

REPUBLIC OF SOUTH AFRICA

TAXATION LAWS AMENDMENT BILL

(As introduced in the National Assembly (proposed section 77))
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 19—2011]

ISBN 978-1-77037-894-0

No. of copies printed 1 800

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

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

To—

- amend the Transfer Duty Act, 1949, so as to amend and delete certain definitions; to modify rates and thresholds; to make new provision; and to effect textual and consequential amendments;
- amend the Income Tax Act, 1962, so as to fix the rates of normal tax and amend monetary amounts; to amend, delete and insert certain definitions; to effect technical corrections; to repeal certain provisions; to amend certain provisions; to make new provision; and to effect textual and consequential amendments;
- amend the Customs and Excise Act, 1964, so as to amend the air passenger tax; to amend rates of duty in Schedule 1; and to make provision for continuations;
- amend the Value-Added Tax Act, 1991, so as to amend certain definitions; to make new provision; to amend certain provisions; to amend a Schedule; and to effect textual and consequential amendments;
- amend the Unemployment Insurance Contributions Act, 2002, so as to extend an exemption;
- amend the Securities Transfer Tax Act, 2007, so as to amend a definition; to amend a provision; and to effect consequential amendments;
- amend the Mineral and Petroleum Resources Royalty Act, 2008, so as to amend certain provisions; and to amend a Schedule;
- amend the Revenue Laws Amendment Act, 2008, so as to amend certain commencement provisions;
- amend the Taxation Laws Amendment Act, 2009, so as to repeal certain provisions;
- amend the Taxation Laws Amendment Act, 2010, so as to amend certain commencement provisions; to amend certain provisions; and to repeal certain provisions;
- make provision for special zero-rating in respect of goods and services supplied by Cricket South Africa;

and to provide for matters connected therewith.

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

Amendment of section 1 of Act 40 of 1949, as amended by section 11 of Act 80 of 1959, section 1 of Act 77 of 1964, section 5 of Act 103 of 1969, section 4 of Act 106 of 1980, section 1 of Act 86 of 1987, section 2 of Act 87 of 1988, Proclamation R.11 of 1994, section 8 of Act 37 of 1996, section 34 of Act 34 of 1997, section 1 of Act 5 of 2001, section 2 of Act 74 of 2002, section 1 of Act 45 of 2003, section 1 of Act 17 of 2009 and section 1 of Act 7 of 2010

1. Section 1 of the Transfer Duty Act, 1949 (Act No. 40 of 1949), is hereby amended—

(a) by the substitution for the definition of “deeds registry” of the following definition:

“**‘deeds registry’** includes the **[office of the Registrar of Mining Titles and the Office of the Rand Townships Registrar]** Mineral and Petroleum Titles Registration Office established by section 2 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);”;

(b) by the substitution in the definition of “fair value” for paragraphs (a) and (d) of the following paragraphs:

“(a) in relation to property as defined in paragraphs (a)[, (b)] and (c) of the definition of ‘property’, means the fair market value of that property as at the date of acquisition thereof;

(d) in relation to a share in a company as contemplated in paragraph (g) of the definition of ‘property’, means so much of the fair market value, as at the date of acquisition of that share, of any property held by that company which constitutes property as contemplated in paragraphs (a)[, (b)] and (c) of that definition (without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property) as is attributable to that share”;

(c) by the substitution in the definition of “property” for paragraph (a) of the following paragraph:

“(a) any real right in land but excluding any right under a mortgage bond or a lease of property other than a lease referred to in paragraph [(b) or] (c);”;

(d) by the deletion in the definition of “property” of paragraph (b); and

(e) by the substitution in the definition of “transaction” for paragraph (a) of the following paragraph:

“(a) in relation to paragraphs (a)[, (b)] and (c) of the definition of ‘property’, an agreement whereby one party thereto agrees to sell, grant, waive, donate, cede, exchange, lease or otherwise dispose of property to another person or any act whereby any person renounces any right in or restriction in his or her favour upon the use or disposal of property; or”.

Amendment of section 2 of Act 40 of 1949, as amended by section 1 of Act 59 of 1951, section 1 of Act 31 of 1953, section 1 of Act 32 of 1954, section 2 of Act 77 of 1964, section 1 of Act 56 of 1966, section 2 of Act 66 of 1973, section 3 of Act 88 of 1974, section 5 of Act 106 of 1980, section 3 of Act 87 of 1988, section 2 of Act 136 of 1992, section 3 of Act 97 of 1993, section 1 of Act 37 of 1995, section 9 of Act 37 of 1996, section 2 of Act 32 of 1999, section 2 of Act 30 of 2002, section 31 of Act 12 of 2003, section 1 of Act 16 of 2004, section 1 of Act 9 of 2005, section 1 of Act 31 of 2005, section 14 of Act 9 of 2006 and section 2 of Act 18 of 2009

2. (1) Section 2 of the Transfer Duty Act, 1949, is hereby amended—

(a) by the deletion in subsection (1) of paragraph (a);

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

“(b) subject to subsection (5)—

(i) 0 per cent of so much of the said value or the said amount, as the case may be, as does not exceed **[R500 000]** R600 000;

- (ii) **[5]** 3 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R500 000]** R600 000 but does not exceed R1 million; **[and]**
- (iii) **[8]** 5 per cent of so much of the said value or the said amount, as the case may be, as exceeds R1 million but does not exceed R1,5 million; and 5
- (iv) 8 per cent of so much of the said value or the said amount, as the case may be, as exceeds R1,5 million **[,**

if the person who acquires the property or in whose favour or for whose benefit the said interest or restriction is renounced is a natural person].”; 10

- (c) by the substitution in subsection (5) for the words preceding the formula of the following words:

“Where a **[natural]** person acquires any property consisting of or including an undivided share in any property (hereinafter in this subsection referred to as the joint property), the duty payable in respect of such acquisition shall be calculated in accordance with the formula”; 15

and

- (d) by the deletion of subsection (8).

(2) Subsection (1) is deemed to have come into operation on 23 February 2011 and applies in respect of property acquired or interest or restriction in any property renounced on or after that date. 20

Amendment of section 3A of Act 40 of 1949, as inserted by section 2 of Act 7 of 2010

3. (1) Section 3A of the Transfer Duty Act, 1949, is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs: 25

“(a) the **[bank]** financier shall be deemed not to have acquired any property under the sharia arrangement; and

(b) the client shall be deemed to have acquired property from the seller— 30

(i) for an amount equal to the consideration paid by the **[bank]** financier to the seller; and

(ii) at such time as the **[bank]** financier acquired the property from the seller by virtue of the transaction between the seller and the **[bank]** financier.”; and 35

- (b) by the addition after subsection (2) of the following subsection:

“(3) For the purpose of the payment of duty in respect of any sukuk as defined in section 24JA(1) of the Income Tax Act, 1962 (Act No. 58 of 1962), the trust shall be deemed not to have acquired the asset from the government of the Republic.”. 40

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

Amendment of section 5 of Act 40 of 1949, as amended by section 6 of Act 103 of 1969, section 2 of Act 86 of 1987, section 3 of Act 136 of 1992, section 2 of Act 20 of 1994, section 2 of Act 45 of 2003 and section 15 of Act 9 of 2006 45

4. Section 5 of the Transfer Duty Act, 1949, is hereby amended—

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

“(5) In the case of the cession of a lease or sub-lease referred to in paragraph **[(b) or]** (c) of the definition of ‘property’ in section one, the value on which duty shall be payable shall be the amount of the consideration payable by the cessionary to the cedent in respect of the cession or, if no consideration is so payable, the declared value of the property acquired under the cession.”; 50

- (b) by the substitution in subsection (7) for paragraph (d) of the following paragraph: 55

“(d) any valuation made by the **[Government Mining Engineer]** Director-General: Mineral Resources or by any other competent and disinterested person appointed by the Commissioner.”; and

- (c) by the substitution in subsection (8) for paragraph (a) of the following paragraph:

“(a) exceeds the amount of the consideration payable in respect of that property, or the declared value, as the case may be, by not less than one-third of the consideration payable or the declared value, as the case may be, the costs of any valuation made by a person referred to in paragraph (d) of subsection (7) (other than the **[Government Mining Engineer]** Director-General: Mineral Resources) shall be paid by the person liable for the payment of the duty;”.

Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 4 of Act 126 of 1998, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000, section 2 of Act 5 of 2001, section 8 of Act 60 of 2001, section 3 of Act 30 of 2002, section 4 of Act 74 of 2002, section 3 of Act 45 of 2003, section 2 of Act 16 of 2004, section 2 of Act 32 of 2004, section 2 of Act 31 of 2005, section 16 of Act 9 of 2006, section 1 of Act 20 of 2006, section 2 of Act 35 of 2007, section 1 of Act 60 of 2008, section 3 of Act 17 of 2009 and section 3 of Act 7 of 2010

5. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by the insertion in subsection (1)(l) after subparagraph (i) of the following subparagraph:

“(iA) an asset-for-share transaction contemplated in section 42 of that Act;”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of property acquired or interest or restriction in any property renounced on or after that date.

Fixing of rates of normal tax and amendment of certain amounts for the purposes of Act 58 of 1962

6. (1) The rates of tax fixed by Parliament in terms of section 5(2) of the Income Tax Act, 1962, are set out in paragraphs 1, 3, 4, 5, 6 and 8 of Appendix I to this Act.

(2) The rate of tax fixed by Parliament in terms of section 48B(1) of the Income Tax Act, 1962, is set out in paragraph 7 of Appendix I to this Act.

(3) The Income Tax Act, 1962, is hereby amended by the substitution for the amounts in section 6(2)(a) and (b) respectively of the amounts in the third column opposite the relevant section in the table in paragraph 2 of Appendix I to this Act.

(4) For the purposes of Appendix I to this Act any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning so assigned unless the context otherwise indicates.

(5) Subject to subsection (6), the rates of tax referred to in subsection (1) and the amounts referred to in subsection (3) apply in respect of—

- (a) any person (other than a company or a trust other than a special trust) for the year of assessment commencing on or after 1 March 2011;
- (b) any company for any year of assessment ending during the period of 12 months ending on 31 March 2012; and
- (c) any trust (other than a special trust) for any year of assessment commencing on 1 March 2011 or ending on 29 February 2012.

(6) The rate of tax referred to in subsection (2) applies in respect of the taxable turnover of a person that was a registered micro business as defined in paragraph 1 of the Sixth Schedule to the Income Tax Act, 1962, in respect of any year of assessment commencing on or after 1 March 2011.

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009 and section 6 of Act 7 of 2010

7. (1) Section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), is hereby amended—

- (a) by the substitution in the definition of “connected person” for subparagraphs (i) and (v) of paragraph (d) of the following subparagraphs:

“(i) any other company that would be part of the same group of companies as that company if the expression ‘at least 70 per cent of the equity shares of’ in paragraphs (a) and (b) of the definition of ‘group of companies’ in this section were replaced by the expression ‘more than 50 per cent of the equity shares of or voting rights in’;

- (v) any other company if at least 20 per cent of the equity shares of or voting rights in the company are held by that other company, and no shareholder holds the majority voting rights in the company;”;

- (b) by the substitution for the definition of “contributed tax capital” of the following definition:

“‘**contributed tax capital**’, in relation to a class of shares issued by a company, means—

- (a) in the case of a company that is not a resident and that becomes a resident on or after 1 January 2011, an amount equal to the sum of—

(i) the market value of all the shares in that company of that class immediately before the date on which that company becomes a resident; and

(ii) the consideration received by or accrued to that company for the issue of shares of that class on or after the date on which that company becomes a resident,

reduced by so much of that amount as the company has transferred on or after the date on which the company becomes a resident to shareholders in relation to those shares, and has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred; or

- (b) in the case of any other company, an amount equal to the sum of—

(i) the stated capital or share capital and share premium of that company immediately before 1 January 2011 in relation to shares in that company of that class issued by that company before that date, less so much of that stated capital or share capital and share premium as would have constituted a dividend, as defined before that date, had that stated capital or

- share capital and share premium been distributed by that company immediately before that date; and
- (ii) the consideration received by or accrued to that company for the issue of shares of that class on or after 1 January 2011, reduced by so much of that amount as the company has transferred on or after 1 January 2011 to shareholders in relation to those shares, and has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred: Provided that the amount transferred as contemplated in paragraph (a) or (b) to a shareholder of any class of shares must not exceed an amount that bears to the total of the amount of contributed tax capital attributable to that class of shares immediately before the transfer the same ratio as the number of shares of that class held by that shareholder bears to the total number of shares of that class;”;
- (c) by the substitution for the definition of “contributed tax capital” of the following definition:
- “**‘contributed tax capital’**, in relation to a class of shares issued by a company, means—
- (a) in the case of a company that is not a resident and that becomes a resident on or after 1 January 2011, an amount equal to the sum of—
- (i) the market value of all the shares in that company of that class immediately before the date on which that company becomes a resident; and
- (ii) the consideration received by or accrued to that company for the issue of shares of that class on or after the date on which that company becomes a resident, reduced by so much of that amount as—
- (aa) the company has transferred on or after the date on which the company becomes a resident **[to shareholders in relation to those shares,]** for the benefit of any person holding a share in that company of that class in respect of that share; and
- (bb) has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred; or
- (b) in the case of any other company, an amount equal to the sum of—
- (i) the stated capital or share capital and share premium of that company immediately before 1 January 2011 in relation to shares in that company of that class issued by that company before that date, less so much of that stated capital or share capital and share premium as would have constituted a dividend, as defined before that date, had the stated capital or share capital and share premium been distributed by that company immediately before that date; and
- (ii) the consideration received by or accrued to that company for the issue of shares of that class on or after 1 January 2011, reduced by so much of that amount as—
- (aa) the company has transferred on or after 1 January 2011 **[to shareholders in relation to those shares,]** for the benefit of any person holding a share in that company of that class in respect of that share; and
- (bb) has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred:
- Provided that the amount transferred by a company as contemplated in paragraph (a) or (b) **[to a shareholder]** for the benefit of a person holding shares of any class of shares of that company must not exceed an amount that bears to the total of the amount of contributed tax capital attributable to that class of shares immediately before the transfer the same ratio as the number of shares of that class held by that **[shareholder]** person bears to the total number of shares of that class;”;

