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PRESIDENT'S OFFICE

KANTOOR VAN DIE PRESIDENT

No. 1586.

30 September 1996

No. 1586.

30 September 1996

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

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

No. 46 of 1996: Revenue Laws Amendment Act, 1996.

No. 46 van 1996: Wysigingswet op Inkomstewette, 1996.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Marketable Securities Tax Act, 1948, so as to further define a certain expression; and to further regulate the furnishing and production of, the search for and the seizure of any information, documents or things, as well as the making of inquiries for the purposes of the administration of the said Act; to amend the Transfer Duty Act, 1949, so as to further regulate the furnishing and production of, the search for and the seizure of any information, documents or things, as well as the making of inquiries for the purposes of the administration of the said Act; to amend the Estate Duty Act, 1955, so as to further regulate the furnishing and production of, the search for and the seizure of any information, documents or things, as well as the making of inquiries for the purposes of the administration of the said Act; to amend the Income Tax Act, 1962, so as to withdraw certain exemptions; to further regulate the granting of depreciation allowances in respect of certain machinery, plant and buildings; to provide for a tax holiday scheme in respect of certain companies; to provide for certain exemptions from secondary tax on companies; and to further regulate the furnishing and production of, the search for and the seizure of any information, documents or things, as well as the making of inquiries for the purposes of the administration of the said Act; to amend the Stamp Duties Act, 1968, so as to further regulate the furnishing and production of, the search for and the seizure of any information, documents or things, as well as the making of inquiries for the purposes of the administration of the said Act; and to repeal certain provisions; to amend the Value-Added Tax Act, 1991, so as to deem certain vendors to have supplied a service in certain circumstances; to further regulate the time and value of such deemed supplied services; to repeal certain obsolete provisions; and to further regulate the furnishing and production of, the search for and the seizure of any information, documents or things, as well as the making of inquiries for the purposes of the administration of the said Act; to amend the Regional Industrial Development Act, 1993, so as to further regulate the composition, powers and functions of the Regional Industrial Development Board; to amend the Taxation Laws Amendment Act, 1994, so as to insert certain expressions and to further define certain others; to amend the Income Tax Act, 1996, so as to further regulate the date of commencement of certain provisions of that Act; and to amend the Tax on Retirement Funds Act, 1996, so as to further define certain expressions; and to further regulate the determination of the taxable amount of an untaxed policyholder fund; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 27 September 1996.)

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

Amendment of section 1 of Act 32 of 1948, as substituted by section 1 of Act 37 of 1996

1. Section 1 of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution for the definition of "stockbroker" of the following definition: 5

" 'stockbroker' means [any natural person who carries on the business of buying and selling marketable securities and who is a practising member of the South African Institute of Stockbrokers] a stockbroker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);" 10

Substitution of section 9 of Act 32 of 1948

2. The following sections are hereby substituted for section 9 of the Marketable Securities Tax Act, 1948:

"General provisions with regard to information, documents or things

9. (1) For the purposes of this section and sections 9A, 9B, 9C, 9D and 10— 15

'administration of this Act' means the—

(a) obtaining of full information in relation to the purchase of any marketable security; 20

(b) ascertaining of the correctness of any return, financial statement, document, declaration of facts or valuation;

(c) determination of the liability of any person for any tax and any penalty in relation thereto leviable under this Act;

(d) collecting of any such liability; 25

(e) ascertaining whether an offence in terms of this Act has been committed;

(f) ascertaining whether a person has, other than in relation to a matter contemplated in paragraphs (a), (b), (c), (d) and (e) of this definition, complied with the provisions of this Act; 30

(g) enforcement of any of the Commissioner's remedies under this Act to ensure that any obligation imposed upon any person by this Act, is complied with; and 35

(h) performance of any other administrative function which is necessary for the carrying out of the provisions of this Act;

'authorisation letter' means a written authorisation granted by the Commissioner, or any chief director, receiver of revenue or chief revenue inspector under the control, direction or supervision of the Commissioner, to an officer to inspect, audit, examine or obtain, as contemplated in section 9B, any information, documents or things; 40

'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate; photograph, map, drawing and any 'computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983); 45

'information' includes any data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983;

'judge' means a judge of the Supreme Court and includes a judge in chambers;

'officer' means an officer contemplated in section 3(1) of the Income Tax Act, 1962 (Act No. 58 of 1962); 50

'premises' include any building, premises, aircraft, vehicle, vessel or place;

'things' include any corporeal or incorporeal thing and any document relating thereto;

'warrant' means a written authorisation issued by a judge to search for and seize any information, documents or things under section 9D. 55

(2) For the purposes of sections 9A, 9B, 9C and 9D, where any information, documents or things are not in one of the official languages, the Commissioner or any officer may by notice in writing require the person liable for the tax or, on such person's default, any other person, to produce, within a reasonable period, a translation thereof in one of the official languages determined by the Commissioner or such officer. 5

(3) Any translation referred to in subsection (2) shall be—

- (a) produced at such time and premises as may be specified by the Commissioner or any officer; and
- (b) prepared and certified by a sworn translator or another person approved by the Commissioner or such officer. 10

(4) For the purposes of sections 9C and 9D, the Commissioner may delegate the powers vested in him by those sections, to any other officer.

Furnishing of information, documents or things by any person

9A. The Commissioner or any officer may, for the purposes of the administration of this Act in relation to any person liable for the tax, require such person or any other person to furnish such information (whether orally or in writing), documents or things as the Commissioner or such officer may require. 15

Obtaining of information, documents or things at certain premises 20

9B. (1) The Commissioner, or an officer named in an authorisation letter, may, for the purposes of the administration of this Act in relation to the person liable for the tax, require such person or any other person, with reasonable prior notice, to furnish, produce or make available any such information, documents or things as the Commissioner or such officer may require to inspect, audit, examine or obtain. 25

(2) For the purposes of the inspection, audit, examination or obtaining of any such information, documents or things, the Commissioner or an officer contemplated in subsection (1), may call on any person—

- (a) at any premises; and 30
- (b) at any time during such person's normal business hours.

(3) For the purposes of subsection (2), the Commissioner or any officer contemplated in subsection (1), shall not enter any dwelling-house or domestic premises (except any part thereof as may be occupied or used for the purposes of trade) without the consent of the occupant. 35

(4) Any officer exercising any power under this section, shall on demand produce the authorisation letter issued to him.

Inquiry

9C. (1) The Commissioner or an officer contemplated in section 9(4) may authorise any person to conduct an inquiry for the purposes of the administration of this Act. 40

(2) Where the Commissioner, or any officer contemplated in section 9(4), authorises a person to conduct an inquiry, the Commissioner or such officer shall apply to a judge for an order designating a presiding officer before whom the inquiry is to be held. 45

(3) A judge may, on *ex parte* application by the Commissioner or any officer contemplated in section 9(4), grant an order in terms of which a person contemplated in subsection (2) is designated to act as presiding officer at the inquiry contemplated in this section.

(4) An application under subsection (2) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based. 50

(5) A judge may grant the order referred to in subsection (3) if he is satisfied that there are reasonable grounds to believe that—

- (a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or
- (ii) an offence in terms of this Act has been committed by any person;
- (b) information, documents or things are likely to be revealed which may afford proof of—
 - (i) such non-compliance; or
 - (ii) the committing of such offence; and
- (c) the inquiry referred to in the application is likely to reveal such information, documents or things.

(6) An order under subsection (3) shall, *inter alia*—

- (a) name the presiding officer;
- (b) refer to the alleged non-compliance or offence to be inquired into;
- (c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and
- (d) be reasonably specific as to the ambit of the inquiry.

(7) Any presiding officer shall be a person appointed by the Minister of Finance in terms of section 83A(4) of the Income Tax Act, 1962 (Act No. 58 of 1962).

(8) For the purposes of an inquiry contemplated in this section, a presiding officer designated under subsection (3) shall—

- (a) determine the proceedings as he may think fit;
- (b) have the same powers to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act, 1962; and
- (c) record the proceedings and evidence at an inquiry in such manner as he may think fit.

(9) Any person may, by written notice issued by the presiding officer, be required to appear before him in order to be questioned under oath or solemn declaration for the purposes of an inquiry contemplated in this section.

(10) The notice contemplated in subsection (9) shall specify the—

- (a) place where such inquiry will be conducted;
- (b) date and time of such inquiry; and
- (c) reasons for such inquiry.

(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present throughout the inquiry, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

(12) Any person contemplated in subsection (9) has the right to a representative of his choice.

(13) An inquiry contemplated in this section shall not be public and the presiding officer shall at any time on application of the person whose affairs are investigated or any other person giving evidence, exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.

(14) Any person may, at the discretion of the presiding officer, be compensated for his reasonable expenditure related to the attendance of an inquiry, by way of witness fees in accordance with the tariffs prescribed in terms of section 51*bis* of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

Search and seizure

9D. (1) For the purposes of the administration of this Act, a judge may, on *ex parte* application by the Commissioner or any officer contemplated in section 9(4), issue a warrant, authorising the officer named therein to, without prior notice and at any time—

(a) (i) enter and search any premises; and
(ii) search any person present on the premises, provided that such search is conducted by an officer of the same gender as the person being searched,

for any information, documents or things, that may afford evidence as to the non-compliance by any person with his obligations in terms of this Act;

(b) seize any such information, documents or things; and

(c) in carrying out any such search, open or cause to be opened or removed and opened, anything in which such officer suspects any information, documents or things to be contained.

(2) An application under subsection (1) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(3) A judge may issue the warrant referred to in subsection (1) if he is satisfied that there are reasonable grounds to believe that—

(a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or

(ii) an offence in terms of this Act has been committed by any person;

(b) information, documents or things are likely to be found which may afford evidence of—

(i) such non-compliance; or

(ii) the committing of such offence; and

(c) the premises specified in the application are likely to contain such information, documents or things.

(4) A warrant issued under subsection (1) shall—

(a) refer to the alleged non-compliance or offence in relation to which it is issued;

(b) identify the premises to be searched;

(c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and

(d) be reasonably specific as to any information, documents or things to be searched for and seized.

(5) Where the officer named in the warrant has reasonable grounds to believe that—

(a) such information, documents or things are—

(i) at any premises not identified in such warrant; and

(ii) about to be removed or destroyed; and

(b) a warrant cannot be obtained timeously to prevent such removal or destruction,

such officer may search such premises and further exercise all the powers granted by this section, as if such premises had been identified in a warrant.

(6) Any officer who executes a warrant may seize, in addition to the information, documents or things referred to in the warrant, any other information, documents or things that such officer believes on reasonable grounds afford evidence of the non-compliance with the relevant obligations or the committing of an offence in terms of this Act.

(7) The officer exercising any power under this section shall on demand produce the relevant warrant (if any).

