 60 fails to pay any amount of such tax on or before the last business day of the month in which the last day of the period allowed for the payment of such tax in terms of that section falls, he shall, in addition to such amount of tax, pay interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month during which the said tax is not paid.”; and

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

35 “(7) Where the Commissioner is satisfied that the failure on the part of any person to make payment of the tax within the period for payment contemplated in subsection (1)(a), (2), (3), ~~or (6)~~ (6A) or on the date referred to in subsection (4) or (5), as the case may be, was not due to an intent to avoid or postpone liability for the payment of the tax, or the Commissioner is partly so satisfied, he may remit in whole or in part any penalty or interest payable in terms of this section.”.

Amendment of section 45 of Act 89 of 1991, as amended by section 33 of Act 136 of 1992 and section 4 of Act 61 of 1993

24. Section 45 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

45 “(1) Where the Commissioner does not within the period of 21 business days after the date on which the vendor’s return in respect of a tax period is received by a Receiver of Revenue who is under the control, direction or supervision of the Commissioner refund any amount refundable in terms of section 44(1), interest shall be paid on such amount at the prescribed rate (but subject to the provisions of section 45A) and calculated for the period commencing at the end of the first-mentioned period to the date of payment of the amount so refundable: Provided that—

- (i) this subsection shall not apply where—
- 5 [(i) *(aa)* such return made by the vendor is incomplete or defective in any material respect; or
- [(ii) *(bb)* the vendor is in default in respect of any of his obligations under this Act to furnish a return for any tax period preceding the said tax period as required by this Act;
- 10 (ii) where the Commissioner is prevented from satisfying himself as to the amount refundable in terms of section 44(1) by reason of not being able to gain access to the books and records of the vendor concerned after having, within a reasonable time, made a request by registered post to the vendor for access to such books and records during the period of 21 business days contemplated in this subsection, the said period of 21 business days shall be suspended from the date of despatch of such request by registered post until
- 15 the date on which such access is granted.”

Amendment of section 54 of Act 89 of 1991, as amended by section 40 of Act 136 of 1991 and section 34 of Act 136 of 1992

20 25. Section 54 of the principal Act is hereby amended by the substitution in subsection (6) for subparagraphs (i) and (ii) of paragraph (b) of the following subparagraphs, respectively:

- “(i) the supply is directly in connection with either the exportation, or the arranging of the exportation, of goods from the Republic to any country or place outside the Republic [(other than a specified country or a place therein)], or the importation, or the arranging of the importation, of goods to the Republic from any country or place outside the Republic, including, in either case, the transportation of those goods within the Republic as part of such exportation or importation, as the case may be; or
- 25 (ii) the supply is of services which comprise the handling, pilotage, salvage or towage of any foreign-going ship or foreign-going aircraft while present in the Republic [or a specified country] or is of services provided in connection with the operation or management of any foreign-going ship or foreign-going aircraft.”
- 30

35 **Amendment of section 68 of Act 89 of 1991, as amended by section 39 of Act 136 of 1992**

 26. Section 68 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

- 40 “(a) by any person enjoying full or limited immunity, rights or privileges under section 3 of the Diplomatic Immunities and Privileges Act, 1989 (Act No. 74 of 1989), or under an agreement or otherwise as contemplated in section 4 of that Act or under the recognized principles of international law [provided similar or equivalent relief is granted in the country by which such person is employed to any representative or employee of the Government of the Republic stationed in such country who enjoys full or limited immunity, rights or privileges in that country]; or
- 45 (b) by any diplomatic or consular mission of a foreign country established in the Republic, relating to transactions concluded for the official purposes of such mission [provided similar or equivalent relief is granted to any diplomatic or consular mission of the Republic established in the foreign country concerned].”
- 50

Repeal of section 69 of Act 89 of 1991

55 27. Section 69 of the principal Act is hereby repealed.

Substitution of section 72 of Act 89 of 1991

28. The following section is hereby substituted for section 72 of the principal Act:

5 **“Arrangements and directions to overcome difficulties, anomalies or incongruities**

72. If in any case the Commissioner is satisfied that in consequence of the manner in which any vendor or class of vendors conducts his or their business, trade or occupation, difficulties, **[or] anomalies or incongruities** have arisen or may arise in regard to the application of any of the provisions of this Act, the Commissioner may make an arrangement or give a direction as to—

10 (a) the manner in which such provisions shall be applied; [in the case of such vendor or class of vendors and the Commissioner may make such arrangements with such vendor or class of vendors as to] or

15 (b) the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided in this Act, in the case of such vendor or class of vendors or any person transacting with such vendor or class of vendors as [appear] appears to overcome such difficulties, [or] anomalies or incongruities: Provided that such direction or arrangement shall not have the effect of substantially reducing or increasing the ultimate liability for tax levied under this Act.”.

Substitution of section 75 of Act 89 of 1991

29. The following section is hereby substituted for section 75 of the principal Act:

“Tax agreements

75. (1) The President may enter into an agreement with the government of any other country or territory whereby arrangements are made with that government with a view to—

30 (a) the prevention, mitigation or discontinuance of the levying, under the laws of the Republic and such other country or territory, of value-added tax or any similar tax where the supply of goods or services is subject to such tax in either the Republic or such other country or territory and such supply or the importation of such goods or services is also subject to such tax in the other country or territory which is a party to the agreement;

35 (b) the refunding of value-added tax or any similar tax, or any portion of such value-added tax or similar tax, levied under the laws of the Republic and such other country or territory, in respect of the supply of goods or services in the Republic or such other country or territory, as the case may be, where such goods or services are imported into such other country or territory or the Republic, as the case may be;

40 (c) regulating or co-ordinating any matter with regard to the levying and collection, under the laws of the Republic and such other country or territory, of value-added tax or any similar tax; or

45 (d) the rendering of reciprocal assistance in the administration of and the collection of value-added tax or any similar tax under the laws of the Republic and such other country or territory, or in respect of the execution of the arrangements provided for in any agreement entered into in terms of this section.

