



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Vol. 361

CAPE TOWN, 19 JULY 1995

KAAPSTAD, 19 JULIE 1995

No. 16542

PRESIDENT'S OFFICE

No. 1048.

19 July 1995

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

No. 21 of 1995: Income Tax Act, 1995.

KANTOOR VAN DIE PRESIDENT

No. 1048.

19 Julie 1995

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

No. 21 van 1995: Inkomstebelastingwet, 1995.

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 29 February 1996 and 30 June 1996, and by companies in respect of taxable incomes for years of assessment ending during the period of 12 months ending on 31 March 1996; to amend the Income Tax Act, 1962; to amend the Income Tax Act, 1994; to provide for special provisions with regard to benefit funds, pension funds, provident funds or retirement annuity funds established or approved by or under the laws of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei, respectively; to extend the application of the Income Tax Act, 1962; to repeal certain laws; and to provide for incidental matters.

(Afrikaans text signed by the President.)
(Assented to 10 July 1995.)

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), in respect of— 5

- (a) the taxable income of any person other than a company for the year of assessment ending on 29 February 1996 or 30 June 1996; and
- (b) the taxable income of any company for any year of assessment ending during the period of 12 months ending on 31 March 1996,

shall be as set forth in Schedule 1 to this Act. 10

Ammendment 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 15

1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R.780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993 and section 2 of Act 21 of 1994

2. Section 1 of the principal Act is hereby amended— 10

- (a) by the substitution for paragraph (c) of the definition of “benefit fund” of the following paragraph: 15
- “(c) any fund (other than a pension fund, provident fund or retirement annuity fund) which, in respect of the year of assessment in question, the Commissioner is satisfied is a permanent fund *bona fide* established for the purpose of providing sickness, accident or unemployment benefits for its members, or mainly for such a purpose and also for the purpose of providing benefits for the [widows, children] dependants or nominees of deceased members;”;
- (b) by the deletion of the definition of “married person”; 20
- (c) by the substitution for paragraph (a) of the definition of “pension fund” of the following paragraph: 25
- “(a) a superannuation, pension, provident [widows’ or orphans’] or dependants’ fund or pension scheme established by law or any such fund established for the benefit of the employees of any local authority;”;
- (d) by the substitution for paragraph (i) of the proviso to paragraph (c) of the definition of “pension fund” of the following paragraph: 30
- “(i) that the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement from employment or for [widows, children] the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid; and”;
- (e) by the substitution for subparagraph (gg) of paragraph (ii) of the proviso to paragraph (c) of the definition of “pension fund” of the following subparagraph: 35
- “(gg) that no portion of any annuity payable to the [widow, child] dependant or nominee of a deceased member shall be commuted later than six months from the date of the death of such member; and”;
- (f) by the substitution for paragraph (a) of the proviso to the definition of “provident fund” of the following paragraph: 40
- “(a) that the fund is a permanent fund *bona fide* established solely for the purpose of providing benefits for employees on retirement from employment or solely for the purpose of providing benefits for [widows, children] the dependants or nominees of deceased employees or deceased former employees or solely for a combination of such purposes; and”;
- (g) by the substitution for paragraph (a) of the proviso to the definition of “retirement annuity fund” of the following paragraph: 50
- “(a) that the fund is a permanent fund *bona fide* established for the sole purpose of providing life annuities for the members of the fund or annuities for the [widows, children] dependants or nominees of deceased members; and”;
- (h) by the substitution for subparagraph (iii) of paragraph (b) of the proviso to the definition of “retirement annuity fund” of the following subparagraph: 55
- “(iii) that no portion of any annuity payable to the [widow, child] dependant or nominee of a deceased member may be commuted later than six months from the date of the death of such member;”;
- (i) by the substitution for subparagraphs (vi) and (vii) of paragraph (b) of the proviso to the definition of “retirement annuity fund” of the following subparagraphs, respectively: 60

- “(vi) that where a member dies before he becomes entitled to the payment of an annuity, the benefits shall not exceed a refund to his estate or to his [widow, children] dependants or nominees of the sum of the amounts (with or without reasonable interest thereon) contributed by him and an annuity or annuities to his [widow, children] dependants or nominees; 5
- (vii) that where a member dies after he has become entitled to an annuity no further benefit shall be payable other than an annuity or annuities to his [widow, children] dependants or nominees;”.

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992 and section 3 of Act 21 of 1994 10

3. (1) Section 3 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any decision of the Commissioner under the definitions of ‘benefit fund’, ‘pension fund’, ‘provident fund’ and ‘retirement annuity fund’ in section 1, section 6, section 8(4)(b), (c), (d) and (e), section 10(1)(cB), (cH), (cI), (cJ), (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 13[(1)], section 14[(1)], section 15, section 16A, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 27[(2)], section 31, section 35(2), section 38(4), section [42(2)] 57, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph (b) of the definition of ‘formula A’ in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 22, 24 and 27 of the Fourth Schedule and paragraphs 2, 3, [and] 6, 9 and 11 of the Seventh Schedule, shall be subject to objection and appeal.”. 15 20

(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. 25

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 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, section 3 of Act 129 of 1991 and section 5 of Act 21 of 1994 30 35

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

(a) by the substitution for the formula in subsection (10) of the following formula:

$$“Y = \left(\frac{A}{B + D - (C + L)} \times (B - L) \right) + (L \times R);” 40$$

(b) by the substitution for the expression “B — C” in paragraph (b) of subsection (10) of the expression “B + D — (C + L)”;

(c) by the substitution for subparagraph (iA) of paragraph (d) of subsection (10) of the following subparagraph: 45

“(iA) [where] in relation to any amount which accrued to the taxpayer before 1 September 1995 to which the provisions of section 7A(4A) are [in the case of an employee (including the holder of an office)] applicable in respect of the said year, the lesser of— 50

(aa) [the] that amount [contemplated in that subsection if that amount has actually accrued to such employee before

1 October 1982 or is, by reason of an option exercised by the taxpayer under subsection (4) of the said section, one of three instalments of an amount which has actually accrued to such employee before that date]; or

(bb) [if the provisions of item (aa) are not applicable, the lesser of—

(A) the amount contemplated in the said subsection (4A); and

(B) an amount equal to three times the annual average of the amounts derived by such [employee] taxpayer during the three years of assessment which immediately preceded the year of assessment under charge by way of remuneration as defined in paragraph 1 of the Fourth Schedule, including an amount referred to in paragraph (vii) of that definition but excluding [any amount referred to in subsection (4) of the said section:

Provided that where the taxpayer has exercised an option as contemplated in the said subsection (4) the sum of the amounts to be accounted for under this item in respect of the three years of assessment during which the instalments referred to in the said subsection (4) are deemed by that subsection to have been received or to have accrued shall not exceed the amount which would have been accounted for under this item in respect of the first of the said three years of assessment if the taxpayer had not exercised the said option: Provided further that where such amount contemplated in the said subsection (4A) was received by or accrued to the taxpayer on or after 1 July 1983, the amount determined under subitem (B) shall be reduced by] so much of the sum of any other amounts contemplated in the said [subsection] section 7A(4A) as were included in the amount represented by the symbol 'C' in respect of any previous year of assessment;”;

(d) by the addition in subsection (10) of the word “and” at the end of subparagraph (iiiA) of paragraph (d);

(e) by the substitution in subsection (10) for subparagraph (iv) of paragraph (d) of the following subparagraph:

“(iv) [where] in relation to any amount which accrued to the taxpayer before 1 September 1995 to which the provisions of paragraph 7 of the Second Schedule are [in the case of the taxpayer] applicable, [in respect of the said year] any amount determined in accordance with the provisions of that Schedule and included in his income for the said year; [and]”;

(f) by the addition to subsection (10) of the following paragraphs:

“(e) ‘D’ represents an amount equal to so much of any current contribution to a retirement annuity fund as is allowable as a deduction in terms of section 11(n)(aa)(A) solely by reason of the inclusion in the taxpayer’s income of any amount contemplated in paragraph (d)(i), (ii), (iii) and (iiiA) and paragraph (f);

(f) ‘L’ represents an amount equal to the sum of—

(i) in relation to any amount which accrued to the taxpayer on or after 1 September 1995 to which the provisions of section 7A(4A) are applicable in respect of the said year, the lesser of— (aa) that amount; or

(bb) an amount equal to three times the annual average of the amounts derived by such taxpayer during the three years of assessment which immediately preceded the year of assessment under charge by way of remuneration as defined in paragraph 1 of the Fourth Schedule, including any amount

- referred to in paragraph (vii) of that definition but excluding so much of the sum of any other amounts contemplated in the said section 7A(4A) as were included in the amounts represented by the symbols 'C' and 'L' in respect of the said year and any previous year of assessment; and
- (ii) in relation to any amount which accrued to the taxpayer on or after 1 September 1995 to which the provisions of paragraph 7 of the Second Schedule are applicable, any amount determined in accordance with the provisions of that Schedule and included in his income for the said year; and
- (g) 'R' represents the greater of the amounts determined by applying the formula—

$$R = \frac{A}{B + D - (C + L)}$$

in respect of the said year and the preceding year of assessment, in which formula the amounts represented by the symbols 'A', 'B', 'C', 'D' and 'L' shall be determined in accordance with the foregoing provisions of this subsection as applicable in the said year or in the said preceding year, as the case may be: Provided that—

- (a) where, as a result of the death or insolvency of the taxpayer, the period assessed is less than 12 months, the symbol 'R' shall be determined with reference to the said year only; and
- (b) where the said preceding year ended on 28 February 1995, the symbols 'D' and 'L' in the formula shall be disregarded; and

- (g) by the addition to subsection (10) of the following further proviso: "Provided further that where the sum of the amounts included in symbol 'L' exceed the taxpayer's taxable income for the said year, the amount of normal tax so payable shall be calculated on the taxpayer's total taxable income for the said year, at the greater of the relevant rate contemplated in the preceding proviso and the amount determined as symbol 'R' in relation to the preceding year only."

Amendment of section 6 of Act 58 of 1962, as inserted by section 5 of Act 104 of 1980 and amended by section 5 of Act 96 of 1981, section 5 of Act 91 of 1982, section 4 of Act 94 of 1983, section 4 of Act 121 of 1984, section 3 of Act 96 of 1985, section 4 of Act 85 of 1987, section 4 of Act 90 of 1988, section 4 of Act 70 of 1989, section 3 of Act 101 of 1990, section 4 of Act 129 of 1991 and section 4 of Act 141 of 1992

5. Section 6 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections:
- "(1) There shall be deducted from the normal tax payable by any natural person an amount equal to the sum of the amounts allowed to the taxpayer by way of rebates under [subsections] subsection (2) [and (3)].
- (2) In the case of a natural person there shall, subject to the provisions of subsection (4), be allowed by way of—
- (a) a primary rebate, [(a)] an amount of [R2 225, if such person is a married person; or
- (b) an amount of R1 950, if such person is not a married person; or
- (c) an amount of R900, if such person is a married woman] R2 625; and
- (b) a secondary rebate, if the taxpayer was or, had he lived, would have been over the age of 65 years on the last day of the year of assessment, an amount of R2 500.";

- (b) by the deletion of subsection (3); and
 (c) by the substitution for subsection (4) of the following subsection:

“(4) Where the period assessed is less than 12 months, the amount to be allowed by way of a rebate under subsection (2) [or (3)(a)] shall be such amount as bears to the full amount of such rebate, the same ratio as the period assessed bears to 12 months unless, where such period terminates at the death of the taxpayer or commences at the death of the spouse of the taxpayer, the Commissioner in the special circumstances of the case otherwise directs.”