(8) The Commissioner, who shall take reasonable care to ensure that the information, documents or things are preserved, may retain them until the conclusion of any investigation into the non-compliance or offence in relation to which the information, documents or things were seized or until

they are required to be used for the purposes of any legal proceedings under this Act, whichever event occurs last.

(9)(a) Any person may apply to the relevant division of the Supreme Court for the return of any information, documents or things seized under this section.

(b) The court hearing such application may, on good cause shown, make such order as it deems fit.

(10) The person to whose affairs any information, documents or things seized under this section relate, may examine and make extracts therefrom and obtain one copy thereof at the expense of the State during normal business hours under such supervision as the Commissioner may determine."

Amendment of section 10 of Act 32 of 1948

3. Section 10 of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution for paragraphs (b) and (c) of subsection (1) of the following paragraphs, respectively:

"(b) [refuses or neglects] without just cause shown by him, refuses or neglects to—

[produce any account or document which he has under paragraph (a) of sub-section (1) of section *nine* been required to produce]

(i) furnish, produce or make available any information, documents or things;

(ii) reply to or answer truly and fully, any questions put to him; or

(iii) attend and give evidence,

as and when required in terms of this Act; or

(c) [fails to attend at the time and place specified in any notice addressed to him under paragraph (b) of sub-section (1) of section *nine*, or having so attended refuses to be sworn or to affirm as a witness, or without just cause shown by him to answer to the best of his ability any question put to him, or in reply to any such question knowingly gives information which is false] obstructs or hinders any officer in the carrying out of his duties,"

Amendment of section 11 of Act 40 of 1949

4. Section 11 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Commissioner may

(a) call upon any person to furnish to him, under oath or not as he may direct, any information or to produce any documents which the Commissioner may consider necessary for the purpose of determining the amount of the duty payable in respect of the acquisition of any property;

(b) require the person liable to pay the duty or the Government Mining Engineer or any other person to appear before him for the purpose of clarifying any valuation made by any such person;

(c) decline to accept any payment of duty otherwise than as a deposit on account of duty until the appropriate declarations referred to in section 14 are submitted to him."

Insertion of sections 11A, 11B, 11C, 11D and 11E in Act 40 of 1949

5. The following sections are hereby inserted in the Transfer Duty Act, 1949, after section 11:

"General provisions with regard to information, documents or things

11A. (1) For the purposes of this section and sections 11B, 11C, 11D and 11E—

'administration of this Act' means the—

- (a) obtaining of full information in relation to the acquisition of any property by any person or the enhancement of the value of any property of any person;
- (b) ascertaining of the correctness of any return, financial statement, document, declaration of facts or valuation; 5
- (c) determination of the liability of any person for any duty and any penalty in relation thereto leviable under this Act;
- (d) collecting of any such liability;
- (e) ascertaining whether an offence in terms of this Act has been committed; 10
- (f) ascertaining whether a person has, other than in relation to a matter contemplated in paragraphs (a), (b), (c), (d) and (e) of this definition, complied with the provisions of this Act;
- (g) enforcement of any of the Commissioner's remedies under this Act to ensure that any obligation imposed upon any person by this Act, is complied with; and 15
- (h) performance of any other administrative function which is necessary for the carrying out of the provisions of this Act; 20

'authorisation letter' means a written authorisation granted by the Commissioner, or any chief director, receiver of revenue or chief revenue inspector under the control, direction or supervision of the Commissioner, to an officer to inspect, audit, examine or obtain, as contemplated in section 11C, any information, documents or things; 25

'documents' include any document, agreement, declaration, book, record, account, deed, plan, instrument, trade list, stock list, affidavit, certificate, photograph, map, drawing and any 'computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983);

'information' includes any data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983; 30

'judge' means a judge of the Supreme Court and includes a judge in chambers;

'officer' means an officer contemplated in section 10(2);

'premises' include any building, premises, aircraft, vehicle, vessel or place;

'things' include any corporeal or incorporeal thing and any document relating thereto; 35

'warrant' means a written authorisation issued by a judge to search for and seize any information, documents or things under section 11E.

(2) For the purposes of sections 11B, 11C, 11D and 11E, where any information, documents or things are not in one of the official languages, the Commissioner or any officer may by notice in writing require the person liable for the duty or, on such person's default, any other person, to produce, within a reasonable period, a translation thereof in one of the official languages determined by the Commissioner or such officer. 40

(3) Any translation referred to in subsection (2) shall be— 45

- (a) produced at such time and premises as may be specified by the Commissioner or any officer; and
- (b) prepared and certified by a sworn translator or another person approved by the Commissioner or such officer. 50

(4) For the purposes of sections 11D and 11E, the Commissioner may delegate the powers vested in him by those sections, to any other officer. 50

Furnishing of information, documents or things by any person

11B. The Commissioner or any officer may, for the purposes of the administration of this Act in relation to any person liable for the duty, require such person or any other person to furnish such information 55

(whether orally or in writing), documents or things as the Commissioner or such officer may require.

Obtaining of information, documents or things at certain premises

11C. (1) The Commissioner, or an officer named in an authorisation letter, may, for the purposes of the administration of this Act in relation to the person liable for the duty, require such person or any other person, with reasonable prior notice, to furnish, produce or make available any such information, documents or things as the Commissioner or such officer may require to inspect, audit, examine or obtain.

(2) For the purposes of the inspection, audit, examination or obtaining of any such information, documents or things, the Commissioner or an officer contemplated in subsection (1), may call on any person—

(a) at any premises; and

(b) at any time during such person's normal business hours.

(3) For the purposes of subsection (2), the Commissioner or any officer contemplated in subsection (1), shall not enter any dwelling-house or domestic premises (except any part thereof as may be occupied or used for the purposes of trade) without the consent of the occupant.

(4) Any officer exercising any power under this section, shall on demand produce the authorisation letter issued to him.

Inquiry

11D. (1) The Commissioner or an officer contemplated in section 11A(4) may authorise any person to conduct an inquiry for the purposes of the administration of this Act.

(2) Where the Commissioner, or any officer contemplated in section 11A(4), authorises a person to conduct an inquiry, the Commissioner or such officer shall apply to a judge for an order designating a presiding officer before whom the inquiry is to be held.

(3) A judge may, on *ex parte* application by the Commissioner or any officer contemplated in section 11A(4), grant an order in terms of which a person contemplated in subsection (7) is designated to act as presiding officer at the inquiry contemplated in this section.

(4) An application under subsection (2) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(5) A judge may grant the order referred to in subsection (3) if he is satisfied that there are reasonable grounds to believe that—

(a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or

(ii) an offence in terms of this Act has been committed by any person;

(b) information, documents or things are likely to be revealed which may afford proof of—

(i) such non-compliance; or

(ii) the committing of such offence; and

(c) the inquiry referred to in the application is likely to reveal such information, documents or things.

(6) An order under subsection (3) shall, *inter alia*—

(a) name the presiding officer;

(b) refer to the alleged non-compliance or offence to be inquired into;

(c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and

(d) be reasonably specific as to the ambit of the inquiry.

(7) Any presiding officer shall be a person appointed by the Minister of Finance in terms of section 83A(4) of the Income Tax Act, 1962 (Act No. 58 of 1962).

(8) For the purposes of an inquiry contemplated in this section, a presiding officer designated under subsection (3) shall—

- (a) determine the proceedings as he may think fit;
- (b) have the same powers to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act, 1962; and
- (c) record the proceedings and evidence at an inquiry in such manner as he may think fit.

(9) Any person may, by written notice issued by the presiding officer, be required to appear before him in order to be questioned under oath or solemn declaration for the purposes of an inquiry contemplated in this section.

(10) The notice contemplated in subsection (9) shall specify the—

- (a) place where such inquiry will be conducted;
- (b) date and time of such inquiry; and
- (c) reasons for such inquiry.

(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present throughout the inquiry, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

(12) Any person contemplated in subsection (9) has the right to a representative of his choice.

(13) An inquiry contemplated in this section shall not be public and the presiding officer shall at any time on application of the person whose affairs are investigated or any other person giving evidence, exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.

(14) Any person may, at the discretion of the presiding officer, be compensated for his reasonable expenditure related to the attendance of an inquiry, by way of witness fees in accordance with the tariffs prescribed in terms of section 51*bis* of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

Search and seizure

11E. (1) For the purposes of the administration of this Act, a judge may, on *ex parte* application by the Commissioner or any officer contemplated in section 11A(4), issue a warrant, authorising the officer named therein to, without prior notice and at any time—

- (a) (i) enter and search any premises; and
- (ii) search any person present on the premises, provided that such search is conducted by an officer of the same gender as the person being searched,

for any information, documents or things, that may afford evidence as to the non-compliance by any person with his obligations in terms of this Act;

- (b) seize any such information, documents or things; and
- (c) in carrying out any such search, open or cause to be opened or removed and opened, anything in which such officer suspects any information, documents or things to be contained.

(2) An application under subsection (1) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

- (3) A judge may issue the warrant referred to in subsection (1) if he is satisfied that there are reasonable grounds to believe that—
- (a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or
 - (ii) an offence in terms of this Act has been committed by any person;
 - (b) information, documents or things are likely to be found which may afford evidence of—
 - (i) such non-compliance; or
 - (ii) the committing of such offence; and
 - (c) the premises specified in the application are likely to contain such information, documents or things.
- (4) A warrant issued under subsection (1) shall—
- (a) refer to the alleged non-compliance or offence in relation to which it is issued;
 - (b) identify the premises to be searched;
 - (c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and
 - (d) be reasonably specific as to any information, documents or things to be searched for and seized.
- (5) Where the officer named in the warrant has reasonable grounds to believe that—
- (a) such information, documents or things are—
 - (i) at any premises not identified in such warrant; and
 - (ii) about to be removed or destroyed; and
 - (b) a warrant cannot be obtained timeously to prevent such removal or destruction,
- such officer may search such premises and further exercise all the powers granted by this section, as if such premises had been identified in a warrant.
- (6) Any officer who executes a warrant may seize, in addition to the information, documents or things referred to in the warrant, any other information, documents or things that such officer believes on reasonable grounds afford evidence of the non-compliance with the relevant obligations or the committing of an offence in terms of this Act.
- (7) The officer exercising any power under this section shall on demand produce the relevant warrant (if any).
- (8) The Commissioner, who shall take reasonable care to ensure that the information, documents or things are preserved, may retain them until the conclusion of any investigation into the non-compliance or offence in relation to which the information, documents or things were seized or until they are required to be used for the purposes of any legal proceedings under this Act, whichever event occurs last.
- (9)(a) Any person may apply to the relevant division of the Supreme Court for the return of any information, documents or things seized under this section.
- (b) The court hearing such application may, on good cause shown, make such order as it deems fit.
- (10) The person to whose affairs any information, documents or things seized under this section relate, may examine and make extracts therefrom and obtain one copy thereof at the expense of the State during normal business hours under such supervision as the Commissioner may determine.”