5 (2) As soon as may be possible after the conclusion of any such agreement the arrangements thereby made shall be notified by the President by notice in the *Gazette*, whereupon until such notice is withdrawn by the President, the arrangements notified therein shall, in relation to value-added tax in the Republic, have effect as if enacted by this Act.

10 (3) The President may at any time withdraw any such notice by notice in the *Gazette*, and the arrangements notified in such earlier notice shall cease to have effect upon a date fixed in such latter notice, but the withdrawal of any notice shall not affect the validity of anything previously done thereunder.

15 (4) As soon as may be possible after the publication in the *Gazette* of any notice under this section, copies thereof shall be tabled in Parliament.

(5) The duty imposed by this Act to preserve secrecy with regard to tax shall not prevent the disclosure to any authorized officer of the country or territory mentioned in any notice issued in terms of subsection (2) of any information necessary for the proper execution of the agreement notified in such notice."

20 Repeal of section 76 of Act 89 of 1991

30. Section 76 of the principal Act is hereby repealed.

Substitution of section 77 of Act 89 of 1991

31. The following section is hereby substituted for section 77 of the principal Act:

25 "Notice of variation of rate of tax

77. (1) The Minister may [during any session of Parliament] by notice in the *Gazette* make known for general information—

30 (a) that in terms of a taxation proposal tabled by him in Parliament [during such session], the rate of tax specified in section 7 is to be increased to a rate set forth in that proposal and in that notice; or

35 (b) that it is proposed [during that session] to decrease the rate of tax so mentioned to a rate set forth in that notice, and the increased or decreased rate of tax so set forth shall, until an Act of Parliament [passed during that session] is promulgated within six calendar months after the publication of the notice in the *Gazette*, by which effect is given to the proposal or other provision is made, apply for the purpose of determining amounts of tax in respect of supplies of goods and services made by [or to] vendors on any date falling on or after the date which the Minister has specified in the said notice for the coming into operation of such increased or decreased rate of tax, as the case may be, or in respect of importations of goods made on such date.

40 (2) When in any legal proceedings the question arises whether the Minister has tabled a taxation proposal referred to in subsection (1), or as to the particulars contained in that proposal, a copy of a document purporting to be printed by order of the Speaker of Parliament and to contain such proposal, shall be accepted as sufficient evidence that such proposal was tabled and of the particulars contained therein."

50

Amendment of Schedule 1 to Act 89 of 1991, as amended by section 48 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 43 of Act 136 of 1992 and section 44 of Act 97 of 1993

32. Schedule 1 to the principal Act is hereby amended—

- 5 (a) by the substitution in paragraph 1 of PART A for the words preceding the expression "405.04" of the following words:
- 10 "1. Goods imported into the Republic which fall under any item or heading [and description] (as contemplated in the Customs and Excise Act) mentioned below, to the extent indicated, regardless of whether or not customs duty is payable or a rebate of customs duty is granted in terms of the Customs and Excise Act:
- Item No. [Heading and] Description";
- 15 (b) by the deletion in paragraph 1 of PART A of Item No. 405.04/63.09;
- (c) by the substitution in paragraph 1 of PART A for Item No. 407.01 of the following Item:
- "407.01 Personal effects and sporting and recreational equipment, new or used:
- 20 [(1)] 00.00/01.01 imported either as accompanied or unaccompanied passengers' baggage by non-residents of the Republic for their own use during their stay in the Republic;
- 25 [(2)] 00.00/01.02 exported by residents of the Republic for their own use while abroad and subsequently reimported either as accompanied or unaccompanied passengers' baggage by such residents.";
- (d) by the substitution in paragraph 1 of PART A for Item No. 30 407.02/00.00/02.00 of the following Item:
- "407.02/00.00/02.00 Additional goods, new or used, of a total value not exceeding **[R1 000]** R10 000 per person (excluding goods of a class or kind specified in Item Nos. 407.02/22.00, 35 407.02/24.02, 407.02/24.03 and 407.02/33.03).";
- (e) by the substitution in paragraph 1 of PART A for Item No. 407.06 of the following Item:
- 40 "407.06 Household furniture, other household effects and other removable articles, including equipment necessary for the exercise of the calling, trade or profession of the person, other than industrial, commercial or agricultural plant and excluding motor vehicles, alcoholic beverages and tobacco goods, the *bona fide* property of a natural person (including a returning resident of the Republic after an 45 absence of six months or more) and members of his family, imported for own use on change of his residence to the Republic.";
- (f) by the substitution in paragraph 1 of PART A for Item Nos. 409.01 and 50 409.02 of the following Items, respectively:
- "409.01 Imported goods (including packing containers) **[exported]** re-exported and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or manipulation 55 **[and without a permanent change of ownership]**.
- 409.02 Goods (including packing containers) produced or manufactured in the Republic, exported therefrom and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process