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 9 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991 and section 5 of Act 141 of 1992

6. Section 7 of the principal Act is hereby amended by the deletion of paragraph (c) of subsection (2).

Amendment of section 7A of Act 58 of 1962, as inserted by section 6 of Act 69 of 1975 and amended by section 7 of Act 103 of 1976, section 6 of Act 96 of 1981, section 4 of Act 65 of 1986, section 8 of Act 129 of 1991 and section 3 of Act 113 of 1993

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

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

“ ‘pension’ means an annuity payable under any law or under the rules of a pension fund or provident fund or by an employer to a former employee of that employer or to the [widow, child or] dependant or nominee of a deceased person who was employed by such employer;”

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

“Where the taxable income of any taxpayer for any year of assessment includes any amount (other than an amount contemplated in paragraph (e) of the definition of ‘gross income’ in section 1) received by or accrued to him as an employee or the holder of any office by way of bonus, gratuity or compensation upon or because of the termination of his services or because of the impending termination of his services within five years (or such longer period as the Commissioner may approve) from the date of actual receipt or accrual of such amount, and—”

- (c) by the substitution for paragraph (a) of subsection (4A) of the following paragraph:

“(a) the taxpayer has attained the age of 55 years [in the case of a male or fifty years in the case of a female]; or”

- (d) by the deletion of paragraph (c) of subsection (4A).

(2) Subsection (1)(c) shall come into operation on a date fixed by the Minister of Finance by notice in the *Gazette*.

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

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

- (a) by the substitution in subsection (1) for the words of the proviso to subparagraph (ii) of paragraph (b) preceding paragraph (aa) of the proviso of the following words:
 “Provided that where an allowance or advance has been paid to a recipient in relation to a motor vehicle in respect of which he has been granted the right of use as contemplated in paragraph 7 of the Seventh Schedule, no regard shall be had to such rate per kilometre in order to determine the portion of such allowance or advance expended by the recipient for business purposes: Provided further that—”;
- (b) by the addition to paragraph (b) of subsection (4) of the following proviso:
 “Provided that the provisions of this paragraph shall not apply to any amount which has been recovered or recouped as a result of any such loss, sale or disposal which has taken or takes place on or after 1 April 1995.”;
- (c) by the substitution for the words preceding the proviso to paragraph (e) of subsection (4) of the following words:
 “If any amount which was deducted under the provisions of section 11(e) or section 12(1) or section 12(1) as applied by section 12(3) or the corresponding provisions of any previous Income Tax Act or section 12B or section 12C or section 14 or section 14bis or section 27(2)(d), in respect of machinery or plant which was used by the taxpayer directly in a process of manufacture, or directly in any other process carried on by him on or after 15 March 1961, which in the opinion of the Commissioner was of a similar nature, or in respect of machinery or plant which was used by an agricultural co-operative (as defined in section 27(9)) directly for storing or packing pastoral, agricultural or other farm products or for subjecting such products to a primary process as defined in the said section 27(9) or in respect of a ship or aircraft used by him for purposes of his trade, has as a result of damage or destruction (hereinafter referred to as ‘the event’) been recovered or recouped during any year of assessment, and if the taxpayer satisfies the Commissioner—
- (i) that he has concluded or will within a period of one year (or such longer period as the Commissioner in the circumstances of the case may allow) from the date of the event conclude a contract for the acquisition by him of further new or unused machinery or plant or a ship or aircraft (hereinafter referred to as the ‘further [machinery or plant] asset’) to replace the aforesaid machinery or plant or ship or aircraft; and
- (ii) that the further [machinery or plant] asset has been or will be brought into use within a period of three years from the date of the event and will be used by him—
- (aa) directly in a process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature; [or]
- (bb) in the case of such co-operative, directly for storing or packing pastoral, agricultural or other farm products or for subjecting such products to a primary process, as defined in section 27(9); or
- (cc) in the case of a ship or aircraft, directly for the purposes of the taxpayer’s trade,
 for a period of not less than five years or until the further [machinery or plant] asset is scrapped or disposed of in the ordinary course of the taxpayer’s trade prior to the expiry of such period of five years,
 the said amount shall, notwithstanding the provisions of paragraph (a) of this subsection, not be included in the income of the taxpayer for the aforesaid year of assessment.”; and
- (d) by the substitution for paragraph (f) of subsection (4) of the following paragraph:
 “(f) If as a result of the loss, sale or disposal in any other manner by the taxpayer of the further [machinery or plant] asset referred to in paragraph (e) there has accrued to or has been received by the taxpayer an amount in excess of the cost thereof less the amount referred to in the said paragraph, so much

of the excess as does not exceed such last-mentioned amount shall (unless such lastmentioned amount has been included in income in terms of the proviso to the said paragraph) be deemed to have been recovered or recouped and shall be included in the taxpayer's income for the year of assessment during which such further [machinery or plant] asset was so lost, sold or disposed of in addition to any recovery or recoupment referred to in paragraph (a)."

(2)(a) Subsection (1)(a) shall come into operation on 1 September 1995.

(b) Subsection (1)(b), (c) and (d) shall be deemed to have come into operation on 1 April 1995 and shall apply to any amount which has been recovered or recouped as a result of any such loss, sale or disposal which takes place on or after that date.

Amendment of section 9 of Act 58 of 1962, as amended by section 7 of Act 90 of 1962, section 6 of Act 72 of 1963, section 7 of Act 90 of 1964, section 9 of Act 95 of 1967, section 12 of Act 89 of 1969, section 6 of Act 65 of 1973, section 9 of Act 85 of 1974, section 8 of Act 103 of 1976, section 9 of Act 121 of 1984, section 5 of Act 96 of 1985, section 6 of Act 65 of 1986, section 2 of Act 108 of 1986, section 7 of Act 85 of 1987, section 36 of Act 9 of 1989, section 10 of Act 129 of 1991, section 7 of Act 141 of 1992, section 5 of Act 113 of 1993, section 3 of Act 140 of 1993 and section 7 of Act 21 of 1994

9. Section 9 of the principal Act is hereby amended—

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

“(e) (i) any services rendered by such person to or work or labour done by such person for or on behalf of the Government, including the Railway Administration and any provincial administration, or any local authority in the Republic or the South African Tourist Corporation or the Council for Scientific and Industrial Research, notwithstanding that such services are rendered or that such work or labour is done outside the Republic, provided such services are rendered or such work or labour is done in accordance with a contract of employment entered into with the Government or such administration or local authority or that Corporation or that Council; or

(ii) the holding of a public office to which such person has been appointed or is deemed to have been appointed in terms of an Act of Parliament, notwithstanding that such public office is held outside the Republic:

[Provided that nothing in this paragraph shall be construed as imposing liability for taxation under this Act upon any salary or emolument paid to any person in the employment of the Government, including the Railway Administration, in respect of any period for which such person is stationed in the territory] Provided [further] that nothing in this paragraph shall be construed as imposing liability for taxation under this Act upon any payment made to any such person who is [employed by the Government, including the South African Transport Services, and is] stationed outside the Republic, by way of an allowance for the purpose of meeting expenditure incurred by such person in connection with his official duties outside the Republic;”;

(b) by the addition in subsection (1) to subparagraph (ii) of paragraph (g) of the following further proviso:

“Provided further that any services rendered in the territory of the former Republic of Transkei, Bophuthatswana, Venda or Ciskei shall be deemed to have been rendered within the Republic;”.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85

of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993 and section 9 of Act 21 of 1994

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

(a) by the addition to paragraph (h) of subsection (1) of the following further proviso: 10

“Provided further that the exemption under this paragraph shall not apply to any natural person unless such person was physically absent from the Republic for a period or periods of at least 183 days in aggregate during the year of assessment in which such interest was received or accrued;” 15

(b) by the deletion in subsection (1) of the word “and” at the end of paragraph (ii) of the proviso to paragraph (hA);

(c) by the addition in subsection (1) of the word “and” at the end of paragraph (iii) of the proviso to paragraph (hA);

(d) by the addition in subsection (1) to the proviso to paragraph (hA) of the following paragraph: 20

“(iv) the exemption under this paragraph shall not apply to any natural person unless such person was physically absent from the Republic for a period or periods of at least 183 days in aggregate during the year of assessment in which such interest was received or accrued;” 25

(e) by the substitution in subsection (1) for paragraph (i) of the first proviso to paragraph (x) of the following paragraph:

“(i) such person has attained the age of 55 years [in the case of a male or fifty years in the case of a female]; or”; and

(f) by the deletion in subsection (1) of paragraph (iii) of the first proviso to paragraph (x). 30

(2)(a) Subsection (1)(a), (b), (c) and (d) shall be deemed to have come into operation on 1 April 1995 and shall apply to any interest received or accrued on or after that date.

(b) Subsection (1)(e) shall come into operation on a date fixed by the Minister of Finance by notice in the *Gazette*. 35

Amendment of section 10A of Act 58 of 1962, as inserted by section 8 of Act 65 of 1973 and amended by section 11 of Act 85 of 1974 and section 8 of Act 113 of 1993

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

(a) by the substitution in subsection (1) for the words following upon paragraph (c) of the definition of “annuity contract” of the following words: 40

“but does not include any agreement for the payment by any insurer of any annuity which is under the rules of a pension fund or of a provident fund or of a retirement annuity fund payable to a member of such fund [or to the widow of such member] or to any other person;” and

(b) by the substitution for subsection (2) of the following subsection: 45

“(2) There shall be exempt from normal tax so much of any annuity amount payable to a purchaser or his deceased or insolvent estate or his spouse or surviving spouse (as contemplated in paragraph (a) of the definition of ‘annuity contract’ in subsection (1)) as is determined in accordance with subsection (3) to represent the capital element of such amount.” 50

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

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

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

- (a) by the substitution for the proviso to paragraph (bB) of the following proviso: 15
 “Provided that any such finance charge (other than a finance charge which falls to be dealt with in terms of the provisions of section 24J) which is calculated or payable in respect of a period of more than 12 months extending beyond the end of the year of assessment shall for the purposes of this paragraph be deemed to have been incurred from day to day during the said period;”;
- (b) by the deletion of paragraph (vii) of the proviso to paragraph (n); and
- (c) by the substitution for paragraph (viii) of the proviso to paragraph (n) of the following paragraph: 20
 “(viii) where any such contribution was allowed as a deduction to a [married woman] person, no deduction in respect of such contribution shall be allowed to [her husband] such person's spouse.”; 25

(2) Subsection (1)(a) shall be deemed to have come into operation on 16 March 1995 and shall apply to any agreement entered into on or after that date.

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, section 7 of Act 140 of 1993 and section 11 of Act 21 of 1994 30

13. (1) Section 12C of the principal Act is hereby amended—

- (a) by the addition of the word “or” at the end of paragraph (e) of subsection (1);
- (b) by the addition to subsection (1) of the following paragraphs: 35
 “(f) aircraft which was or is brought into use on or after 1 April 1995 for the first time by the taxpayer for the purposes of his trade (other than an aircraft in respect of which an allowance has been granted to the taxpayer under section 12B or 14bis); or
 (g) ship which was or is brought into use on or after 1 April 1995 for the first time by the taxpayer for the purposes of his trade (other than a ship in respect of which an allowance has been granted to the taxpayer in terms of section 14(1)(a) or (b));”;
- (c) by the substitution for the words following upon paragraph (e) of subsection (1) of the following words: 40
 “a deduction equal to 20 per cent of the cost of such machinery, plant, implement, utensil, [or] article, ship or aircraft (hereinafter referred to as an asset) shall, subject to the provisions of subsection (4), be allowed in the year of assessment during which the asset is so brought into use and in each of the four succeeding years of assessment: Provided that where such asset is a ship or aircraft, the deduction shall be calculated on the adjustable cost as determined in terms of section 14 or 14bis, as the case may be.”; and 45
 (d) by the substitution for paragraph (c) of subsection (4) of the following paragraph: 50
 “(c) a deduction under this section, section 12(1), section 12B, [or] section 14(1)(a) or (b), section 14bis or section 27(2)(d) was previously 55

granted to such connected person, whether in the current or any previous year of assessment.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 1995 and shall apply to any ship or aircraft acquired on or after that date.