Amendment of section 17 of Act 40 of 1949, as amended by section 5 of Act 77 of 1964

6. Section 17 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (1) of the following subsection: 55

“(1) Any person who—

- (a) fails to comply with any requirement or demand [by the Commissioner] under this Act; [or]
- (b) [who] knowingly submits or causes to be submitted to the Commissioner a

- declaration referred to in section 14 which fails to disclose any material fact relevant to the nature of the transaction by which property has been acquired or to the consideration payable in respect of any property or to the value on which duty is payable;
- (c) without good cause, fails to— 5
- (i) comply with any requirement; or
- (ii) reply to or answer truly and fully any questions put to him, by any person acting under section 11C, 11D or 11E; or
- (d) obstructs or hinders any officer in the carrying out of his duties, shall be guilty of an offence and liable on conviction to a fine [not exceeding R200] 10 or to imprisonment for a period not exceeding one year.”.

Substitution of section 8bis of Act 45 of 1955, as inserted by section 13 of Act 77 of 1962 and amended by section 5 of Act 81 of 1965

7. The following sections are hereby substituted for section 8bis of the Estate Duty Act, 1955: 15

“General provisions with regard to information, documents or things

8A. (1) For the purposes of this section and sections 8B, 8C, 8D, 8E and 28—

‘administration of this Act’ means the—

- (a) obtaining of full information in relation to all property of the estate of any deceased person as at the date of his death or property which is deemed to be property of that person; 20
- (b) ascertaining of the correctness of any return, financial statement, document, declaration of facts or valuation;
- (c) determination of the liability of any person for any duty and any penalty or interest in relation thereto leviable under this Act; 25
- (d) collecting of any such liability;
- (e) ascertaining whether an offence in terms of this Act has been committed;
- (f) ascertaining whether a person has, other than in relation to a matter contemplated in paragraphs (a), (b), (c), (d) and (e) of this definition, complied with the provisions of this Act; 30
- (g) enforcement of any of the Commissioner’s remedies under this Act to ensure that any obligation imposed upon any person by or under this Act, is complied with; and 35
- (h) performance of any other administrative function which is necessary for the carrying out of the provisions of this Act;

‘authorisation letter’ means a written authorisation granted by the Commissioner, any chief director or chief revenue inspector under the control, direction or supervision of the Commissioner, to an officer to inspect, audit, examine or obtain, as contemplated in section 8C, any information, documents or things; 40

‘documents’ include any document, book, record, account, deed, plan, instrument, trade list, stock list, affidavit, certificate, photograph, map, drawing and any ‘computer print-out’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983); 45

‘information’ includes any data stored by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983;

‘judge’ means a judge of the Supreme Court and includes a judge in chambers; 50

‘officer’ means an officer contemplated in section 6(2);

‘premises’ include any building, premises, aircraft, vehicle, vessel or place;

‘things’ include any corporeal or incorporeal thing and any document relating thereto;

‘warrant’ means a written authorisation issued by a judge to search for and seize any information, documents or things in terms of section 8E. 55

(2) For the purposes of sections 8B, 8C, 8D and 8E, where any information, documents or things are not in one of the official languages, the Commissioner or any officer may by notice in writing require the

executor of the estate or, on such executor's default, any other person, to produce, within a reasonable period, a translation thereof in one of the official languages determined by the Commissioner or such officer.

(3) Any translation referred to in subsection (2) shall be—

- (a) produced at such time and premises as may be specified by the Commissioner or any officer; and
- (b) prepared and certified by a sworn translator or another person approved by the Commissioner or such officer.

(4) For the purposes of sections 8D and 8E, the Commissioner may delegate the powers vested in him by those sections, to any other officer.

Furnishing of information, documents or things by any person

8B. The Commissioner or any officer may, for the purposes of the administration of this Act in relation to the estate of any deceased person, require the executor of such estate or any other person to furnish such information (whether orally or in writing) documents or things as the Commissioner or such officer may require.

Obtaining of information, documents or things at certain premises

8C. (1) The Commissioner, or an officer named in an authorisation letter, may, for the purposes of the administration of this Act in relation to the estate of a deceased person, require the executor of such estate or any other person, with reasonable prior notice, to furnish, produce or make available any such information, documents or things as the Commissioner or such officer may require to inspect, audit, examine or obtain.

(2) For the purposes of the inspection, audit, examination or obtaining of any such information, documents or things, the Commissioner or an officer contemplated in subsection (1), may call on any person—

- (a) at any premises; and
- (b) at any time during such person's normal business hours.

(3) For the purposes of subsection (2), the Commissioner or any officer contemplated in subsection (1), shall not enter any dwelling-house or domestic premises (except any part thereof as may be occupied or used for the purposes of trade) without the consent of the occupant.

(4) Any officer exercising any power under this section, shall on demand produce the authorisation letter issued to him.

Inquiry

8D. (1) The Commissioner or an officer contemplated in section 8A(4) may authorise any person to conduct an inquiry for the purposes of the administration of this Act.

(2) Where the Commissioner, or any officer contemplated in section 8A(4), authorises a person to conduct an inquiry, the Commissioner or such officer shall apply to a judge for an order designating a presiding officer before whom the inquiry is to be held.

(3) A judge may, on *ex parte* application by the Commissioner or any officer contemplated in section 8A(4), grant an order in terms of which a person contemplated in subsection (2) is designated to act as presiding officer at the inquiry contemplated in this section.

(4) An application under subsection (2) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(5) A judge may grant the order referred to in subsection (3) if he is satisfied that there are reasonable grounds to believe that—

- (a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or

(ii) an offence in terms of this Act has been committed by any person;
 (b) information, documents or things are likely to be revealed which may afford proof of—

(i) such non-compliance; or

(ii) the committing of such offence; and

(c) the inquiry referred to in the application is likely to reveal such information, documents or things.

(6) An order under subsection (3) shall, *inter alia*—

(a) name the presiding officer;

(b) refer to the alleged non-compliance or offence to be inquired into;

(c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and

(d) be reasonably specific as to the ambit of the inquiry.

(7) Any presiding officer shall be a person appointed by the Minister of Finance in terms of section 83A(4) of the Income Tax Act, 1962 (Act No. 58 of 1962).

(8) For the purposes of an inquiry contemplated in this section, a presiding officer designated under subsection (3) shall—

(a) determine the proceedings as he may think fit;

(b) have the same powers to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act, 1962; and

(c) record the proceedings and evidence at an inquiry in such manner as he may think fit.

(9) Any person may, by written notice issued by the presiding officer, be required to appear before him in order to be questioned under oath or solemn declaration for the purposes of an inquiry contemplated in this section.

(10) The notice contemplated in subsection (9) shall specify the—

(a) place where such inquiry will be conducted;

(b) date and time of such inquiry; and

(c) reasons for such inquiry.

(11) The executor of the estate of the deceased person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present throughout the inquiry, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the executor and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

(12) Any person contemplated in subsection (9) has the right to a representative of his choice.

(13) An inquiry contemplated in this section shall not be public and the presiding officer shall at any time on application of the executor or any other person giving evidence, exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.

(14) Any person may, at the discretion of the presiding officer, be compensated for his reasonable expenditure related to the attendance of an inquiry, by way of witness fees in accordance with the tariffs prescribed in terms of section 51*bis* of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

Search and seizure

8E. (1) For the purposes of the administration of this Act, a judge may, on *ex parte* application by the Commissioner or any officer contemplated in section 8A(4), issue a warrant, authorising the officer named therein to, without prior notice and at any time—

- (a) (i) enter and search any premises; and
(ii) search any person present on the premises, provided that such search is conducted by an officer of the same gender as the person being searched,
for any information, documents or things, that may afford evidence as to the non-compliance by any person with his obligations in terms of this Act; 5
- (b) seize any such information, documents or things; and
- (c) in carrying out any such search, open or cause to be opened or removed and opened, anything in which such officer suspects any information, documents or things to be contained. 10
- (2) An application under subsection (1) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.
- (3) A judge may issue the warrant referred to in subsection (1) if he is satisfied that there are reasonable grounds to believe that— 15
- (a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or
(ii) an offence in terms of this Act has been committed by any person;
- (b) information, documents or things are likely to be found which may afford evidence of— 20
- (i) such non-compliance; or
(ii) the committing of such offence; and
- (c) the premises specified in the application are likely to contain such information, documents or things. 25
- (4) A warrant issued under subsection (1) shall—
- (a) refer to the alleged non-compliance or offence in relation to which it is issued;
- (b) identify the premises to be searched;
- (c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and 30
- (d) be reasonably specific as to any information, documents or things to be searched for and seized.
- (5) Where the officer named in the warrant has reasonable grounds to believe that— 35
- (a) such information, documents or things are—
- (i) at any premises not identified in such warrant; and
(ii) about to be removed or destroyed; and
- (b) a warrant cannot be obtained timeously to prevent such removal or destruction, 40
- such officer may search such premises and further exercise all the powers granted by this section, as if such premises had been identified in a warrant.
- (6) Any officer who executes a warrant may seize, in addition to the information, documents or things referred to in the warrant, any other information, documents or things that such officer believes on reasonable grounds afford evidence of the non-compliance with the relevant obligations or the committing of an offence in terms of this Act. 45
- (7) The officer exercising any power under this section shall on demand produce the relevant warrant (if any).
- (8) The Commissioner, who shall take reasonable care to ensure that the information, documents or things are preserved, may retain them until the conclusion of any investigation into the non-compliance or offence in relation to which the information, documents or things were seized or until they are required to be used for the purposes of any legal proceedings under this Act, whichever event occurs last. 50
- (9)(a) Any person may apply to the relevant division of the Supreme Court for the return of any information, documents or things seized under this section. 55
- (b) The court hearing such application may, on good cause shown, make such order as it deems fit. 60

(10) The executor of the estate to which the information, documents or things seized under this section relate, may examine and make extracts therefrom and obtain one copy thereof at the expense of the State during normal business hours under such supervision as the Commissioner may determine.”

Amendment of section 28 of Act 45 of 1955, as amended by section 17 of Act 77 of 1962, section 7 of Act 81 of 1965, section 9 of Act 81 of 1985 and section 12 of Act 97 of 1993

8. Section 28 of the Estate Duty Act, 1955, is hereby amended by the substitution for paragraph (b)bis of subsection (2) of the following paragraph:

“(b)bis without just cause shown by him, [fails to comply with any requirement of the Commissioner made under sub-section (1) or (2) of section eight bis] refuses or neglects to—

- (i) furnish, produce or make available any information, documents or things;
 - (ii) reply to or answer truly and fully, any questions put to him; or
 - (iii) attend and give evidence,
- as and when required in terms of this Act; or”.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995 and section 8 of Act 36 of 1996

9. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of subparagraph (viii) of paragraph (t) of subsection (1); and
- (b) by the deletion of subparagraph (ix) of paragraph (t) of subsection (1).