- (d) by the deletion of the word “or” at the end of subparagraph (iii) of the definition of “dividend”;
- (e) by the addition of the word “or” at the end of subparagraph (iv) of the definition of “dividend”;
- (f) by the addition in the definition of “dividend” after subparagraph (iv) of the following subparagraph: 5
 “(v) constitutes a foreign dividend;”;
- (g) by the substitution for the definition of “dividend” of the following definition: 10
 “**‘dividend’** means any amount transferred or applied by a company that is a resident for the benefit or on behalf of any **[shareholder in relation to that company by virtue]** person in respect of any share **[held by that shareholder]** in that company, whether that amount is transferred or applied—
 (a) by way of a distribution made by; or
 (b) as consideration for the acquisition of any share in, 15
 that company, but does not include any amount so transferred or applied **[by the company]** to the extent that the amount so transferred or applied—
 (i) results in a reduction of contributed tax capital of the company;
 (ii) constitutes shares in **[that]** the company; or 20
 (iii) constitutes an acquisition by **[a]** the company of its own securities by way of a general repurchase of securities as contemplated in subparagraph (b) of paragraph **[5.67]** 5.67(B) of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with **[the]** any applicable requirements prescribed by paragraphs **[5.67]** 5.68 and 5.72 to 5.84 of section 5 of the JSE Limited Listings Requirements; 25
[(iv) constitutes a redemption of a participatory interest in an arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’; or 30
(v) constitutes a foreign dividend;]”;
- (h) by the substitution for the definition of “equity share” of the following definition:
 “**‘equity share’** means**[, in relation to any company,]** any share or similar interest in **[that]** a company, excluding any share or similar 35
 interest that **[does not carry]**, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;”;
- (i) by the substitution for the definition of “equity share” of the following definition: 40
 “**‘equity share’** means any share **[or similar interest]** in a company, excluding any share **[or similar interest]** that, neither as respects dividends nor as respects returns of capital, carries any right to participate beyond a specified amount in a distribution;”;
- (j) by the substitution in the definition of “financial instrument” for paragraph 45
 (a) of the following paragraph:
 “(a) a loan, advance, debt, **[stock,]** bond, debenture, bill, share, promissory note, banker’s acceptance, negotiable certificate of deposit, deposit with a financial institution, a participatory interest in a portfolio of a collective investment scheme, or a similar 50
 instrument;”;
- (k) by the substitution for the definition of “foreign dividend” of the following definition:
 “**‘foreign dividend’** means any amount that is paid or payable by a foreign company in respect of a share in that foreign company where that 55
 amount is treated as a dividend or similar payment by that foreign company for the purposes of the laws relating to—
 (a) tax on income on companies of the country in which that foreign company **[is incorporated, formed or established]** has its place of effective management; or 60

- (b) companies of the country in which that foreign company is incorporated, formed or established, where **[that] the country in which that foreign company has its place of effective management** does not have any applicable laws relating to tax on income, but does not include any amount so paid or payable that— 5
- (i) constitutes a redemption of a participatory interest in an arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’; or
- (ii) is deductible by that foreign company in the determination of any tax on income on companies of the country in which that foreign company has its place of effective management;” 10
- (l) by the substitution for the definition of “foreign partnership” of the following definition:
- “**‘foreign partnership’**, in respect of any year of assessment, means any partnership, association, **[or]** body of persons or entity formed or established under the laws of any country other than the Republic if— 15
- (a) for the purposes of the laws relating to tax on income of the country in which that partnership, association, **[or]** body of persons or entity is formed or established—
- (i) each member of the partnership, association, **[or]** body of persons or entity is required to take into account the member’s interest in any amount received by or accrued to that partnership, association, **[or]** body of persons or entity when that amount is received by or accrued to the partnership, association, **[or]** body of persons or entity; and 20 25
- (ii) the partnership, association, **[or]** body of persons or entity is not liable for or subject to any tax on income in that country; or
- (b) where the country in which that partnership, association, **[or]** body of persons or entity is formed or established does not have any applicable laws relating to tax on income— 30
- (i) any amount—
- (aa) that is received by or accrued to; or
- (bb) of expenditure that is incurred by, the partnership, association, **[or]** body of persons or entity is allocated concurrently with the receipt, accrual or incurrance to the members of that partnership, association, **[or]** body of persons or entity in terms of an agreement between those members; and 35
- (ii) no amount distributed to a member of a partnership, association, **[or]** body of persons or entity may exceed the allocation contemplated in subparagraph (i) after taking into account any prior distributions made by the partnership, association, **[or]** body of persons or entity;” 40
- (m) by the insertion after the definition of “foreign partnership” of the following definition: 45
- “**‘foreign return of capital’** means any amount that is paid or payable by a foreign company in respect of any share in that foreign company where that amount is treated as a distribution or similar payment (other than an amount that constitutes a foreign dividend) by that foreign company for the purposes of the laws relating to— 50
- (a) tax on income on companies of the country in which that foreign company has its place of effective management; or
- (b) companies of the country in which that foreign company is incorporated, formed or established, where that country in which that foreign company has its place of effective management does not have any applicable laws relating to tax on income, but does not include any amount so paid or payable to the extent that the amount so paid or payable is deductible by that foreign company in the determination of any tax on income of companies of the country in which that foreign company has its place of effective management;” 55 60

- (n) by the substitution in paragraph (c) of the definition of “gross income” for the words preceding the proviso of the following words:
 “any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered or any amount (other than an amount referred to in section 8(1)) received or accrued in respect of **[or by virtue of]** any employment or the holding of any office”;
- (o) by the substitution in paragraph (cA) of the definition of “gross income” for the words following subparagraph (iv) of the following words:
 “as **[compensation]** consideration for any restraint of trade imposed on such person;”;
- (p) by the substitution in the definition of “gross income” for paragraph (d) of the following paragraph:
 “(d) any amount (other than an amount contemplated in paragraph (a)), including any voluntary award, received or accrued—
 (i) in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment (or right or claim to be appointed) to any office or employment;
 (ii) by or to a person, or dependant or nominee of the person, in respect of proceeds from a policy of insurance where the person is or was an employee or director of the policyholder; or
 (iii) by or to a person, or dependant or nominee of the person, in respect of any policy of insurance (other than a risk policy with no cash value or surrender value) that has been ceded to—
 (aa) the person;
 (bb) a dependant or nominee of the person; or
 (cc) a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund,
 for the benefit of the person, or dependant or nominee of the person, by—
 (A) the employer or former employer of the person; or
 (B) the company of which the person is or was a director:
 Provided that—
[(i)](aa) the provisions of **[this paragraph]** subparagraphs (i) and (ii) shall not apply to any lump sum award from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;
[(ii)](bb) any such amount which becomes payable in consequence of or following upon the death of any person shall be deemed to be an amount which accrued to such person immediately prior to his or her death;
 (cc) for the purposes of subparagraphs (ii) and (iii), any amount received by or accrued to a dependant or nominee of a person shall be deemed to be received by or to accrue to that person;”;
- (q) by the substitution in the definition of “gross income” for paragraph (e) of the following paragraph:
 “(e) a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit other than any amount included under paragraph (eA);”;
- (r) by the substitution in paragraph (g) of the definition of “gross income” for the words preceding subparagraph (i) of the following words:
 “any amount received or accrued from another person, as a premium or **[like]** consideration in the nature of a premium—”;
- (s) by the substitution in the definition of “gross income” for paragraph (gA) of the following paragraph:
 “(gA) any amount received or accrued from another person as consideration **[(or payment of like nature)]** for the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or for the rendering of or the undertaking to render any assistance or service in connection

- with the application or utilization of such knowledge or information;”;
- (t) by the substitution in the definition of “gross income” for paragraph (jA) of the following paragraph:
 “(jA) any amount received by or accrued to any person during the year of assessment **[from]** in respect of the disposal of any asset manufactured, produced, constructed or assembled by that person, which is similar to any other asset manufactured, produced, constructed or assembled by that person for purposes of manufacture, sale or exchange by that person or on that person’s behalf;”;
- (u) by the substitution in the definition of “gross income” for paragraph (k) of the following paragraph:
 “(k) any amount received or accrued by way of a dividend or a foreign dividend;”;
- (v) by the substitution for paragraph (m) of the definition of “gross income” for the following paragraph:
 “(m) any amount received or accrued in respect of a policy of insurance of which the taxpayer is the policyholder, where the policy relates to the death, disablement or severe illness of an employee or director (or former employee or director) of the taxpayer, including by way of any loan or advance: Provided that—
 (i) any amount so received or accrued shall be reduced by the amount of any such loan or advance which is or has been included in the taxpayer’s gross income;
 (ii) to the extent that paragraph (a) or (d) of this definition applies to an amount, this paragraph does not apply to that amount;”;
- (w) by the substitution in the definition of “group of companies” for paragraph (a) of the following paragraph:
 “(a) at least 70 percent of the equity shares **[of]** in each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and”;
- (x) by the substitution for the definition of “headquarter company” of the following definition:
 “**‘headquarter company’** in respect of any year of assessment means a company contemplated in section 9I(1) in respect of which an election has been made in terms of that section;”;
- (y) by the substitution in the definition of “living annuity” for paragraph (e) of the following paragraph:
 “(e) on the death of the member or former member, the value of the assets referred to in paragraph (a) may be paid to a nominee of the member or former member as an annuity or lump sum or as an annuity and a lump sum, or, in the absence of a nominee, to the deceased’s estate as a lump sum; and”;
- (z) by the substitution in the definition of “pension fund” for subparagraph (bb) of paragraph (ii) of the proviso to paragraph (c) of the following subparagraph:
 “(bb) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which—
 (A) the fund comes into operation; or
 (B) the employer becomes a participant in that fund;”;
- (zA) by the substitution in the definition of “pension preservation fund” for the words preceding the proviso of the following words:
 “**‘pension preservation fund’** means a pension fund organisation which is registered under the **[Pensions]** Pension Funds Act, 1956 (Act No. 24 of 1956), and which is approved by the Commissioner in respect of the year of assessment in question”;

- (zB) by the substitution in paragraph (a)(i) of the proviso to the definition of “pension preservation fund” for the words preceding item (aa) of the following words:
 “former members of a pension fund or provident fund whose membership of that fund has terminated due to—”; 5
- (zC) by the substitution in paragraph (a)(ii) of the proviso to the definition of “pension preservation fund” for the words preceding item (aa) of the following words:
 “former members of any other pension preservation fund or a provident preservation fund—”; 10
- (zD) by the substitution in paragraph (a) of the proviso to the definition of “pension preservation fund” for subparagraph (iii) of the following subparagraph:
 “(iii) former members of a pension fund or nominees or dependants of that former member in respect of whom **[a benefit]** an ‘unclaimed benefit’ as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), is due or payable by that fund **[that has not been paid within 24 months of the due date];** or”; 15
- (zE) by the substitution in paragraph (b) of the proviso to the definition of “pension preservation fund” for the words preceding subparagraph (i) of the following words:
 “payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph **[2(1)(b)]** 2(1)(a)(ii) or (b) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that is paid or transferred to the fund by—”; 20 25
- (zF) by the substitution in paragraph (a) of the proviso to the definition of “provident preservation fund” for subparagraph (iii) of the following subparagraph:
 “(iii) former members of a provident fund or nominees or dependants of that former member in respect of whom **[a benefit became due but has not been paid within 24 months of the due date]** an ‘unclaimed benefit’ as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), is due or payable by that fund; [or]”; 30
- (zG) by the substitution in paragraph (b) of the proviso to the definition of “provident preservation fund” for the words preceding subparagraph (i) of the following words:
 “payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph **[2(1)(b)]** 2(1)(a)(ii) or (b) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that is paid or transferred to the fund by—”; 35 40
- (zH) by the substitution in paragraph (b) of the proviso to the definition of “retirement annuity fund” for subparagraph (i) of the following subparagraph:
 “(i) for contributions by the members, including contributions made by way of transfer of members’ interests in approved pension funds, pension preservation funds, provident funds, provident preservation funds or other retirement annuity funds;”; 45
- (zI) by the substitution for the definition of “retirement date” of the following definition: 50
 “ ‘retirement date’ means the date on which—
 (a) a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, in terms of the rules of that fund, becomes entitled to an annuity or a lump sum benefit contemplated in **[paragraph 2(1)(a)]** paragraph 2(1)(a)(i) of the Second Schedule on or subsequent to attaining normal retirement age; or 55

- (b) a nominee or dependant of a deceased member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, in terms of the rules of that fund, becomes entitled to an annuity or a lump sum benefit contemplated in paragraph **[2(1)(a)] 2(1)(a)(i)** of the Second Schedule on the death of the member;”;
- (zJ) by the insertion after the definition of “retirement interest” of the following definition:
- “**‘return of capital’** means any amount transferred by a company that is a resident for the benefit or on behalf of any person in respect of any share in that company to the extent that that transfer results in a reduction of contributed tax capital of the company, whether that amount is transferred—
- (a) by way of a distribution made by; or
- (b) as consideration for the acquisition of any share in, that company, but does not include any amount so transferred to the extent that the amount so transferred constitutes—
- (i) shares in the company; or
- (ii) an acquisition by the company of its own securities by way of a general repurchase of securities as contemplated in subparagraph (b) of paragraph 5.67(B) of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with any applicable requirements prescribed by paragraphs 5.68 and 5.72 to 5.84 of section 5 of the JSE Limited Listings Requirements;”;
- (zK) by the substitution in the definition of “severance benefit” for the words preceding paragraph (a) of the following words:
- “**‘severance benefit’** means any amount (other than a lump sum benefit or an amount contemplated in **[section 23(p)] paragraph (d)(ii) or (iii) of the definition of ‘gross income’**) received by or accrued to a person by way of a lump sum from or by arrangement with the person’s employer or an associated institution in relation to that employer in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of the person’s office or employment or of the person’s appointment (or right or claim to be appointed) to any office or employment, if—”;
- (zL) by the substitution in the definition of “severance benefit” for the words following paragraph (c)(ii) of the following words:
- “unless, where the person’s employer is a company, the person at any time held more than five per cent of the issued **[share capital] shares** or members’ interest in the company”;
- (zM) by the substitution in the definition of “severance benefit” for the proviso of the following proviso:
- “: Provided that any such amount which becomes payable in consequence of or following upon the death of a person must be deemed **[to]** to be an amount which accrued to such person immediately prior to his or her death;”;
- (zN) by the insertion after the definition of “severance benefit” of the following definition:
- “**‘share’** means, in relation to any company, any share or similar equity interest in that company;”;
- (zO) by the deletion of the definition of “shareholder”.
- (2) Paragraphs (a) and (j) of subsection (1) come into operation on 1 January 2012.
- (3) Paragraphs (b), (d), (e), (f), (h), (k), (m) and (zJ) of subsection (1) are deemed to have come into operation on 1 January 2011.
- (4) Paragraphs (c), (g), (i), (u), (w), (zL), (zN) and (zO) of subsection (1) come into operation on 1 April 2012.
- (5) Paragraph (l) of subsection (1) is deemed to have come into operation—
- (a) in the case of any foreign partnership that is established or formed before 24 August 2010, as from the commencement of years of assessment commencing on or after 1 October 2011; and
- (b) in the case of any foreign partnership that is established or formed on or after 24 August 2010, as from the date of establishment or formation.

