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KANTOOR VAN DIE PRESIDENT

No. 2010. 25 November 1994

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

No. 21 van 1994: Inkomstebelastingwet, 1994.

OFFICE OF THE PRESIDENT

No. 2010. 25 November 1994

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

No. 21 of 1994: Income Tax 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 fix the rates of normal tax payable by persons other than companies in respect of taxable incomes for the years of assessment ending on 28 February 1995 and 30 June 1995, and by companies in respect of taxable incomes for years of assessment ending during the period of 12 months ending on 31 March 1995; to amend the Income Tax Act, 1962; to withdraw a Government Notice; to provide for special provisions with regard to the transition levy payable by certain companies; to provide for the administration by the Commissioner for Inland Revenue of certain laws; to provide for the imposition of a transition levy in the former Republics of Transkei, Bophuthatswana and Ciskei; to extend the application of the Income Tax Act, 1962; to provide for special provisions for the determination of taxable income derived by persons previously assessable under certain other laws; to provide for the retention of certain phasing-in provisions in respect of persons previously taxed in terms of the laws of the former Republic of Venda; to amend the Income Tax Act, 1962 (Act No. 52 of 1962), of the former Republic of Venda; to amend the Ciskei Income Tax Act, 1984 (Act No. 44 of 1984); to repeal certain laws; and to provide for incidental matters.

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

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

Rates of normal tax

1. The rates of normal tax to be levied in terms of section 5(2) of the Income Tax Act, 1962 (Act No. 58 of 1962) (hereinafter referred to as the principal Act), and in terms of section 5(2) of the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Venda, in respect of—
- (a) the taxable income of any person other than a company for the year of assessment ending on 28 February 1995 or 30 June 1995; and
 - (b) the taxable income of any company for any year of assessment ending during the period of 12 months ending on 31 March 1995,
- shall be as set forth in the Schedule to this Act.

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R.780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992 and section 2 of Act 113 of 1993

2. (1) Section 1 of the principal Act is hereby amended—
- (a) by the substitution for subparagraphs (iv) and (v) of paragraph (d) of the definition of “connected person” of the following subparagraphs, respectively:
- (iv) any person, other than a company, who individually or jointly with any connected person in relation to himself, holds, directly or indirectly, at least 20 per cent of the company’s equity share capital, members’ interest or voting rights;
- (v) any other company if at least **[40 per cent]** 20 per cent of the equity share capital **[members’ interest or voting rights of both such companies]** of such company is held by **[the same persons]** such other company, and no shareholder holds the majority voting rights of such company; and”;
- (b) by the substitution for subparagraph (i) of paragraph (a) of the definition of “retirement-funding employment” of the following subparagraph:
- (i) in the case of such employee, derives in respect of his employment any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule (but leaving out of account the provisions of paragraph (c) and paragraph (vii) of that definition and including the amount of any allowance or advance in respect of transport expenses contemplated in section 8(1)(b), but not an allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under the said section 8(1)(b)(iii)) and is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived; or”.
- (2) Subsection (1)(a) shall come into operation on the date of promulgation of this Act.

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992

- 3.(1) Section 3 of the principal Act is hereby amended by the addition of the following subsection:
- “(4) Any decision of the Commissioner under section 8(4)(e), section 10(1)(cH), (cI), (cJ), (cK), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (t), (u) and (w), section 12C, section 13(1), section 14(1), section 15, section 16A, section 22(1), (3) and (5), section 24(2), section 24C, section 24D, section 27(2), section 31, section 35(2), section 42(2), paragraphs 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph 4 of the Second Schedule and paragraphs 3 and 6 of the Seventh Schedule, shall be subject to objection and appeal.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply to any decision communicated to the taxpayer or person concerned on or after that date.

Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 32 of Act 104 of 1980, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987 and section 3 of Act 70 of 1989

4. Section 4 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the proviso of the following paragraph:

- 10 “(b) the Auditor-General shall in the performance of his duties in terms of [section 42(1) of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975)] section 5 of the Auditor-General Act, 1989 (Act No. 52 of 1989), have access to documents in the possession or custody of the Commissioner.”.

15 Amendment of section 5 of Act 58 of 1962, as amended by section 2 of Act 6 of 1963, section 5 of Act 90 of 1964, section 6 of Act 88 of 1965, section 7 of Act 55 of 1966, section 6 of Act 95 of 1967, section 6 of Act 76 of 1968, section 7 of Act 89 of 1969, section 7 of Act 52 of 1970, section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 5 of Act 113 of 1977, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 20 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 3 of Act 65 of 1986, section 3 of Act 90 of 1988 and section 3 of Act 129 of 1991

5. Section 5 of the principal Act is hereby amended—

- 25 (a) by the substitution for the words preceding the formula in subsection (10) of the following words:

30 “Where any taxpayer’s income includes any special remuneration, or where the provisions of section 7A(4A) or paragraph 15(3) or 17 or 19(1) of the First Schedule or paragraph 7 of the Second Schedule [or paragraph 9 of the Sixth Schedule] are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax payable by the taxpayer in respect of such year (as determined before the deduction of any rebate or the addition of any [loan portion of such tax] transition levy) shall be determined in accordance with the formula—”;

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

40 “(b) ‘A’ represents the amount of normal tax (as determined [after the addition of any surcharge or the deduction of any discount but] before the deduction of any rebate or the addition of any [loan portion of such tax] transition levy) calculated at the full rate of tax chargeable for the said year in respect of a taxable income equal to the amount represented by the expression ‘B—C’ in the formula;”;

- (c) by the deletion of subparagraph (v) of paragraph (d) of subsection (10).

45 Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 50 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992 and section 4 of Act 113 of 1993

6.(1) Section 8 of the principal Act is hereby amended—

(a) by the substitution for subparagraph (i) of paragraph (e) of subsection (1) of the following subparagraph:

“(i) a Minister, Deputy Minister, [or Ministerial Representative of the Republic] a member of Parliament or a member of [the President’s Council or the administrator of a province] a provincial legislature;” and

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

“(f) Where it is expected of any person contemplated in paragraph (e)(i) to defray any expenditure referred to in paragraph (d) out of his salary received as the holder of any public office, an amount equal to a portion (which shall be determined from time to time by the Minister by notice in the *Gazette*) of such salary shall for the purposes of paragraph (d) be deemed to be an allowance granted to such person.

(g) Where, during any year of assessment, any person contemplated in paragraph (e) has held a public office for less than 12 months, the amount of R2 500 referred to in the proviso to paragraph (d)(iv) and the amount determined by the Minister in terms of paragraph (f), shall be reduced to an amount which bears to the relevant amount, the same ratio as the number of months (in the determination of which a part of a month shall be reckoned as a full month), for which the office was held bears to 12 months.”.

(2) Subsection (1) shall be deemed to have come into operation on 27 April 1994.

25 Amendment of section 9 of Act 58 of 1962, as amended by section 7 of Act 90 of 1962, section 6 of Act 72 of 1963, section 7 of Act 90 of 1964, section 9 of Act 95 of 1967, section 12 of Act 89 of 1969, section 6 of Act 65 of 1973, section 9 of Act 85 of 1974, section 8 of Act 103 of 1976, section 9 of Act 121 of 1984, section 5 of Act 96 of 1985, section 6 of Act 65 of 1986, section 2 of Act 108 of 1986, section 30 7 of Act 85 of 1987, section 36 of Act 9 of 1989, section 10 of Act 129 of 1991, section 7 of Act 141 of 1992, section 5 of Act 113 of 1993 and section 3 of Act 140 of 1993

7. (1) Section 9 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

35 “(1A) For the purposes of paragraph (g)(ii) the services referred to in paragraphs (d), (d)bis, (f) and (fA) shall be deemed to have been performed within the Republic.”.