- of manufacture or manipulation **[and without a permanent change in ownership having taken place]** (excluding excisable goods exported ex a customs and excise warehouse).”;
- 5 (g) by the deletion in paragraph 1 of PART A of Item No. 409.03;
- (h) by the substitution in paragraph 1 of PART A for Item No. 409.06 of the following Item:
- 10 “409.06 Excisable goods exported ex a customs and excise warehouse and thereafter returned to or brought back by the exporter, without having been subjected to any process of manufacture or manipulation and without a permanent change in ownership having taken place.”;
- (i) by the substitution in paragraph 1 of PART A for Item No. 409.07 of the following Item:
- 15 “409.07 Compensating products obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the Director-General: Trade and Industry on the recommendation of the Board of Trade and Industry, provided **[that]** -
- 20 (i) the specific permit is obtained before the temporary exportation of the goods; **[and]**
- (ii) if the ownership of the compensating products is transferred prior to entry for customs purposes, such goods are entered in the name of the person who exported the goods; and
- 25 **[ii] (iii)** any additional conditions which may be stipulated in the said permit, are complied with.”;
- (j) by the substitution in paragraph 1 of PART A for Item No. 412.10 of the following Item:
- 30 “412.10 *Bona fide* unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed **[R100] R400** (excluding goods contained in passengers’ baggage, wine, spirits and manufactured tobacco (including cigarettes and cigars)) consigned by natural persons abroad to natural persons in the Republic.”;
- 35 (k) by the addition in paragraph 1 of PART A of the following proviso to Item No. 412.11:
- 40 “Provided that—
- (i) the importation of any goods under this item shall be subject to a certificate issued by the Director-General: Trade and Industry and to such other conditions as may be agreed upon by the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland; and
- 45 (ii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the Director-General: Trade and Industry.”;
- 50 (l) by the substitution in paragraph 1 of PART A for Item No. 412.12 of the following Item:
- 55 “412.12 Goods imported for any purpose agreed upon between the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland: Provided that—
- (i) the provisions of this item shall not apply in respect of any consignment or quantity or class of goods unless the prior approval of the Governments of Botswana, Lesotho, Namibia and Swaziland has been obtained for the application of such provisions

- in respect of every such consignment or quantity or class of goods;
- (ii) the importation of any goods under this item shall be subject to a certificate issued by the Director-General: Trade and Industry and to such other conditions as may be agreed upon by the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland; and
- (iii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the Commissioner for Customs and Excise.”;
- (m) by the insertion in paragraph 1 of PART A after Item No. 412.12 of the following Item:
- “460.11/63.09/01.04 Worn clothing, entered in terms of a specific permit issued by the Director-General: Trade and Industry, on the recommendation of the Board of Tariffs and Trade, purchased by or forwarded unsolicited and free to any church or any welfare organisation registered in terms of the National Welfare Act, 1978 (Act No. 100 of 1978), for free distribution to indigent persons by such church or organisation.”;
- (n) by the substitution in paragraph 1 of PART A for Item Nos. 470.01, 470.02 and 470.03 of the following Item:
- “470.00 Goods temporarily admitted for processing, repair, cleaning, reconditioning or for the manufacture of goods exclusively for export.
- 470.01/00.00/01.00 Goods [temporarily admitted] for processing, provided such goods do not become the property of the importer.
- 470.02/00.00/01.00 Goods [temporarily admitted] for repair, cleaning or reconditioning.
- 02.00 Parts for goods temporarily imported for repair, cleaning or reconditioning.
- 470.03/00.00/01.00 Goods cleared in terms of a permit issued by the Director-General: Trade and Industry, on the recommendation of the Board [on Tariffs and Trade] of Trade and Industry, for use in the manufacturing, processing, finishing, equipping or packing of goods exclusively for export.”;
- (o) by the insertion in paragraph 1 of PART A after the expression “Heading No.” of the following heading:
- “Description”;
- (p) by the insertion in paragraph 1 of PART A, after Heading No. 38.11.11.20, of the following Heading:
- “49.07/4907.00.30 Travellers’ cheques denominated in a foreign currency.”;
- (q) by the substitution in PART A for paragraph 3 of the following paragraph:
- “3. Goods, being printed books, newspapers, journals and periodicals, imported into the Republic by post of a value for duty purposes under the Customs and Excise Act not exceeding [R40] R100 per parcel.”;
- (r) by the addition to PART A of the following paragraph:

“5. Goods forwarded unsolicited and free of charge to—

- (a) a public authority; or
 (b) any association not for gain which satisfies the Commissioner that such goods will be used by that association exclusively—
 5 (i) for educational, religious or welfare purposes; or
 (ii) in the furtherance of that association’s objectives directed to the provision of educational, medical or welfare services or medical or scientific research; or
 10 (iii) for issue to or treatment of indigent persons, free of charge.”;
 (s) by the deletion of PART B;
 (t) by the substitution for PART C of the following PART:

“PART C

15 *Imported goods which are not and will not be required to be entered under the provisions of the Customs and Excise Act [excluding goods imported from any specified country]*