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

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

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

“Provided that any such allowance in respect of any year of assessment shall be included in the income of the taxpayer for the following year of assessment [and for that purpose any allowance made in terms of section 11(2)(n) of the Income Tax Act, 1941, in respect of the year of assessment ended on 30 June, 1961, shall be deemed to have been made in terms of this paragraph].”;

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

“Where during any year of assessment a subsidiary company referred to in paragraph (b) of the definition of ‘South African ship’ in subsection (2) has carried on business as the owner of one or more ships which are by virtue of the said paragraph South African ships and has not ceased to carry on such business, there shall be deducted from the income derived during that year of assessment by the parent company (being a parent company referred to in the said paragraph) of the subsidiary company an allowance equal to so much of any assessed loss which is in terms of section 20 available to be carried forward by the subsidiary company to the following year of assessment, as is [proved to the satisfaction of the Commissioner to be] attributable to any assessed loss (as determined under section 20) incurred by the subsidiary company in carrying on the aforesaid business.”;

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

“(1B) Where a subsidiary company referred to in paragraph (b) of the definition of ‘South African ship’ in subsection (2) has on or after 1 January 1974 purchased from its parent company (being a parent company referred to in the said paragraph), a ship (being a South African ship by virtue of the provisions of the said paragraph and not being a ship acquired to replace a ship) which is used by the subsidiary company for the purposes of its trade for prospecting for minerals (including natural oil) or for mining operations or as a foreign-going ship and in respect of which any allowance has in respect of any year of assessment been granted to the parent company under subsection (1)(a) or (b) or section 12C—

(a) any allowances in respect of such ship granted to the subsidiary company under the provisions of subsection (1)(a) or section 12C, as the case may be, shall be equal in amount to the allowances to which the parent company would have been entitled under those provisions if the parent company had continued to use the ship for the purposes of its trade;

(b) an allowance in respect of such ship shall not be granted to the subsidiary company under the provisions of subsection (1)(a) or section 12C in respect of the year of assessment during which the ship was purchased by the subsidiary company if any allowance in respect of the ship has been granted to the parent company under the provisions of subsection (1)(a) or (b) or section 12C in respect of the same year of assessment;

(c) the cost to the subsidiary company of such ship shall, for the purposes

- of this section, section 8(4), [and] section 11(o) and section 12C, be deemed to be the adjustable cost to the parent company of the ship;
- (d) the allowances in respect of such ship granted to the parent company under subsection (1)(a) or (b) of this section or section 12C shall, for the purposes of this section, section 8(4), [and] section 11(o) and section 12C, be deemed to be allowances granted to the subsidiary company in respect of such ship and the provisions of paragraph (iii) of the proviso to subsection (1)(b) of this section or the proviso to section 8(4)(e), as the case may be, shall, as respects such ship apply to the subsidiary company as though it were the taxpayer referred to in those provisions;
- (e) the parent company shall, for the purposes of section 8(4), not be deemed to have recovered or recouped out of the purchase consideration payable by the subsidiary company any of the allowances granted in respect of such ship to the parent company under subsection (1)(a) or (b) of this section or section 12C and no allowance shall be made to the parent company under section 11(o) in respect of such ship and, for the purposes of paragraph (iii) of the proviso to subsection (1)(b) of this section as applicable to the parent company, the parent company shall not by reason of the sale of the ship to the subsidiary company be deemed to have ceased to use the ship; and
- (f) in the event of such ship ceasing to be a South African ship or to be used by the subsidiary [in the manner contemplated in subsection (1)(b)] as aforesaid, the Commissioner may [in his discretion] direct that any amount falling to be included in the income of the subsidiary company for any year of assessment under paragraph (iii) of the proviso to subsection (1)(b) or the proviso to section 8(4)(e), as the case may be, be included in the income of the parent company for such year of assessment and not in the income of the subsidiary company.”; and
- (d) by the addition of the following subsection:
 “(5) The provisions of subsections (1)(a) and (b) and (1C) shall not apply to any ship acquired on or after 1 April 1995 unless such ship was acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement before that date.”.

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

15. Section 14bis of the principal Act is hereby amended by the addition of the following subsection:

“(6) The provisions of this section shall not apply to any aircraft acquired on or after 1 April 1995 unless such aircraft was acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement before that date.”.

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

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

- (a) by the substitution in subsection (1) for the words following upon subparagraph (iii) of paragraph (b) of the following words:
 “the taxpayer or his spouse or his children or stepchildren [in respect of which the taxpayer or his spouse is entitled to a rebate in terms of section 6(3)(a)]; and”;

- (b) by the substitution for paragraphs (c) and (d) of subsection (1) of the following paragraphs, respectively:
- “(c) any amounts (other than amounts recoverable by the taxpayer or his spouse) which were paid by the taxpayer during the year of assessment in respect of expenditure incurred outside the Republic on services rendered or medicines supplied to the taxpayer or his spouse or his children or stepchildren [in respect of which the taxpayer or his spouse is entitled to a rebate in terms of section 6(3)(a)] and which are substantially similar to the services and medicines in respect of which a deduction may be made under paragraph (b) of this subsection; and
- (d) any expenditure (other than expenditure recoverable by the taxpayer or his spouse) necessarily incurred and paid by the taxpayer in consequence of any physical disability suffered by the taxpayer, his spouse or child or stepchild [in respect of which the taxpayer or his spouse is entitled to a rebate in terms of section 6(3)(a)];”;
- (c) by the substitution in subsection (2) for the expression “section 6(3)(f)” wherever it occurs of the expression “section 6(2)(b)”;
- (d) by the deletion of the word “or” at the end of paragraph (c) of subsection (3);
- (e) by the addition of the word “or” at the end of paragraph (d) of subsection (3);
- (f) by the addition to subsection (3) of the following paragraph:
 “(e) a person who suffers from a mental illness as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973).”; and
- (g) by the addition of the following subsection:
 “(4) For the purposes of this section the expression ‘child or stepchild’ means the taxpayer’s child or stepchild who was alive during any portion of the year of assessment, and who on the last day of the year of assessment—
 (a) was unmarried and was not or would not, had he lived, have been—
 (i) over the age of 18 years;
 (ii) over the age of 21 years and was wholly or partially dependent for his maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of such year; or
 (iii) over the age of 26 years and was wholly or partially dependent for his maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of such year and was a full-time student at an educational institution of a public character; or
 (b) in the case of any other child or stepchild, was incapacitated by physical or mental infirmity from maintaining himself and was wholly or partially dependent for his maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of the year of assessment:
 Provided that any child or stepchild of the taxpayer who has become liable for the payment of normal tax in respect of any year of assessment solely by reason of the provisions of section 5(1A) shall be deemed for the purposes of this section not to have become liable for the payment of normal tax in respect of such year.”.

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

17. Section 20 of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (iii) of the proviso to paragraph (a).

Amendment of section 21 of Act 58 of 1962, as substituted by section 16 of Act 90 of 1972 and amended by section 16 of Act 104 of 1980

18. Section 21 of the principal Act is hereby amended by the substitution for the proviso of the following proviso:

“Provided that for the purposes of this section any order of divorce or judicial separation (hereinafter referred to as the subsequent order) which in effect supersedes any such first-mentioned order of judicial separation or written agreement of separation and does not vary the amount of alimony, allowance or maintenance payable thereunder, shall not affect the rights which any person may have under this section, and in the case of any such person and the spouse or former spouse of such person the subsequent order shall, for the purposes of this section [the definition of ‘married person’ in section 1] and the provisions of section [6(3)(a) and] 10(1)(u), be deemed to have been granted in consequence of proceedings instituted on or before the said date.”.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990, section 22 of Act 129 of 1991, section 17 of Act 113 of 1993 and section 1 of Act 168 of 1993

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

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

“(1) The amount which shall, in the determination of the taxable income derived by any person during any year of assessment from carrying on any trade (other than farming), be taken into account in respect of the value of any trading stock held and not disposed of by him at the end of such year of assessment, shall be—

(a) in the case of trading stock other than trading stock contemplated in paragraph (b), the cost price to such person of such trading stock, less such amount as the Commissioner may think just and reasonable as representing the amount by which the value of such trading stock, not being shares held by any company in any other company, has been diminished by reason of damage, deterioration, change of fashion, decrease in the market value or for any other reason satisfactory to the Commissioner; and

(b) in the case of any trading stock which consists of any instrument in respect of which a company has made an election which has taken effect as contemplated in section 24J(9), the market value of such trading stock as contemplated in such section.”;

(b) by the addition to subsection (5) of the following paragraphs:

“(f) The provisions of paragraphs (d) and (e) shall *mutatis mutandis* apply to any person who carries on any trade in the former Republic of Transkei or Bophuthatswana and who, in respect of the last year of assessment in which he was liable for tax under a law of such a former Republic, determined the value of the trading stock held and not disposed of by him at the end of such year under the provisions of such a law which are similar to the provisions of this section.

(g) Where the provisions of paragraph (f) are applicable in the case of any taxpayer—

(i) the LIFO reserve shall be determined in accordance with the provisions of paragraph (d) in relation to the trading stock held by him at the beginning of the year of assessment immediately following the last year of assessment referred to in paragraph (f); and

(ii) the reference in the second proviso to paragraph (e) to the amount of

the LIFO reserve allowed as a deduction under that paragraph during the year of assessment ending during the period of 12 months which commenced on 1 January 1990 shall be construed as a reference to the amount of the LIFO reserve determined in accordance with the provisions of subparagraph (i)."; and 5

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

"Provided further that where any trading stock (other than livestock or produce) of any company has on or after 21 June 1993 been distributed *in specie* (whether such distribution occurred by means of a dividend, including a liquidation dividend; a total or partial reduction of capital (including any share premium) or a redemption of redeemable preference shares) to any shareholder of that company, there shall be included in the income of such company during the year of assessment in which such trading stock was distributed an amount equal to the market value of such trading stock." 10 15

(2)(a) Subsection (1)(a) shall be deemed to have come into operation on 16 March 1995.

(b) Subsection (1)(b) shall be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 April 1995.

(c) Subsection (1)(c) shall come into operation on the date of promulgation of this Act and shall apply to any trading stock distributed on or after that date. 20

Amendment of section 23D of Act 58 of 1962, as inserted by section 19 of Act 113 of 1993 and amended by section 10 of Act 140 of 1993

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

- (a) by the insertion after paragraph (a) of subsection (1) of the following paragraph: 25

"(aA) any invention, patent, design, trade mark, copyright, or any other property which is of a similar nature, contemplated in section 11(gA).";

- (b) by the substitution for subsection (2) of the following subsection: 30

"(2) Where any asset which has been let by a taxpayer to a lessee was acquired by the taxpayer, [on or after 21 June 1993] whether directly or indirectly from—

(a) such lessee; [or]

(b) a person who is a connected person in relation to such lessee; 35

(c) a sublessee in relation to such asset (being a person to whom the right of use of such asset has been granted by a lessee or by any person to whom the right of use of such asset has previously been granted); or

(d) a person who is a connected person in relation to such sublessee,

and a deduction was previously granted to such lessee, [or] such connected person or such sublessee under section 11(e), 11(gA), 12B, 12C, 13, 14 or 14bis or section 12 prior to the repeal thereof by section 16 of the Income Tax Act, 1991 (Act No. 129 of 1991), or section 27(2)(d) prior to the deletion thereof by section 28(b) of that Act, whether in the current or any previous year of assessment, any deduction or allowance claimed by such lessor in respect of such asset in terms of section 11(e), (gA) or (o), 12C, 13, 14 or 14bis shall be calculated on an amount not exceeding the lesser of the cost or adjustable cost, as the case may be, of such asset to such lessee, [or] such connected person or such sublessee or the market value thereof as determined on the date upon which the asset was acquired by the taxpayer."; and 40 45 50

- (c) by the addition of the following subsection:

"(3) The provisions of subsection (2) shall apply to—

(a) any asset, excluding an asset contemplated in subsection (1)(aA), acquired from a lessee or a connected person in relation to such lessee on or after 21 June 1993; 55

- (b) any asset contemplated in subsection (1)(aA), acquired from a lessee or a connected person in relation to such lessee on or after 1 July 1995; and
- (c) any asset acquired from a sublessee or a connected person in relation to such sublessee on or after 1 July 1995.”

(2) Subsection (1) shall come into operation on 1 July 1995.