(6) Paragraphs (n), (o), (r), (s) and (t) of subsection (1) come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

(7) Paragraphs (p), (v) and (zK) of subsection (1) come into operation on 1 March 2012 and apply in respect of receipts and accruals on or after that date.

(8) Paragraph (x) of subsection (1) is deemed to have come into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date. 5

(9) Paragraphs (y), (zA), (zB), (zC) and (zH) of subsection (1) come into operation on 1 March 2012.

(10) Paragraphs (zD), (zE), (zF), (zG), and (zI) of subsection (1) are deemed to have come into operation on 1 March 2009. 10

Amendment of section 5 of Act 58 of 1962, as substituted by section 2 of Act 6 of 1963 and amended by section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 3 of Act 3 of 2008, section 6 of Act 60 of 2008, section 8 of Act 17 of 2009 and section 7 of Act 7 of 2010 15

8. (1) Section 5 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (10) for the words preceding the formula of the following words: 20

“Where any taxpayer’s income includes any special remuneration, or where the provisions of section 7A(4A) or paragraph 15(3), 17 or 19(1) of the First Schedule are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax (excluding tax on any lump sum benefit) payable by the taxpayer in respect of such year (as determined before the deduction of any rebate) shall be determined in accordance with the formula—”; and 25

(b) by the substitution in subsection (10) for the words preceding the formula of the following words: 30

“Where any taxpayer’s income includes any special remuneration, or where the provisions of **[section 7A(4A) or]** paragraph 15(3), 17 or 19(1) of the First Schedule are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax (excluding tax on any lump sum benefit or severance benefit) payable by the taxpayer in respect of such year (as determined before the deduction of any rebate) shall be determined in accordance with the formula—”. 35

(2) Paragraph (a) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2010.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of amounts received or accrued on or after that date. 40

Amendment of section 6 of Act 58 of 1962, as amended by section 4 of Act 90 of 1962, section 3 of Act 6 of 1963, section 5 of Act 72 of 1963, section 8 of Act 55 of 1966, section 7 of Act 95 of 1967, section 7 of Act 76 of 1968, section 8 of Act 89 of 1969, section 7 of Act 88 of 1971, section 5 of Act 104 of 1980, section 5 of Act 96 of 1981, section 5 of Act 91 of 1982, section 4 of Act 94 of 1983, section 4 of Act 121 of 1984, section 3 of Act 96 of 1985, section 4 of Act 85 of 1987, section 4 of Act 90 of 1988, section 4 of Act 70 of 1989, section 3 of Act 101 of 1990, section 4 of Act 129 of 1991, section 4 of Act 141 of 1992, section 5 of Act 21 of 1995, section 4 of Act 36 of 1996, section 3 of Act 28 of 1997, section 22 of Act 30 of 1998, section 5 of Act 32 of 1999, section 15 of Act 30 of 2000, section 6 of Act 19 of 2001, section 11 of Act 30 of 2002, section 35 of Act 12 of 2003, section 6 of Act 16 of 2004, section 3 of Act 9 of 2005, section 7 of Act 31 of 2005, section 20 of Act 9 of 2006, section 5 of Act 8 of 2007, section 1 of Act 3 of 2008, section 7 of Act 60 of 2008, section 6 of Act 17 of 2009 and section 8 of Act 7 of 2010 45 50 55

9. (1) Section 6 of the Income Tax Act, 1962, is hereby amended—

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

“(1) There shall be deducted from the normal tax payable by any natural person, other than normal tax in respect of any retirement fund

- lump sum benefit **[or]**, retirement fund lump sum withdrawal benefit or severance benefit, an amount equal to the sum of the amounts allowed to the taxpayer by way of rebates under subsection (2).”;
- (b) by the deletion in subsection (2) of the word “and” at the end of paragraph (a);
- (c) by the substitution in subsection (2) for the full stop at the end of paragraph (b) of the expression “; and”; 5
- (d) by the addition in subsection (2) after paragraph (b) of the following paragraph:
- “(c) a tertiary rebate if the taxpayer was or, had he or she lived, would have been 75 years of age or older on the last day of the year of assessment, an amount of R2 000.”; and 10
- (e) by the substitution for subsection (5) of the following subsection:
- “(5) Where the taxable income of a taxpayer consists solely of [**‘net remuneration’ as defined**] remuneration of which the full amount is subject to the Standard Income Tax on Employees contemplated in paragraph 11B of the Fourth Schedule, the **[normal]** amount of tax payable by that taxpayer— 15
- (a) in respect of a year of assessment commencing during the period of 12 months commencing on 1 March 2011 and ending on 29 February 2012, must be reduced by an amount equal to two-thirds; 20
- and
- (b) in respect of a year of assessment commencing during the period of 12 months commencing on 1 March 2012 and ending on 28 February 2013, must be reduced by an amount equal to one-third, 25
- of the difference between—
- (i) the **[normal]** amount of tax that would have been payable by the taxpayer had this subsection not applied; and
- (ii) the aggregate of the Standard Income Tax on Employees payable by the taxpayer in respect of that year of assessment.”. 30
- (2) Subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date. 30

Insertion of section 6A in Act 58 of 1962

10. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 6 of the following section:

“Medical scheme fees tax credit

- 6A.** (1) A rebate, to be known as the medical scheme fees tax credit must be deducted from the normal tax payable by a taxpayer who is a natural person, unless the taxpayer is entitled to a rebate under section 6(2)(b). 35
- (2) (a) The medical scheme fees tax credit applies in respect of fees paid by the taxpayer to— 40
- (i) a medical scheme registered under the Medical Schemes Act, 1998 (Act No. 131 of 1998); or
- (ii) a fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered. 45
- (b) The amount of the medical scheme fees tax credit must be— 45
- (i) R216, in respect of benefits to the taxpayer;
- (ii) R432, in respect of benefits to the taxpayer and one dependant; or
- (iii) R432, in respect of benefits to the taxpayer and one dependant, plus R144 in respect of benefits to each additional dependant, 50
- for each month in that year of assessment in respect of which those fees are paid.
- (3) For the purposes of this section, any amount contemplated in subsection (2) that has been paid by—
- (a) the estate of a deceased taxpayer is deemed to have been paid by the taxpayer on the day before his or her death; or 55

(b) an employer of the taxpayer is, to the extent that the amount has been included in the income of that taxpayer as a taxable benefit in terms of the Seventh Schedule, deemed to have been paid by that taxpayer.

(4) For the purposes of this section a **‘dependant’** in relation to a taxpayer means a ‘dependant’ as defined in section 1 of the Medical Schemes Act, 1998 (Act No. 131 of 1998).”.

(2) Subsection (1) comes into operation on 1 March 2012 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 6quat of Act 58 of 1962, as inserted by section 9 of Act 89 of 1969 and amended by section 5 of Act 94 of 1983, section 5 of Act 85 of 1987, section 5 of Act 28 of 1997, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000, section 4 of Act 59 of 2000, section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002, section 16 of Act 45 of 2003, section 4 of Act 32 of 2004, section 8 of Act 31 of 2005, section 7 of Act 35 of 2007, section 9 of Act 17 of 2009 and section 7 of Act 18 of 2009

11. (1) Section 6quat of the Income Tax Act, 1962, is hereby amended—

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

“(1) Subject to **[the provisions of]** subsection (2), **[a rebate determined in accordance with this section shall be deducted from the normal tax payable by]** where the taxable income of any resident [in whose taxable income there is included] during a year of assessment includes—

(a) any income received by or accrued to such resident from any source outside the Republic **[(other than any foreign dividend contemplated in paragraph (d)) which is—**

(i) **not deemed to be from a source within the Republic];** or

(b) any proportional amount contemplated in section 9D; or

[(d) any foreign dividend; or]

(e) any taxable capital gain contemplated in section 26A, from a source outside the Republic **[which is not deemed to be from a source in the Republic];** or

(f) any amount—

(i) contemplated in **[paragraphs]** paragraph (a) [,] or (b) **[or (d)]** which is received by or accrued to any other person and which is deemed to have been received by or accrued to such resident in terms of section 7;

(ii) of capital gain of any other person from a source outside the Republic **[which is not deemed to be from a source in the Republic]** and which is attributed to that resident in terms of paragraph 68, 69, 70, 71, 72 or 80 of the Eighth Schedule; or

(iii) contemplated in paragraphs (a), (b) [, (d)] or (e) which represents capital of a trust, and which is included in the income of that resident in terms of section 25B(2A) or taken into account in determining the aggregate capital gain or aggregate capital loss of that resident in terms of paragraph 80(3) of the Eighth Schedule;

there must be deducted from the normal tax payable in respect of that taxable income a rebate determined in accordance with this section.”;

(b) by the deletion in subsection (1A)(a) of subparagraph (ii);

(c) by the substitution in subsection (1B)(a) for the words preceding the proviso of the following words:

“the rebate or rebates of any tax proved to be payable as contemplated in subsection (1A), shall not in aggregate exceed an amount which bears to the total normal tax payable the same ratio as the total taxable income attributable to the income, proportional amount, **[foreign dividend,]** taxable capital gain or amount, as the case may be, which is included as contemplated in subsection (1), bears to the total taxable income”;

- (d) by the substitution in subsection (1B) for paragraph (i) of the proviso to paragraph (a) of the following paragraph:
- “(i) in determining the amount of the taxable income that is attributable to that income, proportional amount, **[foreign dividend,]** taxable capital gain or amount, any allowable deductions contemplated in sections 11(n), 18 and 18A must be deemed to have been incurred proportionately in respect of income derived from sources within and outside the Republic;”;
- (e) by the deletion in subsection (1B) of subparagraph (aa) of paragraph (iA) of the proviso;
- (f) by the substitution in subsection (1B) for subparagraph (bb) of paragraph (iA) of the proviso of the following subparagraph:
- “(bb) relates to any amount contemplated in **[section 9D(9)(b)(ii) or (iii)]** section 9D(9A)(a) which **[are]** is not excluded from the application of section 9D(2) in terms of **[those subparagraphs]** that section or section 9D(9)(b),”;
- (g) by the substitution for subsection (5) of the following subsection:
- “(5) Notwithstanding sections 79 and 81(5), an additional or reduced assessment in respect of a year of assessment to give effect to subsections (1) and (1A) may be made within six years from the date of the original assessment in respect of that year.”.
- (2) Paragraphs (a), (b), (c), (d) and (g) of subsection (1) come into operation on 1 January 2012 and apply in respect of years of assessment commencing on or after that date.
- (3) Paragraphs (e) and (f) of subsection (1) come into operation on 1 April 2012 and apply in respect of years of assessment commencing on or after that date.

Insertion of section 6quin in Act 58 of 1962

12. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 6quat of the following section:

“Rebate in respect of foreign taxes on income from source within Republic

6quin. (1) Subject to subsection (3), where any portion of the taxable income of a resident is attributable to an amount that is from a source within the Republic and is received by or accrued to that resident in respect of services rendered within the Republic, and an amount of tax in respect of that amount is—

- (a) (i) levied by any sphere of government of any country—
 (aa) other than the Republic; and
 (bb) with which the Republic has concluded an agreement for the avoidance of double taxation; and
 (ii) withheld when the amount is paid to that resident by the person making the payment; or

(b) imposed by any sphere of government of any country other than the Republic in terms of the laws of that country, a rebate determined in accordance with subsection (2) must be deducted from the normal tax payable by that resident.

(2) (a) For the purposes of paragraph (a) of subsection (1), the rebate is an amount equal to the lesser of—

- (i) the amount of normal tax which is attributable to the amount received or accrued as contemplated in that subsection; or
 (ii) the amount of tax levied and withheld as contemplated in that paragraph.

(b) For the purposes of paragraph (b) of subsection (1), the rebate is an amount equal to the lesser of—

- (i) the amount of normal tax which is attributable to the amount received or accrued as contemplated in that subsection; or
 (ii) the amount of tax imposed as contemplated in that paragraph.

- (3) No rebate may be deducted in terms of this section if—
- (a) the amount of tax levied and withheld as contemplated in subsection (1)(a);
 - (b) the amount of tax imposed as contemplated in subsection (1)(b); or
 - (c) any portion of any amount contemplated in paragraph (a) or (b), is deducted from the income of that resident in terms of section 6quat(1C).
- (4) For the purposes of subsection (2)(a)(ii) and (b)(ii), the amount of any tax—
- (a) levied and withheld as contemplated in subsection (1)(a); or
 - (b) imposed as contemplated in subsection (1)(b), must be translated to the currency of the Republic on the last day of the year of assessment in which that tax is so levied and withheld or imposed, by applying the average exchange rate for that year of assessment.”.
- (2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of amounts of tax withheld or imposed by any sphere of government of any country other than the Republic during years of assessment commencing on or after that date.

Amendment of section 6quin of Act 58 of 1962

13. (1) Section 6quin of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Subject to [subsection] subsections (3) and (3A), where any portion of the taxable income of a resident is attributable to an amount that is from a source within the Republic and is received by or accrued to that resident in respect of services rendered within the Republic, and an amount of tax in respect of that amount is—”; and
 - (b) by the insertion of the following subsection after subsection (3):

“(3A) Where an amount of tax is levied and withheld as contemplated in subsection (1)(a), no rebate may be deducted in terms of this section if the resident contemplated in subsection (1) does not, within 60 days from the date on which that amount of tax is withheld, submit to the Commissioner a declaration in such form as may be required by the Commissioner that the amount of tax was levied and withheld as contemplated in subsection (1)(a).”.
- (2) Subsection (1) comes into operation on a date determined by the Minister by notice in the *Gazette*, which date must be later than 1 January 2012, and applies in respect of amounts of tax withheld or imposed by any sphere of government of any country other than the Republic during years of assessment commencing on or after the date so determined.