1. Goods imported into the Republic, namely—
 20 (a) Goods referred to in paragraph 1 of Part A of this Schedule under Items Nos. 405.04, 406.00, 407.01, 407.02, 407.06, 409.01, [409.03] 409.04, 409.06, 409.07, 412.02, 412.03, 412.04, 412.10, 412.11, 412.12, 460.11/63.09/01.04 [470.01, 470.02, 470.03] 470.00, 480.00, 490.00 and Headings Nos. 25 07.01, 07.02, 07.03, 07.04, 07.05, 07.06, 07.07, 07.08, 07.09, 07.13, 08.06/0806.10, 08.07, 08.08, 08.09, 08.10, 10.05, 10.06, 16.04/1604.13.15, 16.04/1604.13.20, 27.09.00, 27.10/2710.00.12, 27.10/2710.00.16, 38.11.11.20, 49.07/4907.00.30 and 49.11/4911.10.20 to the extent indicated.
 30 (b) Goods or items referred to in paragraphs 2, 3, [and] 4 and 5 of Part A of this Schedule, to the extent indicated.
 (c) Any motor vehicle constituting an asset of any enterprise or of any other *bona fide* commercial, financial, industrial, mining, quarrying, farming, forestry or fishing concern or 35 of any *bona fide* professional practice actively carried on in Botswana, Lesotho, Namibia or Swaziland, and which is brought temporarily into the Republic from such country for the use during the course of his employment by any employee of such enterprise, concern or practice where such an employee is ordinarily resident in the Republic and does not have any direct or indirect financial interest or share in such enterprise, concern or practice.
 40 2. Goods which are shipped or conveyed to the Republic for trans-shipment or conveyance to any export country.
 45 3. Goods imported into or produced or manufactured in the Republic, exported therefrom to Botswana, Lesotho, Namibia or Swaziland and thereafter directly returned to or brought back by the exporter or any other party without having been subjected to any manufacturing process, manipulation or modification [and without a change in ownership] if such goods were 50 acquired in the Republic before the commencement date or, where such goods were so acquired on or after that date, tax under this Act was paid in respect of the acquisition thereof and has not been refunded.”.

Amendment of Schedule 2 to Act 89 of 1991, as amended by section 49 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 44 of Act 136 of 1992 and section 45 of Act 97 of 1993

33. Schedule 2 to the principal Act is hereby amended by the substitution in
 5 PART A for subparagraph (a) of paragraph 2 of the following subparagraph:
 “(a) the Commissioner, in respect of a vendor registered under this Act, [or
 a Commissioner for Inland Revenue of a specified country, in respect of
 a vendor registered in that country] is satisfied that that vendor, being
 10 the recipient of any such goods, carries on agricultural, pastoral or
 other farming operations and has issued to him a notice of registration
 in which authorization is granted whereby the goods concerned may be
 supplied to him at the rate of zero per cent: Provided that where a
 vendor to whom such notice of registration has been issued is in default
 15 in respect of his obligation under this Act to furnish any return or to
 pay tax or he has ceased to carry on the said operations or he has
 utilized such notice of registration for purposes other than the carrying
 on of such operations, the Commissioner [concerned] may, by notice in
 writing to the vendor, cancel such authorization with immediate effect
 or with effect from a date determined by [that] the Commissioner and
 20 require the vendor to surrender such notice of registration in order that
 an amended notice of registration, excluding the said authorization,
 may if necessary be issued to the vendor;”.

Amendment of section 60 of Act 113 of 1993, as amended by section 20 of Act 140 of 1993 and section 4 of Act 168 of 1993

- 25 34. Section 60 of the Income Tax Act, 1993, is hereby amended—
 (a) by the substitution for the words preceding the definition of “distrib-
 utable shares” in subsection (1) of the following words:
 “In this section, any word or expression to which a meaning has
 30 been assigned in the [principal Act] Income Tax Act, 1962 (Act
 No. 58 of 1962), or the Stamp Duties Act, 1968 (Act No. 77 of
 1968), bears (having regard to the context within which such word
 or expression is used) the meaning so assigned, and—”;
 (b) by the substitution for paragraph (a) of the definition of “distributable
 35 shares” in subsection (1) of the following paragraph:
 “(a) any shares in one or more listed companies held on [21 June
 1993] 4 November 1994 by an unbundling company [or an
 intermediate company] (hereinafter referred to as the holder)
 for its own benefit, whether directly or indirectly through one
 or more intermediate companies, if—
 40 (i) that holder’s interest, on such date and at the time of the
 approval of the proposed transaction in terms of subsec-
 tion (2), in at least one of such listed companies consti-
 tutes at least 10 per cent of the equity share capital of
 such listed company; or
 45 (ii) such shares so held on such date and time represent at
 least 70 per cent of the market value of the assets of such
 holder; and”;
 (c) by the substitution for the words preceding subparagraph (i) of
 paragraph (b) of the definition of “distributable shares” in subsection
 50 (1) of the following words:
 “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—”;
 55 (d) by the substitution for paragraph (c) of the definition of “distributable
 shares” in subsection (1) of the following paragraph:
 “(c) any shares in an unlisted company held on [22 November
 1993] 4 November 1994 by [such holder] an unbundling
 company for its own benefit if—