(2) Subsection (1) shall come into operation on 1 January 1995 and shall apply to any services performed on or after that date.

40 Amendment of section 9A of Act 58 of 1962, as inserted by section 8 of Act 85 of 1987 and amended by section 8 of Act 141 of 1992

8. Section 9A of the principal Act is hereby amended by the substitution for the definition of “investment income” in subsection (1) of the following definition:

45 “ ‘investment income’ means any amount derived from any source outside or within the Republic in the form of interest, dividends, rents (other than rents in respect of immovable property situated outside the Republic), any gains made on the redemption or disposal of any banker’s acceptance or similar instrument or any amount which is of a similar nature, or any gain 50 made on the disposal of any marketable security or any right to acquire marketable securities [or the amount of any gain referred to in paragraph (eA) of the definition of ‘gross income’ in section 1 where such gain would if it had been made by a resident of the Republic have been included in his gross income];”.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993 and section 4 of Act 140 of 1993

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

- 15 (a) by the deletion of subparagraph (i) of paragraph (c) of subsection (1);
 (b) by the addition to subparagraph (ii) of paragraph (c) of subsection (1) of the following proviso:

20 “Provided that the provisions of this subparagraph shall not apply to any amount payable to any person or his surviving spouse by reason of such person having occupied the office of President as elected in terms of section 77 of the Constitution;”;

- (c) by the substitution for subparagraph (v) of paragraph (cC) of subsection (1) of the following subparagraph:

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

- 30 (d) by the substitution for item (bb) of subparagraph (v) of paragraph (cI) of subsection (1) of the following item:

35 “(bb) one of those directors, members or trustees is a person nominated by a Minister or the member of an Executive Council of a province responsible for housing matters, or, in any case where [the] a former Administrator of a province [is] was, to the exclusion of such a Minister, charged with the administration of any applicable law relating to housing, by such Administrator;”;

- 40 (e) by the insertion after paragraph (cL) of subsection (1) of the following paragraph:

45 “(cM) the receipts and accruals of any company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or deemed by the said section to be so formed and incorporated, which has been approved by the Commissioner, if—

- 50 (i) the sole or principal object of the company is to promote and facilitate the distribution of agricultural and related commodities;

(ii) such sole or principal object is actively pursued;

- 55 (iii) the company is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;
- 60

- (iv) the company does not carry on any business other than business which is directly connected with the said sole or principal object;
- 5 (v) at least one of the members is a local authority;
- (vi) in terms of the memorandum or articles of association of the company, it is upon its deregistration, winding-up or liquidation obliged to give or transfer its assets remaining after the satisfaction of its liabilities to—
- 10 (aa) some other company which is exempt from tax under this paragraph; or
- (bb) a local authority to utilize such assets for the same objects as the aforesaid company:
- Provided that—
- 15 (a) where the Commissioner is satisfied that any such company has during any year of assessment failed to comply with the provisions of this paragraph, he may withdraw his approval of the company with effect from the commencement of that year of assessment;
- 20 (b) where the Commissioner has withdrawn his approval of such company, it shall, within two months from the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any company which is exempt from tax under this paragraph or to a local authority to utilize such assets for the same objects as the aforesaid company;
- 25 (c) where a company fails to transfer, or take reasonable steps to transfer, its remaining assets as contemplated in paragraph (b) of this proviso, the accumulated net revenue which has not been distributed shall be deemed for the purposes of this Act to be an amount of taxable income which accrued to such company during the year of assessment referred to in paragraph (a) of this proviso; and
- 30 (d) any decision of the Commissioner in the exercise of his discretion under this paragraph shall be subject to objection and appeal;”;
- 35 (f) by the deletion of subparagraph (xiii) of paragraph (i) of subsection (1); and
- 40 (g) by the substitution for paragraph (zA) of subsection (1) of the following paragraph:
- “(zA) any amount by way of rebate or other assistance received by or accrued to or in favour of any exporter (as defined in section 11bis(1)) under any scheme for the promotion or financing of exports which is for the purposes of this paragraph approved by
- 45 the Minister of Trade and Industry [and Tourism] with the concurrence of the Minister of Finance [as well as any amount (including any interest paid in terms of the General Export Incentive Scheme introduced with effect from 1 April 1990 and which is calculated in respect of any period falling after 1 April 1991) which is paid by the State, on or after 1 April 1990, under any such scheme]: Provided that where the person entitled to claim such amount from the State has, under an agreement directly connected with the export trade carried on by him,
- 50

agreed to pay the whole or any portion of such amount to any other person, the exemption under this paragraph shall also apply to the whole or such portion of such amount received by or accrued to such other person under the said agreement;”.

5 (2)(a) Subsection (1)(a) and (b) shall be deemed to have come into operation on 10 May 1994 and shall apply to any amount paid or payable to any person on or after that date.

(b) Subsection (1)(f) shall be deemed to have come into operation on 1 April 1994 and shall apply to years of assessment commencing on or after that date.

10 (c) Subsection (1)(g) shall come into operation on 1 March 1995 and shall apply to—

(i) any amount determined in terms of the General Export Incentive Scheme in respect of export sales (as contemplated in the guidelines for the General Export Incentive Scheme) which take place on or after that date; and

15 (ii) any amount received by or accrued to or in favour of any person on or after that date under any other scheme.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 25 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993 and section 5 of Act 140 of 1993

30 10. Section 11 of the principal Act is hereby amended—

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

“(iii) no allowance shall be made under this paragraph in respect of any ship to which the provisions of section 14(1)(a) or (b) apply or in respect of any aircraft to which the provisions of section 14bis(1)(a), [or] (b) or (c) apply;”;

(b) by the substitution for the words preceding the proviso to paragraph (o) of the following words:

40 “save as provided in paragraph 12(2) of the First Schedule, an allowance in respect of any building (or portion thereof) referred to in section 13(1) or (4) or section 13bis(1) or section 27(2)(b) or of any improvements (or portion thereof) to such building or of any shipbuilding structure referred to in section 13(8) or of any improvement to such shipbuilding structure or of any residential unit referred to in section 13ter or of any permanent work, road pavement or ancillary service referred to in section 24G or of any machinery, plant, implements, utensils or articles used by the taxpayer for the purposes of his trade which have been scrapped by such taxpayer during the year of assessment, such allowance to be the excess of the original cost to such taxpayer of such building (or portion thereof) or such improvements (or portion thereof) to such building or such shipbuilding structure or such improvements to such shipbuilding structure or such residential unit or such permanent work, road pavement or ancillary service or such machinery, plant, implements, utensils or articles over the total amount arrived at by adding all the allowances made in respect thereof under the provisions of paragraph (e) of this section, or section 12(1), or section 12(1) as applied by section 12(3), or

- section 12A(2), or section 12B, or section 12C, or section 13(1), or section 13(1) as applied by section 13(4) or (8), or section 13bis(1), (2) or (3), or section 13ter(2) or (3), or section 14(1)(a) or (b); or the corresponding provisions of any previous Income Tax Act, or
- 5 section 14bis(1)(a), **[or] (b) or (c)**, or section 24F, or section 24G, or section 27(2)(b) or (d), to any amount or the value of any advantage accruing to the taxpayer in respect of the sale or other disposal of such building, shipbuilding structure, improvements, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils or articles:"; and
- 10 (c) by the deletion of paragraph (uA).