(2)(a) Subsection (1)(a) shall be deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 July 1996.

(b) Subsection (1)(b) shall come into operation as from the commencement of years of assessment commencing on or after 1 January 1997.

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, section 11 of Act 21 of 1994 and section 13 of Act 21 of 1995

10. (1) Section 12C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the proviso of the following proviso:

“Provided that where—

- (a) 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

- (b) any new or unused machinery or plant referred to in paragraph (a) or (b), as the case may be, of this subsection was or is—

- (i) (aa) acquired by the taxpayer under an agreement (whether conditional

or not) concluded during the period commencing on 1 July 1996 and ending on 30 September 1999; and

(bb) brought into use by the taxpayer or the lessee, as the case may be, during such period; or

(ii) (aa) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement during the period commencing on 1 July 1996 and ending on 30 September 1999; and

(bb) brought into use by the taxpayer or the lessee, as the case may be, during the period commencing on 1 October 1999 and ending on 31 March 2000,

the deduction under this subsection shall be increased to 33 $\frac{1}{3}$ per cent of the cost of such machinery or plant in respect of the year of assessment during which the plant or machinery was or is so brought into use and in each of the two immediately succeeding years of assessment.”

(2) Subsection (1) shall be deemed to have come into operation on 1 July 1996. 15

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

11. (1) Section 13 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the first and second provisos of the following proviso: 25

“Provided that—

- (a) no allowance shall be made under this subsection in respect of such portion of the cost of any building the erection of which was commenced on or after 1 July 1961, or any improvements effected thereto as has been taken into account in the calculation of any allowance to the taxpayer under section 11(g) whether in the current or any previous year of assessment; 30
- (b) [Provided further that] in the case of any such building the erection of which has or is commenced on or after 1 January 1989 and any such improvements which have or are commenced on or after that date, other than any building or improvements contemplated in paragraph (c) of this proviso, the allowance under this subsection shall be increased to 5 per cent of the cost (after the deduction of any amount as provided in subsection (3)) to the taxpayer of such building or improvements; and 35
- (c) in the case of any such—
- (i) building the erection of which has or is commenced during the period commencing on 1 July 1996 and ending on 30 September 1999; or 40
- (ii) improvements which have or are commenced during such period; and, where such building has or is or such improvements have been or are brought into use on or before 31 March 2000, the allowance under this subsection shall be increased to 10 per cent of the cost (after the deduction of any amount as provided for in subsection (3)) to the taxpayer of such building or improvements.” 45

(2) Subsection (1) shall be deemed to have come into operation on 1 July 1996.

Insertion of section 37H in Act 58 of 1962

12. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 37G: 50

“Tax holiday scheme for certain companies**37H. (1) For the purposes of this section—**

‘board’ means the board established by section 2 of the Regional Industrial Development Act, 1993 (Act No. 187 of 1993);

‘commencement date’ means 1 October 1996;

‘goods’ means goods as defined in section 31(1);

‘project’ means a project which in the opinion of the board—

(a) represents the manufacturing of any products, goods, articles or any other things as classified in ‘Major Division 3: Manufacturing’ of the Standard Industrial Classification of all Economic Activities (Fifth Edition) issued by the Central Statistical Services in January 1993; and

(b) meets the investment requirements prescribed by the regulations under subsection (14)(a);

‘qualifying company’ means any company which—

(a) is incorporated on or after the commencement date;

(b) commences the carrying on of one qualifying project for the first time on or after the commencement date; and

(c) has the sole object of carrying on one qualifying project as from the date of such incorporation and which does not carry on any trade other than such qualifying project;

‘qualifying project’ means a project which has been approved by the board in terms of subsection (2)(a);

‘services’ means services as defined in section 31(1);

‘State’ means the Departments and Administrations as listed in Column 1 of Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994);

‘tax holiday scheme’ means a scheme in terms of which qualifying companies enjoy tax holiday status;

‘tax holiday status’ means the status whereby in respect of a year of assessment ending—

(a) during the period of six months ending 31 March 1997, the income of a qualifying company is reduced in accordance with subsection (12); or

(b) after 31 March 1997, the rate of normal tax on each rand of the taxable income received by or accrued to or in favour of a qualifying company is fixed at a rate of zero per cent in terms of section 5.

(2) The board may—

(a) evaluate and approve any project, to be carried on by a company, as a qualifying project;

(b) investigate or cause to be investigated any project for the purposes of this section;

(c) monitor the tax holiday scheme to—

(i) determine whether the objectives of that scheme are being achieved; and

(ii) advise the Minister of Finance and the Minister of Trade and Industry on any future proposed amendment or adjustment thereof;

(d) direct that where this section is applicable to any company, the company shall be excluded from any such further assistance from the State as the board may determine;

(e) require any company contemplated in subsection (4) to furnish the board with any such information or documents as are necessary for the board to perform its functions in terms of this section; and

(f) perform such other functions as are assigned to it under this section.

(3) The board shall not approve any project as a qualifying project—

(a) if it is of the opinion that the project to be carried on by any company is substantially the same manufacturing concern as was or is carried on by any other person within the Republic on or before the submission of the application for approval of the project in terms of subsection (4); or

(b) after the commencement of the carrying on of such project by any company.

(4) Any application by a company for the approval by the board of any project to be carried on by such company as a qualifying project, shall be made directly to the board in such form as the board may prescribe.

(5) This section shall apply to any project which has been approved by the board as a qualifying project in respect of any application received by the board from the relevant company on or before 30 September 1999.

(6) An application contemplated in subsection (4) shall be in respect of a project which shall consist of one or more of the following components—

(a) a spatial component as contemplated in subsection (14)(b);

(b) an industry component as contemplated in subsection (14)(c); and

(c) a human resource component as contemplated in subsection (14)(d).

(7) In determining whether a project is a qualifying project, the board shall—

(a) have regard to the—

(i) financial viability of the project;

(ii) effect on national competitiveness;

(iii) utilisation of resources;

(iv) utilisation of competitive technology; and

(v) commitment to the upgrading and training of local skills; and

(b) subject to subsection (8)—

(i) analyse each component of the project; and

(ii) where it is satisfied that such component is a component as contemplated in subsection (14)(b), (c) or (d), as the case may be, certify such component accordingly.

(8) Where the project consists solely of a human resource component or where one of the components of a project consists of a human resource component, the board shall—

(a) subject to paragraph (b), carry out an initial analysis and certification of such human resource component on application for approval of the project; and

(b) review such initial analysis and certification—

(i) where the project consists solely of a human resource component, within six months after the end of the first year of assessment during which the qualifying company commences its tax holiday status; and

(ii) where the project consists of more than one component, one of which is a human resource component, before the expiration of the tax holiday status of the qualifying company attributable to the certification by the board of all other components of such project.

(9) Where the board has approved a project to be carried on by a company as a qualifying project, the tax holiday status of such company shall, subject to subsections (10) and (15), be a period of—

(a) two consecutive years of assessment where the board has certified one component of the project;

(b) four consecutive years of assessment where the board has certified two components of the project; or

(c) six consecutive years of assessment where the board has certified three components of the project.

(10) Where a project consists of more than one component, one of which is a human resource component, the period of the tax holiday status in respect of such human resource component shall, for the purposes of this section, be deemed to commence as from the commencement of the year of assessment immediately subsequent to the expiration of the period of the tax holiday status in respect of every other component.

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(11) The tax holiday status of a qualifying company shall commence as from the commencement of the first year of assessment during which such qualifying company derives a taxable income.

(12) Where a qualifying company has a year of assessment ending during the period of six months ending 31 March 1997, there shall be allowed to be deducted from the income of such company in respect of such year of assessment, an amount equal to the taxable income in respect of such year of assessment of such company as determined before granting a deduction under this subsection.

(13) Notwithstanding the provisions of this section, a qualifying company shall no longer enjoy tax holiday status after the expiry of 10 years as from the commencement of the year of assessment during which the project which is carried on by the qualifying company was approved as a qualifying project by the board.

(14) The Minister of Trade and Industry may in consultation with the Minister of Finance make regulations to—

(a) prescribe the investment requirements for any project having regard to the amount of capital invested in—

(i) land whereon and buildings wherein the process of manufacture is to be carried on; and

(ii) machinery and plant to be used directly in the process of manufacture;

(b) provide for the demarcation of a location with an existing specialisation and advantage in manufacturing within which a project is to be carried on (in this section referred to as the spatial component), having regard to the—

(i) reinforcement of secondary cities;

(ii) reinforcement of key urban nodes along any development corridor which qualifies as a spatial development initiative;

(iii) consolidation of emerging agglomeration areas where a sufficient supply of appropriate infrastructure is available; and

(iv) supporting of the diversification of local economies where a sufficient supply of appropriate infrastructure is available as a result of the restructuring of existing manufacturing activities;

(c) identify any manufacturing group (as contemplated in the Standard Industrial Classification of all Economic Activities (Fifth Edition) issued by the Central Statistical Services in January 1993) that, on an average basis, is likely to contribute most significantly to the achievement of sustainable economic growth and employment creation in the medium to longer term through enhanced international competitiveness; as a qualifying industry (in this section referred to as the industry component), having regard to the—

(i) employment and output linkages throughout the economy;

(ii) capital to human resource ratio;

(iii) generation of increased output; and

(iv) potential to experience an increase in international demand for such group's products, goods, articles or any other things over the short to medium term;

(d) prescribe a ratio in respect of human resource remuneration to value added (in this section referred to as the human resource component);

(e) prescribe criteria in order to determine for the purposes of—

(i) subsection (3)(a), whether the project to be carried on by the company is substantially the same manufacturing concern as is or was carried on by any other person within the Republic, having regard to the—

(aa) scale and scope of the project;