- (i) such **[holder's]** unbundling company's interest in such unlisted company, on the date and time referred to in paragraph (a), constitutes at least 30 per cent of the equity share capital of such unlisted company; or
- 5 (ii) such shares so held, on the date and time referred to in paragraph (a), represent at least 70 per cent of the market value of the assets of such **[holder]** unbundling company,
- 10 and such shares are, in pursuance of a distribution *in specie* thereof in the course of an unbundling transaction, to be listed on a licensed stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), within six months of such distribution *in specie*, or within such further period as the Commissioner, having regard to the
- 15 (e) by the substitution for the definition of "distribution *in specie*" in subsection (1) of the following definition:
- "'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 (including any share premium) or a redemption of redeemable preference shares;"
- 20 (f) by the substitution for paragraphs (a) and (b) of the definition of "intermediate company" in subsection (1) of the following paragraphs:
- 25 "(a) [at least] more than 50 per cent of the equity share capital of which is held by an unbundling company; or
- 30 (b) [at least] more than 50 per cent of the equity share capital of which is held by —
- (i) a company which is an intermediate company in terms of paragraph (a) of this definition; or
- (ii) an unbundling company and one or more companies referred to in subparagraph (i) of this definition;"
- 35 (g) by the insertion after the definition of "qualifying shareholder" in subsection (1) of the following definition:
- "'share', in relation to a company, means a share in the equity share capital of such company;"
- 40 (h) by the substitution for subsection (2) of the following subsection:
- "(2) The Commissioner may, subject to such conditions as he may deem necessary, approve any proposed transaction as an unbundling transaction for the purposes of this section, if a written application containing such details of the transaction as the Commissioner may require is submitted to him by an unbundling company before the commencement of the implementation of such transaction [and before 30 June 1994]."; and
- 45 (i) by the substitution for paragraph (a) of subsection (7) of the following paragraph:
- 50 "(a) the approval of an unbundling transaction granted by him under subsection (2) or a certificate issued by him under subsection (4) was obtained by fraud or in consequence of any misrepresentation or failure to disclose any material fact by the unbundling company or any other person concerned; or".

Repeal of section 27 of Act 88 of 1974

35. (1) Section 27 of the Revenue Laws Amendment Act, 1974, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 September 1994.

Special exemption in respect of shares issued by Rooibos Tea Natural Products Limited

36. (1) No stamp duty shall be payable in respect of the issue of 1 068 538 ordinary Class A shares with no par value by Rooibos Tea Natural Products Limited to the producers as referred to in paragraph 3 of the minutes of a meeting held by the board of directors of the said company on 1 March 1994.

(2) Subsection (1) shall be deemed to have come into operation on 1 March 1994.

Special exemption in respect of shares issued by Chicory SA Limited

37. (1) No stamp duty shall be payable in respect of the issue of 19 500 000 ordinary shares with a par value of 10 cents each at a premium of 90 cents each by Chicory SA Limited to the producers as referred to in paragraph 5.1 of the minutes of a meeting held by the board of directors of the said company on 21 September 1993.

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

Special exemption in respect of shares issued by SA Mohair Brokers Limited

38. (1) No stamp duty shall be payable in respect of the issue of 15 000 000 ordinary shares with a par value of one cent each at a premium of 99 cents each by SA Mohair Brokers Limited to the producers as referred to in the minutes of a meeting held by the board of directors of the said company on 24 August 1993.

(2) Subsection (1) shall be deemed to have come into operation on 31 May 1994.

Exemption from stamp duty or transfer duty relating to transfer of marketable securities or property or of rights or obligations under bonds under scheme for rationalisation of group of companies and assessment of companies in such group for income tax purposes in certain circumstances

39. (1) For the purposes of this section any word or expression to which a meaning has been assigned in the Transfer Duty Act, the Stamp Duties Act or the Income Tax Act, bears (having regard to the context within which such word or expression is used) the meaning so assigned, and—

“controlled company” means a company in relation to which another company is at the date and time referred to in the definition of “controlling company” the controlling company;

“controlling company”, in relation to any other company, means a listed company which—

(a) on 4 November 1994, or, where such other company is incorporated after such date and the Commissioner is satisfied that such other company was incorporated to give effect to a rationalisation scheme, the date of incorporation of such other company; and

(b) at the time of any agreement referred to in the definition of “rationalisation scheme” to which such other company is a party, holds for its own benefit, whether directly or indirectly through one or more companies in the group of companies of which all the companies in question are members, shares in such other company which, together with shares in that other company held by a trustee under a scheme referred to in section 38(2)(b) of the Companies Act, 1973 (Act No. 61 of 1973), constitutes not less than 75 per cent of the equity share capital of the said other company;

“group of companies” means a controlling company and one or more other companies which are controlled companies in relation to the controlling company at the date and time referred to in the definition of “controlling company”;

“Income Tax Act” means the Income Tax Act, 1962 (Act No. 58 of 1962);

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

“marketable security” means a marketable security the registration of transfer of which would, but for the exemption under this section, be subject to stamp duty;

“rationalisation scheme” means any scheme effected in terms of a written agreement concluded on or after 4 November 1994 for the rationalisation of the activities of a group of companies where—

(a) such scheme was devised solely or mainly—

(i) in order to achieve substantial and enduring savings in operational expenditure or substantial and enduring operational or administrative advantages within the said group; or

(ii) in the furtherance of and for the purpose of benefiting some or all of the trading activities of the said group which before the transfer thereof were carried on by one or more companies of the said group and after the transfer thereof will be carried on by one or more other companies of the said group; or

(b) the Commissioner is, having regard to the circumstances of the case and subject to such conditions he may impose, satisfied that such scheme was devised solely or mainly to effect an unbundling transaction as contemplated in section 60 of the Income Tax Act, 1993 (Act No. 113 of 1993);

“Stamp Duties Act” means the Stamp Duties Act, 1968 (Act No. 77 of 1968);

“stamp duty” means the stamp duty leviable under Item 15(3) of Schedule 1 to the Stamp Duties Act in respect of the registration of transfer of any marketable security or the stamp duty leviable under Item 7(3), (4) or (5) of the said Schedule in respect of the cession of a mortgage bond or the substitution of a debtor in respect of such bond;

“transfer duty” means the duty leviable under the Transfer Duty Act;

“Transfer Duty Act” means the Transfer Duty Act, 1949 (Act No. 40 of 1949).