5

Insertion of section 24J in Act 58 of 1962

21. (1) The following section is hereby inserted in the principal Act after section 24I:

“Incurral and accrual of interest

24J. (1) For the purposes of this section, unless the context otherwise indicates—

10

‘accrual amount’, in relation to an accrual period, means an amount determined in accordance with the following formula:

$$A = B \times C$$

in which formula—

- (a) ‘A’ represents the amount to be determined;
- (b) ‘B’ represents the yield to maturity; and
- (c) ‘C’ represents the adjusted initial amount:

15

Provided that—

(i) where the commencement or end of any year of assessment falls within an accrual period, the amount so determined shall be apportioned on a day to day basis over the term of such accrual period in order to determine the relevant portion of such amount relating to that part of such accrual period falling within the year of assessment so commencing or ending, as the case may be;

20

(ii) where an instrument is transferred on a date other than at the end of an accrual period, the amount so determined shall be apportioned on a day to day basis over the term of such accrual period in order to determine the relevant portion of such amount relating to the relevant transferor or transferee, as the case may be, in relation to such instrument; and

25

(iii) the amount so determined shall be appropriately adjusted by taking into account amounts received or payments made other than at the end of an accrual period;

30

‘accrual period’, in relation to an instrument, means—

(a) where in terms of such instrument regular payments at intervals of equal length and not exceeding 12 months per interval are to be made throughout the term of such instrument, the period between such regular payments; or

35

(b) any period not exceeding 12 months elected by the holder or issuer, as the case may be,

40

which period shall be applied consistently throughout the term of such instrument;

‘adjusted gain on transfer or redemption of an instrument’ means—

(a) in relation to the holder of any income instrument, the amount by which the sum of the transfer price or redemption payment of such income instrument in relation to such holder and any payments received by such holder in terms of such income instrument during the accrual period in which such income instrument is transferred or redeemed, exceeds the sum of the adjusted initial amount in relation to such income instrument and the accrual amount in relation to such accrual period and any payments made by such holder in terms of such income instrument during such accrual period; or

45

50

(b) in relation to the issuer of any instrument, the amount by which the sum of the adjusted initial amount in relation to such instrument and the accrual amount in relation to the accrual period during which such instrument is transferred or redeemed and any payments received by such issuer in terms of such instrument during the accrual period, exceeds the sum of the transfer price or redemption payment in relation to such instrument in relation to such issuer and any payments

55

- made by such issuer in terms of such instrument during such accrual period;
- 'adjusted initial amount' means—
- (a) in relation to the holder of an income instrument with regard to a particular accrual period, the sum of the initial amount and the accrual amounts in relation to all previous accrual periods and any other payments made by such holder during all such previous accrual periods less any payments received by such holder during all such previous accrual periods, in terms of such income instrument; or
- (b) in relation to the issuer of an instrument with regard to a particular accrual period, the sum of the initial amount and the accrual amounts in relation to all previous accrual periods and any other payments received by such issuer during all such previous accrual periods less any payments made by such issuer during all such previous accrual periods, in terms of such instrument;
- 'adjusted loss on transfer or redemption of an instrument' means—
- (a) in relation to the holder of any income instrument, the amount by which the sum of the adjusted initial amount in relation to such income instrument and the accrual amount in relation to the accrual period during which such income instrument is transferred or redeemed and any payments made by such holder in terms of such income instrument during such accrual period, exceeds the sum of the transfer price or redemption payment in relation to such income instrument in relation to such holder and any payments received by such holder in terms of such income instrument during such accrual period; or
- (b) in relation to the issuer of any instrument, the amount by which the sum of the transfer price or redemption payment of such instrument in relation to such issuer and any payments made by such issuer in terms of such instrument during the accrual period during which such instrument is transferred or redeemed, exceeds the sum of the adjusted initial amount in relation to such instrument and the accrual amount in relation to such accrual period and any payments received by such issuer in terms of such instrument during such accrual period;
- 'alternative method' means a method of calculating interest in relation to any class of instruments which—
- (a) conforms with generally accepted accounting practice;
- (b) is consistently applied in respect of all such instruments (excluding any instrument as contemplated in subsection (9)) for all financial reporting purposes; and
- (c) method achieves a result in so far as the timing of the accrual and incurral of interest is concerned which does not differ significantly from the result achieved by the application of the provisions of subsections (2)(a) and (3)(a);
- 'deferred interest' includes—
- (a) any interest where such interest (or any portion thereof), calculated in respect of any accrual period falling within the term of any instrument by applying a constant interest rate throughout the term of such instrument, is not payable or receivable in terms of such instrument within one year from the date of the commencement of such accrual period; and
- (b) any interest payable or receivable in terms of any instrument where such interest is not calculated by applying a constant interest rate throughout the term of such instrument;
- 'fixed rate instrument' means an instrument in terms of which the amount or amounts payable or receivable is or are or consists of or consist of—
- (a) a specified amount or specified amounts;
- (b) an amount or amounts the method of calculation of which does not involve the application of a variable rate; or
- (c) any combination of amounts referred to in paragraph (a) or (b);
- 'holder', in relation to an income instrument—
- (a) means any person who has become entitled to any interest in terms of such income instrument; or
- (b) at any particular time, means any person who, if any interest payable

- in terms of such income instrument was due and payable at that time, would be entitled to receive payment of such interest;
- 'income instrument' means any instrument—
- (a) the term of which will, or is reasonably likely to, exceed one year; and
 - (b) which is issued or acquired at a discount or premium or bears deferred interest;
- 'initial amount' means the issue price or transfer price, as the case may be, in relation to an instrument;
- 'instrument' means any form of interest-bearing arrangement, whether in writing or not, including—
- (a) any stock, bond, debenture, bill, promissory note, certificate or similar arrangement;
 - (b) any deposit with a bank or other financial institution;
 - (c) any secured or unsecured loan, advance or debt;
 - (d) any acquisition or disposal of any right to receive interest or the obligation to pay any interest, as the case may be, in terms of any other interest bearing arrangement; or
 - (e) any repurchase agreement or resale agreement, which was issued or deemed to have been issued after 15 March 1995, or issued on or before 15 March 1995 and transferred on or after the date of promulgation of the Income Tax Act, 1995, but excluding—
 - (i) any lease agreement; and
 - (ii) any agreement qualifying for an allowance contemplated in section 24(2) to the extent that such section is applicable to the holder of such agreement;
- 'interest' includes the gross amount of any interest or related finance charges, discount or premium payable or receivable in terms of or in respect of a financial arrangement, irrespective of whether such amount is—
- (a) calculated with reference to a fixed rate of interest or a variable rate of interest; or
 - (b) payable or receivable as a lump sum or in unequal instalments during the term of the financial arrangement;
- 'issue', in relation to an instrument, means the creation of the liability to pay or the right to receive an amount or amounts in terms of such instrument;
- 'issue price', in relation to an instrument, means the consideration given or received for the issue of the instrument;
- 'issuer', in relation to any instrument—
- (a) means any person who has incurred any interest in terms of such instrument; or
 - (b) at any particular time, means any person who, if any interest payable in terms of such instrument was due and payable at that time, would be liable to pay such interest;
- 'redemption', in relation to an instrument, means the discharging of all liability to pay all amounts in terms of such instrument;
- 'redemption payment', in relation to an instrument, means any payment made or received which has the effect of redeeming such instrument;
- 'repurchase agreement' means the obtaining of money (which money shall for the purposes of this section be deemed to have been so obtained by way of a loan) through the disposal of an asset by any person to any other person subject to an agreement in terms of which such person undertakes to acquire from such other person at a future date the asset so disposed of or any other asset issued by the issuer of, and which has been so issued subject to the same conditions regarding term, interest rate and price as, the asset so disposed of;

- 'resale agreement' means the provision of money (which money shall for the purposes of this section be deemed to have been so provided in the form of a loan) through the acquisition of an asset by any person from any other person subject to an agreement in terms of which such person undertakes to dispose of to such other person at a future date the asset so acquired or any other asset issued by the issuer of, and which has been so issued subject to the same conditions regarding term, interest rate and price as, the asset so acquired; 5
- 'short selling' means the sale of any instrument by a person who is not the owner of such instrument, and in respect of which such person has the obligation to deliver such instrument at a future date; 10
- 'term', in relation to an instrument, means the period from the issue or transfer, as the case may be, until the date of redemption thereof;
- 'transfer', in relation to an instrument, includes— 15
- (a) the transfer, sale, assignment or disposal in any other manner of such instrument by the holder or issuer thereof, as the case may be; or
- (b) the acquisition of such instrument by the holder or issuer thereof, as the case may be, by way of a transfer, sale, assignment or disposal in any other manner, 20
- but does not include the redemption of such instrument;
- 'transfer price', in relation to the transfer of an instrument, means the consideration payable or receivable, as the case may be, for the transfer of such instrument;
- 'variable rate' means a rate determined with reference to an interest or indexation rate or other similar factor, being a rate or factor that varies or may vary during the term of the instrument; 25
- 'variable rate instrument' means an instrument which is not a fixed rate instrument; and
- 'yield to maturity' means the rate of compound interest per accrual period at which the present value of all amounts payable or receivable in terms of any instrument in relation to a holder or an issuer, as the case may be, of such instrument during the term of such instrument equals the initial amount in relation to such holder or issuer of such instrument: Provided that where— 30
- (a) such instrument is a variable rate instrument, such rate of compound interest shall be calculated with reference to the variable rate applicable on the date such rate of compound interest is to be calculated to determine all amounts payable or receivable after such date; 35
- (b) in the case of a variable rate instrument the variable rate in relation to such instrument changes, the rate of compound interest shall be redetermined in relation to such variable rate instrument with reference to— 40
- (i) the appropriate adjusted initial amount in relation to such variable rate instrument determined before such change in the rate; and 45
- (ii) such changed variable rate applicable on the date such rate of compound interest is to be redetermined to determine all amounts payable or receivable after such date;
- (c) any variation in the terms or conditions of such instrument takes place which will result in a change in such rate of compound interest in relation to such instrument, the rate of compound interest shall be redetermined in relation to such instrument with reference to the appropriate adjusted initial amount in relation to such instrument determined before such variation; or 50
- (d) there is a variation or alteration— 55
- (i) of the rights or interests of a holder in relation to an income instrument to receive interest in terms of such income instrument, the rate of compound interest in relation to such income instrument shall be redetermined in respect of such holder with reference to the appropriate adjusted initial amount in relation to such income instrument determined before such variation or alteration; or 60

- (ii) in the obligations of an issuer in relation to an instrument to pay any interest in terms of such instrument, the rate of compound interest in relation to such instrument shall be redetermined in respect of such issuer with reference to the appropriate adjusted initial amount in relation to such instrument determined before such variation or alteration. 5
- (2) Where any person is the issuer in relation to an instrument during any year of assessment, such person shall for the purposes of this Act be deemed to have incurred an amount of interest during such year of assessment, which is equal to— 10
- (a) the sum of all accrual amounts in relation to all accrual periods falling, whether in whole or in part, within such year of assessment in respect of such instrument; or
- (b) an amount determined in accordance with an alternative method in relation to such year of assessment in respect of such instrument. 15
- (3) Where any person is the holder in relation to an income instrument during any year of assessment, there shall for the purposes of this Act be deemed to have accrued to such person during such year of assessment, an amount of interest which is equal to—
- (a) the sum of all accrual amounts in relation to all accrual periods falling, whether in part or in whole, within such year of assessment in respect of such income instrument; or 20
- (b) an amount determined in accordance with an alternative method in relation to such year of assessment in respect of such income instrument. 25
- (4) Any—
- (a) adjusted gain on transfer or redemption of an instrument calculated in relation to the transfer or redemption, as the case may be, of such instrument by a person during any year of assessment shall for the purposes of this Act be deemed to have accrued to such person in such year of assessment; and 30
- (b) adjusted loss on transfer or redemption of an instrument calculated in relation to the transfer or redemption, as the case may be, of such instrument by a person during any year of assessment, shall for the purposes of this Act be deemed to have been incurred by such person in such year of assessment. 35
- (5) Where any interest actually—
- (a) paid by any person in terms of an instrument is to be taken into account in the determination of any accrual amount in relation to such an instrument or any other amount determined in accordance with an alternative method in relation to such instrument which accrual amount or other amount is to be dealt with in terms of the provisions of subsection (2), no account shall for the purposes of section 11 be taken of any such interest so actually paid, save by way of the operation of such subsection; or 45
- (b) received by any person in terms of an income instrument is to be taken into account in the determination of any accrual amount in relation to such income instrument or any other amount determined in accordance with an alternative method in relation to such income instrument which accrual amount or other amount is to be dealt with in 50

terms of the provisions of subsection (3), no account shall for the purposes of the definition of 'gross income' in section 1 be taken of any such interest so actually received, save by way of the operation of such subsection.