Insertion of section 6sex in Act 58 of 1962

14. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 6quin of the following section:

“Rebate in respect of dividends tax on income of foreign companies

- 6sex.** (1) For the purposes of this section—
- ‘dividend’ means any dividend as defined in section 1, but does not include any dividend paid or declared by a headquarter company; and
- ‘foreign dividend’ means any foreign dividend as defined in section 10B(1).
- (2) If, during any year of assessment—
- (a) (i) any dividend, foreign dividend or amount of any foreign dividend is, by virtue of section 10(1)(k)(i) or 22B, included in the income of a foreign company;
 - (ii) the foreign company contemplated in subparagraph (i) is the beneficial owner, as defined in section 64D, of the share to which that dividend, foreign dividend or amount relates at the time of the inclusion contemplated in subparagraph (i); and

- (iii) the dividend, foreign dividend or amount would, but for—
 - (aa) paragraph (ee) or (ff) of the proviso to section 10(1)(k)(i); or
 - (bb) section 22B,
 have been exempt from tax in terms of section 10(1)(k)(i) or 10B; or
 - (b)
 - (i) the proceeds from the disposal by a foreign company of shares in another company are, by virtue of paragraph 43A of the Eighth Schedule, increased by an amount equal to the amount of any dividend received by or accrued to that foreign company in respect of any share held by the foreign company in that other company;
 - (ii) that foreign company is the beneficial owner, as defined in section 64D, of the share contemplated in subparagraph (i) at the time of the disposal contemplated in that subparagraph; and
 - (iii) there would have been no increase in proceeds as contemplated in subparagraph (i) but for paragraph 43A of the Eighth Schedule,
- a rebate determined in accordance with subsection (3) must be deducted from the normal tax payable by that foreign company.
- (3) For the purposes of subsection (2), a rebate is an amount equal to the dividends tax borne by the foreign company during the year of assessment or the following year of assessment which—
- (a) in the case of any dividend, foreign dividend or amount contemplated in subsection (2)(a)(i), is attributable to that dividend, foreign dividend or amount; or
 - (b) in the case of any amount contemplated in subsection (2)(b)(i), is attributable to that amount.
- (4) The determination of the rebate as contemplated in subsection (3) must be made—
- (a) after taking into account any applicable agreement for the prevention of double taxation; and
 - (b) irrespective of whether a declaration contemplated in section 64G(3) or section 64H(3) has been submitted as contemplated in those sections in respect of the relevant dividend or foreign dividend.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation and applies in respect of—

 - (a) any dividend, foreign dividend or amount of foreign dividend included in income; or
 - (b) any dividend received by or accrued to a foreign company, during any year of assessment commencing on or after that date.

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 5 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991, section 5 of Act 141 of 1992, section 6 of Act 21 of 1995, section 23 of Act 30 of 1998, section 13 of Act 53 of 1999, section 5 of Act 59 of 2000, section 10 of Act 74 of 2002, section 17 of Act 45 of 2003, section 5 of Act 32 of 2004, section 9 of Act 31 of 2005, section 8 of Act 35 of 2007, section 4 of Act 3 of 2008, section 8 of Act 60 of 2008 and section 10 of Act 17 of 2009

15. (1) Section 7 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“Any income received by or accrued to any person married **[with or without]** in or out of community of property (hereinafter referred to as the recipient) shall be deemed for the purposes of this Act to be income accrued to such person’s spouse (hereinafter referred to as the donor) if—”;

- (b) by the substitution in subsection (7) for paragraph (a) of the following paragraph:

“(a) the donor’s right to receive or have paid to him or for his benefit any amount by way of rent, dividend, foreign dividend, interest, royalty or similar income in respect of any movable or immovable property (including without limiting the foregoing any lease, company share, marketable security, deposit, loan, copyright, design or trade mark) or in respect of the use of, or the granting of permission to use, such property, is ceded or otherwise made over to any other person or to a third party for that other person’s benefit in such manner that the donor remains the owner of or retains an interest in the said property or if the said property or interest is transferred, delivered or made over to the said other person or to a third party for the said other person’s benefit, in such manner that the donor is or will at a fixed or determinable time be entitled to regain ownership of or the interest in the said property; or”; and

- (c) by the substitution in subsection (7) for the words following paragraph (b) of the following words:

“any such rent, dividend, foreign dividend, interest, royalty or income (including any amount which, but for this subsection, would have been exempt from tax in the hands of the said other person) as is received by or accrues to or for the benefit of the said other person on or after 1 July 1983 and which would otherwise, but for the said donation, settlement or other disposition, have been received by or have accrued to or for the benefit of the donor, shall be deemed to have been received by or to have accrued to the donor.”.

- (2) Paragraphs (b) and (c) of subsection (1) come into operation on 1 April 2012.

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000, section 7 of Act 19 of 2001, section 21 of Act 60 of 2001, section 12 of Act 30 of 2002, section 11 of Act 74 of 2002, section 18 of Act 45 of 2003, section 6 of Act 32 of 2004, section 4 of Act 9 of 2005, section 21 of Act 9 of 2006, section 5 of Act 20 of 2006, section 6 of Act 8 of 2007, section 9 of Act 35 of 2007, section 5 of Act 3 of 2008, section 9 of Act 60 of 2008, section 11 of Act 17 of 2009 and section 10 of Act 7 of 2010

- 16. (1) Section 8 of the Income Tax Act, 1962, is hereby amended—**

- (a) by the substitution in subsection (1)(b)(iiiA) for item (bb) of the following item:

“(bb) in any other case—

- (A) the wear and tear of that vehicle must be determined over a period of seven years from the date of original acquisition by that recipient and the cost of the vehicle must for this purpose be limited to **[R400 000]** R480 000, or such other amount determined by the Minister by notice in the *Gazette*; and
- (B) the finance charges in respect of any debt incurred in respect of the purchase of that vehicle must be limited to an amount which would have been incurred had the original debt been **[R400 000]** R480 000, or such other amount determined by the Minister in terms of subitem (A);”; and

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

“There shall be included in the taxpayer’s income all amounts allowed to be deducted or set off under the provisions of sections 11 to 20, inclusive, section 24D, section 24F, section 24G, section 24I, section 24J, section 27(2)(b) and section 37B(2) of this Act, except section 11(k), (p) and (q), section 11D(1), section 12(2) or section 12(2) as applied by section 12(3), section 12A(3), section 13(5), or section 13(5), as applied by section 13(8), or section 13bis(7), [or] section 15(a)[,] or section 15A, or under the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment which have been recovered or recouped during the current year of assessment”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 8A of Act 58 of 1962, as inserted by section 11 of Act 89 of 1969 and amended by section 8 of Act 88 of 1971, section 7 of Act 32 of 2004 and section 10 of Act 31 of 2005

17. (1) Section 8A of the Income Tax Act, 1962, is hereby amended—

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

“(a) There shall be included in the taxpayer’s income for the year of assessment the amount of any gain made by the taxpayer after the first day of June, 1969, by the exercise, cession or release during such year of any right to acquire any marketable security (whether such right be exercised, ceded or released in **[while]** whole or part), if such right was obtained by the taxpayer before 26 October 2004 as a director or former director of any company or in respect of services rendered or to be rendered by him or her as an employee to an employer.”; and

- (b) by the substitution for subsection (10) of the following subsection:
- “(10) For the purposes of this section **‘marketable security’** means any security, **[stock,]** debenture, share, option or other interest capable of being sold in a share-market or exchange or otherwise.”.

(2) Subsection (1) comes into operation on 1 January 2012.

Amendment of section 8B of Act 58 of 1962, as inserted by section 6 of Act 104 of 1980 and amended by section 6 of Act 121 of 1984, section 6 of Act 101 of 1990, section 8 of Act 32 of 2004, section 11 of Act 31 of 2005, section 6 of Act 20 of 2006, section 10 of Act 35 of 2007 and section 10 of Act 60 of 2008

18. (1) Section 8B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraph (c) of the definition of “broad-based employee share plan” of the following paragraph:

- “(c) the employees who acquire the equity shares as contemplated in paragraph (a) are entitled to all dividends and foreign dividends and full voting rights in relation to those equity shares; and”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of section 8C of Act 58 of 1962, as inserted by section 7 of Act 96 of 1981 and amended by section 7 of Act 121 of 1984, section 7 of Act 101 of 1990, section 8 of Act 32 of 2004, section 12 of Act 31 of 2005, section 7 of Act 20 of 2006, section 11 of Act 35 of 2007, section 11 of Act 60 of 2008 and section 12 of Act 7 of 2010

19. (1) Section 8C of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1A) of the following subsection:

- “(1A) If a **[capital distribution as contemplated in paragraph 74 of the Eighth Schedule]** return of capital or foreign return of capital, other than a **[capital distribution]** return of capital or foreign return of capital by way of a distribution of an equity instrument, is received by or accrues to a taxpayer in respect of a restricted equity instrument, the taxpayer must include the amount of the **[capital**

- distribution]** return of capital or foreign return of capital in his or her income for the year of assessment during which the amount is received or accrues.”.
- (2) Subsection (1) comes into operation on 1 April 2012.

Amendment of section 8E of Act 58 of 1962, as inserted by section 6 of Act 70 of 1989 and amended by section 19 of Act 45 of 2003, section 9 of Act 32 of 2004, section 7 of Act 8 of 2007 and section 13 of Act 7 of 2010 5

20. (1) Section 8E of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in subsection (1) of paragraph (b) of the definition of “date of issue”;
- (b) by the substitution in subsection (1) for paragraph (a) of the definition of “hybrid equity instrument” of the following paragraph: 10
- “(a) any share other than an equity share if—
- (i) the issuer of that share is obliged to redeem that share in whole or in part; or
- (ii) that share may at the option of the holder be redeemed in whole or in part, within a period of three years from the date on which that share is issued;”;
- (c) by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the definition of “hybrid equity instrument” of the following subparagraph: 20
- “(i) (aa) the issuer of that share is obliged to redeem that share in whole or in part within a period of three years from the date on which that share is issued;
- (bb) that share may at the option of the holder be redeemed in whole or in part within a period of three years from the date on which that share is issued; or
- (cc) at the time of issue of that share, the existence of the company issuing that share—
- (A) is to be terminated within a period of three years; or
- (B) is likely to be terminated within a period of three years upon a reasonable consideration of all the facts at that time; and”;
- (d) by the substitution in subsection (1) for the words preceding item (aa) of paragraph (b)(ii) of the definition of “hybrid equity instrument” of the following words: 35
- “such share does not rank *pari passu* as regards its participation in dividends or foreign dividends with all other ordinary shares in the capital of the relevant company or, where the ordinary shares in such company are divided into two or more classes, with the shares of at least one of such classes, or any dividend or foreign dividend payable on such share is to be calculated directly or indirectly with reference to—”;
- (e) by the addition in subsection (1) of the word “or” at the end of item (cc) of paragraph (b)(ii) of the definition of “hybrid equity instrument”;
- (f) by the addition in subsection (1) to the definition of “hybrid equity instrument” of the following paragraph: 45
- “(c) any share if—
- (i) any dividend or foreign dividend payable on such share is to be calculated directly or indirectly with reference to any specified rate of interest or the amount of capital subscribed for such share; and
- (ii) such share is directly or indirectly secured by a financial instrument other than an equity share.”;
- (g) by the deletion in subsection (1) of the definition of “right of disposal”; and
- (h) by the substitution for subsection (2) of the following subsection: 55
- “(2) Any dividend **[declared by a company on]** or foreign dividend received by or accrued to a person in respect of a **[hybrid equity instrument]** share which is **[declared on or after the date that the share becomes]** received or accrues during any year of assessment during which that share at any time during that year constitutes a hybrid equity instrument **[shall for the purposes of this Act]** must be deemed 60

in relation to **[the recipient thereof]** that person only to be an amount of interest accrued to **[the recipient from a source within the Republic]** that person.”.

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of dividends or foreign dividends received or accrued on or after that date.

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Insertion of section 8EA in Act 58 of 1962

21. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 8E of the following section:

“Dividends on third-party backed shares deemed to be income in relation to recipients thereof

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8EA. (1) For the purposes of this section—

‘enforcement obligation’ in relation to a share means any obligation, whether fixed or contingent, of any person other than the issuer of that share to—

- (a) acquire the share from the holder of that share;
- (b) make any payment in respect of that share in terms of a guarantee, indemnity or similar arrangement; or
- (c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);

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‘enforcement right’ in relation to a share means any right, whether fixed or contingent, of the holder of that share or of any person that is a connected person in relation to that holder to require any person other than the issuer of that share to—

- (a) acquire that share from the holder;
- (b) make any payment in respect of that share in terms of a guarantee, indemnity or similar arrangement; or
- (c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);

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‘equity share’ means an equity share as defined in section 1, other than an equity share that would have constituted a hybrid equity instrument, as defined in section 8E(1), but for the three-year period requirement contemplated in paragraph (a) of the definition of ‘hybrid equity instrument’ in that section;

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‘operating company’ means—

- (a) any company that carries on business continuously, and in the course or furtherance of that business provides goods or services for consideration; or
- (b) any company that is a controlling group company in relation to a company contemplated in paragraph (a);

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‘third-party backed share’ means any share in respect of which an enforcement right is exercisable or an enforcement obligation is enforceable as a result of any amount of any specified dividend or foreign dividend attributable to that share not being received by or accruing to the person holding that share: Provided that, where the consideration received by or accrued to the issuer of a share which, but for this proviso, would have constituted a third-party backed share was used by that issuer to—

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- (a) acquire an equity share in an operating company;
- (b) indirectly acquire an equity share in an operating company by means of the acquisition of any other share in any other company, if that consideration is used or applied directly or indirectly for the purpose of acquiring an equity share in an operating company;
- (c) settle any—
 - (i) debt incurred by that issuer for the purpose of acquiring an equity share in an operating company; or
 - (ii) interest accrued on any debt contemplated in subparagraph (i); or

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- (d) acquire any other share issued by that issuer if—
- (i) that other share, but for this proviso, would have constituted a third-party backed share; and
 - (ii) that consideration does not exceed the amount outstanding in respect of that share, being—
 - (aa) the capital subscribed for the acquisition of; and
 - (bb) any amount of dividends or interest accrued in respect of, that other share,
- in determining whether—
- (A) an enforcement right is exercisable in respect of that share, no regard must be had to any arrangement in terms of which the holder of that share has an enforcement right in respect of that share and that right is exercisable only against—
 - (AA) that operating company or any person that directly or indirectly holds more than 20 per cent of the equity shares in that operating company;
 - (BB) any person that directly or indirectly holds more than 20 per cent of the equity shares in that issuer; or
 - (CC) any company that is a controlled group company in relation to that operating company or that issuer; and
 - (B) an enforcement obligation is enforceable in respect of that share, no regard must be had to any arrangement in terms of which—
 - (AA) that operating company or any person that directly or indirectly holds more than 20 per cent of the equity shares in that operating company;
 - (BB) any person that directly or indirectly holds more than 20 per cent of the equity shares in that issuer; or
 - (CC) any company that is a controlled group company in relation to that operating company or that issuer,
 has an enforcement obligation in respect of that share and that obligation is enforceable by the holder of that share.
- (2) Any dividend or foreign dividend received by or accrued to a person in respect of a share which is received or accrued during any year of assessment during which that share at any time during that year constitutes a third-party backed share must be deemed in relation to that person only to be an amount of income received by or accrued to that person.”.
- (2) Subsection (1) comes into operation on 1 October 2012 and applies in respect of dividends and foreign dividends received or accrued on or after that date.