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

- 15 **11. Section 12C of the principal Act is hereby amended by the addition of the following subsection:**

- "(6) Any expenditure (other than expenditure referred to in section 11(a)) incurred by a taxpayer during any year of assessment in moving an asset in respect of which a deduction was allowed or is allowable under this
- 20 section or section 12B from one location to another shall—
- (a) where the taxpayer is entitled to a deduction in respect of such asset under subsection (1) in that year and one or more succeeding years, be allowed to be deducted from his income in equal instalments in each year in which such a deduction is allowable; or
- 25 (b) in any other case, be allowed to be deducted from his income in that year."

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

- 12. Section 13bis of the principal Act is hereby amended—**
- (a) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

- 35 "(e) of such portion of any building improvements (other than repairs and other than improvements in respect of the cost of which, or of any portion thereof, an allowance under the preceding provisions of this subsection is or was deductible from the income of the taxpayer for the current or any
- 40 previous year of assessment) commenced on or after 1 January 1964, as was during the year of assessment in question used by the taxpayer for the purposes of his trade of hotelkeeper or was during the year of assessment in question let by the taxpayer and used by the lessee for the purposes of the lessee's trade of hotelkeeper **[provided the building (or a portion thereof) to which such improvements were effected was during the year of assessment in question registered as an hotel under the Hotels Act, 1965]:"**;
- 45

- (b) by the deletion of subsections (7), (7A), (7B) and (8); and
- 50 (c) by the substitution for the words preceding paragraph (a) of subsection (9) of the following words:

"The allowance under subsection (2) [and the hotel building investment allowance under subsection (7)] shall not be granted in respect of—"

Repeal of section 16 of Act 58 of 1962

13. Section 16 of the principal Act is hereby repealed.

Repeal of section 18B of Act 58 of 1962

14. Section 18B of the principal Act is hereby repealed.

5 **Amendment of section 23 of Act 58 of 1962, as amended by section 18 of Act 65 of 1973, section 20 of Act 121 of 1984, section 23 of Act 129 of 1991, section 20 of Act 141 of 1992 and section 18 of Act 113 of 1993**

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

10 (a) by the substitution for subparagraphs (i) and (ii) of paragraph (b) of the following subparagraphs, respectively:

“(i) his income from such employment or office is derived mainly from commission or other variable payments which are based on the taxpayer’s work performance and his duties are mainly performed otherwise than in an office which is provided to him by his employer; **[and] or**

15 (ii) his duties are mainly performed **[otherwise than] in [an office which is provided to him by his employer] such part;**”;

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

20 “(i) such entertainment expenditure as may be deducted from the income of such taxpayer under the provisions of section 11(u) **[or (uA)]; or**”.

Amendment of section 23B of Act 58 of 1962, as inserted by section 25 of Act 129 of 1991

25 16. (1) Section 23B of the principal Act is hereby amended—

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

“(1) Where, but for the provisions of this **[section] subsection**, an amount qualifies or has qualified for a deduction or an allowance under more than one provision of this Act, a deduction or allowance in respect of such amount or any portion thereof, shall not be allowed more than once in the determination of the taxable income of any person.”; and

(b) by the addition of the following subsection:

35 “(3) No deduction shall be allowed under section 11(a) or (b) in respect of any expenditure or loss of a type for which a deduction or allowance may be granted under any other provision of this Act, notwithstanding that such other provision may impose any **limitation on the amount of such deduction or allowance.**”.

40 (2) Subsection (1) shall be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 1990.

Insertion of section 23F in Act 58 of 1962

17. The following section is hereby inserted in the principal Act after section 23E:

“Acquisition of trading stock

45 **23F.** Where any taxpayer has during any year of assessment incurred expenditure for the acquisition of trading stock which was neither disposed of by him during such year nor held by him at the end of such year, any deduction which may be allowed to him under the provisions of section 11(a) or (b) in respect of such expenditure shall not be allowed in such year, but such expenditure shall for the

purposes of such provisions be deemed to have been incurred by him in the first subsequent year of assessment in which—

- (a) such trading stock is disposed of by him;
- (b) the value of such trading stock falls to be included in his income under the provisions of section 22(1); or
- (c) it is shown by him that by reason of the loss or destruction of such trading stock or the termination of the agreement in terms of which such trading stock was acquired by him or for any other reason, such trading stock will neither be disposed of nor held by him.”.

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993 and amended by section 11 of Act 140 of 1993

18. (1) Section 24I of the principal Act is hereby amended—

- (a) by the insertion after the definition of “acquisition rate” in subsection (1) of the following definition:

“‘affected forward exchange contract’ means any forward exchange contract which has been entered into by any person during any year of assessment, to serve as a hedge in respect of—

- (a) a loan, advance or debt, where—

- (i) such loan or advance has not yet been obtained or such debt has not yet been incurred by such person during such year of assessment; and

- (ii) such loan, advance or debt is to be utilized as contemplated in subsection (7)(a) in terms of an agreement entered into by such person prior to the end of such year of assessment for the acquisition, installation, construction, devise, development, creation, production or restoration of any asset (whether corporeal or incorporeal) as contemplated in that subsection; or

- (b) interest to be incurred in respect of a loan or advance obtained or to be obtained or a debt incurred or to be incurred as contemplated in subsection (7)(a);”;

- (b) by the substitution for paragraph (b) of the definition of “exchange item” in subsection (1) of the following paragraph:

“(b) owing to a person in respect of a loan or advance or a debt payable by another person to such person, which loan, advance or debt shall include a unit of currency held by such person for its own benefit or by any other person on behalf of such person;”;

- (c) by the substitution for subparagraph (ii) of paragraph (b) of the definition of “ruling exchange rate” in subsection (1) of the following subparagraph:

“(ii) the date it is translated, the market-related forward rate available for the remaining period of such forward exchange contract, or in the case where the forward rate in terms of such forward exchange contract has been used to translate a loan, advance or debt as contemplated in paragraph (a)(ii), the forward rate in terms of such contract, or in respect of an affected forward exchange contract, the forward rate in terms of such affected forward exchange contract;”;

- (d) by the addition to the definition of “ruling exchange rate” in subsection (1) of the following proviso:

“Provided that the Commissioner may, having regard to the particular circumstances of the case, prescribe an alternative rate to any of the aforementioned prescribed rates to be applied by a person in such particular circumstances, if such alternative rate is used for accounting purposes in terms of generally accepted accounting practice;”;

(e) by the substitution for subsections (4) and (5) of the following subsections, respectively:

“(4) In determining the taxable income of any person derived from carrying on any trade by him within the Republic, there shall in respect of any year of assessment ending on or after 1 January 1994 be included in or deducted from the income so derived, as the case may be—

(a) (i) any premium or like consideration received or receivable by, or paid or payable by, such person in terms of a foreign currency option contract entered into by such person in the course of such trade; or

[(b)] (ii) any consideration paid or payable by such person in respect of a foreign currency option contract acquired by such person in the course of such trade; and

(b) any discount which accrued to such person or any premium incurred by him in respect of any forward exchange contract, where—

(i) such forward exchange contract was entered into by such person in the course of such trade as a related or matching forward exchange contract to serve as a hedge in respect of any loan, advance or debt utilized or to be utilized by such person to acquire any asset or to finance any expense in the course of such trade, or to serve as a hedge in respect of any loan, advance or debt arising from the sale of any asset or the supply of any services in the course of such trade; and

(ii) such loan, advance or debt was recorded on transaction date at the forward rate in terms of such forward exchange contract, but such asset so acquired or such expense so financed, or such asset so sold or services so supplied, was recorded at the spot rate or an alternative rate as the Commissioner may have prescribed in terms of the definition of ‘ruling exchange rate’:

Provided that such discount or premium shall be deemed to have accrued or been incurred, as the case may be, on a day to day basis during the period of such forward exchange contract for the purposes of this paragraph.