(6) Where the term of an instrument issued on or before 15 March 1995 is extended or the terms or conditions of such instrument are materially varied after the said date, such instrument shall be deemed to have been issued after the said date and the provisions of this section shall apply to both the issuer and the holder in relation to such instrument as from the date of such extension or material variation.

(7) Where there is more than one—

(a) holder in relation to an income instrument and any accrual amount in relation to an accrual period with regard to any one of the holders in relation to such income instrument is to be determined, such accrual amount shall be so determined without taking into account any consideration or any amount or amounts paid or payable or received or receivable by any other holder in terms of such income instrument; and

(b) issuer in relation to an instrument and any accrual amount in relation to an accrual period with regard to any one of the issuers in relation to such instrument is to be determined, such accrual amount shall be so determined without taking into account any consideration or any amount or amounts paid or payable or received or receivable by any other issuer in terms of such instrument.

(8) Where in relation to an instrument any person is entitled to any interest in terms of such instrument and also liable to pay any interest in terms of such instrument, such person shall for the purposes of this section—

(a) where the interest which he is entitled to receive in terms of such instrument exceeds the interest which he is liable to pay in terms of such instrument, be deemed not to be an issuer in relation to such instrument; and

(b) where the interest which he is liable to pay in terms of such instrument exceeds the interest which he is entitled to receive in terms of such instrument, be deemed not to be a holder in relation to such instrument.

(9)(a) Any company whose business comprises the dealing in instruments (including the short selling of instruments) may elect that the provisions of subsections (2) to (8), inclusive, shall not apply to all such instruments in respect of which it so deals in.

(b) Any election referred to in paragraph (a) shall—

(i) be made in writing;

(ii) be accompanied by a statement setting forth full details of the methodology to be applied by the company to determine the market value as contemplated in paragraph (c) in relation to all instruments contemplated in paragraph (a);

(iii) not take effect unless the Commissioner has, subject to such conditions as he may deem necessary, approved—

(A) the methodology to be applied by such company to determine the market value as contemplated in paragraph (c) in respect of such instruments; and

(B) the manner in which such market value in relation to such instruments is to be taken into account in the determination of the taxable income of such company during any year of assessment; and

(iv) subject to the provisions of paragraphs (e) and (f), be binding upon such company in respect of all such instruments during the year of assessment in which it took effect and every succeeding year of assessment.

(c) The market value in relation to all instruments contemplated in paragraph (a) of a company which made an election as contemplated in such paragraph shall be determined in accordance with commercially accepted practice which is applied by such company consistently in respect of all such instruments for financial reporting purposes to its shareholders.

(d) Any instrument contemplated in paragraph (a) which as a result of an election made in terms of such paragraph is to be dealt with on a market value basis as contemplated in the foregoing provisions of this subsection shall (subject to the provisions of paragraphs (e) and (f)) be so dealt with until the date of redemption or transfer of such instrument.

(e) Where the Commissioner is satisfied that the approval granted by him in terms of paragraph (b)(iii) was obtained by fraud or in consequence of any misrepresentation or failure to disclose any material fact by the company which made the election in terms of paragraph (a), he shall, if he is satisfied that in the light of the full facts the approval should not have been granted, withdraw such approval as from the date such approval was granted by him.

(f) Where any company during any year of assessment no longer complies with the provisions of this subsection—

(i) the approval granted by the Commissioner in terms of paragraph (b)(iii) shall be deemed to have been withdrawn by the Commissioner as from such year of assessment; and

(ii) an appropriate adjustment shall be made to the taxable income of such company during such year of assessment in relation to all instruments contemplated in paragraph (a) of the company held and not disposed of or not redeemed by it, as the case may be, as at the end of such year of assessment, having regard to all interest which would have been deemed to have been incurred by or accrued to such company had the provisions of this subsection not been applicable during all years of assessment before such year of assessment and all amounts which have been included in or deducted from the income of such company during such years of assessment: Provided that the provisions of this paragraph shall not have the effect that an amount be included in or deducted from the income of such company more than once.

(10) Any reference in this section to any payment made or an amount paid or payable, consideration given or received or any payment received or an amount received or receivable, as the case may be, shall be construed as including a payment or an amount or consideration otherwise than in cash.

(11) Any decision of the Commissioner in the exercise of his discretion under this section shall be subject to objection and appeal.

(2) Subsection (1) shall, in so far as it relates to—

(a) any instrument issued after 15 March 1995, be deemed to have come into operation on 16 March 1995 and shall apply in respect of any instrument issued on or after that date;

(b) any instrument issued on or before 15 March 1995 of which the term is extended after that date or of which the terms and conditions are materially varied after that date, be deemed to have come into operation from the date of such extension or material variation, as the case may be; or

(c) the transfer of any instrument issued on or before 15 March 1995, come into operation on the date of promulgation of this Act and shall apply to any such

instrument transferred on or after that date as from the date of transfer of such last-mentioned instrument.

Amendment of section 29 of Act 58 of 1962, as inserted by section 25 of Act 113 of 1993

22. Section 29 of the principal Act is hereby amended by the substitution in subsection (18) for the expression "married person" of the expression "natural person". 5

Substitution of section 31 of Act 58 of 1962

23. (1) The following section is hereby substituted for section 31 of the principal Act:

"Determination of taxable income of certain persons in respect of international transactions 10

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

'goods' includes any corporeal movable thing, fixed property and any real right in any such thing or fixed property;

'international agreement' means a transaction, operation or scheme entered into between— 15

(a) a person who, in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person, is managed or controlled in the Republic; and

(b) any other person who, in the case of a natural person, is ordinarily resident outside the Republic or in the case of a person other than a natural person, is managed or controlled outside the Republic; and 20

'services' includes anything done or to be done, including, without limiting the generality of the foregoing—

(a) the granting, assignment, cession or surrender of any right, benefit or privilege; 25

(b) the making available of any facility or advantage;

(c) the granting of financial assistance, including a loan, advance or debt, and the provision of any security or guarantee;

(d) the performance of any work;

(e) an agreement of insurance; or 30

(f) the conferring of rights to incorporeal property.

(2) Where any goods or services are supplied or acquired in terms of an international agreement and—

(a) the acquiror is a connected person in relation to the supplier; and

(b) the goods or services are supplied or acquired at a price which is either— 35

(i) less than the price which such goods or services might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length (such price being the arm's length price); or 40

(ii) greater than the arm's length price,

then, for the purposes of this Act in relation to either the acquiror or supplier, the Commissioner may, in the determination of the taxable income of either the acquiror or supplier, adjust the consideration in respect of the transaction to reflect an arm's length price for the goods or services. 45

(3)(a) Where any natural person ordinarily resident outside the Republic or any person other than a natural person who is managed or controlled outside the Republic (hereinafter referred to as the investor) has granted financial assistance contemplated in paragraph (c) of the definition of 'services' in subsection (1), whether directly or indirectly, to— 50

(i) any connected person in relation to the investor who, in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person, is managed or controlled in the Republic; or

(ii) any other person (in whom he has a direct or indirect interest) other 55

than a natural person, who is managed or controlled in the Republic (hereinafter referred to as the recipient) and, by virtue of such interest, is entitled to participate in not less than 25 per cent of the dividends, profits or capital of the recipient, or is entitled, directly or indirectly, to exercise not less than 25 per cent of the votes of the recipient, and the Commissioner is, having regard to the circumstances of the case, of the opinion that the value of the aggregate of all such financial assistance is excessive in relation to the fixed capital (being share capital, share premium, accumulated profits, whether of a capital nature or not, or any other permanent owners' capital, other than permanent capital in the form of financial assistance as so contemplated) of such connected person or recipient, any interest, finance charge or other consideration payable for or in relation to or in respect of the financial assistance shall, to the extent to which it relates to the amount which is excessive as contemplated in this paragraph, be disallowed as a deduction for the purposes of this Act.

(b) For the purposes of paragraph (a), financial assistance granted indirectly shall be deemed to include any financial assistance granted by any third person who is not a connected person in relation to the investor, a connected person contemplated in paragraph (a) or the recipient, where such financial assistance has been granted by arrangement, directly or indirectly, with the investor and on the strength of any financial assistance granted, directly or indirectly, by the investor or any connected person in relation to the investor, to such third person."

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply to any goods or services supplied or acquired on or after that date.

Insertion of sections 37F and 37G in Act 58 of 1962

24. (1) The following sections are hereby inserted in the principal Act after section 37E:

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

37F. Where it is necessary for any rule provided in this 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, 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 self-governing territory declared under section 26 of the repealed Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), to be a self-governing territory or of the former Republic of Transkei, Bophuthatswana, Venda or Ciskei 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.

Determination of taxable income derived from small business undertakings

37G. The Minister of Finance may make regulations to facilitate compliance with the provisions of this Act by natural persons who carry on business through small business undertakings, whether as sole proprietors or in partnership with other natural persons.

(2) A regulation made under subsection (1) may—

(a) prescribe what shall constitute a small business undertaking, having regard to—

- (i) the nature of the undertaking;
 - (ii) the turnover, taxable income or profit of the undertaking;
 - (iii) the number of persons employed in the undertaking;
 - (iv) the nature and extent of other income derived by the proprietor or partners; and
 - (v) any other feature which, in the opinion of the said Minister, indicates that an undertaking should be regarded as a small business undertaking;
- (b) provide for the variation of any provision of this Act relating to the determination of the taxable income derived from a small business undertaking, including—
- (i) the determination of taxable income having regard only to amounts actually received or expended;
 - (ii) any variation in the manner in which the values of trading stock are taken into account;
 - (iii) the manner in which expenditure of a capital nature incurred is to be treated; and
 - (iv) any other provision which, save in so far as the timing of the receipt or accrual of income or the incurral of expenditure is concerned, will not result in a material variation in the determination of the taxable income derived by the undertaking over a period of time;
- (c) provide for the exemption from, or extension of time limits in, any provision of this Act relating to the preparation and submission of documents, accounts, returns or payments;
- (d) make such other provision as in the opinion of the said Minister will facilitate the carrying on of small business undertakings.”

(2) Subsection (1) shall in relation to the insertion of section 37F in the principal Act be deemed to have come into operation—

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

Repeal of Part III of Chapter II of Act 58 of 1962

25. (1) Part III of Chapter II of the principal Act is hereby repealed.
- (2) Subsection (1) shall come into operation on 1 October 1995 and shall apply to—
- (a) any dividend (excluding such portion thereof as consists of an interim dividend) which has been declared by any company on or after that date; and
 - (b) any interim dividend the payment of which has been approved after that date by the directors of any company or by some other person under authority conferred by the memorandum and articles of association of such company.

Amendment of section 57 of Act 58 of 1962, as amended by section 22 of Act 88 of 1965 and section 27 of Act 90 of 1988

26. The following section is hereby substituted for section 57 of the principal Act:

“Donations by a body corporate at the instance of any person

57. (1) If any property is disposed of under any donation by any body corporate at the instance of any person, that property shall for the purposes of this Part be deemed to be disposed of under a donation by that person: Provided that any tax paid or payable by that person in respect of any property so disposed of under a donation by any body corporate may be recovered from the assets of that body corporate.

- (2) For the purposes of subsection (1) property shall be deemed to be disposed of under a donation by any body corporate at the instance of any person if, having regard to the circumstances under which that donation was made by such body corporate, the Commissioner is of the opinion—
- (a) that it was not made in the ordinary course of the normal income earning operations of that body corporate; and
- (b) that the selection of the donee who benefited by the donation was made at the instance of that person.”