(2) Where, under any rationalisation scheme, any company (hereinafter referred to as the transferor company), disposes of (whether by way of sale, donation, cession, dividend or in any other form) or undertakes to dispose of any marketable security or property to any other company (hereinafter referred to as the transferee company), or cedes or undertakes to cede any mortgage bond hypothecating property to the transferee company or the transferee company is or is to be substituted for the transferor company as the debtor under such a bond and both companies are at the time of such agreement and the implementation thereof members of one and the same group of companies—

(a) such disposal, transfer, cession or substitution of any marketable security, property or bond, as the case may be, where it gave rise to the distribution of a dividend, such dividend shall be deemed not to be a dividend for the purposes of Parts III and VII of Chapter II of the Income Tax Act;

(b) the controlling company involved in such scheme and the Commissioner may agree that, subject to such adjustments as may be necessary, the transferor company and the transferee company shall be deemed to be one and the same company; and

(c) there shall be exempt from stamp duty the consequent registration of transfer to such transferee company of such marketable security or the cession of such bond or the substitution of the debtor in terms of the agreement, in terms of such scheme and there shall be exempt from transfer duty the acquisition by the transferee company of the property in terms of such scheme, as the case may be.

(3) The provisions of subsections (2) and (6) shall only apply if—

(a) the agreement referred to in the definition of “rationalisation scheme” and a written statement setting forth details of the rationalisation scheme and any subsequent variation thereof, have been submitted by or on behalf of the controlling company of the relevant group of companies to the Commissioner, together with a mandate from each controlled company in such group which is a party to the agreement to act on its behalf for the purposes of this section, supported by a resolution of the directors or shareholders of such controlled company; and

(b) the Commissioner has issued a certificate to the effect that the registration of transfer of the relevant marketable security or the cession of the relevant bond or the substitution of the debtor under the relevant bond, is exempt from stamp duty under this section or that the acquisition of the relevant property is exempt from transfer duty under this section, as the case may be.

(4) Any exemption under subsection (2) shall lapse unless registration of transfer of the relevant marketable security or the registration of the cession of the relevant bond or the substitution of the debtor under the relevant bond or the registration of transfer of the relevant property, as the case may be, is effected not later than six months after the date of the certificate referred to in subsection (3)(b) or within such further period as the Commissioner, having regard to the circumstances of the case, may approve.

(5) Where the Commissioner is satisfied that—

(a) a certificate issued by him under subsection (3)(b) was obtained by fraud or was issued or obtained in consequence of any misrepresentation or failure to disclose any material fact by the controlling company or any other person; or

(b) the controlling company or any other person concerned failed to comply with the provisions of this section,

he shall, if he is satisfied that in the light of the full facts the certificate should not have been issued, or that such provisions have not been complied with, withdraw such certificate, and—

(i) the exemption from stamp duty or transfer duty authorized by such certificate shall be deemed to have been withdrawn as from the date of issue of such certificate; and

(ii) the provisions of subsections (2) and (6) shall be deemed not to have applied.

(6) For the purposes of the taxation levied under the Income Tax Act and notwithstanding anything to the contrary in that Act, where on or after 4 November 1994 the whole or a part of any business undertaking is disposed of (whether by way of sale, donation, cession, dividend or in any other form) in terms of a rationalisation scheme by a company (hereinafter referred to as the transferor company) to any other company (hereinafter referred to as the transferee company) and both such companies are at the time of such disposal members of one and the same group of companies, the controlling company involved in such scheme and the Commissioner may agree that—

(a) any trading stock so disposed of shall be deemed to have been sold by the transferor company to the transferee company at a price equal to the value of such trading stock in the hands of the transferor company as determined under the provisions of section 22(1) of the Income Tax Act, and shall be deemed to have been acquired by the transferee company as trading stock;

(b) any building, machinery, plant, implement, utensil or article so disposed of, the value of which is to be taken into account for purposes of the Income Tax Act, shall, in so far as the transferor company is concerned, be deemed to have been sold by it at a price equal to the tax value in its hands;

(c) the transferor company and the transferee company shall, subject to such adjustments as may be necessary, be deemed to be one and the same company: Provided that—

- (i) the provisions of this paragraph shall not be interpreted as permitting the transferee company to set off against its income any assessed loss or balance of assessed loss incurred by the transferor company; and
- 5 (ii) the provisions of this paragraph shall not affect the liability for tax of the transferor company or the transferee company in respect of any income derived or expenditure incurred prior to the date on which the rationalisation scheme came into effect; and
- 10 (d) where any sale or disposal of any trading stock, asset or business undertaking or part thereof contemplated in paragraph (a), (b) or (c) gives rise to the distribution of a dividend, such distribution shall be deemed not to be a dividend for the purposes of Parts III and VII of Chapter II of the Income Tax Act.
- (7) The provisions of this section shall not apply if the main or one of the main
15 purposes of a rationalisation scheme is the avoidance, postponement or reduction of liability for the payment of any tax, duty or levy, whether imposed under the Income Tax Act or any other law administered by the Commissioner, which, but for the provisions of this section, would have been payable in consequence of such scheme having been entered into.
- 20 (8) Any decision of the Commissioner in the exercise of his discretion under this section shall be subject to objection and appeal.