Substitution of section 9 of Act 58 of 1962

22. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 9 of the following section:

“Source of income

- 9.** (1) For the purposes of this section, ‘**royalty**’ means any amount that is received or accrues in respect of the use, right of use or permission to use any intellectual property as defined in section 23I.
- (2) An amount is received by or accrues to a person from a source within the Republic if that amount—
- (a) constitutes a dividend received by or accrued to that person;
 - (b) constitutes interest as defined in section 24J or deemed interest as contemplated in section 8E(2) where that interest—
 - (i) is attributable to an amount incurred by a person that is a resident, unless the interest is attributable to a permanent establishment which is situated outside the Republic; or
 - (ii) is received or accrues in respect of the utilisation or application in the Republic by any person of any funds or credit obtained in terms of any form of interest-bearing arrangement;

- (c) constitutes a royalty that is attributable to an amount incurred by a person that is a resident, unless that royalty is attributable to a permanent establishment which is situated outside the Republic;
- (d) constitutes a royalty that is received or accrues in respect of the use or right of use of or permission to use in the Republic any intellectual property as defined in section 23I; 5
- (e) is attributable to an amount incurred by a person that is a resident and is received or accrues in respect of the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information, unless the amount so received or accrued is attributable to a permanent establishment which is situated outside the Republic; 10
- (f) is received or accrues in respect of the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in the Republic, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information; 15
- (g) is received or accrues in respect of the holding of a public office to which that person has been appointed or is deemed to have been appointed in terms of an Act of Parliament; 20
- (h) is received or accrues in respect of services rendered to or work or labour performed for or on behalf of any employer—
 - (i) in the national, provincial or local sphere of government of the Republic; 25
 - (ii) that is a constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - (iii) that is a public entity listed in Schedule 2 or 3 to that Act; or
 - (iv) that is a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); 30
- (i) constitutes a pension or an annuity and the services in respect of which that amount is so received or accrues were rendered within the Republic: Provided that if the amount is received or accrues in respect of services which were rendered partly within and partly outside the Republic, only so much of that amount as bears to the total of that amount the same ratio as the period during which the services were rendered in the Republic bears to the total period during which the services were rendered must be regarded as having been received by or accrued to the person from a source within the Republic; 35
- (j) constitutes an amount received or accrued in respect of the disposal of an asset that constitutes immovable property held by that person or any interest or right of whatever nature of that person to or in immovable property and that property is situated in the Republic; 40
- (k) constitutes an amount received or accrued in respect of the disposal of an asset other than an asset contemplated in paragraph (j) if—
 - (i) that person is a resident and—
 - (aa) that asset is not attributable to a permanent establishment of that person which is situated outside the Republic; and 50
 - (bb) the proceeds from the disposal of that asset are not subject to any taxes on income payable to any sphere of government of any country other than the Republic; or
 - (ii) that person is not a resident and that asset is attributable to a permanent establishment of that person which is situated in the Republic; or 55
- (l) is attributable to any exchange difference determined in terms of section 24I in respect of any exchange item as defined in that section to which that person is a party if—

- (i) that person is a resident and—
 - (aa) that exchange item is not attributable to a permanent establishment of that person which is situated outside the Republic; and
 - (bb) that amount is not subject to any taxes on income payable to any sphere of government of any country other than the Republic; or
 - (ii) that person is not a resident and that exchange item is attributable to a permanent establishment of that person which is situated in the Republic.
- (3) For the purposes of—
- (a) paragraph (i) of subsection (2), any amount granted to a person by way of pension or annuity must be deemed to have been received by or to have accrued to that person in respect of services rendered by that person; and
 - (b) paragraph (j) of subsection (2), an interest in immovable property held by a person includes any equity shares in a company or ownership or the right to ownership of any other entity or a vested interest in any assets of any trust, if—
 - (i) 80 per cent or more of the market value of those equity shares, ownership or right to ownership or vested interest, as the case may be, at the time of disposal thereof, is attributable directly or indirectly to immovable property held otherwise than as trading stock; and
 - (ii) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person) directly or indirectly holds at least 20 per cent of the equity shares in that company or ownership or right to ownership of that other entity.
- (4) An amount is received by or accrues to a person from a source outside the Republic if that amount—
- (a) constitutes a foreign dividend received by or accrued to that person;
 - (b) constitutes interest as defined in section 24J(1) or deemed interest as contemplated in section 8E(2) received by or accrued to that person that is not from a source within the Republic in terms of subsection (2)(b);
 - (c) constitutes a royalty received by or accrued to that person that is not from a source within the Republic in terms of subsection (2)(c) or (d);
 - (d) constitutes an amount received or accrued to that person in respect of the disposal of an asset that is not from a source within the Republic in terms of subsection (2)(j) or (k); or
 - (e) is attributable to any exchange difference determined in terms of section 24I in respect of any exchange item as defined in that section to which that person is a party and is not from a source within the Republic in terms of subsection (2)(l)."
- (2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of amounts received or accrued during years of assessment commencing on or after that date.

Amendment of section 9A of Act 58 of 1962, as substituted by section 12 of Act 35 of 2007 and amended by section 6 of Act 3 of 2008

23. (1) Section 9A of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (3) and (4) of the following subsections:

“(3) Where any amount, or any portion of any amount, of the net income of a controlled foreign company in respect of a foreign tax year of the controlled foreign company may not be remitted to the Republic for the reasons contemplated in subsection (1), there shall be allowed to be deducted from the net income of the controlled foreign company for that foreign tax year an amount equal to so much of the amount or portion which may not be remitted.

(4) The amount or portion which may not be remitted **[during the year of assessment]** as contemplated in subsection (3) shall be deemed to be an amount received by or accrued to the controlled foreign company contemplated in that subsection in the following foreign tax year of [assessment] the controlled foreign company.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.

Amendment of section 9C of Act 58 of 1962, as inserted by section 14 of Act 35 of 2007 and amended by section 7 of Act 3 of 2008, section 12 of Act 60 of 2008 and section 15 of Act 7 of 2010

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

- (a) by the deletion in subsection (1) of the word “and” at the end of the definition of “connected person”;
- (b) by the insertion in subsection (1) after the definition of “connected person” of the following definition:

“**‘equity share’** includes a participatory interest in a portfolio of a collective investment scheme in securities;”;
- (c) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “qualifying share” of the following words:

“**‘qualifying share’**, in relation to any taxpayer, means an equity share **[contemplated in section 41]**, which has been disposed of by the taxpayer or which is treated as having been disposed of by the taxpayer in terms of paragraph 12 of the Eighth Schedule, if the taxpayer immediately prior to such disposal had been the owner of that share for a continuous period of at least three years excluding a share which at any time during that period was—”;
- (d) by the substitution for subsection (2) of the following subsection:

“(2) Any amount other than a dividend ~~or foreign dividend~~ received by or accrued to a taxpayer in respect of a qualifying share shall be deemed to be of a capital nature.”;
- (e) by the substitution for subsection (2A) of the following subsection:

“(2A) Subsection (2) does not apply in respect of so much of the amount received or accrued in respect of the disposal of a qualifying share contemplated in that subsection as does not exceed the expenditure allowed in respect of that share in terms of section **[12J(3)] 12J(2).**”;
- (f) by the substitution in subsection (3)(a) for the words preceding subparagraph (i) of the following words:

“more than 50 per cent of the market value of the equity shares **[, contemplated in section 44,]** of that company was attributable directly or indirectly to immovable property other than—”;
- (g) by the substitution for subsection (6) of the following subsection:

“(6) Where the taxpayer holds identical shares in the same company which were acquired by the taxpayer on different dates and the taxpayer has disposed of any of those shares, the taxpayer shall for the purposes of this section be deemed to have disposed of the shares held by the taxpayer for the longest period of time.”.

(2) Paragraphs (a), (b), (c), (f) and (g) of subsection (1) are deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

(3) Paragraph (d) of subsection (1) comes into operation on 1 April 2012.

(4) Paragraph (e) of subsection (1) comes into operation on 1 January 2012 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001, section 22 of Act 60 of 2001, section 14 of Act 74 of 2002, section 22 of Act 45 of 2003, section 13 of Act 32 of 2004, section 14 of Act 31 of 2005, section 9 of Act 20 of 2006, section 9 of Act 8 of 2007, section 15 of Act 35 of 2007, section 8 of Act 3 of 2008, section 13 of Act 60 of 2008, section 12 of Act 17 of 2009 and section 16 of Act 7 of 2010

25. (1) Section 9D of the Income Tax Act, 1962, is hereby amended—
- (a) by the insertion in subsection (1) after the definition of “foreign business establishment” of the following definition:
- “**‘foreign company’** means any—
- (a) cell or segregated account contemplated in the definition of ‘protected cell company’;
- (b) protected cell company to the extent that—
- (i) specified assets of that company are not segregated into structurally independent cells or segregated accounts as contemplated in paragraph (a) of the definition of ‘protected cell company’; or
- (ii) specified assets and liabilities of that company are not linked or attributed to cells or segregated accounts as contemplated in paragraph (b) of the definition of ‘protected cell company’; or
- (c) foreign company, as defined in section 1, other than a protected cell company;”;
- (b) by the substitution in subsection (1) for the full-stop at the end of the definition of “participation rights” of the expression “; and”;
- (c) by the insertion in subsection (1) after the definition of “participation rights” of the following definition:
- “**‘protected cell company’** means any entity incorporated, established or formed, whether by way of conversion or otherwise, in terms of any law of any country other than the Republic—
- (a) if the principal trading activities of that entity constitute the business of an insurer; and
- (b) where that law makes provision for—
- (i) the segregation of specified assets of that entity into structurally independent cells or segregated accounts;
- (ii) the linking or attribution of specified assets and liabilities to those cells or segregated accounts; or
- (iii) separate participation rights in respect of each such cell or segregated account,
- irrespective of whether or not that law provides that the establishment or formation of a cell or segregated account creates a legal person distinct from that entity.”;
- (d) by the substitution in subsection (2A) for the words following subparagraph (iv) of paragraph (c) of the proviso of the following words:
- “where that controlled foreign company and that other controlled foreign company form part of the same group of companies, unless **[any resident has elected in terms of subsection (12) that the provisions of subsection (9) shall not apply in respect of the net income of that other controlled foreign company for the relevant foreign tax year or]** that interest, rental, royalty, other income, adjusted amount, exchange difference, reduction or discharge is taken into account to determine the net income of that other controlled foreign company;”;
- (e) by the deletion in subsection (2A) of paragraph (i) of the proviso;
- (f) by the substitution in subsection (6) for the words preceding the proviso of the following words:
- “The net income of a controlled foreign company in respect of a foreign tax year shall be determined in the functional currency of that controlled foreign company and shall, for purposes of determining the amount to be included in the income of any resident during any year of assessment under the provisions of this section, be translated to the currency of the

- Republic by applying the average exchange rate for that **[year of assessment] foreign tax year**";
- (g) by the substitution in subsection (9) for the words preceding paragraph (b) of the following words:
- “[In] Subject to subsection (9A), in determining the net income of [the]** 5
a controlled foreign company in terms of subsection (2A), there must not
be taken into account any amount which—”;
- (h) by the substitution in subsection (9) for paragraph (b) of the following paragraph:
- “(b) is attributable to any foreign business establishment of that** 10
controlled foreign company (whether or not as a result of the
disposal or deemed disposal of any assets forming part of that
foreign business establishment) and, in determining that amount
and whether that amount is attributable to a foreign business
establishment— 15
- (i) that foreign business establishment must be treated as if that
foreign business establishment were a distinct and separate
enterprise engaged in the same or similar activities under the
same or similar conditions and dealing wholly independently 20
with the controlled foreign company of which the foreign
business establishment is a foreign business establishment;
and
- (ii) that determination must be made as if the amount arose in the
context of a transaction, operation, scheme, agreement or
understanding that was entered into on the terms and condi- 25
tions that would have existed had the parties to that transac-
tion, operation, scheme, agreement or understanding been
independent persons dealing at arm’s length;”;
- (i) by the substitution in subsection (9)(f) for subitem (A) of item (bb) of the following subitem:
- “(A) excluded from the application of this section in terms of this** 30
paragraph or section [10(1)(k)(ii)(dd)] 10B(2)(a), (b) or (c);”;
- (j) by the deletion in subsection (9) of the proviso to paragraph (fA);
- (k) by the insertion after subsection (9) of the following subsection:
- “(9A) (a) Any amount which is attributable to a foreign business** 35
establishment of a controlled foreign company as contemplated in
subsection (9)(b) must, notwithstanding that subsection, be taken into
account in determining the net income of that controlled foreign
company if that amount—
- (i) is derived from the disposal of goods by that controlled foreign 40
company where those goods will be acquired directly or indirectly
by a connected person (in relation to that controlled foreign
company) who is a resident, unless—
- (aa) the aggregate amount of tax payable to all spheres of 45
government of any country other than the Republic by the
controlled foreign company in respect of the foreign tax year
of that controlled foreign company is more than 50 per cent of
the amount of normal tax that would have been payable in
respect of any taxable income of the controlled foreign
company had the controlled foreign company been a resident 50
for that foreign tax year; or
- (bb) that amount is attributable to a permanent establishment of the
controlled foreign company;
- (ii) is derived from any service performed by that controlled foreign 55
company to a connected person (in relation to that controlled
foreign company) who is a resident, unless that service is performed
outside the Republic and—
- (aa) the service relates directly to the creation, extraction, produc- 60
tion, assembly, repair or improvement of goods utilised within
one or more countries other than the Republic;

- (bb) the service relates directly to the sale or marketing of goods of a connected person (in relation to that controlled foreign company) who is a resident and those goods are sold to persons who are not connected persons in relation to that controlled foreign company for physical delivery to customers' premises situated within the country of residence of that controlled foreign company; 5
 - (cc) the service is rendered mainly in the country of residence of that controlled foreign company for the benefit of customers that have premises situated in that country; or 10
 - (dd) to the extent that no deduction is allowed of any amount paid by that connected person to that controlled foreign company in respect of the service;
 - (iii) arises in respect of a financial instrument—
 - (aa) unless that financial instrument is attributable to the principal trading activities of the foreign business establishment and those principal trading activities—
 - (A) constitute the activities of a bank, financial service provider or insurer; and
 - (B) do not constitute the activities of a treasury operation or captive insurer; 20
 - (bb) unless—
 - (A) that amount is attributable to any exchange difference determined in terms of section 24I in respect of that financial instrument; 25
 - (B) the exchange difference contemplated in subitem (A) arises in the ordinary course of business of the principal trading activities of that foreign business establishment; and
 - (C) the principal trading activities contemplated in subitem (B) do not constitute the activities of a treasury operation or captive insurer; or 30
 - (cc) to the extent that the total of—
 - (A) those amounts arising in respect of financial instruments attributable to activities of that foreign business establishment; and 35
 - (B) amounts arising from exchange gains determined in terms of section 24I attributable to activities of that foreign business establishment, other than amounts in respect of which paragraphs (e) to (fB) of subsection (9) apply, does not exceed five per cent of the total of all amounts received by or accrued to the controlled foreign company that are attributable to that foreign business establishment; 40
 - (iv) arises by way of rental in respect of any movable property, unless that movable property is leased by the controlled foreign company in terms of—
 - (aa) an operating lease; and
 - (bb) a lease that constitutes a financial instrument; 45
 - (v) arises in respect of the use or right of use of or permission to use any intellectual property as defined in section 23I, unless that controlled foreign company directly and regularly creates, develops or substantially upgrades any intellectual property as defined in section 23I which gives rise to that amount; 50
 - (vi) is a capital gain determined in respect of the disposal or deemed disposal of any intellectual property as defined in section 23I unless—
 - (aa) that controlled foreign company directly and regularly creates, develops or substantially upgrades any intellectual property as defined in section 23I which gives rise to that amount; and 55