- (bb) extent of the utilisation of—
 (A) machinery and plant; or
 (B) human resources;
- (cc) influence thereof on the national normal tax base in existence on the date on which the application for approval is considered by the board; and
- (dd) relationship between such company or its shareholders and any previous owner of such manufacturing concern; and
- (ii) subsection (3)(b), when the carrying on of a project commences;
- (f) define any expression referred to in this subsection, if necessary;
- (g) further describe and define the issues as contemplated in subsection (7)(a) to which the board shall have regard; and
- (h) prescribe and define any condition as he may deem necessary for the evaluation, approval or monitoring of a project or the monitoring of the tax holiday scheme.
- (15) Where the—
- (a) board is satisfied that the approval of the project was obtained by fraud or as a result of any misrepresentation or failure to disclose any material fact by the company, the board shall, unless it otherwise directs, withdraw such approval if it is satisfied that in the light of the full facts such approval should not have been granted and, in such a case, such approval shall be deemed to have been withdrawn as from the date on which such project was approved as a qualifying project;
- (b) board, in reviewing its initial analysis and certification of the human resource component as contemplated in subsection (8)(b), is satisfied that such human resource component is not a human resource component as contemplated in subsection (14)(d), the board shall, unless it otherwise directs, withdraw the certification of such human resource component and such certification shall, where it was reviewed in terms of—
- (i) subsection (8)(b)(i), be deemed to have been withdrawn as from the commencement of the year of assessment wherein such review takes place; and
- (ii) subsection (8)(b)(ii), be deemed to be withdrawn as from the date of the board's initial certification of such human resource component;
- (c) board is satisfied that a spatial component or an industry component no longer constitutes a spatial component or an industry component, as the case may be, as contemplated in subsection (14)(b) or (c), as the case may be, as a result of any reason other than a reason contemplated in paragraph (a), the board shall, unless it otherwise directs, withdraw the certification of such spatial component or industry component, as the case may be, and such certification shall be deemed to have been withdrawn from the commencement of the year of assessment during which such spatial component or industry component, as the case may be, no longer constitutes such a spatial component or such an industry component, as the case may be, as originally certified by the board; or
- (d) Commissioner is satisfied that a qualifying company has entered into or carried out any transaction, operation or scheme whereby any goods or services are, directly or indirectly—
- (i) supplied to a connected person in relation to the qualifying company; or
- (ii) acquired from a connected person in relation to the qualifying company, and the goods or services are supplied or acquired, as the case may be, at a price which is either—
- (aa) 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

(bb) greater than the arm's length price, the tax holiday status of such qualifying company shall, unless the Commissioner otherwise directs, lapse from the commencement of the year of assessment during which such qualifying company entered into or carried out such transaction, operation or scheme.

(16) Where subsection (15)(a) has been applied, the company shall pay, in addition to the tax chargeable in respect of its taxable income for each of the years of assessment during which the tax holiday status was previously granted, an amount equal to twice the tax chargeable in respect of its taxable income for each of such years of assessment.

(17)(a) The Commissioner may in his discretion remit the additional charge imposed by subsection (16) or any part thereof.

(b) Notwithstanding the provisions of this subsection, the Commissioner may either before or after an assessment is issued agree with the company on the amount of the additional charge to be paid, and the amount so agreed upon shall not be subject to any objection and appeal.

(18)(a) The board shall notify the company and the Commissioner of any decision taken in accordance with subsection (2), (3), (7) or (15)(a), (b) or (c) within a period of 30 days after the approval of the minutes of the meeting whereat such decision was taken.

(b) The board shall furnish the company with reasons for any decision contemplated in paragraph (a) simultaneously with the notification of such decision.

(19)(a) Notwithstanding the provisions of section 4, the Commissioner may disclose to the board such information relating to the company's affairs as is necessary to enable the board to perform its functions in terms of this section.

(b) Before disclosing such information the Commissioner shall deliver or send to the company a written notification of his intended action setting forth particulars of the said information.

(c) The company may within 30 days after the date of such written notification or such further period as the Commissioner may approve, lodge in writing with the Commissioner any objection it may have to the disclosure of the information.

(d) If, on the expiry of the said period of 30 days or the said further period, no objection has been lodged as contemplated in paragraph (c) or, if an objection has been lodged and the Commissioner is not satisfied that the objection should be sustained, the Commissioner may thereupon disclose such information as contemplated in paragraph (a).

(20)(a) The members and employees of the board shall preserve and aid in preserving secrecy with regard to all matters that may come to their knowledge in the performance of their functions in terms of this section, and shall not communicate any such matter to any person whatsoever other than the company concerned or its legal representative nor suffer or permit any such person to have access to any records in the possession or custody of the Commissioner, except in the performance of their functions as members and employees of the board or by order of a competent court.

(b) Every member and employee of the board shall take and subscribe before a magistrate or justice of the peace or an officer of the South African Revenue Service who is a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed.

(c) Any member or employee of the board who contravenes a provision of paragraph (a), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(21) Where—

(a) the certification of a component in respect of a qualifying company has been withdrawn in terms of subsection (15)(b) or (c); or

(b) the tax holiday status of a qualifying company has lapsed in terms of subsection (15)(d);

the Commissioner may, notwithstanding the provisions of section 79, raise assessments in respect of the company as if such company were not a qualifying company.

(22) Any decision of the Commissioner under this section shall be subject to objection and appeal.

(23) The relevant division of the Supreme Court may, on the application of a company which has made any application in terms of this section and which feels aggrieved by a decision made by the board in connection with that application, review the decision on the following grounds—

(a) interest in the application, bias, malice or corruption on the part of any member of the board;

(b) gross irregularity in the proceedings; and

(c) exercise of a power in an arbitrary, *mala fide* or unreasonable manner.

(24) The court in reviewing a decision of the board in terms of subsection (23) may, if the court is satisfied that—

(a) any of the grounds for review referred to in the said subsection has been proved; and

(b) the applicant has been substantially prejudiced by the decision, set aside the decision, and shall, in setting aside the decision, unless in its opinion exceptional circumstances warrant another order, issue an order that the board consider afresh the matter in respect of which the decision was made.

(25)(a) A company which has made any application in terms of this section and which feels aggrieved by a decision on a question of law made by the board in connection with the application, may appeal to the relevant division of the Supreme Court against the decision.

(b) Such an appeal shall be noted and prosecuted as if it were an appeal against a judgment in a magistrate's court in civil proceedings.

(c) If the court, after considering the appeal, is satisfied that the board has misdirected itself in the making of the decision concerned, the court may set aside that decision, and shall, in setting aside the decision, unless in its opinion exceptional circumstances warrant another order, issue an order that the board consider afresh the matter in respect of which the decision was made."

(2) Subsection (1) shall come into operation on 1 October 1996.

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995 and section 21 of Act 36 of 1996

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

(a) by the deletion of the word "and" at the end of paragraph (g) of subsection (5); and

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

"(i) in the case of any company which is a 'qualifying company' as defined in section 37H, any dividend declared by such company during the period ending six months after the end of the last year of assessment during which such company qualifies for the tax holiday status referred to in that section out of profits derived during the period during which such company qualifies for such tax holiday status; and

(j) any dividend declared by a company contemplated in paragraph (e) of the definition of 'company' in section 1."

(2) Subsection (1)(b) shall, in so far as it adds paragraph (j) to section 64B(5) of the Income Tax Act, 1962, be deemed to have come into operation on 17 March 1993.

Substitution of section 74 of Act 58 of 1962, as amended by section 24 of Act 88 of 1965

14. The following sections are hereby substituted for section 74 of the Income Tax Act, 1962:

“General provisions with regard to information, documents or things

74. (1) For the purposes of this section and sections 74A, 74B, 74C, 74D and 75—

‘administration of this Act’ means the—

- (a) obtaining of full information in relation to any—
 - (i) amount received by or accrued to any person;
 - (ii) property disposed of under a donation by any person; and
 - (iii) dividend declared by any company;
- (b) ascertaining of the correctness of any return, financial statement, document, declaration of facts or valuation;
- (c) determination of the liability of any person for any tax, duty or levy and any interest or penalty in relation thereto leviable under this Act;
- (d) collecting of any such liability;
- (e) ascertaining whether an offence in terms of this Act has been committed;
- (f) ascertaining whether a person has, other than in relation to a matter contemplated in paragraphs (a), (b), (c), (d) and (e) of this definition, complied with the provisions of this Act;
- (g) enforcement of any of the Commissioner’s remedies under this Act to ensure that any obligation imposed upon any person by or under this Act, is complied with; and
- (h) performance of any other administrative function which is necessary for the carrying out of the provisions of this Act;

‘authorisation letter’ means a written authorisation granted by the Commissioner, or any chief director, receiver of revenue or chief revenue inspector under the control, direction or supervision of the Commissioner, to an officer to inspect, audit, examine or obtain, as contemplated in section 74B, any information, documents or things;

‘documents’ include any document, book, record, account, deed, plan, instrument, trade list, stock list, affidavit, certificate, photograph, map, drawing and any ‘computer print-out’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983);

‘information’ includes any data stored by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983;

‘judge’ means a judge of the Supreme Court and includes a judge in chambers;

‘officer’ means an officer contemplated in section 3(1);

‘premises’ include any building, premises, aircraft, vehicle, vessel or place;

‘things’ include any corporeal or incorporeal thing and any document relating thereto;

‘warrant’ means a written authorisation issued by a judge to search for and seize any information, documents or things under section 74D.

(2) For the purposes of sections 74A, 74B, 74C and 74D, where any information, documents or things are not in one of the official languages, the Commissioner or any officer may by notice in writing require the taxpayer or, on the taxpayer’s default, any other person, to produce, within a reasonable period, a translation thereof in one of the official languages determined by the Commissioner or such officer.

(3) Any translation referred to in subsection (2) shall be—

- (a) produced at such time and premises as may be specified by the Commissioner or any officer; and
- (b) prepared and certified by a sworn translator or another person approved by the Commissioner or such officer.

(4) For the purposes of sections 74C and 74D, the Commissioner may delegate the powers vested in him by those sections, to any other officer.

Furnishing of information, documents or things by any person

74A. The Commissioner or any officer may, for the purposes of the administration of this Act in relation to any taxpayer, require such taxpayer

or any other person to furnish such information (whether orally or in writing) documents or things as the Commissioner or such officer may require.

Obtaining of information, documents or things at certain premises

74B. (1) The Commissioner, or an officer named in an authorisation letter, may, for the purposes of the administration of this Act in relation to any taxpayer, require such taxpayer or any other person, with reasonable prior notice, to furnish, produce or make available any such information, documents or things as the Commissioner or such officer may require to inspect, audit, examine or obtain.

(2) For the purposes of the inspection, audit, examination or obtaining of any such information, documents or things, the Commissioner or an officer contemplated in subsection (1), may call on any person—

- (a) at any premises; and
- (b) at any time during such person's normal business hours.

(3) For the purposes of subsection (2), the Commissioner or any officer contemplated in subsection (1), shall not enter any dwelling-house or domestic premises (except any part thereof as may be occupied or used for the purposes of trade) without the consent of the occupant.

(4) Any officer exercising any power under this section, shall on demand produce the authorisation letter issued to him.

Inquiry

74C. (1) The Commissioner or an officer contemplated in section 74(4) may authorise any person to conduct an inquiry for the purposes of the administration of this Act.

(2) Where the Commissioner, or any officer contemplated in section 74(4), authorises a person to conduct an inquiry, the Commissioner or such officer shall apply to a judge for an order designating a presiding officer before whom the inquiry is to be held.