Insertion of section 57A in Act 58 of 1962

27. The following section is hereby inserted in the principal Act after section 57: 10

“Donations by spouses married in community of property

- 57A.** For the purposes of this Part, in the case of spouses married in community of property, where any property is disposed of in terms of a donation by one of the spouses and—
- (a) such property falls within the joint estate of the spouses, such donation shall be deemed to have been made in equal shares by each spouse; and
- (b) such property was excluded from the joint estate of the spouses, such donation shall be deemed to have been made solely by the spouse making the donation.”

Amendment of section 64A of Act 58 of 1962, as inserted by section 4 of Act 136 of 1991 and substituted by section 29 of Act 141 of 1992 and amended by section 33 of Act 113 of 1993

28. (1) Section 64A of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding the proviso to paragraph (a) of the definition of “leviable amount” of the following words: “in relation to a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990), and a branch of a foreign institution contemplated in section 18A of the said Act, an amount equal to 50 per cent of the minimum share capital and unimpaired reserve funds required to be maintained by the bank or such branch and determined in respect of each calendar quarter, in accordance with the provisions of section 70(2)(b) of the said Act:”; and
- (b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:
- “(a) in the case of a bank or a branch of a foreign institution within the meaning of the Banks Act, 1990 (Act No. 94 of 1990), or a [permanent society] mutual bank registered in terms of the Mutual [Building Societies Act, 1965 (Act No. 24 of 1965)] Banks Act, 1993 (Act No. 124 of 1993), the leviable amount as determined in relation to every calendar quarter commencing on or after 1 October 1991; and”
- (2) Subsection (1) shall come into operation from any calendar quarter ending on or after 30 September 1995.

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 and section 24 of Act 21 of 1994

29. (1) Section 64B of the principal Act is hereby amended—
- (a) by the substitution for paragraph (b) of the proviso to subsection (3) of the following paragraph:
- “(b) in the determination of the net amount of any dividend distributed in the course or in anticipation of the liquidation or winding up or deregistration of a company, there shall be allowed as a deduction any

dividend contemplated in subsection (5)(c) which has during the current or any previous dividend cycle accrued to the company.”;

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

“(c) so much of any dividend distributed in the course or in anticipation of the liquidation or winding up [of a company] or [in anticipation of the] deregistration of a company, [under a scheme for the rationalisation of a group of companies in terms of section 48 of the Taxation Laws Amendment Act, 1988 (Act No. 87 of 1988)] as is shown by the company to be a distribution of profits derived during any year of assessment which ended not later than 31 March 1993 (other than any such profits derived by way of the revaluation of trading stock held by such company) or profits of a capital nature: Provided that where such dividend is distributed in anticipation of the liquidation or winding up or deregistration of a company and such company is not liquidated or wound up or deregistered within six months after the date on which such dividend is so distributed or such further period as is in the circumstances of the case considered reasonably necessary, the provisions of this paragraph and of subsection (3)(b) shall be deemed not to have applied to such dividend and any secondary tax on companies which becomes payable as a result thereof shall be recoverable from the shareholders to whom such dividend was distributed in the same proportion as such dividend was so distributed;” and

- (c) by the substitution in subsection (5) for the words preceding subparagraph (iii) of paragraph (f) of the following words:

“any dividend declared by any company to any other company (other than a company referred to in paragraph (a)), if—

- (i) such other company at the date of such declaration [holds] and throughout the period of 12 months ending on the date of such declaration held 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 (excluding profits derived by way of dividends) are derived solely from a source within the Republic; [and]

- (iiA) such dividend was declared solely out of profits earned by such company during any period in which all its equity share capital was so held by such other company for its own benefit; and”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply to any dividend declared on or after that date.

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 and section 25 of Act 21 of 1994

30. Section 64C of the principal Act is hereby amended—

- (a) by the deletion of the word “or” at the end of paragraph (c) of subsection (3);
 (b) by the addition of the word “or” at the end of paragraph (d) of subsection (3);
 (c) by the addition to subsection (3) of the following paragraph:
 “(e) such amount represents an amount which has been adjusted or disallowed in accordance with the provisions of section 31.”; and
 (d) by the deletion of paragraph (h) of subsection (4).

Amendment of section 77 of Act 58 of 1962, as amended by section 25 of Act 69 of 1975, section 41 of Act 101 of 1990 and section 35 of Act 129 of 1991

31. Section 77 of the principal Act is hereby amended by the deletion of subsection (8).

Amendment of section 79 of Act 58 of 1962, as amended by section 26 of Act 69 of 1975 and section 23 of Act 91 of 1982

32. Section 79 of the principal Act is hereby amended by the substitution in subsection (1) for item (B) of paragraph (v) of the first proviso of the following item:

“(B) to the fact that [an incorrect or incomplete return of relevant personal particulars was] the employee has furnished false information to the employer [under paragraph 12 of the said Schedule or to the fact that a fresh return of such particulars was not furnished to the employer as required by the said paragraph] and in consequence thereof, an incorrect amount of tax was withheld.”

Amendment of section 89quat of Act 58 of 1962, as inserted by section 34 of Act 121 of 1984 and substituted by section 22 of Act 65 of 1986 and amended by section 18 of Act 70 of 1989, section 42 of Act 113 of 1993 and section 15 of Act 140 of 1993

33. (1) Section 89quat of the principal Act is hereby amended by the substitution in subsection (1) for the definition of “effective date” of the following definition:

“‘effective date’, in relation to any year of assessment of a provisional taxpayer, means—

- (a) where the provisional taxpayer is a company which has a year of assessment which ends on the last day of February or is a person (other than a company) who has not been granted permission by the Commissioner under the provisions of section 66(13)ter to render accounts for a period ending on a date other than the last day of February, the date falling 7 months after the last day of such year; or
- (b) in any other case, the date falling 6 months after the last day of such year as applicable for the purposes of the provisions of paragraph 21, 22 or 23 of the Fourth Schedule;”

(2) Subsection (1) shall be deemed to have come into operation from the commencement of years of assessment ending on or after 28 February 1995.

Amendment of paragraph 19 of First Schedule to Act 58 of 1962, as added by section 28 of Act 95 of 1967 and amended by section 43 of Act 89 of 1969, section 33 of Act 88 of 1971, section 22 of Act 90 of 1972, section 32 of Act 69 of 1975, section 30 of Act 103 of 1976, section 16 of Act 104 of 1979, section 25 of Act 104 of 1980, section 29 of Act 91 of 1982, section 45 of Act 94 of 1983 and section 42 of Act 129 of 1991

34. Paragraph 19 of the First Schedule to the principal Act is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph:
 “(1) If any taxpayer has made an election as provided in subparagraph (5) which is binding upon him in respect of any period of assessment (hereinafter referred to as the relevant period) during which he or his [wife] spouse has carried on farming operations or has derived income from farming operations, and his taxable income derived during the relevant period from farming exceeds his average taxable income from farming as determined in relation to the relevant period in accordance with subparagraph (2), the normal tax chargeable in respect of his taxable income for the relevant period shall, subject to the provisions of section 5 of this Act, be determined in accordance with section 5(10).”;
- (b) by the substitution in subparagraph (2) for the words preceding subitem (bb) of item (a) of the following words:
 “where the taxpayer or his [wife] spouse carried on farming operations before the commencement of the relevant period, such amount as the Commissioner may determine as representing the taxpayer’s annual average taxable income (if any) from farming in respect of the periods of assessment—
 (aa) for which the taxpayer was assessable under this Act [(but excluding

- in the case of a woman any period assessable under section 77(6) of this Act)] and which fall within the period of five years ending on the last day of the relevant period; and”;
- (c) by the substitution in subparagraph (2) for the words preceding subitem (i) of item (b) of the following words: 5
 “where the taxpayer is a person referred to in subparagraph (5)(a) and [neither he nor his wife carried] did not carry on farming operations [(whether before or after their marriage)] before the commencement of the relevant period and—”;
- (d) by the substitution for item (a) of subparagraph (5) of the following item: 10
 “(a) who is a natural person and whose taxable income for any period of assessment consists of or includes taxable income derived from farming operations carried on by him for his own benefit or by his [wife] spouse for [her] such spouse’s own benefit; or”;
- (e) by the substitution for the proviso to subparagraph (5) of the following proviso: 15
 “Provided that—
 (i) no election may be made under this subparagraph by [a woman] any person in respect of any period of assessment referred to in item (a) if during such period [she] such person was married and [her] such person’s income for such period is in terms of section 7(2) of this Act deemed to be income accrued to [her husband] such person’s spouse; 20
 (ii) where an election has been made by [a woman] such person in respect of any period of assessment referred to in item (a) and [her] such person’s income for any succeeding period of assessment is in terms of section 7(2) of this Act deemed to be income accrued to [her husband] such person’s spouse, such election shall, with effect from such succeeding period, cease to have any force or effect.” 25

Amendment of paragraph 1 of Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 23 of Act 90 of 1964, section 34 of Act 88 of 1971, section 34 of Act 69 of 1975, section 26 of Act 113 of 1977, section 17 of Act 104 of 1979, section 27 of Act 104 of 1980, section 28 of Act 96 of 1981, section 46 of Act 94 of 1983, section 24 of Act 65 of 1986 and section 43 of Act 101 of 1990 30

35. (1) Paragraph 1 of the Second Schedule to the principal Act is hereby amended by the substitution for the proviso to paragraph (b) of the definition of “retire” of the following proviso: 35

“Provided that for the purposes of this paragraph ‘full benefits’ shall in the case of a member who retires from employment on the grounds of ill-health or who retires from employment after attaining the age of 55 years [in the case of a male or fifty years in the case of a female], include the surrender value of any policy of insurance which is in terms of subparagraph (2)*bis* of paragraph 4 deemed to be a lump sum benefit;” 40

(2) Subsection (1) shall come into operation on a date fixed by the Minister of Finance by notice in the *Gazette*.

Amendment of paragraph 4 of Second Schedule to Act 58 of 1962, as amended by section 20 of Act 72 of 1963 and section 24 of Act 90 of 1964 45

36. (1) Paragraph 4 of the Second Schedule to the principal Act is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

“(3) If a member of a provident fund retires from such fund before he reaches the age of 55 years [in the case of a male or fifty years in the case of a female] on grounds other than ill-health, any lump sum benefits received by or accrued to such member in consequence of or following upon such retirement shall, unless the Commissioner having regard to the circumstances of the case otherwise directs, be assessed to tax not in accordance with the provisions of paragraph 5 but in 50

accordance with the provisions of paragraph 6 as though it were a lump sum benefit derived by such member in consequence of or following upon such member's withdrawal or resignation from such fund."

(2) Subsection (1) shall come into operation on a date fixed by the Minister of Finance by notice in the *Gazette*.

5

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993 and section 16 of Act 140 of 1993

10

37. (1) Paragraph 1 of the Fourth Schedule to the principal Act is hereby amended by the substitution for paragraph (c) of the definition of "remuneration" of the following paragraph:

15

"(c) 35 per cent of—

- (i) the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such 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
- (ii) the amount of any allowance referred to in section 8(1)(d) granted to the holder of a public office contemplated in section 8(1)(e)."

20

(2) Subsection (1) shall come into operation as from the commencement of years of assessment commencing on or after 1 March 1996.

25

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 28 of Act 113 of 1977, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990 and section 45 of Act 129 of 1991

30

38. Paragraph 2 of the Fourth Schedule to the principal Act is hereby amended by the substitution for the expression "section 6(3)(f)" in item (b) of subparagraph (4) of the expression "section 6(2)(b)".

Amendment of paragraph 11 of Fourth Schedule to Act 58 of 1962

35

39. The following paragraph is hereby substituted for paragraph 11 of the Fourth Schedule to the principal Act:

"11. In order to alleviate hardship to an employee due to illness or other circumstances or to correct any error in regard to the calculation of employees' tax [whether arising from the furnishing to an employer of a false or incorrect return of personal particulars or otherwise, or where the employee has in terms of subparagraph (2) of paragraph 12 applied to the Commissioner for the issue of a directive to his employer to enable the employer to deduct or withhold the correct amount by way of employees' tax] the Commissioner may, having regard to the circumstances of the case, issue a directive to the employer concerned authorising the employer to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to the employee or to deduct or withhold by way of employees' tax a specified amount or an amount to be determined in accordance with a specified rate or scale; and the employer shall comply with such directive."