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- (bb) that intellectual property does not constitute property which, if that controlled foreign company were a resident, would constitute tainted intellectual property as defined in section 23I in relation to that controlled foreign company; or
 - (vii) is in the form of an insurance premium, unless that amount is attributable to the principal trading activities of the foreign business establishment and those principal trading activities—
 - (aa) constitute the activities of an insurer; and
 - (bb) do not constitute the activities of a captive insurer:
- Provided that if any amount which is attributable to a foreign business establishment of a controlled foreign company as contemplated in subsection (9)(b) is, solely as a result of the application of subparagraph (iii) of this paragraph, not taken into account in determining the net income of that controlled foreign company, that amount must be so taken into account—
- (A) to the extent that a deduction is allowed in respect of any other amount incurred by a connected person (in relation to that controlled foreign company) who is a resident; and
- (B) where that amount is attributable to that other amount.
- (b) For the purposes of—
 - (i) item (aa) of paragraph (a)(i), the aggregate amount of tax payable contemplated in that item must be determined—
 - (aa) after taking into account any applicable agreement for the prevention of double taxation and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic; and
 - (bb) after disregarding any loss in respect of a year other than a year contemplated in that item or from a company other than a controlled foreign company contemplated in that item;
 - (ii) item (bb) of paragraph (a)(i), in determining whether an amount is attributable to a permanent establishment of a controlled foreign company—
 - (aa) that permanent establishment must be treated as if that permanent establishment were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the controlled foreign company of which it is a permanent establishment; and
 - (bb) that determination must be made as if the amount arose in the context of a transaction, operation, scheme, agreement or understanding that was entered into on the terms and conditions that would have existed had the parties to that transaction been independent persons dealing at arm's length;
 - (iii) items (aa) and (bb) of paragraph (a)(iii), where the principal trading activities of a foreign business establishment do not constitute the activities of a treasury operation, the principal trading activities of that foreign business establishment must be deemed to constitute the activities of a treasury operation where—
 - (aa) less of those principal trading activities are conducted in the country in which the foreign business establishment is located than in any other single country;
 - (bb) those principal trading activities do not involve the regular and continuous acceptance of deposits from or the provision of credit to clients who are not connected persons in relation to that controlled foreign company; or
 - (cc) less than 50 per cent of the amounts attributable to the activities of the foreign business establishment are derived from those principal trading activities with respect to clients who are not connected persons in relation to that controlled foreign company;

- (iv) items (aa) and (bb) of paragraph (a)(iii) and paragraph (a)(vii), where the principal trading activities of a foreign business establishment do not constitute the activities of a captive insurer, the principal trading activities of that foreign business establishment must be deemed to constitute the activities of a captive insurer where—
 - (aa) less of those principal trading activities are conducted in the country in which that foreign business establishment is located than in any other single country;
 - (bb) those principal trading activities do not involve the regular transaction of business as an insurer with clients who are not connected persons in relation to that controlled foreign company; or
 - (cc) less than 50 per cent of the amounts attributable to activities of that foreign business establishment are derived from those principal trading activities with respect to clients who are not connected persons in relation to that controlled foreign company; and
 - (v) paragraph (a)(iv), ‘**operating lease**’ means a lease of movable property concluded by a lessor in the ordinary course of business of letting such property if—
 - (aa) such property may be hired by members of the general public directly from that lessor in terms of such a lease, for a period of no more than five years;
 - (bb) either—
 - (A) the cost of maintaining such property and of carrying out repairs thereto required in consequence of normal wear and tear is ultimately borne by the lessor; or
 - (B) the activities of maintaining and repairing such property that are required in consequence of normal wear and tear are performed by the lessor; and
 - (cc) subject to any claim that the lessor may have against the lessee by reason of the lessee’s failure to take proper care of the property, the risk of destruction or loss of or other disadvantage to such property is not assumed by the lessee.”;
 - (l) by the deletion of subsections (10), (12) and (13);
 - (m) by the addition after subsection (13) of the following subsection:

“(14) Any resident who makes an election contemplated in subsection (12) or (13) may also elect that the further proviso to subsection (2A) must not apply in respect of the foreign tax year in respect of which the election contemplated in subsection (12) or (13) is made.”; and
 - (n) by the deletion of subsection (14).
- (2) Paragraphs (a), (b), (c) and (f) of subsection (1) come into operation on 1 January 2012 and apply in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.
- (3) Paragraphs (d), (e), (g), (h), (i), (j), (k), (l) and (n) of subsection (1) come into operation on 1 April 2012 and apply in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.
- (4) Paragraph (m) of subsection (1) is deemed to have come into operation on 1 January 2011 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment—
- (a) ending on or after that date; and
 - (b) in respect of which a return for the assessment of tax is furnished to the Commissioner on or after that date.

Insertion of section 9H in Act 58 of 1962

26. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 9G of the following section:

“Change of residence or becoming headquarter company

9H. (1) For the purposes of this section—

‘**asset**’ means an asset as defined in paragraph 1 of the Eighth Schedule;
‘**market value**’ in relation to an asset means the price which could be obtained upon a sale of that asset between a willing buyer and a willing seller dealing at arm’s length in an open market.

(2) Subject to subsection (3), where a person ceases to be a resident or becomes a headquarter company, that person must be treated as having—

- (a) disposed of each of that person’s assets on the date immediately before the day on which that person so ceases to be a resident or becomes a headquarter company for an amount received or accrued equal to the market value of the asset on that date; and
- (b) reacquired each of those assets immediately after the time of the disposal contemplated in paragraph (a) and at an expenditure equal to the market value contemplated in that paragraph.

(3) Subsection (2) does not apply in respect of an asset of a person where that asset constitutes—

- (a) immovable property, any interest in immovable property or any right to or in immovable property situated in the Republic as contemplated in paragraph 2(2) of the Eighth Schedule and held by that person;
- (b) any asset which will, after the person ceases to be a resident or becomes a headquarter company as contemplated in subsection (2), be attributable to a permanent establishment of that person in the Republic;
- (c) any qualifying equity share contemplated in section 8B that was granted to that person less than five years before the date on which that person ceases to be a resident or becomes a headquarter company as contemplated in subsection (2);
- (d) any equity instrument contemplated in section 8C, which had not yet vested as contemplated in that section at the time that the person ceases to be a resident or becomes a headquarter company as contemplated in subsection (2); or
- (e) any right of that person to acquire any marketable security contemplated in section 8A.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Insertion of section 9I in Act 58 of 1962

27. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 9H of the following section:

“Headquarter companies

9I. (1) Any company that—

- (a) is a resident; and
- (b) complies with the requirements prescribed by subsection (2), may elect in the form and manner determined by the Commissioner to be a headquarter company for a year of assessment of that company.

(2) A company complies with the requirements contemplated in subsection (1)(b) for a year of assessment of that company if—

- (a) for the duration of that year of assessment and of all previous years of assessment of the company, each shareholder in the company (whether alone or together with any other company forming part of the same group of companies as that shareholder) held 10 per cent or more of the equity shares and voting rights in that company; 5
- (b) at the end of that year of assessment and of all previous years of assessment of that company, 80 per cent or more of the cost of the total assets of the company was attributable to one or more of the following: 10
- (i) any interest in equity shares in;
 - (ii) any amount loaned or advanced to; or
 - (iii) any intellectual property as defined in section 23I(1) that is licensed by that company to,
- any foreign company in which that company (whether alone or together with any other company forming part of the same group of companies as that company) held at least 10 per cent of the equity shares and voting rights: Provided that in determining the total assets of the company, there must not be taken into account any amount in cash or in the form of a bank deposit payable on demand; and 15
- (c) where the gross income of that company for that year of assessment exceeds R5 million, 50 per cent or more of that gross income consisted of amounts in the form of one or both of the following: 20
- (i) any rental, dividend, interest, royalty or service fee paid or payable by any foreign company contemplated in paragraph (b); or
 - (ii) any proceeds from the disposal of any interest contemplated in paragraph (b)(i) or of any intellectual property contemplated in paragraph (b)(iii): 25
- Provided that in determining the gross income of the company, there must not be taken into account any exchange difference determined in terms of section 24I in respect of any exchange item as defined in that section to which that company is a party. 30
- (3) An election made by a company in terms of subsection (1) is effective from the commencement of the year of assessment in respect of which that election is made.
- (4) A headquarter company must submit to the Minister an annual report providing the Minister with the information that the Minister may prescribe within such time and containing such information as the Minister may prescribe.”. 35
- (2) Subsection (1) is deemed to have come into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date. 40

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, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 1 of Act 49 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, section 8 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, section 10 of Act 20 of 2006, section 10 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, section 9 of Act 3 of 2008, section 16 of Act 60 of 2008, section 13 of Act 17 of 2009 and section 18 of Act 7 of 2010

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

(a) by the substitution in subsection (1)(cA)(i) for the words preceding item (aa) of the following words:

“any institution, board or body (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), or the Companies Act, 2008 (Act No. 71 of 2008), any co-operative, close corporation, trust or water services provider, and any Black tribal authority, community authority, Black regional authority or Black territorial authority contemplated in section 2 of the Black Authorities Act, 1951 (Act No. 68 of 1951)) established by or under any law and which, in the furtherance of its sole or principal object—”;

(b) by the substitution in subsection (1)(cN)(ii)(dd) for subitem (ii) of the following subitem:

“(ii) **[R150 000]** R200 000;”;

(c) by the substitution in subsection (1)(cO)(iv) for item (bb) of the following item:

“(bb) **[R100 000]** R120 000;”;

(d) by the substitution in subsection (1)(e)(i) for item (bb) of the following item:

“(bb) a share block company **[established in terms of]** as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980), from its shareholders; or”;

(e) by the substitution in subsection (1)(e)(i)(cc) for the words preceding subitem (A) of the following words:

“any other association of persons (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), or the Companies Act, 2008 (Act No. 71 of 2008), any co-operative, close corporation and trust, but including a company contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), and a non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008)) from its members, where the Commissioner is satisfied that, subject to such conditions as he or she may deem necessary, such association of persons—”;

(f) by the substitution in subsection (1)(gB)(iii) for item (B) of the following item:

“(B) does not exceed an amount of R300 000 **[less the sum of any other amounts which have been excluded from the person’s income by virtue of the exemption conferred by paragraph (x), whether in the current or any previous year of assessment];** and”;

- (g) by the addition to subsection (1)(gB) of the following subparagraph after subparagraph (iii):
 “(iv) compensation paid in terms of section 17 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996);”;
- (h) by the insertion in subsection (1) after paragraph (gF) of the following paragraphs: 5
 “(gG) any amount received by or accrued to a person as contemplated in subparagraph (ii) or (iii) of paragraph (d) of the definition of ‘gross income’—
 (i) in the case of a policy that is a risk policy with no cash value or surrender value, if the amount of premiums paid in respect of that policy by the employer of the person has been deemed to be a taxable benefit of the person in terms of the Seventh Schedule since the later of—
 (aa) the date on which the employer or company contemplated in those subparagraphs became the policyholder of that policy; or
 (bb) 1 March 2012,
 unless the amount of the premiums paid was deductible by the person in terms of section 11(a); 10
 (ii) in the case of any other policy, if an amount equal to the aggregate of the amount of any premiums has been included in the income of the person as a taxable benefit in terms of the Seventh Schedule since the date on which the policy was entered into; 15
 (gH) in respect of a policy of insurance contemplated in section 11(w)(ii), where it is not stated that section 11(w)(ii) applies to premiums payable in respect of that policy as contemplated in section 11(w)(ii)(dd)(A) or (B), any amount received or accrued in respect of that policy;”;
- (i) by the insertion in subsection (1) of the following paragraph after paragraph (h): 20
 “(hA) any amount received by or accrued to the holder of a debt instrument as defined in section 23K(1)—
 (i) if the holder of that debt instrument is a company that forms part of the same group of companies, as defined in section 41, as the issuer of that debt instrument; and
 (ii) to the extent that the amount is attributable to any amount of interest as defined in section 23K(1) that is not deductible as a result of the application of section 23K;”;
- (j) by the substitution in subsection (1)(i)(xv)(bb) for subitems (A) and (B) of the following subitems: 25
 “(A) in the case of any person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of **[R32 000]** R33 000; or
 (B) in any other case, the amount of **[R22 300]** R22 800;”;
- (k) by the substitution in subsection (1) for paragraph (i) of the following paragraph: 30
 “(i) in the case of any taxpayer who is a natural person, so much of the aggregate of any interest received by or accrued to him or her from a source in the Republic as does not during the year of assessment exceed—
 (i) in the case of any person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of R33 000; or
 (ii) in any other case, the amount of R22 800;”;
- (l) by the substitution in subsection (1)(k)(i) for the words preceding the proviso of the following words: 35
 “dividends (other than **[foreign dividends or]** dividends paid or declared by a headquarter company) received by or accrued to or in favour of any person”; 40
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- (m) by the deletion in subsection (1)(k) of item (cc) of the proviso to subparagraph (i);
- (n) by the substitution in subsection (1)(k)(i) for item (dd) of the proviso of the following paragraph:
 “(dd) to any dividend in respect of a restricted equity instrument as defined in section 8C, unless—
 (A) the restricted equity instrument constitutes an equity share, other than an equity share that would have constituted a hybrid equity instrument as defined in section 8E(1) but for the three-year period requirement contemplated in that definition;
[or]
 (B) the dividend constitutes an equity instrument as defined in that section; or
 (C) the restricted equity instrument constitutes an interest in a trust and, where that trust holds shares, all of those shares constitute equity shares, other than equity shares that would have constituted hybrid equity instruments as defined in section 8E(1) but for the three-year period requirement contemplated in that definition;”;
- (o) by the addition in subsection (1)(k) to the proviso to subparagraph (i) of the following paragraphs:
 “(ee) to any dividend received by or accrued to or in favour of a company in consequence of—
 (A) any cession; or
 (B) any right of that company acquired in consequence of any cession;
 (ff) to any dividends received by or accrued to or in favour of a company in respect of a share held by that company to the extent that the aggregate of those dividends does not exceed the aggregate of any amounts incurred by that company by way of direct or indirect compensation for any distributions in respect of any share borrowed by the company where that share so borrowed constitutes an identical asset as defined in paragraph 32(2) of the Eighth Schedule in relation to the share so held; or
 (gg) to any dividends received by or accrued to or in favour of a company in respect of a share borrowed by that company;”;
- (p) by the deletion in subsection (1)(k) of subparagraph (ii);
- (q) by the substitution in subsection (1)(t) for subparagraph (x) of the following subparagraph:
 “(x) of the Development Bank of Southern Africa established on 23 June 1983[.];”;
- (r) by the insertion in subsection (1)(t) of the following subparagraph:
 “(xvi) of—
 (aa) the compensation fund established by section 15 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);
 (bb) the reserve fund established by section 19 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); and
 (cc) a mutual association licensed in terms of section 30 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), to carry on the business of insurance of employers against their liabilities to employees, if the compensation paid by the mutual association is identical to compensation that would have been payable in similar circumstances in terms of that Act;”;
- (s) by the deletion in subsection (1) of paragraph (zG).
- (2) Paragraphs (a), (e), (l) and (n) of subsection (1) are deemed to have come into operation on 1 January 2011.