Extension of application of certain laws

40. (1) The laws mentioned in Schedule 1 which immediately prior to the commencement of the Constitution were in force in the national territory of the
25 Republic, excluding the territories of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei, shall, from a date fixed by the President by proclamation in the *Gazette*, also apply in the territories of the said former Republics.

(2) Different dates may be fixed in terms of subsection (1) in respect of
30 different laws mentioned in Schedule 1.

(3) Any law referred to in a law contemplated in subsection (1) which is not yet applicable in the territories of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei, shall for the purposes of the law contemplated in
35 subsection (1) concerned be deemed to be applicable in the said territories.

(4) The Value-Added Tax Act, 1991 (Act No. 89 of 1991), shall, from the date of commencement of the Taxation Laws Amendment Act, 1994, also apply in the territories of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei.

(5) Any law referred to in the Value-Added Tax Act, 1991, which is not yet
40 applicable in the territories of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei, shall for the purposes of the Value-Added Tax Act, 1991, be deemed to be applicable in the said territories.

Repeal of laws, and savings

41. (1) Subject to the provisions of subsections (2), (3), (4) and (5), the laws
45 mentioned in the second column of Part 1 of Schedule 2 are, from a date fixed by the President by proclamation in the *Gazette*, repealed to the extent as set out in the third column of Part 1 of Schedule 2 in respect of the different territories in which they were applicable immediately prior to the commencement of the Constitution as set out in the fourth column of Part 1 of Schedule 2.

(2) Different dates may be fixed in terms of subsection (1) in respect of
50 different laws mentioned in the second column of Part 1 of Schedule 2.

(3) Anything done under a law repealed in terms of subsection (1) which is capable of being done under a provision of a law mentioned in the second column of Schedule 1, shall be deemed to have been done under such provision
55 of such law.

- 5 (4) Any tax or duty which has become payable under a law repealed in terms of subsection (1) before or on the date of the repeal of such a law, but which has not at the said date been paid, shall be recovered in accordance with and subject to the provisions of the law concerned as if that law had not been repealed in terms of subsection (1).
- 10 (5) Notwithstanding the provisions of subsection (1), any series of stamps approved for use in any of the territories of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei in terms of a law repealed in terms of subsection (1), shall be deemed not to have been withdrawn on the date of the
- 15 (6) Subject to the provisions of subsections (7) and (8), the laws mentioned in the second column of Part 2 of Schedule 2 are, from the commencement of the Taxation Laws Amendment Act, 1994, repealed to the extent as set out in the third column of Part 2 of Schedule 2.
- 20 (7) The provisions of the laws repealed in terms of subsection (6) in terms of which value-added tax is levied at the rate of zero per cent in respect of services relating to betting shall, until a date fixed by the Minister of Finance by notice in the *Gazette*, remain in force as if enacted in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
- 25 (8) Anything done under a law repealed in terms of subsection (6) which is capable of being done under a provision of the Value-Added Tax Act, 1991, shall be deemed to have been done under such provision of the Value-Added Tax Act, 1991.
- 30 (9) Any value-added tax which has become payable or refundable under a law repealed in terms of subsection (6) before or on the date of the repeal of such a law, but which has not at the said date been paid or refunded, as the case may be, shall be recovered or refunded in accordance with and subject to the provisions of the law concerned as if that law had not been repealed in terms of subsection (6).

Short title

- 35 42. This Act shall be called the Taxation Laws Amendment Act, 1994.

SCHEDULE 1**EXTENSION OF THE APPLICATION OF CERTAIN LAWS (SECTION 40)**

Number and year of law	Short title
Act No. 32 of 1948	Marketable Securities Tax Act, 1948
Act No. 40 of 1949	Transfer Duty Act, 1949
Act No. 45 of 1955	Estate Duty Act, 1955
Act No. 77 of 1968	Stamp Duties Act, 1968

SCHEDULE 2

Part 1

LAWS REPEALED (SECTION 41(1))

	Number and year of law	Short title	Extent of laws repealed	Area of national territory in respect of which law is repealed
(a)	Act No. 32 of 1948	Marketable Securities Tax Act, 1948	The whole	The territories of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei
(b)	Act No. 40 of 1949	Transfer Duty Act, 1949	The whole	The territories of the former Republics of Transkei, Bophuthatswana and Venda
	Act No. 59 of 1951	Transfer Duty Amendment Act, 1951	The whole	
	Act No. 31 of 1953	Transfer Duty Amendment Act, 1953	The whole	
	Act No. 32 of 1954	Transfer Duty Amendment Act, 1954	The whole	
	Act No. 70 of 1963	Revenue Laws Amendment Act, 1963	The whole	
	Act No. 77 of 1964	Revenue Laws Amendment Act, 1964	Sections 1 to 15	
	Act No. 81 of 1965	Revenue Laws Amendment Act, 1965	The whole	
	Act No. 56 of 1966	Revenue Laws Amendment Act, 1966	The whole	
(c)	Act No. 77 of 1968	Stamp Duties Act, 1968	The whole	The territories of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei
	Act No. 103 of 1969	Revenue Laws Amendment Act, 1969	The whole	
	Act No. 72 of 1970	Revenue Laws Amendment Act, 1970	The whole	
	Act No. 92 of 1971	Revenue Laws Amendment Act, 1971	Sections 1, 2 and 13	
	Act No. 89 of 1972	Revenue Laws Amendment Act, 1972	Section 2 and sections 9 to 13	
	Act No. 66 of 1973	Revenue Laws Amendment Act, 1973	Sections 2 to 20	
	Act No. 88 of 1974	Revenue Laws Amendment Act, 1974	The whole	
	Act No. 70 of 1975	Revenue Laws Amendment Act, 1975	The whole	
(d)	Act No. 54 of 1976	Abattoir Industry Act, 1976	Section 77	The territories of the former Republics of Transkei, Bophuthatswana and Venda