(3) A judge may, on *ex parte* application by the Commissioner or any officer contemplated in section 74(4), grant an order in terms of which a person contemplated in subsection (2) is designated to act as presiding officer at the inquiry contemplated in this section.

(4) An application under subsection (2) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(5) A judge may grant the order referred to in subsection (3) if he is satisfied that there are reasonable grounds to believe that—

- (a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or
- (ii) an offence in terms of this Act has been committed by any person;
- (b) information, documents or things are likely to be revealed which may afford proof of—
 - (i) such non-compliance; or
 - (ii) the committing of such offence; and
- (c) the inquiry referred to in the application is likely to reveal such information, documents or things.

(6) An order under subsection (3) shall, *inter alia*—

- (a) name the presiding officer;
- (b) refer to the alleged non-compliance or offence to be inquired into;
- (c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and
- (d) be reasonably specific as to the ambit of the inquiry.

(7) Any presiding officer shall be a person appointed by the Minister of Finance in terms of section 83A(4).

(8) For the purposes of an inquiry contemplated in this section, a presiding officer designated under subsection (3) shall—

- (a) determine the proceedings as he may think fit;
- (b) have the same powers to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material as are vested in a President of the Special Court contemplated in section 83; and
- (c) record the proceedings and evidence at an inquiry in such manner as he may think fit.

(9) Any person may, by written notice issued by the presiding officer, be required to appear before him in order to be questioned under oath or solemn declaration for the purposes of an inquiry contemplated in this section.

(10) The notice contemplated in subsection (9) shall specify the—

- (a) place where such inquiry will be conducted;
- (b) date and time of such inquiry; and
- (c) reasons for such inquiry.

(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present throughout the inquiry, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

(12) Any person contemplated in subsection (9) has the right to a representative of his choice.

(13) An inquiry contemplated in this section shall not be public and the presiding officer shall at any time on application of the person whose affairs are investigated or any other person giving evidence, exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.

(14) Any person may, at the discretion of the presiding officer, be compensated for his reasonable expenditure related to the attendance of an inquiry, by way of witness fees in accordance with the tariffs prescribed in terms of section 51*bis* of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(15) Where the person referred to in subsection (1) is a person other than an officer contemplated in section 3(1), the provisions of section 4 shall *mutatis mutandis* apply to such person with regard to the preservation of secrecy.

Search and seizure

74D. (1) For the purposes of the administration of this Act, a judge may, on *ex parte* application by the Commissioner or any officer contemplated in section 74(4), issue a warrant, authorising the officer named therein to, without prior notice and at any time—

- (a) (i) enter and search any premises; and
- (ii) search any person present on the premises, provided that such search is conducted by an officer of the same gender as the person being searched,

for any information, documents or things, that may afford evidence as to the non-compliance by any taxpayer with his obligations in terms of this Act;

- (b) seize any such information, documents or things; and
- (c) in carrying out any such search, open or cause to be opened or removed and opened, anything in which such officer suspects any information, documents or things to be contained.

(2) An application under subsection (1) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(3) A judge may issue the warrant referred to in subsection (1) if he is satisfied that there are reasonable grounds to believe that—

- (a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or
- (ii) an offence in terms of this Act has been committed by any person;
- (b) information, documents or things are likely to be found which may afford evidence of—
 - (i) such non-compliance; or
 - (ii) the committing of such offence; and
- (c) the premises specified in the application are likely to contain such information, documents or things.

(4) A warrant issued under subsection (1) shall—

- (a) refer to the alleged non-compliance or offence in relation to which it is issued;
- (b) identify the premises to be searched;
- (c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and
- (d) be reasonably specific as to any information, documents or things to be searched for and seized.

(5) Where the officer named in the warrant has reasonable grounds to believe that—

- (a) such information, documents or things are—
 - (i) at any premises not identified in such warrant; and
 - (ii) about to be removed or destroyed; and
- (b) a warrant cannot be obtained timeously to prevent such removal or destruction,

such officer may search such premises and further exercise all the powers granted by this section, as if such premises had been identified in a warrant.

(6) Any officer who executes a warrant may seize, in addition to the information, documents or things referred to in the warrant, any other information, documents or things that such officer believes on reasonable grounds afford evidence of the non-compliance with the relevant obligations or the committing of an offence in terms of this Act.

(7) The officer exercising any power under this section shall on demand produce the relevant warrant (if any).

(8) The Commissioner, who shall take reasonable care to ensure that the information, documents or things are preserved, may retain them until the conclusion of any investigation into the non-compliance or offence in relation to which the information, documents or things were seized or until they are required to be used for the purposes of any legal proceedings under this Act, whichever event occurs last.

(9)(a) Any person may apply to the relevant division of the Supreme Court for the return of any information, documents or things seized under this section.

(b) The court hearing such application may, on good cause shown, make such order as it deems fit.

(10) The person to whose affairs any information, documents or things seized under this section relate, may examine and make extracts therefrom and obtain one copy thereof at the expense of the State during normal business hours under such supervision as the Commissioner may determine.”

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993 and section 27 of Act 21 of 1994

15. Section 75 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) without just cause shown by him, refuses or neglects to—

(i) furnish, produce or make available any information, documents or things; [or]

(ii) reply to or answer truly and fully, any questions put to him; or

(iii) [to] attend and give evidence,

as and when required [by the Commissioner or any officer duly authorised by him or to answer truly and fully any questions put to him or to produce any books or papers required of him by the Commissioner or any such officer] in terms of this Act; or”.

Insertion of section 28B in Act 77 of 1968

16. The following section is hereby inserted in the Stamp Duties Act, 1968, after section 28A:

“Offences in respect of furnishing, producing and making available information, documents or things, as well as inquiries and searches and seizures

28B. Any person who—

(a) without just cause shown by him, refuses or neglects to—

(i) furnish, produce or make available any information, documents or things;

(ii) reply to or answer truly and fully, any questions put to him; or

(iii) attend and give evidence,

as and when required in terms of this Act; or

(b) obstructs or hinders any officer in the carrying out of his duties, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.”.

Repeal of section 29 of Act 77 of 1968

17. Section 29 of the Stamp Duties Act, 1968, is hereby repealed.

Substitution of section 31 of Act 77 of 1968, as amended by section 7 of Act 72 of 1970

18. The following sections are hereby substituted for section 31 of the Stamp Duties Act, 1968:

“General provisions with regard to information, documents or things

31. (1) For the purposes of this section and sections 31A, 31B, 31C, 31D and 28B—

‘administration of this Act’ means the—

(a) obtaining of full information in relation to any instrument that is subject to stamp duty in terms of this Act;

(b) ascertaining of the correctness of any statement, financial statement, document, declaration of facts or valuation;

(c) determination of the liability of any person for any duty or any penalty in relation thereto leviable under this Act;

(d) collecting of any such liability;

(e) ascertaining whether an offence in terms of this Act has been committed;

(f) ascertaining whether a person has, other than in relation to a matter contemplated in paragraphs (a), (b), (c), (d) and (e) of this definition, complied with the provisions of this Act;

(g) enforcement of any of the Commissioner’s remedies under this Act to ensure that any obligation imposed upon any person by or under this Act, is complied with; and

(h) performance of any other administrative function which is necessary for the carrying out of the provisions of this Act;

'authorisation letter' means a written authorisation granted by the Commissioner, or any chief director, receiver of revenue or chief revenue inspector under the control, direction or supervision of the Commissioner, to an officer to inspect, audit, examine or obtain, as contemplated in section 31B, any information, documents or things;

'documents' include any document, book, record, account, deed, plan, instrument, trade list, stock list, affidavit, certificate, photograph, map, drawing, any 'computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983), stamp and instrument contemplated in Schedule 1;

'information' includes any data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983;

'judge' means a judge of the Supreme Court and includes a judge in chambers;

'officer' means an officer contemplated in section 2(1);

'premises' include any building, premises, aircraft, vehicle, vessel or place;

'things' include any corporeal or incorporeal thing and any document relating thereto;

'warrant' means a written authorisation issued by a judge to search for and seize any information, documents or things under section 31D.

(2) For the purposes of sections 31A, 31B, 31C and 31D, where any information, documents or things are not in one of the official languages, the Commissioner or any officer may by notice in writing require the person liable for the duty or, on such person's default, any other person, to produce, within a reasonable period, a translation thereof in one of the official languages determined by the Commissioner or such officer.

(3) Any translation referred to in subsection (2) shall be—

(a) produced at such time and premises as may be specified by the Commissioner or any officer; and

(b) prepared and certified by a sworn translator or another person approved by the Commissioner or such officer.

(4) For the purposes of sections 31C and 31D, the Commissioner may delegate the powers vested in him by those sections, to any other officer.

Furnishing of information, documents or things by any person

31A. The Commissioner or any officer may, for the purposes of the administration of this Act in relation to any person liable for the duty, require such person or any other person to furnish such information (whether orally or in writing), documents or things as the Commissioner or such officer may require.

Obtaining of information, documents or things at certain premises

31B. (1) The Commissioner, or an officer named in an authorisation letter, may, for the purposes of the administration of this Act in relation to the person liable for the duty, require such person or any other person, with reasonable prior notice, to furnish, produce or make available any such information, documents or things as the Commissioner or such officer may require to inspect, audit, examine or obtain.

(2) For the purposes of the inspection, audit, examination or obtaining of any such information, documents or things, the Commissioner or an officer contemplated in subsection (1), may call on any person—

(a) at any premises; and

(b) at any time during such person's normal business hours.

(3) For the purposes of subsection (2), the Commissioner or any officer contemplated in subsection (1), shall not enter any dwelling-house or domestic premises (except any part thereof as may be occupied or used for the purposes of trade) without the consent of the occupant.

(4) Any officer exercising any power under this section, shall on demand produce the authorisation letter issued to him.

Inquiry

31C. (1) The Commissioner or an officer contemplated in section 31(4) may authorise any person to conduct an inquiry for the purposes of the administration of this Act.

(2) Where the Commissioner, or any officer contemplated in section 31(4), authorises a person to conduct an inquiry, the Commissioner or such officer shall apply to a judge for an order designating a presiding officer before whom the inquiry is to be held.

(3) A judge may, on *ex parte* application by the Commissioner or any officer contemplated in section 31(4), grant an order in terms of which a person contemplated in subsection (7) is designated to act as presiding officer at the inquiry contemplated in this section.

(4) An application under subsection (2) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(5) A judge may grant the order referred to in subsection (3) if he is satisfied that there are reasonable grounds to believe that—

(a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or

(ii) an offence in terms of this Act has been committed by any person;

(b) information, documents or things are likely to be revealed which may afford proof of—

(i) such non-compliance; or

(ii) the committing of such offence; and

(c) the inquiry referred to in the application is likely to reveal such information, documents or things.