(3) Paragraphs (b), (c), (f) and (j) of subsection (1) are deemed to have come into operation on 1 March 2011 and apply in respect of amounts received or accrued on or after that date.

(4) Paragraphs (g) and (h) of subsection (1) come into operation on 1 March 2012 and apply in respect of amounts received or accrued on or after that date. 5

(5) Paragraph (i) of subsection (1) is deemed to have come into operation on 3 June 2011 and applies in respect of years of assessment ending on or after that date.

(6) Paragraph (k) of subsection (1) comes into operation on 1 March 2012.

(7) Paragraphs (m), (o) and (q) of subsection (1) come into operation on 1 April 2012.

(8) Paragraph (p) of subsection (1) comes into operation— 10

(a) insofar as it applies to any person that is a natural person, deceased estate, insolvent estate or special trust, on 1 March 2012 and applies in respect of years of assessment commencing on or after that date; and

(b) insofar as it applies to any person that is a person other than a natural person, deceased estate, insolvent estate or special trust, on 1 April 2012 and applies 15 in respect of years of assessment commencing on or after that date.

(9) Paragraph (r) of subsection (1) comes into operation on 1 January 2012.

(10) Paragraph (s) of subsection (1) comes into operation on 1 January 2012 and applies in respect of all receipts and accruals in respect of films of which principal photography commences on or after that date. 20

Insertion of section 10B in Act 58 of 1962

29. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 10A of the following section:

“Exemption of foreign dividends and dividends paid or declared by headquarter companies 25

10B. (1) For the purposes of this section, ‘foreign dividend’ means any—

(a) foreign dividend as defined in section 1; or

(b) dividend paid or declared by a headquarter company. 30

(2) Subject to subsection (4), there must be exempt from normal tax any foreign dividend received by or accrued to a person—

(a) if that person (whether alone or together with any other company forming part of the same group of companies as that person) holds at least 10 per cent of the total equity shares and voting rights in the company declaring the foreign dividend; 35

(b) if that person is a company and the foreign dividend is paid or declared by another foreign company that is resident in the same country as that company;

(c) who is a resident to the extent that the foreign dividend does not exceed the aggregate of all amounts which are included in the income of that resident in terms of section 9D in any year of assessment, which relate to the net income of— 40

(i) the company declaring the foreign dividend; or

(ii) any other company which has been included in the income of that resident in terms of section 9D by virtue of that resident’s participation rights in that other company held indirectly through the company declaring the foreign dividend, 45

reduced by—

(aa) the amount of any foreign tax payable in respect of the amounts so included in that resident’s income; and 50

(bb) so much of all foreign dividends received by or accrued to that resident at any time from any company contemplated in subparagraph (i) or (ii), as was—

(A) exempt from tax in terms of paragraph (a), (b) or (d); or

(B) previously not included in the income of that resident by virtue of any prior inclusion in terms of section 9D; or 55

(d) to the extent that the foreign dividend is received by or accrues to that person in respect of a listed share and does not consist of a distribution of an asset *in specie*.

(3) In addition to the exemption provided for in subsection (2), there must be exempt from normal tax so much of the amount of the aggregate of any foreign dividends received by or accrued to a person during a year of assessment as—

- (a) is not exempt from normal tax in terms of subsection (2) for that year of assessment; and
- (b) does not during the year of assessment exceed an amount determined in accordance with the following formula:

$$A = B \times C$$

in which formula:

- (i) 'A' represents the amount to be exempted for a year of assessment in terms of this paragraph;
- (ii) 'B' represents—
 - (aa) where the person is a natural person, deceased estate, insolvent estate or special trust, the ratio of the number 30 to the number 40; or
 - (bb) where the person is a person other than a natural person, deceased estate, insolvent estate or special trust, the ratio of the number 18 to the number 28; and
- (iii) 'C' represents the aggregate of any foreign dividends received by or accrued to the person during a year of assessment that is not exempt from normal tax in terms of subsection (2).

(4) Subsections (2)(a) and (2)(b) do not apply in respect of any foreign dividend received by or accrued to any person—

- (a) if—
 - (i) (aa) any amount of that foreign dividend is determined directly or indirectly with reference to; or
 - (bb) that foreign dividend arises directly or indirectly from, any amount payable by any person to any other person; and
 - (ii) the amount so paid or payable is deductible by the person and—
 - (aa) is not subject to normal tax in the hands of that other person; or
 - (bb) where that other person is a controlled foreign company, is not taken into account in determining the net income, contemplated in section 9D(2A), of that controlled foreign company; or
- (b) from any portfolio contemplated in paragraph (e)(ii) of the definition of 'company' in section 1.

(5) The exemptions from tax provided by this section do not extend to any payments out of any foreign dividend received by or accrued to any person."

(2) Subsection (1) comes into operation—

- (a) insofar as it applies to any person that is a natural person, deceased estate, insolvent estate or special trust, on 1 March 2012 and applies in respect of dividends received or accrued on or after that date; and
- (b) insofar as it applies to any person that is a person other than a natural person, deceased estate, insolvent estate or special trust, on 1 April 2012 and applies in respect of dividends received or accrued on or after that date.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, section 9 of Act 16 of 2004, section 16 of Act 32 of 2004, section 6 of Act 9 of 2005, section 18 of Act 31 of 2005, section 11 of Act 20 of 2006, section 11 of Act 8 of 2007, section 17 of Act 35 of 2007, section 10 of Act 3 of 2008, section 18 of Act 60 of 2008, section 14 of Act 17 of 2009 and section 19 of Act 7 of 2010

30. (1) Section 11 of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of paragraph (bA);
- (b) by the deletion of paragraph (hA);
- (c) by the substitution in paragraph (n)(i)(aa) for subitem (A) of the following subitem:
 - “(A) 15 per cent of an amount equal to the amount remaining after deducting from, or setting off against, the income derived by the taxpayer during the year of assessment (excluding income derived from any retirement-funding employment (being the income or part thereof referred to in the definition of ‘retirement-funding employment’ in section 1), and any retirement fund lump sum benefit **[and]**, retirement fund lump sum withdrawal benefit and severance benefit) the deductions or assessed losses admissible against such income under this Act (excluding this paragraph, sections 17A, 18 and 18A and items (c) to (i), inclusive, of paragraph 12(1) of the First Schedule); or”;
- (d) by the substitution for paragraph (w) of the following paragraph:
 - “(w) expenditure incurred by a taxpayer in respect of any premiums payable under a policy of insurance (other than a policy of insurance solely against an accident as defined in section 1 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)) of which the taxpayer is the policyholder, where—
 - (i) (aa) the policy relates to the death, disablement or severe illness of an employee or director of the taxpayer; and
 - (bb) the amount of expenditure incurred by the taxpayer in respect of the premiums payable under the policy is deemed to be a taxable benefit granted to an employee or director of the taxpayer in terms of paragraph 2(k) of the Seventh Schedule; or
 - (ii) (aa) the taxpayer is insured against any loss by reason of the death, disablement or severe illness of an employee or director of the taxpayer;
 - (bb) the policy is a risk policy with no cash value or surrender value;
 - (cc) the policy is not the property of any person other than the taxpayer at the time of the payment of the premium: Provided that any premium paid shall not be disallowed as a deduction by reason of the policy being held by a creditor of the taxpayer as security for a debt of the taxpayer; and
 - (dd) in respect of any policy entered into—

- (A) on or after 1 March 2012, the policy agreement states that this paragraph applies in respect of premiums payable under that policy; or
- (B) before 1 March 2012, it is stated in an addendum to the policy agreement by no later than 31 August 2012 that this paragraph applies in respect of premiums payable under that policy;”.

(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 January 2012 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 March 2011.

(4) Paragraph (d) of subsection (1) comes into operation on 1 March 2012 and applies in respect of premiums incurred on or after that date.

Repeal of section 11C of Act 58 of 1962

31. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 11C.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of section 11D of Act 58 of 1962

32. (1) Section 11D of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (1) to (10) of the following subsections:

“(1) For the purposes of this section ‘**research and development**’ means—

- (a) systematic investigative or systematic experimental activities of which the result is uncertain for the purpose of—
 - (i) discovering non-obvious scientific or technological knowledge; or
 - (ii) creating—
 - (aa) an invention as defined in section 2 of the Patents Act, 1978 (Act No. 57 of 1978);
 - (bb) a design as defined in section 1 of the Designs Act, 1993 (Act No. 195 of 1993), that qualifies for registration under section 14 of that Act;
 - (cc) a computer program as defined in section 1 of the Copyright Act, 1978 (Act No. 98 of 1978); or
 - (dd) knowledge essential to the use of such invention, design or computer program; or
- (b) developing or significantly improving any invention, design, computer program or knowledge contemplated in paragraph (a) if that development or improvement relates to any—
 - (i) new or improved function;
 - (ii) improvement of performance;
 - (iii) improvement of reliability; or
 - (iv) improvement of quality,
 of that invention, design, computer program or knowledge.

(2) For the purposes of determining the taxable income of a taxpayer in respect of any year of assessment there shall be allowed as a deduction from the income of that taxpayer an amount equal to so much of any expenditure actually incurred by that taxpayer directly and solely in respect of research and development undertaken in the Republic if that expenditure is incurred—

- (a) in the production of income; and
- (b) in the carrying on of any trade.

(3) In addition to the deduction allowable in terms of subsection (2), a taxpayer that is a company may deduct an amount equal to 50 per cent of the expenditure contemplated in subsection (2) if—

- (a) that research and development is approved by the Minister of Science and Technology in terms of subsection (9);
- (b) that expenditure is incurred in respect of research and development carried on by that taxpayer; and

- (c) that expenditure is incurred on or after the date of receipt of the application by the Department of Science and Technology for approval of that research and development in terms of subsection (9).
- (4) In addition to the deduction allowable in terms of subsection (2), where any amount of expenditure is incurred by a taxpayer to fund expenditure of another person carrying on research and development on behalf of that taxpayer, the taxpayer may deduct an amount equal to 50 per cent of the expenditure contemplated in subsection (2)—
- (a) if that research and development is approved by the Minister of Science and Technology in terms of subsection (9);
- (b) that expenditure is incurred in respect of research and development carried on by that taxpayer;
- (c) to the extent that the other person carrying on the research and development is—
- (i) (aa) an institution, board or body that is exempt from normal tax under section 10(1)(cA); or
- (bb) the Council for Scientific and Industrial Research; or
- (ii) a company forming part of the same group of companies, as defined in section 41, if the company that carries on the research and development does not claim a deduction under subsection (3); and
- (d) that expenditure is incurred on or after the date of receipt of the application by the Department of Science and Technology for approval of that research and development in terms of subsection (9).
- (5) Where a company funds expenditure incurred by another company as contemplated in subsection (4)(c)(ii), any deduction under that subsection by the company that funds the expenditure must be limited to an amount of 50 per cent of the actual expenditure incurred directly and solely in respect of that research and development carried on by the other company that is being funded.
- (6) For the purposes of subsections (3) and (4), a person carries on research and development if that person may determine or alter the methodology of the research.
- (7) Where any government grant is received by or accrues to a taxpayer to fund expenditure in respect of any research and development, an amount equal to the amount that is funded must not be taken into account for purposes of the deduction under subsection (3) or (4).
- (8) No deduction shall be allowed under this section for expenditure incurred in respect of—
- (a) market research, market testing or sales promotion;
- (b) administration, financing, compliance or similar expenditure;
- (c) routine testing, analysis, collection of information or quality control in the normal course of business;
- (d) development of internal business processes unless those internal business processes are mainly intended for sale or for granting the use or right of use or the grant of permission to use thereof;
- (e) social science research, including the arts and humanities;
- (f) oil and gas or mineral exploration or prospecting, except research and development carried on to develop technology used for that exploration or prospecting;
- (g) the creation or development of financial instruments or financial products;
- (h) the creation or enhancement of trademarks or goodwill; and
- (i) any expenditure contemplated in section 11(gB) or (gC).
- (9) The Minister of Science and Technology must approve any research and development being carried on or funded for the purposes of subsections (3) and (4) having regard to—
- (a) the innovative nature of the research and development;
- (b) the extent to which carrying on that research and development requires specialised skills; and

- (c) such other criteria as the Minister of Science and Technology in consultation with the Minister of Finance may prescribe by regulation.
- (10) If research and development is approved under subsection (9) and—
- (a) any material fact changes which would have had the effect that approval under subsection (9) would not have been granted had that fact been known to the Minister of Science and Technology at the time of granting approval; or
- (b) the taxpayer carrying on that research and development fails to submit a report to the committee as required by subsection (13),
- the Minister of Science and Technology may, after taking into account the recommendations of the committee, withdraw the approval granted in respect of that research and development with effect from a date specified by that Minister.”.

(2) Subsection (1) comes into operation on 1 April 2012 unless a later date is determined by the Minister by notice in the *Gazette* and applies in respect of expenditure incurred in respect of research and development on or after 1 April 2012 or such later date determined by the Minister by notice in the *Gazette* but before 1 April 2022.