40

45

50

Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962, as inserted by section 41 of Act 90 of 1988 and amended by section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992 and section 3 of Act 168 of 1993

40. Paragraph 11B of the Fourth Schedule to the principal Act is hereby amended—

55

- (a) by the substitution in subparagraph (1) for paragraph (b) of the definition of “standard employment” of the following paragraph:
- “(b) the employment of any employee with an employer if such employee declares **[on the return of personal particulars referred to in paragraph 12] in writing** that he does not and will not during the period in which he holds such employment render services (other than such casual services as may be determined by the Commissioner in the deduction tables prescribed by him under paragraph 9) to any other employer; or”;
- (b) by the deletion in subparagraph (1) of the proviso to the definition of “tax period”; and
- (c) by the substitution for subparagraph (6) of the following subparagraph:
- “(6) For the purposes of determining the amount of Standard Income Tax on Employees required to be deducted or withheld from any net remuneration paid or payable by an employer to an employee, the employer shall **[determine the amount of annual tax in relation to such net remuneration in accordance with the return of personal particulars or fresh return furnished by the employee in terms of paragraph 12(1) or in accordance with any directive issued by the Commissioner as contemplated in paragraph 12(2) or, where no return whatsoever has been submitted by the employee and the employer has not been issued with such a directive, in the manner prescribed in paragraph 12(3)] not allow the deduction of the rebate contemplated in section 6(2)(b) unless he is in possession of a written declaration by the employee that he would be over the age of 65 years on the last day of the year of assessment: Provided that—**
- (a) where the employee has failed, or is deemed to have failed in terms of paragraph (b), to furnish such **[return of personal particulars or fresh return or to apply to the Commissioner for the issue of a directive as contemplated in paragraph 12(2)] written declaration** and in consequence of such failure the amount of Standard Income Tax on Employees determined by the employer is greater than the amount which would have been determined had the employee submitted **[a return reflecting his correct personal particulars] such written declaration**, the amount so determined by the employer shall for the purposes of this paragraph be deemed to have been correctly determined; and
- (b) where an employee has not furnished such **[return of personal particulars or fresh return] written declaration** in sufficient time to enable the employer to take account thereof for the purpose of determining such amount of annual tax **[or has not applied to the Commissioner for the issue of such directive in sufficient time to enable the Commissioner to issue such directive and the employer to take account thereof for the said purpose]**, the employee shall be deemed for the said purpose to have failed to render such **[return of personal particulars or fresh return or to have applied for such directive] written declaration.**”

Deletion of paragraph 12, and heading thereto, of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 42 of Act 90 of 1988, section 48 of Act 101 of 1990 and section 47 of Act 129 of 1991

41. Paragraph 12, and the heading thereto, of the Fourth Schedule to the principal Act are hereby deleted.

Deletion of paragraph 12A, and heading thereto, of Fourth Schedule to Act 58 of 1962, as inserted by section 49 of Act 113 of 1993

42. Paragraph 12A, and the heading thereto, of the Fourth Schedule to the principal Act are hereby deleted.

Amendment of paragraph 15 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 7 of Act 30 of 1984

43. Paragraph 15 of the Fourth Schedule to the principal Act is hereby amended by the deletion of subparagraph (1A).

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983 and section 52 of Act 101 of 1990 5

44. Paragraph 19 of the Fourth Schedule to the principal Act is hereby amended—
- (a) by the addition in subparagraph (1) of the word “or” at the end of subitem (i) of item (d);
 - (b) by the deletion in subparagraph (1) of the word “or” at the end of subitem (ii) of item (d); and
 - (c) by the deletion of subitem (iii) of item (d) of subparagraph (1).

Amendment of paragraph 30 of Fourth Schedule to Act 58 of 1962 15

45. Paragraph 30 of the Fourth Schedule to the principal Act is hereby amended by the substitution for item (e) of subparagraph (1) of the following item:

- “(e) [furnishes to his employer or the Commissioner a false or misleading return of personal particulars or] gives any false information or misleads his employer in relation to any matter affecting the amount of employees’ tax to be deducted in his case; or” 20

Amendment of paragraph 5 of Seventh 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, section 57 of Act 101 of 1990 and section 31 of Act 21 of 1994

46. Paragraph 5 of the Seventh Schedule to the principal Act is hereby amended by the substitution for the first proviso to subparagraph (2) of the following proviso: 25

- “Provided that where the asset in question is movable property (other than marketable securities or an asset which the employer had the use of prior to acquiring ownership thereof) and was acquired by the employer in order to dispose of it to the employee or the asset in question (other than marketable securities) was held by the employer as trading stock, the value to be placed thereon shall be the cost thereof to the employer or, where such asset was held as trading stock and the market value thereof was less than such cost, such market value.” 30

Amendment of paragraph 7 of Seventh 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, section 36 of Act 141 of 1992 and section 32 of Act 21 of 1994 40

47. (1) Paragraph 7 of the Seventh Schedule to the principal Act is hereby amended—

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

“Provided that—

 - (a) where an employee has been granted the right of use of such 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 be deducted from the amount determined under the foregoing provisions of this subparagraph 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; and
- (b) where such motor vehicle 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 such motor vehicle, the determined value shall be the determined value as at the date on which the employee was granted the right of use of such motor vehicle for the first time.”;
- (b) by the deletion of subparagraph (1A);
- (c) by the addition to subparagraph (2) of the following proviso:
“Provided that where the employee receives an allowance or advance contemplated in section 8(1)(b), such value of the private use of such vehicle shall not be reduced by any such consideration.”; and
- (d) by the substitution in subparagraph (4) for the words preceding paragraph (i) of the proviso to item (a) of the following words:
“as respects each such month, be an amount equal to 1,2 per cent of the determined value of such motor vehicle: Provided that where more than one motor vehicle is made available by an employer to a particular employee at the same time and the provisions of subparagraph (6) are not applicable in the case of such vehicles, the said value shall be an amount equal to 1,2 per cent of the determined value of the motor vehicle having the highest determined value and 2 per cent of the determined value of every other such motor vehicle: Provided further that where the employee—”.
- (2)(a) Subsection (1)(c) shall come into operation on 1 September 1995.
- (b) Subsection (1)(d) shall be deemed to have come into operation on 1 May 1995.

Amendment of paragraph 11 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 33 of Act 96 of 1985 and section 35 of Act 65 of 1986

48. Paragraph 11 of the Seventh Schedule to the principal Act is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) [Subject to the provisions of paragraphs 13A and 14] The cash equivalent of the value of the taxable benefit derived in consequence of the grant of a loan to an employee in the circumstances contemplated in paragraph 2(f) shall be the amount of interest that would have been payable on the amount owing in respect of the loan in respect of the year of assessment if the employee had been obliged to pay interest on such amount during such year at the official rate of interest, less the amount of interest (if any) actually incurred by the employee in respect of the loan in respect of such year.”.

Amendment of paragraph 12 of Seventh Schedule to Act 58 of 1962, as substituted by section 34 of Act 96 of 1985

49. The following paragraph is hereby substituted for paragraph 12 of the Seventh Schedule to the principal Act:

“12. [Subject to the provisions of paragraphs 13A and 14] The cash equivalent of the value of the taxable benefit consisting of any subsidy in respect of the amounts of interest or capital repayments referred to in paragraph 2(g) or any subsidy contemplated in paragraph 2(gA) shall be the amount of such subsidy.”.

Deletion of paragraph 13A, and heading thereto, of Seventh Schedule to Act 58 of 1962, as inserted by section 36 of Act 96 of 1985 and amended by section 54 of Act 113 of 1993

50. Paragraph 13A, and the heading thereto, of the Seventh Schedule to the principal Act are hereby deleted.

Deletion of paragraph 14, and heading thereto, of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 37 of Act 96 of 1985, section 36 of Act 65 of 1986 and section 30 of Act 85 of 1987

51. Paragraph 14, and the heading thereto, of the Seventh Schedule to the principal Act are hereby deleted. 5

Deletion of paragraph 15, and heading thereto, of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 38 of Act 96 of 1985, section 37 of Act 65 of 1986 and section 11 of Act 108 of 1986

52. Paragraph 15, and the heading thereto, of the Seventh Schedule to the principal Act are hereby deleted. 10

Amendment of section 24 of Act 21 of 1994

53. Section 24 of the Income Tax Act, 1994, is hereby amended—

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

“(a) Subsection (1)(a), (b), (c), (e), (f) [(g)] and (h) shall be deemed to have 15
come into operation on 17 March 1993.”; and

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

“(c) Subsection (1)(g) shall in so far as it—

(i) adds paragraphs (e) and (g) to subsection (5) of section 64B of the 20
principal Act, be deemed to have come into operation on 17 March 1993; and

(ii) adds paragraph (f) to subsection (5) of section 64B of the principal Act, be deemed to have come into operation on 25 November 1994 and that paragraph shall apply to any dividend declared on or after that date.”.

Amendment of section 41 of Act 21 of 1994 25

54. Section 41 of the Income Tax Act, 1994, is hereby amended—

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

“(c) to [income derived from a source within] the territory of the former 30
Republic of Venda.”; and

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

“(c) Subsection (1)(c) shall be deemed to have come into operation—

(i) [in respect of any] in so far as Parts III and VII of Chapter II of the 35
principal Act are applicable, in respect of any dividend declared by a company during a year of assessment commencing after 1 April 1994;

(ii) in so far as Part VI of Chapter II of the principal Act is applicable, from any calendar quarter ending on or after 30 September 1995;

(iii) in so far as any other provision of the principal Act or any provision of any such regulation, Proclamation or Government Notice relates to a 40
year of assessment—

(aa) of a person, other than a company, from the commencement of years of assessment [commencing] ending on or after [1 March 1995] 29 February 1996; [and] or

[(ii) in respect of any] 45

(bb) of a company, from the commencement of years of assessment commencing on or after 1 April 1994; or

(iv) in any other case, from 1 March 1995.”.

Repeal of section 42 of Act 21 of 1994 50

55. Section 42 of the Income Tax Act, 1994, is hereby repealed.

Special provisions to apply to former Republics of Transkei, Bophuthatswana, Venda and Ciskei in respect of certain provisions of principal Act

56. (1) Any fund which prior to the date of promulgation of this Act was approved as

a benefit fund, pension fund, provident fund or retirement annuity fund for the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Transkei, the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Bophuthatswana, the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Venda or the Income Tax Act, 1984 (Act No. 44 of 1984), of the former Republic of Ciskei, but not for purposes of the principal Act, shall for the purposes of the principal Act be deemed to have been approved as a benefit fund, pension fund, provident fund or retirement annuity fund, as the case may be, in respect of years of assessment ending on or before 28 February 1997, if the rules of such fund are submitted to the Commissioner for Inland Revenue by 29 February 1996: Provided that the said Commissioner may, if he is satisfied that any such fund should not be so approved in respect of any such year, determine that the provisions of this section shall not apply to such fund in respect of such year, any such determination of the said Commissioner being subject to objection and appeal.

(2) For the purposes of the principal Act any superannuation, pension, provident or dependants' fund or pension scheme established by a law of the territories of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei or any such fund so established for the benefit of the employees of any local authority of the territories of the said former Republics shall be deemed to have been established by law in the Republic.

Application of the principal Act

57. (1) The provisions of the principal Act, excluding Part III of Chapter II, as well as any regulation, Proclamation or Government Notice made or issued under the provisions thereof, shall, subject to the provisions of subsections (2) and (3), be applicable in the territories of the former Republics of Transkei, Bophuthatswana and Ciskei—

- (a) in so far as Part VI of Chapter II of such Act is so applicable, from any calendar quarter ending on or after 30 September 1995;
- (b) in so far as Part VII of Chapter II of such Act is so applicable, to any dividend declared during a year of assessment commencing after 1 April 1995;
- (c) in so far as any other provision of such Act or any provision of any such regulation, Proclamation or Government Notice so applicable, relates to a year of assessment—
 - (i) of a person other than a company, from the commencement of years of assessment ending on or after 29 February 1996; or
 - (ii) of a company, from the commencement of years of assessment ending on or after 1 April 1995; or
- (d) in any other case, from 1 March 1995.