(5) Where during any year of assessment any premium or discount on a forward exchange contract is included in any exchange difference in respect of any loan, advance or debt, where such exchange difference arose by reason of such loan, advance or debt having been—

(a) translated at the forward rate as contemplated in paragraph (a)(ii) of the definition of ‘ruling exchange rate’ or an alternative rate as the Commissioner may have prescribed in terms of that definition; and

(b) (i) recorded during that year of assessment at the spot rate on transaction date as contemplated in paragraph (a)(i) of that definition; or

(ii) translated at the end of the immediately preceding year of assessment at the spot rate on translation date as contemplated in paragraph (a)(ii) of that definition; or

(iii) translated at the end of the immediately preceding year of assessment at the forward rate as contemplated in paragraph (a)(ii) of that definition, but such forward rate differs from the forward rate contemplated in paragraph (a) of this [definition] subsection; or

(iv) recorded or translated, as the case may be, on any of the dates contemplated in subparagraph (i), (ii) or (iii) at an alternative rate as the Commissioner may have prescribed in terms of the definition of ‘ruling exchange rate’.

such premium or discount on such forward exchange contract which is so included in such exchange difference, shall be deemed to have been incurred or accrued, as the case may be, on a day to day basis during the period of such forward exchange contract and such premium or discount shall, for the purposes of subsection (2), be included in or deducted from a person's income on such basis.”;

(f) by the substitution for the words following upon paragraph (c) of subsection (7) of the following words:

“shall, where such exchange difference arose or such premium or other consideration was paid or became payable in a year of assessment prior to the year of assessment during which such machinery, plant, implement, utensil, building, improvements to any building, invention, patent, design, trade mark, copyright or other similar property or knowledge was or is brought into use for the purposes of such person's trade, be carried forward and be taken into account in the determination of the taxable income of such person in the year of assessment during which such machinery, plant, implement, utensil, building, improvements to any building, invention, patent, design, trade mark, copyright or other similar property or knowledge was or is so brought into use for the purposes of such person's trade.”; and

(g) by the insertion after subsection (7) of the following subsection:

“(7A)(a) Where any exchange difference is to be included in or deducted from the income of any company in terms of subsection (2), there shall, in lieu of such deduction or inclusion, be included in or deducted, as the case may be, from the income of such company during any year of assessment an amount equal to 10 per cent of the deferred amount of such exchange difference arising from a loan or advance owing by such company to any other company or a loan or advance owing by any other company to such company (such a loan or advance referred to as a qualifying exchange item for the purposes of this subsection), if—

(i) such company is a connected person in relation to such other company; and

(ii) the qualifying exchange item is of a capital nature.

(b) The deferred amount of any exchange difference shall, subject to the provisions of paragraphs (c), (d) and (e), be the sum of—

(i) the foreign exchange gain or foreign exchange loss as determined in terms of this section during any year of assessment in respect of any qualifying exchange item if such foreign exchange gain or foreign exchange loss arose as a result of the translation of such qualifying exchange item at the end of such year of assessment; and

(ii) the balance of any foreign exchange gain or foreign exchange loss, in respect of any qualifying exchange item which had arisen as a result of the translation of such qualifying exchange item during any preceding year of assessment, not included in or deducted from the income of such company in terms of paragraph (a) during such preceding year of assessment.

(c) The foreign exchange gain and foreign exchange loss referred to in paragraph (b)(i) shall exclude—

(i) in respect of all years of assessment ending on or before 31 December 1995, any foreign exchange loss in respect of any loan or advance made by such company to any other company or by any other company to such company on or before 31 December 1994; and

(ii) any foreign exchange gain or foreign exchange loss arising in respect of any qualifying exchange item at the end of any year of assessment to the extent to which such qualifying exchange item is hedged by a related or matching forward exchange contract.

(d) The balance of any foreign exchange gain or foreign exchange

loss in respect of any qualifying exchange item referred to in paragraph (b)(ii) shall—

- (i) where the foreign currency amount of a qualifying exchange item, to the extent to which it is not hedged by a related or matching forward exchange contract, at the end of any year of assessment is less than the foreign currency amount of such qualifying exchange item, to the extent to which it was not hedged by a matching or related forward exchange contract, as at the end of the immediately preceding year of assessment, be reduced by an amount which bears to such balance the same ratio as the reduction in the foreign currency amount of such qualifying exchange item which is not so hedged at the end of such year of assessment bears to the foreign currency amount of such qualifying exchange item which was not so hedged at the end of such immediately preceding year of assessment; or
- (ii) be reduced by 100 per cent of such balance in the first year of assessment during which the provisions of paragraph (a) have not been complied with.

(e) Where any qualifying exchange item (hereinafter referred to as the old qualifying exchange item) is realized during the year of assessment by conversion thereof into a qualifying exchange item denominated in any other foreign currency (hereinafter referred to as the new qualifying exchange item)—

- (i) any exchange difference arising as a result of such conversion shall, for the purposes of paragraph (b)(i), be deemed to be a deferred amount of any exchange difference in respect of such old qualifying exchange item;
- (ii) the foreign currency amount of such old qualifying exchange item shall, for the purposes of paragraph (d), be deemed not to have been reduced on realization to the extent that it was converted into a new qualifying exchange item and, thereafter, the old qualifying exchange item and the new qualifying exchange item shall be deemed to be one and the same qualifying exchange item and a reduction of the foreign currency amount of the new qualifying exchange item shall be deemed to be a reduction of the old qualifying exchange item; and
- (iii) the foreign currency amount of the old qualifying exchange item at the end of such immediately preceding year of assessment shall for the purposes of paragraph (d) be restated in the foreign currency in which the new qualifying exchange item is denominated by applying the appropriate exchange rate used to convert the old qualifying exchange item to the new qualifying exchange item.

(f) Any reduction in terms of paragraph (d) of the balance of any foreign exchange gain or foreign exchange loss in respect of a qualifying exchange item shall be included in or deducted from, as the case may be, the income of such company in the year of assessment of such reduction.”

(2) Subsection (1) shall be deemed to have come into operation in respect of years of assessment ending on or after 1 January 1994.