Number and year of law		Short title	Extent of laws repealed	Area of national territory in respect of which law is repealed
(e)	Act No. 104 of 1976	Revenue Laws Amendment Act, 1976	The whole	The territories of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei
(f)	Act No. 114 of 1977	Revenue Laws Amendment Act, 1977	Sections 1 to 6, and 9 to 20	The territories of the former Republics of Bophuthatswana, Venda and Ciskei
(g)	Act No. 95 of 1978	Revenue Laws Amendment Act, 1978	The whole	The territories of the former Republics of Venda and Ciskei
	Act No. 102 of 1979	Revenue Laws Amendment Act, 1979	The whole	
(h)	Act No. 106 of 1980	Revenue Laws Amendment Act, 1980	The whole	The territory of the former Republic of Ciskei
	Act No. 99 of 1981	Revenue Laws Amendment Act, 1981	The whole	
(i)	Act No. 18 of 1978 (Transkei)	Stamp Duties Amendment Act, 1978	The whole	The territory of the former Republic of Transkei
	Act No. 22 of 1983 (Transkei)	Stamp Duties Amendment Act, 1983	The whole	
	Act No. 7 of 1985 (Transkei)	Stamp Duties Amendment Act, 1985	The whole	
	Act No. 14 of 1986 (Transkei)	Stamp Duties Amendment Act, 1986	The whole	
	Decree No. 17 of 1989 (Transkei)	Decree No. 17 (Revenue Laws Amendment) of 1989	Section 3	
	Decree No. 16 of 1991 (Transkei)	Decree No. 16 (Value-Added Tax) of 1991	Sections 79 to 84	
(j)	Act No. 25 of 1980 (Bophuthatswana)	Bophuthatswana Transfer Duty Amendment Act, 1980	The whole	The territory of the former Republic of Bophuthatswana
	Act No. 4 of 1984 (Bophuthatswana)	Revenue Laws Amendment Act, 1984	Sections 2 and 3(2)(b)	
	Act No. 12 of 1986 (Bophuthatswana)	Revenue Laws Amendment Act, 1986	The whole	
	Act No. 32 of 1986 (Bophuthatswana)	Transfer Duty Amendment Act, 1986	The whole	
	Act No. 6 of 1987 (Bophuthatswana)	Revenue Laws Amendment Act, 1987	The whole	

TAXATION LAWS AMENDMENT ACT, 1994

Act No: 20, 1994

Number and year of law	Short title	Extent of laws repealed	Area of national territory in respect of which law is repealed
Act No. 25 of 1991 (Bophuthatswana) Act No. 34 of 1992 (Bophuthatswana) Act No. 35 of 1993 (Bophuthatswana)	Value-Added Tax Act, 1991 Taxation Laws Amendment Act, 1992 Taxation Laws Amendment Act, 1993	Sections 79 to 84 Sections 14 to 17 Sections 3, 4, 18, 19 and 20	
(k) Act No. 33 of 1983 (Ciskei) Act No. 13 of 1985 (Ciskei)	Revenue Laws Amendment Act, 1983 Revenue Laws Amendment Act, 1985	The whole Section 1	The territory of the former Republic of Ciskei

SCHEDULE 2**Part 2****LAWS REPEALED (SECTION 41(6))**

Laws of the former Republic of Transkei		
Number and year of law	Short title	Extent of repeal
Decree No. 16 of 1991	Decree No. 16 (Value-Added Tax) of 1991	Sections 1 to 78
Decree No. 15 of 1992	Decree No. 15 [Validation of Decree No. 16 (Value-Added Tax) of 1991]	The whole
Decree No. 2 of 1994	Decree No. 2 [Further Amendment of Decree No. 16 (Value-Added Tax) of 1991] of 1994	The whole, except sections 79 to 84

Laws of the former Republic of Bophuthatswana		
Number and year of law	Short title	Extent of repeal
Act No. 25 of 1991	Value-Added Tax Act, 1991	The whole, except sections 79 to 84
Act No. 34 of 1992	Taxation Laws Amendment Act, 1992	Sections 21 to 52
Act No. 34 of 1993	Value-Added Tax Amendment Act, 1993	The whole

Laws of the former Republic of Venda		
Number and year of law	Short title	Extent of repeal
Proclamation No. 32 of 1991	Value-Added Tax Proclamation, 1991	The whole
Proclamation No. 10 of 1992	Value-Added Tax Amendment Proclamation, 1992	The whole
Proclamation No. 03 of 1993	Value-Added Tax Amendment Proclamation, 1993	The whole
Proclamation No. 08 of 1993	Value-Added Tax Second Amendment Proclamation, 1993	The whole

Laws of the former Republic of Ciskei		
Number and year of law	Short title	Extent of repeal
Decree No. 17 of 1991	Value-Added Tax Decree, 1991	The whole
Decree No. 19 of 1992	Value-Added Tax Amendment Decree, 1992	The whole
Decree No. 25 of 1992	Value-Added Tax Second Amendment Decree, 1992	The whole
Decree No. 8 of 1994	Value-Added Tax Amendment Decree, 1994	The whole