(2)(a) In so far as the principal Act is applicable in terms of subsection (1), the laws of the territories of any of the former Republics of Transkei, Bophuthatswana and Ciskei, which impose a tax similar to a tax imposed in terms of the principal Act, shall not be applicable.

(b) In so far as the laws of any of the former Republics of Transkei, Bophuthatswana and Ciskei impose a tax which is not similar to a tax imposed in terms of the principal Act, such laws shall no longer be applicable in respect of the territory of—

- (i) the former Republic of Transkei, to—
 - (aa) any undistributed profits tax payable in terms of section 48 of the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Transkei, in respect of years of assessment ending after 1 April 1995;
 - (bb) any non-residents tax on interest payable in terms of section 64A of the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Transkei, in respect of interest accrued during years of assessment ending after 1 April 1995;
 - (cc) any special tax payable in terms of section 6B, any local tax payable in terms of section 7, any general stock tax payable in terms of section 7A or any general levy payable in terms of section 7B of the Transkei Taxation Act, 1969 (Act No. 8 of 1969), of the former Republic of

- Transkei, in respect of years of assessment ending after 1 April 1995; and
- (dd) any tax on investment income payable in terms of section 6C of the Transkei Taxation Act, 1969 (Act No. 8 of 1969), of the former Republic of Transkei, in respect of interest paid or dividends declared during years of assessment ending after 1 April 1995; 5
- (ii) the former Republic of Bophuthatswana, to—
- (aa) any non-residents tax on rentals payable in terms of section 48 of the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Bophuthatswana, in respect of any rental received or accrued during years of assessment ending after 1 April 1995; 10
- (bb) any management fees tax payable in terms of section 64G of the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Bophuthatswana, in respect of any management fees derived during years of assessment ending after 1 April 1995; 15
- (cc) any non-resident partnership profits tax payable in terms of section 64I of the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Bophuthatswana, in respect of any profits accrued during years of assessment ending after 1 April 1995; and
- (dd) any withholding tax on fees paid to non-residents payable in terms of section 64J of the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Bophuthatswana, in respect of any fees derived during years of assessment ending after 1 April 1995; and 20
- (iii) the former Republic of Ciskei, to any withholding tax payable in terms of section 13(c), (d), (e) or (f) of the Income Tax Act, 1984 (Act No. 44 of 1984), of the former Republic of Ciskei, in respect of any amount paid or payable during years of assessment ending after 1 April 1995. 25
- (3) Any law referred to in the principal Act which is not yet applicable in the territories of the former Republics of Transkei, Bophuthatswana and Ciskei, shall for the purposes of the principal Act be deemed to be applicable in such territories. 30

Repeal of laws, and saving

58. (1) Subject to the provisions of subsections (2) and (3), the laws mentioned in the second column of Schedule 2 are hereby repealed to the extent as set out in the third column thereof.

(2) Any tax or levy which has become payable under a law repealed by 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 so repealed. 35

(3) Subsections (1) and (2) shall come into operation on 1 October 1995.

Commencement of certain amendments

59. 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 1996. 45

Short title

60. This Act shall be called the Income Tax Act, 1995.

SCHEDULE 1

RATES OF NORMAL TAX PAYABLE BY PERSONS OTHER THAN COMPANIES IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 29 FEBRUARY 1996 AND 30 JUNE 1996, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 1996

(SECTION 1)

1. The rates of normal tax referred to in section 1 of this Act in respect of persons other than companies are as follows:—

(a) In respect of the taxable income of any natural person, an amount of tax calculated in accordance with the table below:

Taxable Income	Rates of Tax in respect of Natural 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 31 per cent of the amount by which the taxable income exceeds R30 000;
“ R40 000 “ “ “ “ R50 000	R8 900 plus 42 per cent of the amount by which the taxable income exceeds R40 000;
“ R50 000 “ “ “ “ R70 000	R13 100 plus 43 per cent of the amount by which the taxable income exceeds R50 000;
“ R70 000 “ “ “ “ R80 000	R21 700 plus 44 per cent of the amount by which the taxable income exceeds R70 000;
“ R80 000	R26 100 plus 45 per cent of the amount by which the taxable income exceeds R80 000;

(b) in respect of the taxable income of any person other than a natural person, an amount of tax calculated in accordance with the table below:

Taxable Income	Rates of Tax in respect of Persons other than Natural 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 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 “ “ “ “ R70 000	R17 070 plus 43 per cent of the amount by which the taxable income exceeds R56 000;
“ R70 000 “ “ “ “ R80 000	R23 090 plus 44 per cent of the amount by which the taxable income exceeds R70 000;
“ R80 000	R27 490 plus 45 per cent of the amount by which the taxable income exceeds R80 000;

(c) on each rand of so much of the taxable income as exceeds R50 000, 1,67 cents, in addition to the tax determined under subparagraph (a) or (b): 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) and paragraph 7 of the Second Schedule to the principal Act.

2. The rates of normal tax referred to in section 1 of this Act in respect of companies are, subject to the provisions of paragraphs 4 and 5, as follows:—

- (a) On each rand of the taxable income of any company (excluding taxable income referred to in subparagraphs (b), (c) and (d)), 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;
- (b) 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);

- (c) 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;
- (d) 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, 45 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:

Provided that the tax determined in accordance with any of subparagraphs (a) to (d), inclusive, shall be payable in addition to the tax determined in accordance with any other of the said subparagraphs.

3. The rates set forth in paragraphs 1 and 2 shall be the rates required to be fixed by Parliament in accordance with the provisions of section 5(2) of the principal Act, in respect of taxable incomes derived from sources within or deemed to be within the Republic.

4. Where the normal tax payable by any company in respect of taxable income derived from a source within the territories of the former Republics of Transkei, Bophuthatswana and Ciskei as determined under paragraph 2(a), (b), (c) and (d), exceeds the tax which, but for the provisions of section 57(2) of this Act, would have been payable in respect of such taxable income as determined under the provisions of—

- (a) the Income Tax Act, 1962 (Act No. 58 of 1962), of the former Republic of Transkei, the Transkei Taxation Act, 1969 (Act No. 8 of 1969), of the former Republic of Transkei and the Income Tax Amendment Act, 1982 (Act No. 19 of 1982), of the former Republic of Transkei;
- (b) 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; or
- (c) the Income Tax Act, 1984 (Act No. 44 of 1984), of the former Republic of Ciskei,

as the case may be, there shall be deducted from such normal tax an amount equal to 50 per cent of the amount by which such normal tax exceeds the tax which, but for the provisions of section 57(2) of this Act, would have been payable under any such Act.

5. Any company which qualifies for exemption under the provisions of section 2 of the Company Tax Amendment Decree, 1994 (Decree No. 2 of 1994 of Ciskei), shall be exempt from normal tax on so much of its taxable income as is derived from a source within the territory of the former Republic of Ciskei.

6. For the purposes of paragraph 2 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.

7. For the purposes of the principal Act any amount determined in accordance with paragraph 1(c) shall be known as the transition levy.

8. 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.

SCHEDULE 2**LAWS REPEALED****(SECTION 58)***(a)*

Laws of the former Republic of Transkei		
Number and year of law	Short title	Extent of repeal
Act No. 58 of 1962	Income Tax Act, 1962	The whole
Act No. 8 of 1969	Transkei Taxation Act, 1969	The whole
Act No. 2 of 1970	Transkeian Finance Act, 1970	The whole
Act No. 5 of 1972	Transkeian General Law Amendment Act, 1972	The whole
Act No. 27 of 1976	Taxation Adjustment Act, 1976	The whole
Act No. 10 of 1977	Taxation Amendment Act, 1977	The whole
Act No. 17 of 1978	Taxation Amendment Act, 1978	The whole
Act No. 25 of 1980	Taxation Amendment Act, 1980	The whole
Act No. 23 of 1981	Taxation Amendment Act, 1981	The whole
Act No. 19 of 1982	Income Tax Amendment Act, 1982	The whole
Act No. 3 of 1983	Taxation Amendment Act, 1983	The whole
Act No. 19 of 1983	Income Tax Amendment Act, 1983	The whole
Act No. 10 of 1984	Income Tax Amendment Act, 1984	The whole
Act No. 22 of 1985	General Law Amendment Act, 1985	The whole
Act No. 16 of 1986	Taxation Amendment Act, 1986	The whole
Act No. 4 of 1987	Taxation Amendment Act, 1987	The whole
Act No. 19 of 1987	Revenue Laws Amendment Act, 1987	The whole
Decree No. 13 of 1988	Decree No. 13 (General Law Amendment) of 1988	Sections 6 and 7
Decree No. 17 of 1989	Decree No. 17 (Revenue Laws Amendment) of 1989	Section 4

(b)

Laws of the former Republic of Bophuthatswana		
Number and year of law	Short title	Extent of repeal
Act No. 58 of 1962	Income Tax Act, 1962	The whole
Act No. 26 of 1978	Bophuthatswana Taxation Act, 1978	The whole
Act No. 4 of 1980	Bophuthatswana Taxation Amendment Act, 1980	The whole
Act No. 26 of 1980	Bophuthatswana Taxation Second Amendment Act, 1980	The whole
Act No. 27 of 1980	Bophuthatswana Taxation Third Amendment Act, 1980	The whole
Act No. 30 of 1980	Bophuthatswana Taxation Fourth Amendment Act, 1980	The whole
Act No. 7 of 1982	Bophuthatswana Taxation Amendment Act, 1982	The whole
Act No. 34 of 1982	Bophuthatswana Taxation Second Amendment Act, 1982	The whole
Act No. 15 of 1983	Bophuthatswana Taxation Amendment Act, 1983	The whole
Act No. 31 of 1984	Bophuthatswana Taxation Amendment Act, 1984	The whole
Act No. 32 of 1984	Bophuthatswana Second Taxation Amendment Act, 1984	The whole
Act No. 23 of 1985	Bophuthatswana Taxation Amendment Act, 1985	The whole
Act No. 24 of 1985	Second Bophuthatswana Taxation Amendment Act, 1985	The whole
Act No. 28 of 1986	Bophuthatswana Taxation Amendment Act, 1986	The whole
Act No. 33 of 1986	Bophuthatswana Taxation Second Amendment Act, 1986	The whole
Act No. 4 of 1988	Bophuthatswana Taxation Amendment Act, 1988	The whole
Act No. 10 of 1989	Bophuthatswana Taxation Amendment Act, 1989	The whole
Act No. 4 of 1991	Bophuthatswana Taxation Amendment Act, 1991	The whole
Act No. 34 of 1992	Taxation Laws Amendment Act, 1992	The whole
Act No. 64 of 1992	Bophuthatswana Taxation Laws Amendment Act, 1992	The whole
Act No. 35 of 1993	Taxation Laws Amendment Act, 1993	The whole

(c)

Laws of the former Republic of Venda		
Number and year of law	Short title	Extent of repeal
Act No. 36 of 1987	Taxation Laws Amendment Act, 1987	The whole

Act No. 21, 1995

INCOME TAX ACT, 1995

(d)

Laws of the former Republic of Ciskei		
Number and year of law	Short title	Extent of repeal
Act No. 16 of 1984	Company Tax Amendment Act, 1984	The whole
Act No. 44 of 1984	Income Tax Act, 1984	The whole
Act No. 7 of 1988	Income Tax Amendment Act, 1988	The whole
Act No. 15 of 1988	Company Tax Amendment Act, 1988	The whole
Act No. 11 of 1989	Reinsurance of Material Damage and Loss Act, 1989	The Schedule
Decree No. 16 of 1991	Income Tax Amendment Decree of 1991	The whole
Decree No. 20 of 1992	Income Tax Amendment Decree of 1992	The whole
Decree No. 21 of 1992	Taxation Amendment Decree of 1992	The whole
Decree No. 24 of 1993	Taxation Amendment Decree of 1993	The whole
Decree No. 7 of 1994	Income Tax Amendment Decree of 1994	The whole