(6) An order under subsection (3) shall, *inter alia*—

(a) name the presiding officer;

(b) refer to the alleged non-compliance or offence to be inquired into;

(c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and

(d) be reasonably specific as to the ambit of the inquiry.

(7) Any presiding officer shall be a person appointed by the Minister in terms of section 83A(4) of the Income Tax Act, 1962 (Act No. 58 of 1962).

(8) For the purposes of an inquiry contemplated in this section, a presiding officer designated under subsection (3) shall—

(a) determine the proceedings as he may think fit;

(b) have the same powers to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act, 1962; and

(c) record the proceedings and evidence at an inquiry in such manner as he may think fit.

(9) Any person may, by written notice issued by the presiding officer, be required to appear before him in order to be questioned under oath or solemn declaration for the purposes of an inquiry contemplated in this section.

(10) The notice contemplated in subsection (9) shall specify the—

(a) place where such inquiry will be conducted;

(b) date and time of such inquiry; and

(c) reasons for such inquiry.

(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present throughout the inquiry, unless on application by the person contemplated in subsection (1),

the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

(12) Any person contemplated in subsection (9) has the right to a representative of his choice.

(13) An inquiry contemplated in this section shall not be public and the presiding officer shall at any time on application of the person whose affairs are investigated or any other person giving evidence, exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.

(14) Any person may, at the discretion of the presiding officer, be compensated for his reasonable expenditure related to the attendance of an inquiry, by way of witness fees in accordance with the tariffs prescribed in terms of section 51*bis* of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

Search and seizure

31D. (1) For the purposes of the administration of this Act, a judge may, on *ex parte* application by the Commissioner or any officer contemplated in section 31(4), issue a warrant, authorising the officer named therein to, without prior notice and at any time—

- (a) (i) enter and search any premises; and
(ii) search any person present on the premises, provided that such search is conducted by an officer of the same gender as the person being searched,

for any information, documents or things, that may afford evidence as to the non-compliance by any person with his obligations in terms of this Act;

- (b) seize any such information, documents or things; and
(c) in carrying out any such search, open or cause to be opened or removed and opened, anything in which such officer suspects any information, documents or things to be contained.

(2) An application under subsection (1) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(3) A judge may issue the warrant referred to in subsection (1) if he is satisfied that there are reasonable grounds to believe that—

- (a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or
(ii) an offence in terms of this Act has been committed by any person;
(b) information, documents or things are likely to be found which may afford evidence of—
(i) such non-compliance; or
(ii) the committing of such offence; and

(c) the premises specified in the application are likely to contain such information, documents or things.

(4) A warrant issued under subsection (1) shall—

- (a) refer to the alleged non-compliance or offence in relation to which it is issued;
(b) identify the premises to be searched;
(c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and
(d) be reasonably specific as to any information, documents or things to be searched for and seized.

(5) Where the officer named in the warrant has reasonable grounds to believe that—

- (a) such information, documents or things are—
(i) at any premises not identified in such warrant; and
(ii) about to be removed or destroyed; and

(b) a warrant cannot be obtained timeously to prevent such removal or destruction,

such officer may search such premises and further exercise all the powers granted by this section, as if such premises had been identified in a warrant.

(6) Any officer who executes a warrant may seize, in addition to the information, documents or things referred to in the warrant, any other information, documents or things that such officer believes on reasonable grounds afford evidence of the non-compliance with the relevant obligations or the committing of an offence in terms of this Act.

(7) The officer exercising any power under this section shall on demand produce the relevant warrant (if any).

(8) The Commissioner, who shall take reasonable care to ensure that the information, documents or things are preserved, may retain them until the conclusion of any investigation into the non-compliance or offence in relation to which the information, documents or things were seized or until they are required to be used for the purposes of any legal proceedings under this Act, whichever event occurs last.

(9)(a) Subject to subsection (10), any person may apply to the relevant division of the Supreme Court for the return of any information, documents or things seized under this section.

(b) The court hearing such application may, subject to subsection (10), on good cause shown, make such order as it deems fit.

(10) Where there is good reason to suspect that any person is guilty of an offence, the information, documents or things so seized, may be placed in safe custody and be adjudged to be forfeited to the State by the court having jurisdiction as to the offence and thereafter shall be dealt with as the Commissioner may direct: Provided that nothing contained in this subsection shall affect the rights of any person who is otherwise entitled by law to the possession or custody of any such information, documents or things stolen or improperly obtained.

(11) The person to whose affairs any information, documents or things seized under this section relate, may examine and make extracts therefrom and obtain one copy thereof at the expense of the State during normal business hours under such supervision as the Commissioner may determine.

(12) Where any stamps are seized under a warrant, the person authorised by the warrant shall, if required, give to the person in whose custody or possession the stamps are found, an acknowledgment of the number, particulars and amount of the stamps and permit the stamps to be marked on the back thereof before the removal thereof."

Amendment of Item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 83 of Act 89 of 1991, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994 and section 17 of Act 37 of 1996

19. (1) Item 15 of Schedule 1, to the Stamp Duties Act, 1968, is hereby amended by the insertion after paragraph (h) of "*Exemptions from the duty under paragraph (3)*" of the following paragraph:

"(hA) Any registration of transfer of any marketable security registered in the name of—

- (i) any pension fund established by law to any other pension fund which is registered under the Pension Funds Act, 1956; or
 (ii) any previous fund as contemplated in section 14(5) of the Government Employees Pension Fund Law, 1996 (Proclamation No. 21 of 1996), to the Government Employees Pension Fund as contemplated in section 2 of that Law.” 5

(2) Subsection (1) shall, in so far as it relates to any registration of transfer of marketable securities to—

- (a) any pension fund which is registered in terms of the Pension Funds Act, 1956, be deemed to have come into operation on 1 July 1995; and 10
 (b) the Government Employees Pension Fund, be deemed to have come into operation on 1 May 1996.

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, section 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993 and section 11 of Act 20 of 1994 15

20. Section 8 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (13) of the following subsection:

“(13A) For the purposes of this Act, except section 16(3), where any vendor who makes taxable supplies of services contemplated in subsection (13) of this section, receives any amount paid by any other vendor as a prize or winnings in consequence of a supply of such services made by the last-mentioned vendor to the first-mentioned vendor, the first-mentioned vendor shall be deemed to supply a service to the last-mentioned vendor.” 20

Amendment of section 9 of Act 89 of 1991, as amended by section 25 of Act 136 of 1991 and section 25 of Act 97 of 1993 25

21. Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the addition to subsection (3) of the following paragraph:

“(f) where any supply of a service is deemed to be made as contemplated in section 8(13A), the supply shall be deemed to take place whenever any amount is paid out as a prize or winnings by the supplier of the services contemplated in section 8(13).” 30

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, section 5 of Government Notice 2695 of 8 November 1991, section 16 of Act 136 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994 and section 21 of Act 37 of 1996 35

22. Section 10 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (17) of the following subsection:

“(17A) Where a service is deemed by section 8(13A) to be supplied to any vendor, the consideration in money for such supply shall be deemed to be the amount that is received as a prize or winnings.” 40

Repeal of section 56 of Act 89 of 1991

23. Section 56 of the Value-Added Tax Act, 1991, is hereby repealed.

Substitution of section 57 of Act 89 of 1991

24. The following sections are hereby substituted for section 57 of the Value-Added Tax Act, 1991: 45

“General provisions with regard to information, documents or things

57. (1) For the purposes of this section and sections 57A, 57B, 57C, 57D and 58—

‘administration of this Act’ means the—

- (a) obtaining of full information in relation to the—
- (i) supply by any vendor of goods and services supplied by him in the course or furtherance of any enterprise carried on by him;
 - (ii) importation of any goods into the Republic by any person; and
 - (iii) supply of any imported services by any person;
- (b) ascertaining of the correctness of any return, financial statement, document, declaration of facts or valuation;
- (c) determination of the liability of any person for any tax and any interest or penalty in relation thereto leviable under this Act;
- (d) collecting of any such liability;
- (e) ascertaining whether an offence in terms of this Act has been committed;
- (f) ascertaining whether a person has, other than in relation to a matter contemplated in paragraphs (a), (b), (c), (d) and (e) of this definition, complied with the provisions of this Act;
- (g) enforcement of any of the Commissioner's remedies under this Act to ensure that any obligation imposed upon any person by or under this Act, is complied with; and
- (h) performance of any other administrative function which is necessary for the carrying out of the provisions of this Act;
- 'authorisation letter' means a written authorisation granted by the Commissioner, or any chief director, receiver of revenue or chief revenue inspector under the control, direction or supervision of the Commissioner, to an officer to inspect, audit, examine or obtain, as contemplated in section 57B, any information, documents or things;
- 'documents' include any document, book, record, account, deed, plan, instrument, trade list, stock list, affidavit, certificate, photograph, map, drawing and any 'computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983);
- 'information' includes any data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983;
- 'judge' means a judge of the Supreme Court and includes a judge in chambers;
- 'officer' means an officer contemplated in section 5(1);
- 'premises' include any building, premises, aircraft, vehicle, vessel or place;
- 'things' include any corporeal or incorporeal thing and any document relating thereto;
- 'warrant' means a written authorisation issued by a judge to search for and seize any information, documents or things under section 57D.
- (2) For the purposes of sections 57A, 57B, 57C and 57D, where any information, documents or things are not in one of the official languages, the Commissioner or any officer may by notice in writing require the vendor or, on the vendor's default, any other person, to produce, within a reasonable period, a translation thereof in one of the official languages determined by the Commissioner or such officer.
- (3) Any translation referred to in subsection (2) shall be—
- (a) produced at such time and premises as may be specified by the Commissioner or any officer; and
 - (b) prepared and certified by a sworn translator or another person approved by the Commissioner or such officer.
- (4) For the purposes of sections 57C and 57D, the Commissioner may delegate the powers vested in him by those sections, to any other officer.

Furnishing of information, documents or things by any person

57A. The Commissioner or any officer may, for the purposes of the administration of this Act in relation to any vendor, require such vendor or any other person to furnish such information (whether orally or in writing), documents or things as the Commissioner or such officer may require.

Obtaining of information, documents or things at certain premises

57B. (1) The Commissioner, or an officer named in an authorisation letter, may, for the purposes of the administration of this Act in relation to any vendor, require such vendor or any other person, with reasonable prior notice, to furnish, produce or make available any such information, documents or things as the Commissioner or such officer may require to inspect, audit, examine or obtain.

(2) For the purposes of the inspection, audit, examination or obtaining of any such information, documents or things, the Commissioner or an officer contemplated in subsection (1), may call on any person—

(a) at any premises; and

(b) at any time during such person's normal business hours.

(3) For the purposes of subsection (2), the Commissioner or any officer contemplated in subsection (1), shall not enter any dwelling-house or domestic premises (except any part thereof as may be occupied or used for the purposes of trade) without the consent of the occupant.