Amendment of section 28 of Act 58 of 1962, as amended by section 17 of Act 90 of 1962, section 22 of Act 55 of 1966, section 24 of Act 89 of 1969, section 21 of Act 88 of 1971, section 19 of Act 65 of 1973, section 16 of Act 103 of 1976, section 19 of Act 91 of 1982, section 22 of Act 94 of 1983, section 17 of Act 65 of 1986, section 23 of Act 90 of 1988, section 13 of Act 70 of 1989, section 25 of Act 101 of 1990, section 29 of Act 129 of 1991 and section 24 of Act 113 of 1993

19.(1) Section 28 of the principal Act is hereby amended—

- (a) by the addition to subparagraph (i) of paragraph (b) of subsection (1) of the following item:

“(E) amounts derived from the investment of funds held by the insurer in his untaxed policyholder fund in terms of section 29(4)(a); and”;

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

“(other than any such expenditure which relates to amounts contemplated in items (A) to [(D)] (E) of paragraph (b)(i) and expenditure referred to in subsection (1A)) as remains after deducting from the said total an amount which bears to the said total the same ratio as so much of any dividends which have been excluded as contemplated in the foregoing provisions of this paragraph bears to the sum of the gross amounts contemplated in this paragraph (before the deduction of the said dividends).”.

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

Repeal of section 30 of Act 58 of 1962

20.(1) Section 30 of the principal Act is hereby repealed.

(2) Subsection (1) shall come into operation as from the commencement of years of assessment commencing on or after 1 January 1995.

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

21.(1) Section 35 of the principal Act is hereby amended by the substitution for the words preceding the proviso to paragraph (a) of subsection (2) of the following words:

“Any person who incurs a liability to pay to any other person (not being a person who is ordinarily resident in the Republic or a [domestic] company which has its place of effective management inside the Republic) any amount referred to in section 9(1)(b) or (bA), or who receives payment of any such amount on behalf of such other person, shall within 14 days after the end of the month during which the said liability is incurred or the said payment is received, as the case may be, or within such further period as the Commissioner may approve, make a payment (which shall be deemed to be an advance payment made on behalf of such other person) to the Commissioner in respect of such other person’s obligation to pay normal tax for the year of assessment during which the said amount accrues to or is received by such other person, calculated [on a sum equal to 30] at the rate of 12 per cent of the said amount [at the rate of tax (excluding any loan portion) applicable to the taxable income (other than taxable income derived from mining operations) of companies] and shall submit to the Commissioner at the time of such tax payment a declaration in such form as the Commissioner may prescribe.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 1994 and shall apply to any payments made on or after that date.

45 Repeal of section 37B of Act 58 of 1962

22.(1) Section 37B of the principal Act is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation as from years of assessment commencing on or after 1 March 1994.

50 Amendment of section 42 of Act 58 of 1962, as amended by section 21 of Act 88 of 1965, section 17 of Act 95 of 1967, section 29 of Act 89 of 1969, section 19 of Act 52 of 1970, section 23 of Act 88 of 1971, section 18 of Act 90 of 1972, section 22 of Act 65 of 1973, section 32 of Act 85 of 1974, section 22 of Act 69 of 1975, section 18 of Act 103 of 1976, section 19 of Act 113 of 1977, section 20 of Act 91 of 1982, section 28 of Act 94 of 1983, section 31 of Act 129 of 1991 and section 27 of Act 141 of 1992

23. Section 42 of the principal Act is hereby amended—

- (a) by the substitution in paragraph (d) of subsection (2) for the expression "ecclesiastical" of the expression "religious"; and
- (b) by the addition to subsection (2) of the following paragraph:
- 5 "(l) so much of any dividend which is declared by a company which has its place of effective management outside the Republic out of dividends which have accrued to such company within the six months immediately preceding such declaration and in respect of which non-resident shareholders' tax has been paid."

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993

24.(1) Section 64B of the principal Act is hereby amended—

- (a) by the substitution for the words preceding subparagraph (i) of paragraph (a) of the definition of "dividend cycle" in subsection (1) of the following words:
- 15 "in relation to the first dividend declared by a company (other than a company which carries on long-term insurance business) on or after 17 March 1993, the period commencing on the later of—"
- (b) by the deletion of the word "and" at the end of paragraph (a) of the definition of "dividend cycle" in subsection (1);
- 20 (c) by the insertion after paragraph (a) of the definition of "dividend cycle" in subsection (1) of the following paragraph:
- 25 "(aA) in relation to the first dividend declared by a company which carries on long-term insurance business out of profits derived during any year of assessment commencing on or after 1 July 1993, the period commencing on the later of—
- 30 (i) the day falling six months prior to the declaration of the said dividend; and
- (ii) the day following the date of declaration of the last dividend (other than a dividend *in specie* or a dividend payable on a preference share) declared by the company prior to the declaration of the said first dividend, and ending on the date on which such first dividend accrues to the shareholder concerned; and"
- (d) by the substitution for subsection (2) of the following subsection:
- 35 "(2) There shall be levied and paid for the benefit of the State Revenue Fund a tax, to be known as the secondary tax on companies, which is calculated at the rate of [15 per cent] 25 per cent of the net amount, as determined in terms of subsection (3), of any dividend declared by any company on or after [17 March 1993] 22 June 1994."
- 40 (e) by the substitution in subsection (3) for the words preceding the proviso of the following words:
- 45 "The net amount of any dividend referred to in subsection (2) shall be the amount by which such dividend declared by a company exceeds the sum of any dividends (other than any dividends contemplated in subsection (5)(b), (c), [and] (d) and (f)) which have during the dividend cycle in relation to such firstmentioned dividend accrued to the company:"
- (f) by the deletion of the word "and" at the end of paragraph (c) of subsection (5);
- 50 (g) by the addition to subsection (5) of the following paragraphs:
- 55 "(e) so much of any dividend declared by a company referred to in subsection (12) (e) during any subsequent year of assessment as contemplated in that subsection, as represents a distribution of an amount received by or accrued to such company as a result of the disposal of gold mining assets;
- (f) any dividend declared by any company to any other company, if—
- (i) such other company at the date of such declaration holds for its own benefit all the equity share capital of such company;

- (ii) such other company is a company which has its place of effective management in the Republic and its profits are derived solely from a source within the Republic; and
- (iii) such company has by notice in writing furnished to the Commissioner by not later than the last day on which secondary tax on companies would, but for this exemption, have been payable in respect of the declaration of such dividend or such later date as the Commissioner may approve, elected that such dividend be exempt from the payment of secondary tax on companies in terms of this paragraph; and
- (g) any dividend distributed by a company which carries on long-term insurance business out of profits derived during any year of assessment commencing prior to 1 July 1993.”; and
- (h) by the addition of the following subsections:
- “(15) Where a company which carries on long-term insurance business declares a dividend out of profits derived during any year of assessment commencing on or after 1 July 1993 and the company’s normal tax payable for that year has in terms of section 29(17) been determined wholly or partially by applying the provisions of section 28, there shall be deducted from the secondary tax on companies payable in respect of such dividend, an amount (hereinafter referred to as the insurers’ credit) equal to so much of the normal tax payable in respect of such year as exceeds the normal tax which would have been payable had the company’s normal tax been determined entirely by applying the provisions of section 29.
- (16) Where the insurers’ credit exceeds the secondary tax on companies payable in respect of any dividend declared out of profits derived during—
- (a) the first year of assessment commencing on or after 1 July 1993, such excess shall be carried forward and be deemed to be the insurers’ credit in respect of the second year of assessment; and
- (b) the second year of assessment commencing on or after 1 July 1993, such excess shall be carried forward and be deducted from the secondary tax on companies payable in respect of dividends declared out of profits derived during the third year of assessment commencing on or after 1 July 1993.
- (17) For the purposes of subsections (5)(g), (15) and (16) a dividend shall be deemed not to have been declared out of profits derived during any year of assessment to the extent that such dividend could have been declared out of profits derived during any subsequent year of assessment.”.
- (2)(a) Subsection (1)(a), (b), (c), (e), (f), (g) and (h) shall be deemed to have come into operation on 17 March 1993.
- (b) Subsection (1)(d) shall be deemed to have come into operation on 22 June 1994.

Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 13 of Act 140 of 1993

- 25.(1) Section 64C of the principal Act is hereby amended—
- (a) by the substitution in paragraph (f) of subsection (4) for the expression “shareholder”, wherever it occurs, of the expression “recipient”;
- (b) by the deletion of the word “and” at the end of paragraph (g) of subsection (4);
- (c) by the addition of the word “and” at the end of paragraph (h) of subsection (4);
- (d) by the addition to subsection (4) of the following paragraph:
- “(i) to any loan or credit granted to a trust by a company to enable such trust to purchase shares in such company with a view to the resale of such shares by such trust to employees of such company or of an associated company in relation to such company, under a share

incentive scheme operated by the company for the benefit of such employees."; and

(e) by the substitution in subsection (5) for the expression "shareholder", wherever it occurs, of the expression "recipient".

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

Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987 and section 10 37 of Act 101 of 1990

26. Section 66 of the principal Act is hereby amended by the deletion of subsection (12).

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992 and section 15 35 of Act 113 of 1993

27. Section 75 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

20 "(2) The Commissioner may, subject to such conditions as he may determine, and in respect of such books (other than ledgers, cash books and journals) or documents as he may specify, authorize the retention of [a microfilm copy of] any book or document referred to in subsection (1) in a form acceptable to him in lieu of the original thereof."

Amendment of section 89ter of Act 58 of 1962, as inserted by section 14 of Act 6 of 1963 and amended by section 22 of Act 90 of 1964, section 22 of Act 95 of 1967, 25 section 37 of Act 89 of 1969, section 36 of Act 94 of 1983, section 33 of Act 121 of 1984 and section 41 of Act 113 of 1993

28. (1) Section 89ter of the principal Act is hereby amended by the substitution for the words preceding paragraph (c) of subsection (3) of the following words:

30 "For the purposes of [this section] subsections (1) and (2) 'taxes' means the taxes comprehended in the definition of 'tax' in section 1, excluding—

(a) non-resident shareholders' tax, [undistributed profits tax, excess profits duty] donations tax, [and] non-residents tax on interest, levy on financial services and secondary tax on companies;"

35 (2) Subsection (1) shall be deemed to have come into operation on 1 April 1994 and shall apply to any payments made on or after that date.

Amendment of section 107 of Act 58 of 1962, as amended by section 26 of Act 65 of 1973 and section 46 of Act 97 of 1986

29. Section 107 of the principal Act is hereby amended by the deletion of paragraph (dA) of subsection (1).

40 Amendment of paragraph 1 of 7th Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 26 of Act 96 of 1985, Government Notice No. R.2706 of 29 November 1985, section 33 of Act 65 of 1986, Government Notice No. R.2683 of 19 December 1986, section 28 of Act 85 of 1987, Government Notice No. R.714 of 14 April 1989, section 24 of Act 70 of 1989, 45 Government Notice No. R.763 of 29 March 1990, section 55 of Act 101 of 1990, section 35 of Act 141 of 1992 and section 52 of Act 113 of 1993

30.(1) Paragraph 1 of the Seventh Schedule to the principal Act is hereby amended by the substitution in the definition of "official rate of interest" for the expression "15 per cent" of the expression "14 per cent".

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

Amendment of paragraph 5 of 7th Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 28 of Act 96 of 1985 and section 57 of Act 101 of 1990

31. Paragraph 5 of the Seventh Schedule to the principal Act is hereby amended—

- (a) by the addition of the following further proviso to subparagraph (2):
 “Provided further that where—
 (a) any asset is presented by an employer to an employee as an award for bravery, such value to be placed thereon shall be reduced by the lesser of the cost to the employer of all such assets so awarded to the employee during the year of assessment and R2 000; or
 (b) any asset is given by an employer to an employee for long service, such value to be placed thereon shall be reduced by the lesser of the cost to the employer of all such assets so given to the employee during the year of assessment and R2 000.”;
- (b) by the substitution for subparagraph (3) of the following subparagraph:
 “(3) No value shall be placed under this paragraph on—
 [(a) any asset presented by an employer to an employee as an award for bravery if the cost to the employer of all such assets so awarded to the employee during the year of assessment does not exceed R2 000; or
 (b) any asset given by an employer to an employee for long service if the cost to the employer of all such assets so given to the employee during the year of assessment does not exceed R2 000; or
 (c)] fuel or lubricants supplied by an employer to his employee for use in a motor vehicle where the value of the private use of such vehicle has been determined under paragraph 7.”; and
- (c) by the substitution for subparagraph (4) of the following subparagraph:
 “(4) For the purposes of [subparagraph (3)(b)] this paragraph, ‘long service’ means an initial unbroken period of service of not less than 15 years or any subsequent unbroken period of service of not less than 10 years.”.

Amendment of paragraph 7 of 7th Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 30 of Act 96 of 1985, section 10 of Act 108 of 1986, Government Notice No. 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice No. R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice No. R.764 of 29 March 1990, section 58 of Act 101 of 1990, section 50 of Act 129 of 1991 and section 36 of Act 141 of 1992

32. Paragraph 7 of the Seventh Schedule to the principal Act is hereby amended—

- (a) by the deletion of the proviso to subparagraph (1); and
 (b) by the insertion after subparagraph (1) of the following subparagraph:
 “(1A)(a) Where an employee has been granted the right of use of a motor vehicle as contemplated in subparagraph (2) and such vehicle, or the right of use thereof, was acquired by the employer not less than 12 months before the date on which the employee was granted such right of use, there shall, subject to the provisions of item (b), be deducted from the amount determined under subparagraph (1), a depreciation allowance calculated according to the reducing balance method at the rate of 15 per cent for each completed period of 12 months from the date on which the employer first obtained such vehicle or the right of use thereof to the date on which the said employee was first granted the right of use thereof.
 (b) The provisions of item (a) shall not apply where the vehicle or the right of use thereof was acquired by the employer from an associated

institution in relation to the employer and the employee concerned had prior to such acquisition enjoyed the right of use of the vehicle.”.

Amendment of paragraph 9 of 7th Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 31 of Act 96 of 1985, section 34 of Act 65 of 1986, section 29 of Act 85 of 1987, section 59 of Act 101 of 1990 and section 53 of Act 113 of 1993

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

- 10 “ ‘remuneration’, in relation to any employee, means the aggregate of the amounts of remuneration (as determined in accordance with the definition of ‘remuneration’ in paragraph 1 of the Fourth Schedule but excluding any amounts referred to in paragraph (c) and including any amounts referred to in paragraph (vii) of that definition) which have been derived by him from
15 his employer and any companies and funds which are associated institutions in relation to the employer, but excluding—”.

Amendment of paragraph 20 of 7th Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 39 of Act 96 of 1985

34. Paragraph 20 of the Seventh Schedule to the principal Act is hereby
20 amended by the substitution for item (b) of subparagraph (1) of the following item:

“(b) the provisions of paragraph 5[(3)(b)] (2) so as to vary the amount specified therein;”.

Withdrawal of Government Notice No. 57 of 14 January 1994

- 25 35.(1) Government Notice No. 57 of 14 January 1994 is hereby withdrawn.
(2) Subsection (1) shall be deemed to have come into operation on 14 January 1994.

Transition levy for companies who have had change in financial year

36. Where, in consequence of a change in its financial year, any company has
30 two years of assessment which end during the period of 12 months ending on 31 March 1995, the transition levy payable under the provisions of sections 38, 39 and 40 of this Act and paragraph 1(g) of the Schedule to this Act, shall be payable only in respect of the first of such years of assessment.

Administration by Commissioner of certain laws of former state

37. Notwithstanding anything to the contrary contained in any law, the
35 Minister of Finance may by notice in the *Gazette* provide that the Commissioner for Inland Revenue, appointed in terms of section 2 of the principal Act, shall from a date specified in such notice be responsible for carrying out the provisions of any law of a former state specified in such notice and which continues to be
40 in force in terms of section 229 of the Constitution and imposes any tax, duty or levy which is similar to any tax, duty or levy levied in terms of any law which is at present administered by the said Commissioner.

Transition levy payable by persons deriving income from source within former Republic of Transkei

38. Subject to the provisions of the Income Tax Act, 1962 (Act No. 58 of
45 1962), of the former Republic of Transkei, and the Transkei Taxation Act, 1969 (Act No. 8 of 1969), of the former Republic of Transkei, in this section referred to as the Transkei Act, there shall in addition to the tax imposed at the rates prescribed in terms of—
50 (a) section 6 of the Transkei Act, be paid by every person (other than a company) in respect of the year of assessment ending on 28 February

- 1995, a transition levy which is calculated at the rate of 3,33 per cent of the amount by which the taxable income of such person exceeds R50 000: Provided that for the purposes of this paragraph, the taxable income of a person shall be determined without the inclusion of any amount contemplated in section 7A(4A) of the principal Act and paragraph 7 of the Second Schedule to the said Act; and
- 5 (b) Schedule 2 to the Income Tax Amendment Act, 1982 (Act No. 19 of 1982), of the former Republic of Transkei, be paid by every company in respect of any year of assessment ending during the period of 12 months ending on 31 March 1995, a transition levy which is calculated at the rate of 5 per cent of the amount by which the taxable income of such company exceeds R50 000: Provided that for the purposes of this paragraph, the taxable income of the company shall be determined without the set-off of any balance of assessed loss incurred by the company in any previous year of assessment.
- 10
- 15

Transition levy payable by persons deriving income from source within former Republic of Bophuthatswana

39. Subject to the provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Bophuthatswana, and the Bophuthatswana Taxation Act, 1978 (Act No. 26 of 1978), of the former Republic of Bophuthatswana, in this section referred to as the Bophuthatswana Act, there shall, in addition to the tax imposed at the rates prescribed in terms of—
- 20 (a) section 6 of the Bophuthatswana Act, be paid by every person (other than a company) in respect of the year of assessment ending on 28 February 1995, a transition levy which is calculated at the rate of 3,33 per cent of the amount by which the taxable income of such person exceeds R50 000: Provided that for the purposes of this paragraph, the taxable income of a person shall be determined without the inclusion of any amount contemplated in section 7A(4A) of the principal Act and paragraph 7 of the Second Schedule to the said Act; and
- 25 (b) the Schedule to the Bophuthatswana Act, be paid by every company in respect of any year of assessment ending during the period of 12 months ending on 31 March 1995, a transition levy which is calculated at the rate of 5 per cent of the amount by which the taxable income of such company exceeds R50 000: Provided that for the purposes of this paragraph, the taxable income of the company shall be determined without the set-off of any balance of assessed loss incurred by the company in any previous year of assessment.
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Transition levy payable by persons deriving income from source within former Republic of Ciskei

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40. Subject to the provisions of the Income Tax Act, 1984 (Act No. 44 of 1984), of the former Republic of Ciskei, in this section referred to as the Income Tax Act, there shall, in addition to the tax imposed in terms of section 5 of the Income Tax Act, be paid a transition levy on chargeable income (excluding dividends contemplated in section 6(c) of the Income Tax Act)—
- 45 (a) by every person (other than a company) in respect of the year of assessment ending on 28 February 1995, which is calculated at the rate of 3,33 per cent of the amount by which the chargeable income of such person exceeds R50 000: Provided that for the purposes of this paragraph, the chargeable income of a person shall be determined without the inclusion of any amount contemplated in section 7A(4A) of the principal Act; and
- 50

- (b) by every company (including a company which has been granted tax-free status in terms of the Company Tax Amendment Act, 1984 (Act No. 16 of 1984 of Ciskei), or the Company Tax Amendment Decree, 1994 (Decree No. 2 of 1994 of Ciskei)), in respect of any year of assessment ending during the period of 12 months ending on 31 March 1995 which is calculated at the rate of 5 per cent of the amount by which the chargeable income of such company exceeds R50 000: Provided that for the purposes of this paragraph, the chargeable income of the company shall be determined without the set-off of any balance of assessed loss incurred by the company in any previous year of assessment.

Application of the principal Act

41.(1) The principal Act, as well as any regulation, Proclamation or Government Notice issued in terms of the provisions thereof, shall, subject to the provisions of subsections (2), (3) and (4), be applicable—

- (a) to former citizens of any former territory;
- (b) to income derived from a source within the territory of a former state in respect of a trade which any person (other than a natural person) commenced carrying on for the first time or recommenced carrying on in such former state on or after 22 June 1994; and
- (c) to income derived from a source within the territory of the former Republic of Venda.

(2) Insofar as the principal Act is applicable in terms of subsection (1), the laws of a former state or of a former territory which impose a similar tax, shall not be applicable.

(3) Any law referred to in the principal Act which is not yet applicable in a former territory or in the territory of the former Republic of Venda, shall for the purposes of the principal Act be deemed to be applicable in the said territory.

(4)(a) Subsection (1)(a) shall be deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 March 1994.

(b) Subsection (1)(b) shall be deemed to have come into operation on 22 June 1994.

(c) Subsection (1)(c) shall come into operation—

- (i) in respect of any person (other than a company) from years of assessment commencing on or after 1 March 1995; and
- (ii) in respect of any company from the commencement of years of assessment commencing on or after 1 April 1994.

Determination of taxable income derived by persons previously assessable under certain other laws

42. (1) Where any rule provided in the principal Act as to the inclusion in the income of any taxpayer, for any year or as to the deduction or set-off of any amount from or against his income for such year, in effect requires that regard shall be had to anything that has been done or has occurred in or in relation to a previous year of assessment, anything that has in fact been done or has in fact occurred in or in relation to a year of assessment during which the taxpayer was assessable for taxation purposes in terms of any law of a former territory or in terms of any law of the former Republic of Venda for any year of assessment, shall, subject to such adjustments as may in the circumstances be appropriate, for the purposes of applying such rule be taken into account.