(4) Any officer exercising any power under this section, shall on demand produce the authorisation letter issued to him.

Inquiry

57C. (1) The Commissioner or an officer contemplated in section 57(4) may authorise any person to conduct an inquiry for the purposes of the administration of this Act.

(2) Where the Commissioner, or any officer contemplated in section 57(4), authorises a person to conduct an inquiry, the Commissioner or such officer shall apply to a judge for an order designating a presiding officer before whom the inquiry is to be held.

(3) A judge may, on *ex parte* application by the Commissioner or any officer contemplated in section 57(4), grant an order in terms of which a person contemplated in subsection (7) is designated to act as presiding officer at the inquiry contemplated in this section.

(4) An application under subsection (2) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(5) A judge may grant the order referred to in subsection (3) if he is satisfied that there are reasonable grounds to believe that—

(a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or

(ii) an offence in terms of this Act has been committed by any person;

(b) information, documents or things are likely to be revealed which may afford proof of—

(i) such non-compliance; or

(ii) the committing of such offence; and

(c) the inquiry referred to in the application is likely to reveal such information, documents or things.

(6) An order under subsection (3) shall, *inter alia*—

(a) name the presiding officer;

(b) refer to the alleged non-compliance or offence to be inquired into;

(c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and

(d) be reasonably specific as to the ambit of the inquiry.

(7) Any presiding officer shall be a person appointed by the Minister in terms of section 83A(4) of the Income Tax Act, 1962 (Act No. 58 of 1962).

(8) For the purposes of an inquiry contemplated in this section, a presiding officer designated under subsection (3) shall—

(a) determine the proceedings as he may think fit;

(b) have the same powers to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act; and

(c) record the proceedings and evidence at an inquiry in such manner as he may think fit.

(9) Any person may, by written notice issued by the presiding officer, be required to appear before him in order to be questioned under oath or solemn declaration for the purposes of an inquiry contemplated in this section.

(10) The notice contemplated in subsection (9) shall specify the—

(a) place where such inquiry will be conducted;

(b) date and time of such inquiry; and

(c) reasons for such inquiry.

(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present throughout the inquiry, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

(12) Any person contemplated in subsection (9) has the right to a representative of his choice.

(13) An inquiry contemplated in this section shall not be public and the presiding officer shall at any time on application of the person whose affairs are investigated or any other person giving evidence, exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.

(14) Any person may, at the discretion of the presiding officer, be compensated for his reasonable expenditure related to the attendance of an inquiry, by way of witness fees in accordance with the tariffs prescribed in terms of section 51*bis* of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(15) Where the person referred to in subsection (1) is a person other than an officer contemplated in section 5(1), the provisions of section 6 shall *mutatis mutandis* apply to such person with regard to the preservation of secrecy.

Search and seizure

57D. (1) For the purposes of the administration of this Act, a judge may, on *ex parte* application by the Commissioner or any officer contemplated in section 57(4), issue a warrant, authorising the officer named therein to, without prior notice and at any time—

(a) (i) enter and search any premises; and

(ii) search any person present on the premises, provided that such search is conducted by an officer of the same gender as the person being searched,

for any information, documents or things, that may afford evidence as to the non-compliance by any person with his obligations in terms of this Act;

(b) seize any such information, documents or things; and

(c) in carrying out any such search, open or cause to be opened or removed and opened, anything in which such officer suspects any information, documents or things to be contained.

(2) An application under subsection (1) shall be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

(3) A judge may issue the warrant referred to in subsection (1) if he is satisfied that there are reasonable grounds to believe that—

- (a) (i) there has been non-compliance by any person with his obligations in terms of this Act; or
(ii) an offence in terms of this Act has been committed by any person;
- (b) information, documents or things are likely to be found which may afford evidence of—
- (i) such non-compliance; or
(ii) the committing of such offence; and
- (c) the premises specified in the application are likely to contain such information, documents or things.
- (4) A warrant issued under subsection (1) shall—
- (a) refer to the alleged non-compliance or offence in relation to which it is issued;
- (b) identify the premises to be searched;
- (c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and
- (d) be reasonably specific as to any information, documents or things to be searched for and seized.
- (5) Where the officer named in the warrant has reasonable grounds to believe that—
- (a) such information, documents or things are—
- (i) at any premises not identified in such warrant; and
(ii) about to be removed or destroyed; and
- (b) a warrant cannot be obtained timeously to prevent such removal or destruction,
- such officer may search such premises and further exercise all the powers granted by this section, as if such premises had been identified in a warrant.
- (6) Any officer who executes a warrant may seize, in addition to the information, documents or things referred to in the warrant, any other information, documents or things that such officer believes on reasonable grounds afford evidence of the non-compliance with the relevant obligations or the committing of an offence in terms of this Act.
- (7) The officer exercising any power under this section shall on demand produce the relevant warrant (if any).
- (8) The Commissioner, who shall take reasonable care to ensure that the information, documents or things are preserved, may retain them until the conclusion of any investigation into the non-compliance or offence in relation to which the information, documents or things were seized or until they are required to be used for the purposes of any legal proceedings under this Act, whichever event occurs last.
- (9)(a) Any person may apply to the relevant division of the Supreme Court for the return of any information, documents or things seized under this section.
- (b) The court hearing such application may, on good cause shown, make such order as it deems fit.
- (10) The person to whose affairs any information, documents or things seized under this section relate, may examine and make extracts therefrom and obtain one copy thereof at the expense of the State during normal business hours under such supervision as the Commissioner may determine.”.

Amendment of section 58 of Act 89 of 1991, as amended by section 41 of Act 136 of 1991 and section 39 of Act 97 of 1993

25. Section 58 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for paragraph (b) of the following paragraph:
- “(b) holds himself out as an officer authorised by the Commissioner or a judge for the purposes of the obtaining of information, documents or things, an inquiry or entry and search as contemplated in section [57(1)] 57B, 57C or 57D, as the case may be; or”;

- (b) by the substitution for paragraphs (g) and (h) of the following paragraphs, respectively:
- “(g) [fails to comply with any requirement of section 56] without just cause shown by him, refuses or neglects to—
- (i) furnish, produce or make available any information, documents or things;
 - (ii) reply to or answer truly and fully, any questions put to him; or
 - (iii) attend and give evidence,
- as and when required in terms of this Act; or
- (h) hinders or obstructs or assaults any officer engaged in carrying out his duties under section [57(1)] 57B or 57D [or wilfully fails to comply with any lawful demand made by such officer in the performance of his duties or the exercise of his powers]; or”.

Amendment of section 2 of Act 187 of 1993, as amended by section 24 of Act 11 of 1995

26. (1) Section 2 of the Regional Industrial Development Act, 1993, is hereby amended by the insertion after subparagraph (i) of paragraph (b) of subsection (2) of the following subparagraph:

“(ii) the South African Revenue Service designated by the Director-General: South African Revenue Service;”.

(2) Subsection (1) shall come into operation on 1 October 1996.

Amendment of section 5 of Act 187 of 1993

27. (1) Section 5 of the Regional Industrial Development Act, 1993, is hereby amended—

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

“(i) exercise the powers conferred on it by section 37H of the Income Tax Act, 1962 (Act No. 58 of 1962).”; and

(b) by the insertion after paragraph (c) of subsection (3) of the following paragraph:

“(cA) perform the functions assigned to it by section 37H of the Income Tax Act, 1962;”.

(2) Subsection (1) shall come into operation on 1 October 1996.

Amendment of section 39 of Act 20 of 1994, as amended by section 7 of Act 37 of 1995 and section 35 of Act 37 of 1996

28. (1) Section 39 of the Taxation Laws Amendment Act, 1994, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “controlling company” of the following words:

“‘controlling company’, in relation to any other company, means a listed or holding company which—”;

(b) by the substitution in subsection (1) for the proviso to the definition of “controlling company” of the following proviso:

“Provided that for the purposes of a scheme contemplated in paragraph (a)(iii) of the definition of ‘rationalisation scheme’ in this subsection, the company may also be a company other than a listed or holding company;”; and

(c) by the insertion in subsection (1) after the definition of “group of companies” of the following definition:

“‘holding company’ means a company the fixed capital (being share capital, share premium, accumulated profits, whether of a capital nature or not, or any other permanent owners’ capital) of which amounted to more than R250 million at the end of the year of assessment immediately preceding the year of assessment during which the agreement referred to in the definition of ‘rationalisation scheme’ has been concluded;”.

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

Amendment of section 24 of Act 36 of 1996

29. (1) Section 24 of the Income Tax Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) shall come into operation on [the date of promulgation of this Act] 3 July 1996 and shall apply to any interest attributable to any tax arising from the application of the provisions of section [103(1)] 103 of the principal Act to any transaction, operation or scheme entered into or carried out, or any agreement entered into or effected on or after that date.”

(2) Subsection (1) shall be deemed to have come into operation on 3 July 1996.

Amendment of section 29 of Act 36 of 1996

30. (1) Section 29 of the Income Tax Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) shall come into operation on [the date of promulgation of this Act] 3 July 1996 and shall apply to any transaction, operation or scheme entered into or carried out, or any agreement entered into or effected on or after that date: Provided that the provisions of section 103 of the principal Act shall, in relation to any transaction, operation or scheme entered into or carried out, or any agreement entered into or effected before that date, continue to apply as if subsection (1) had not been enacted.”

(2) Subsection (1) shall be deemed to have come into operation on 3 July 1996.

Amendment of section 1 of Act 38 of 1996

31. (1) Section 1 of the Tax on Retirement Funds Act, 1996, is hereby amended by the deletion of paragraph (b) of the definition of “retirement fund”.

(2) Subsection (1) shall be deemed to have come into operation on 1 March 1996.

Amendment of section 4 of Act 38 of 1996

32. Section 4 of the Tax on Retirement Funds Act, 1996, is hereby amended—

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

“(ii) equal to the statutory actuarial value of liabilities under guaranteed annuities; and”; and

(b) by the substitution for paragraph (f) of the following paragraph:

“(f) ‘F’ represents the value represented by symbol ‘D’ less the sum of the actuarial value of the liabilities relating to the assets contemplated in—

(i) section 29(4)(a)(ii) [and (iii)] of the Income Tax Act (excluding assets in respect of amounts allocated to retirement funds contemplated in paragraph (c) and assets representing guaranteed annuities contemplated in paragraph (d)); and

(ii) section 29(4)(a)(iii) of the Income Tax Act (excluding assets—
(aa) in respect of amounts allocated to retirement funds contemplated in paragraph (c);

(bb) representing guaranteed annuities contemplated in paragraph (d); and

(cc) contemplated in subparagraph (i)).”

(2) Subsection (1) shall be deemed to have come into operation on 1 March 1996.

Short title

33. This Act shall be called the Revenue Laws Amendment Act, 1996.