(2) Subsection (1) shall—

- (a) in so far as the provisions relate to a taxpayer who was assessable in terms of any law of a former territory, be deemed to have come into operation from the commencement of years of assessment commencing on or after 1 March 1994; and
- (b) in so far as the provisions relate to a taxpayer who was assessable in terms of any law of the former Republic of Venda come into operation—
 - (i) in respect of any person (other than a company) from years of assessment commencing on or after 1 March 1995; and

- (ii) in respect of any company from the commencement of years of assessment commencing on or after 1 April 1994.

Determination of value in respect of fringe benefits granted to persons who derive remuneration from source within former Republic of Venda

5 43.(1) In the determination of the cash equivalent for purposes of paragraph (i) of the definition of "gross income" in section 1 of the principal Act of any person who derives remuneration from a source within the territory of the former Republic of Venda, the provisions of paragraphs (14) and (15) of the First Schedule to the Income Tax Amendment Proclamation, 1993 (Proclamation No. 18 of 1993), of the said former Republic, shall, notwithstanding the
10 repeal of the said Proclamation, continue to apply as though they are contained in the Seventh Schedule to the principal Act.

(2) Subsection (1) shall come into operation from years of assessment commencing on or after 1 March 1995.

15 **Amendment of Income Tax Act, 1962, of former Republic of Venda**

44. Any provision in this Act which amends the principal Act shall be deemed to have amended the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Venda *mutatis mutandis*.

20 **Amendment of paragraph 12 of First Schedule to Income Tax Act, 1984, of former Republic of Ciskei**

45. Paragraph 12 of the First Schedule to the Income Tax Act, 1984 (Act No. 44 of 1984), of the former Republic of Ciskei, is hereby amended by the deletion of subparagraph (a).

Repeal of laws, and savings

25 46.(1) The following laws are hereby repealed:

(a) Laws of the former territories:

- (i) The KwaZulu Income Tax Harmonization Act, 1984 (Act No. 4 of 1984);
- 30 (ii) the Gazankulu Income Tax Harmonisation Act, 1984 (Act No. 5 of 1984);
- (iii) the Lebowa Tax Harmonization Act, 1984 (Act No. 6 of 1984);
- (iv) the Qwaqwa Income Tax Harmonization Act, 1984 (Act No. 7 of 1984);
- (v) the KwaNdebele Income Tax Harmonization Act, 1984 (Act No. 9 of 1984); and
- 35 (vi) the KaNgwane Income Tax Harmonization Act, 1989 (Act No. 8 of 1989); and

(b) Laws of the former Republic of Venda:

- (i) Income Tax Act, 1962 (Act No. 58 of 1962);
- 40 (ii) Income Tax Amendment Act, 1984 (Act No. 7 of 1984);
- (iii) Income Tax Amendment Act, 1986 (Act No. 11 of 1986);
- (iv) Income Tax Amendment Act, 1987 (Act No. 15 of 1987);
- (v) Income Tax Second Amendment Act, 1987 (Act No. 32 of 1987);
- (vi) Income Tax Amendment Act, 1988 (Act No. 8 of 1988);
- 45 (vii) Income Tax Second Amendment Act, 1988 (Act No. 25 of 1988);
- (viii) Income Tax Amendment Act, 1989 (Act No. 31 of 1989);
- (ix) Income Tax Amendment Proclamation, 1990 (Proclamation No. 32 of 1990);
- (x) Income Tax Amendment Proclamation, 1991 (Proclamation No. 31 of 1991);
- 50 (xi) Income Tax Amendment Proclamation, 1992 (Proclamation No. 22 of 1992);

(xii) Income Tax Proclamation, 1993 (Proclamation No. 18 of 1993);
and

(xiii) Income Tax Proclamation, 1994 (Proclamation No. 93 of 1994);

5 (2) Any tax or levy 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 (3) Anything done under a law repealed in terms of subsection (1) and which is capable of being done under a provision of the principal Act, shall, from the date of repeal of the said law, be deemed to have been done under such provision of the principal Act.

15 (4)(a) Subsection (1)(a) shall be deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 March 1994.

(b) Subsection (1)(b) shall come into operation—

- 20 (i) in respect of any person (other than a company) from years of assessment commencing on or after 1 March 1995; and
(ii) in respect of any company from the commencement of years of assessment commencing on or after 1 April 1994.

Definitions

47. For the purposes of this Act—

- 25 “former state” means the former Republics of Transkei, Bophuthatswana, Venda and Ciskei; and
“former territory” means any territory declared under section 26 of the Self-governing Territories Act, 1971 (Act No. 21 of 1971), to be self-governing territories.

Commencement of certain amendments

30 48. Save in so far as is otherwise provided therein or the context otherwise indicates, the amendments effected to the principal Act by this Act, shall for the purposes of assessments in respect of normal tax under the principal Act, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 1995.

Short title

35 49. This Act shall be called the Income Tax Act, 1994.

SCHEDULE

RATES OF NORMAL TAX PAYABLE BY PERSONS OTHER THAN COMPANIES IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 28 FEBRUARY 1995 AND 30 JUNE 1995, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 1995

(Section 1 of this Act)

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

TABLES

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

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

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

- (b) on each rand of the taxable income of any company (excluding taxable income referred to in subparagraphs (c), (d) and (e)), 35 cents, or, in the case of a company which mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, 48 cents;

- (c) on each rand of the taxable income derived by any company from mining for gold on any gold mine (with the exclusion of so much of the taxable income as the Commissioner determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the principal Act, but after the set-off of any assessed loss in terms of section 20(1) of the principal Act), a percentage determined in accordance with the formula:

$$y = 43 - \frac{215}{x}$$

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

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

in which formulae y represents such percentage and x the ratio expressed as a percentage which the taxable income so derived (with the said exclusion, but before the set-off of any assessed loss or deduction which is not attributable to the mining for gold from the said mine) bears to the income so derived (with the said exclusion);

- (d) on each rand of the taxable income of any company, the sole or principal business of which in the Republic is, or has been, mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Commissioner determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the principal Act, a rate equal to the average rate of normal tax or 35 cents, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of its aggregate taxable income from gold mining for the period from 1 July 1916 to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;
- (e) on each rand of the taxable income derived by any company from carrying on long-term insurance business—
- (i) where such taxable income has been determined in terms of the provisions of section 28 of the principal Act, 43 cents; or
 - (ii) where such taxable income has been determined in terms of the provisions of section 29 of the principal Act—
 - (aa) in respect of its individual policyholder fund, 30 cents; and
 - (bb) in respect of its company policyholder fund and corporate fund, 35 cents;
- (f) on each rand of so much of the taxable income of any person (other than a company) as exceeds R50 000 in the case of a person other than a married woman or R175 000 in the case of a married woman, 3,33 cents: Provided that for the purposes of this subparagraph, the taxable income of a person shall be determined without the inclusion of any amount contemplated in section 7A(4A) of the principal Act and paragraph 7 of the Second Schedule to the said Act;
- (g) on each rand of so much of the taxable income of any company as exceeds R50 000, 5 cents: Provided that for the purposes of this subparagraph, the taxable income of the company shall be determined without the set-off of any balance of assessed loss incurred by the company in any previous year of assessment.

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

income which, in the opinion of the Commissioner, results directly from mining for gold.

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

3. For the purposes of the principal Act, any amount determined in accordance with paragraph 1(f) or (g) shall be known as the transition levy.

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