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, section 13 of Act 21 of 1995, section 10 of Act 46 of 1996, section 18 of Act 59 of 2000, section 11 of Act 19 of 2001, section 15 of Act 30 of 2002, section 30 of Act 45 of 2003, section 8 of Act 9 of 2005, section 20 of Act 31 of 2005, section 14 of Act 8 of 2007, section 22 of Act 35 of 2007, section 20 of Act 60 of 2008 and section 19 of Act 17 of 2009

33. (1) Section 12C of the Income Tax Act, 1962, is hereby amended—

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

“(gA) new or unused machinery or plant, which is owned by a taxpayer, or acquired by a taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and is first brought into use by that taxpayer for purposes of research and development as defined in section 11D;”;

- (b) by the substitution in subsection (1) for paragraph (h) of the following paragraph:

“(h) improvement (other than repairs) to any machinery, plant, implement, utensil or article referred to in paragraph (a), (b), (c), (d) [or], (e) or (gA), which is during the year of assessment used as contemplated in that paragraph;”;

- (c) by the addition in subsection (1) to the proviso of the following paragraph:

“(d) any new or unused machinery or plant referred to in paragraph (gA) of this subsection or improvement referred to in paragraph (h) of this subsection, is or was—

(i) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement on or after 1 January 2012; and

(ii) brought into use by the taxpayer on or after that date for the purpose of research and development as defined in section 11D;”;

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

“: Provided further that where any machinery, plant, implement, utensil, article or improvement qualifying for an allowance under this section is mounted on or affixed to any concrete or other foundation or supporting structure and the Commissioner is satisfied that—

- (a) the foundation or supporting structure is designed for such machinery, plant, implement, utensil, article or improvement and constructed in such manner that it is or should be regarded as being

- integrated with the machinery, plant, implement, utensil, article or improvement; and
- (b) the useful life of the foundation or supporting structure is or will be limited to the useful life of the machinery, plant, implement, utensil, article or improvement mounted thereon or affixed thereto, the foundation or supporting structure shall be deemed to be a part of the machinery, implement, utensil, article or improvement mounted thereon or affixed thereto”.

(2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on 1 April 2012 unless a later date is determined by the Minister by notice in the *Gazette* and apply in respect of expenditure incurred in respect of research and development on or after 1 April 2012 or such later date determined by the Minister by notice in the *Gazette* but before 1 April 2022.

Amendment of section 12E of Act 58 of 1962, as amended by section 12 of Act 19 of 2001, section 17 of Act 30 of 2002, section 21 of Act 74 of 2002, section 37 of Act 12 of 2003, section 31 of Act 45 of 2003, section 9 of Act 9 of 2005, section 21 of Act 31 of 2005, section 24 of Act 9 of 2006, section 14 of Act 20 of 2006, section 15 of Act 8 of 2007, section 25 of Act 35 of 2007, section 13 of Act 3 of 2008, section 23 of Act 60 of 2008, section 21 of Act 17 of 2009 and section 23 of Act 7 of 2010

34. (1) Section 12E of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (4)(c) for subparagraph (i) of the following subparagraph:

“(i) any income in the form of dividends, foreign dividends, royalties, rental derived in respect of immovable property, annuities or income of a similar nature;”;

- (b) by the substitution in subsection (4) for paragraph (d) of the following paragraph:

“(d) ‘**personal service**’, in relation to a company, co-operative or close corporation, means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, consulting, draftsmanship, education, engineering, financial service broking, health, information technology, journalism, law, management, real estate broking, research, sport, surveying, translation, valuation or veterinary science, if—

- (i) that service is performed personally by any person who holds an interest in that company, co-operative or close corporation; and

- (ii) that company, co-operative or close corporation does not throughout the year of assessment employ three or more full-time employees (other than any employee who is a shareholder of the company or member of the co-operative or close corporation, as the case may be, or who is a connected person in relation to a shareholder or member), who are on a full-time basis engaged in the business of that company, co-operative or close corporation of rendering that service.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 April 2012.

Amendment of section 12G of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 29 of Act 60 of 2001, section 22 of Act 74 of 2002 and section 27 of Act 35 of 2007

35. (1) Section 12G of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (9) for paragraph (b) of the following paragraph:

“(b) any company carrying on a qualifying strategic industrial project during any year of **[assessments]** assessment fails to submit a report to the Minister of Trade and Industry, as required in terms of subsection (8); or”;

- (b) by the substitution in the proviso to subsection (9) for the words preceding subparagraph (i) of the following words:

“Provided that where the change in material facts or failure to meet any requirement, as contemplated in paragraph (a), takes place as a result of any event which is outside the control of the company, that Minister may, taking into account the circumstances of that event[,]—”.

(2) Subsection (1) comes into operation on 1 January 2012.

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Amendment of section 12H of Act 58 of 1962, as substituted by section 23 of Act 17 of 2009 and amended by section 25 of Act 7 of 2010

36. Section 12H of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the definition of “registered learnership agreement” of the following paragraph:

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“(a) a contract of apprenticeship entered into before 1 October **[2011]** 2016 and registered in terms of section 18 of the Manpower Training Act, 1981 (Act No. 56 of 1981), if the minimum period of training required in terms of the Conditions of Apprenticeship prescribed in terms of section 13(2)(b) of that Act before the apprentice is permitted to undergo a trade test is more than 12 months; or”; and

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(b) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the definition of “registered learnership agreement” of the following subparagraph:

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“(ii) entered into between a learner and an employer before 1 October **[2011]** 2016;”.

Amendment of section 12I of Act 58 of 1962, as inserted by section 26 of Act 60 of 2008 and amended by section 24 of Act 17 of 2009 and section 26 of Act 7 of 2010

37. (1) Section 12I of the Income Tax Act, 1962, is hereby amended—

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

“(a) (i) 55 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or

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(ii) 100 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status that is located within an industrial development zone; or”;

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

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“(b) (i) 35 per cent of the cost of any new and unused manufacturing asset used in any **[other]** industrial policy project other than an industrial policy project with preferred status; or

(ii) 75 per cent of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status that is located within an industrial development zone.”;

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(c) by the substitution in subsection (2) for the words following paragraph (b) of the following words:

“in the year of assessment during which that asset is first brought into use by the company as owner thereof for the furtherance of the industrial policy project carried on by that company, if that asset was acquired **[or]** and contracted for on or after the date of approval and was brought into use within four years from the date of approval.”;

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

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“(9) Notwithstanding subsection (8), the Minister of Trade and Industry may not approve any industrial project where the potential additional investment and training allowances in respect of that project and all other approved industrial projects (other than those projects where the approval thereof has been withdrawn under subsection (12)), will in the aggregate exceed R20 billion.”; and

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- (e) by the substitution in subsection (19)(e) for subparagraph (vi) of the following subparagraph:

“(vi) any **[decisions]** decision not to withdraw the approval of an industrial policy project, despite any material change in facts.”.

- (2) Paragraphs (a), (b) and (e) of subsection (1) come into operation on 1 January 2012 and apply in respect of projects approved on or after that date.

- (3) Paragraphs (c) and (d) of subsection (1) are deemed to have come into operation on 5 January 2009.

Amendment of section 12J of Act 58 of 1962, as inserted by section 27 of Act 60 of 2008 and amended by section 25 of Act 17 of 2009

38. (1) Section 12J of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the definition of “impermissible trade” of the following paragraph:

“(b) any trade carried on by a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), a long-term insurer as defined in the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), a short-term insurer as defined in the Short-Term Insurance Act, **[2008]** 1998 (Act No. 53 of 1998), and any trade carried on in respect of money-lending or hire-purchase financing;”;

- (b) by the deletion in subsection (1) of paragraph (f) of the definition of “impermissible trade”;

- (c) by the substitution in subsection (1) for paragraph (b) of the definition of “qualifying company” of the following paragraph:

“(b) the company is not a controlled group company in relation to a group of companies **[contemplated in paragraph (d)(i) of the definition of ‘connected person’]**;”;

- (d) by the substitution in subsection (1) for the definition of “qualifying share” of the following definition:

“**‘qualifying share’** means an equity share held by a venture capital company which is issued to that company by a qualifying company, **[unless]** and does not include any share which—

- (a) that venture capital company has an option to dispose of **[the share]**, or the qualifying company has an obligation to redeem **[that share]**, for an amount other than the market value of the share at the time of that disposal or redemption; or

- (b) would have constituted a hybrid equity instrument, as defined in section 8E(1), but for the three-year period requirement contemplated in paragraph (a) of the definition of ‘hybrid equity instrument’ in that section;”;

- (e) by the substitution in subsection (1) for the definition of “qualifying share” of the following definition:

“**‘qualifying share’** means an equity share held by a venture capital company which is issued to that company by a qualifying company, and does not include any share which—

- [(a) that venture capital company has an option to dispose of, or the qualifying company has an obligation to redeem, for an amount other than the market value of the share at the time of that disposal or redemption; or]**

- (b) would have constituted a hybrid equity instrument, as defined in section 8E(1), but for the three-year period requirement contemplated in paragraph (a) of the definition of ‘hybrid equity instrument’ in that section; or

- (c) constitutes a third-party backed share as defined in section 8EA(1);”;

- (f) by the substitution in subsection (1) for the full stop at the end of the definition of “venture capital company” of a semicolon;

- (g) by the insertion in subsection (1) of the following definition:

“**‘venture capital share’** means an equity share held by a taxpayer in a venture capital company which is issued to that taxpayer by a venture capital company, and does not include any share which—

- (a) that taxpayer has an option to dispose of, or the venture capital company has an obligation to redeem, for an amount other than the market value of the share at the time of that disposal or redemption; or
- (b) would have constituted a hybrid equity instrument, as defined in section 8E(1), but for the three-year period requirement contemplated in paragraph (a) of the definition of ‘hybrid equity instrument’ in that section.”;
- (h) by the substitution in subsection (1) for the definition of “venture capital share” of the following definition: 10
- “ ‘venture capital share’ means an equity share held by a taxpayer in a venture capital company which is issued to that taxpayer by a venture capital company, and does not include any share which—
- [(a) that taxpayer has an option to dispose of, or the venture capital company has an obligation to redeem, for an amount other than the market value of the share at the time of that disposal or redemption; or] 15
- (b) would have constituted a hybrid equity instrument, as defined in section 8E(1), but for the three-year period requirement contemplated in paragraph (a) of the definition of ‘hybrid equity instrument’ in that section; or 20
- (c) constitutes a third-party backed share as defined in section 8EA(1).”;
- (i) by the substitution for subsection (2) of the following subsection: 25
- “ (2) [There] Subject to subsections (3), (3A) and (4), there must be allowed as a deduction from the income of a [natural person, a listed company or a controlled group company in relation to a listed company as contemplated in the definition of group of companies in section 41, a deduction determined in terms of subsection (3) in respect of] taxpayer expenditure actually incurred by that [person or company] taxpayer in acquiring [shares] any venture capital share issued to that [person or company] taxpayer by a venture capital company.”; 30
- (j) by the substitution for subsection (3) of the following subsection: 35
- “ (3) (a) Where, during any year of assessment—
- (i) any loan or credit has been used by a taxpayer for the payment or financing of the whole or any portion of any expenditure contemplated in subsection (2); and
- (ii) any portion of that loan or credit is owed by the taxpayer on the last day of the year of assessment, 40
- the amount which may be taken into account as expenditure that qualifies for a deduction in terms of subsection (2) must be limited to the amount for which the taxpayer is in terms of paragraph (b) deemed to be at risk on the last day of the year of assessment.
- (b) For the purposes of paragraph (a), a taxpayer must be deemed to be at risk to the extent that— 45
- (i) the incurral of the expenditure contemplated in subsection (2); or
- (ii) the repayment of any loan or credit (other than any loan or credit contemplated in paragraph (ii) of the proviso to this paragraph) used by the taxpayer for the payment or financing of any expenditure contemplated in subsection (2), 50
- would (having regard to any transaction, agreement, arrangement, understanding or scheme entered into before or after such expenditure is incurred) result in an economic loss to the taxpayer were no income to be received by or accrue to the taxpayer in future years from the disposal of any venture capital share issued to the taxpayer as a result of the incurral of that expenditure: Provided that the taxpayer must not be deemed to be at risk to the extent that— 55
- (aa) the loan or credit is not repayable within a period of five years from the date on which that loan or credit was advanced to the taxpayer; and 60
- (bb) any loan or credit used by the taxpayer for the payment or financing of the whole or any portion of any expenditure

- contemplated in subsection (2) is (having regard to any transaction, agreement, arrangement, understanding or scheme entered into before or after such expenditure is incurred) granted directly or indirectly to the taxpayer by the venture capital company by which the qualifying shares are issued as a result of the incurring of that expenditure.”;
- (k) by the insertion of the following subsection after subsection (3):
- “(3A) If, during any year of assessment—
- (a) a taxpayer incurs expenditure as contemplated in subsection (2); and
- (b) as a result of or immediately after the acquisition of a venture capital share in a venture capital company that taxpayer is a connected person in relation to that venture capital company, no deduction must be allowed in terms of subsection (2) during that year of assessment in respect of any expenditure incurred by the taxpayer in acquiring any venture capital share issued to that taxpayer by that venture capital company.”;
- (l) by the deletion in subsection (5) of paragraphs (c), (d) and (f);
- (m) by the substitution for subsection (6) of the following subsection:
- “(6) If the Commissioner is satisfied that any venture capital company approved in terms of subsection (5) has during a year of assessment [—
- (a)] failed to comply with the provisions of that subsection [; or
- (b) **derived more than 20 per cent of its gross income from investment income as defined in section 12E(4)(c), other than—**
- (i) **dividends from qualifying shares; and**
- (ii) **proceeds derived from investment in qualifying shares],**
- the Commissioner must, after due notice to the company withdraw that approval from the commencement of that year if corrective steps acceptable to the Commissioner are not taken by the company within a period stated in that notice.”;
- (n) by the deletion in subsection (6A) of paragraph (a);
- (o) by the substitution in subsection (6A)(b) for subparagraphs (i) and (ii) of the following subparagraphs:
- “(i) **[R100] R300** million, where the qualifying company was a junior mining company; or
- (ii) **[R10] R20** million, where the qualifying company was a company other than a junior mining company; or”;
- (p) by the substitution in subsection (6A) for paragraph (c) of the following subparagraph:
- “(c) no more than **[15] 20** per cent of the expenditure incurred by the company to acquire qualifying shares held by the company was incurred for qualifying shares issued to the company by any one qualifying company.”.
- (2) Paragraphs (a), (b), (c), (d), (f), (g), (i), (j), (k), (l), (m), (n), (o) and (p) of subsection (1) come into operation on 1 January 2012 and apply in respect of years of assessment commencing on or after that date.
- (3) Paragraphs (e) and (h) of subsection (1) come into operation on 1 October 2012.

Insertion of section 12O in Act 58 of 1962

39. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 12N of the following section:

“Exemption in respect of films

12O. (1) For the purposes of this section—

‘**completion date**’ means the date on which a qualifying film is for the first time in a form in which it can be regarded as ready for copies of it to be made and distributed, for presentation to the general public;

‘**exploitation rights**’ means the right to any receipts and accruals in respect of—

- (a) the use of;
- (b) the right of use of; or
- (c) the granting of permission to use,
- any film to the extent that those receipts and accruals are wholly dependent on profits and losses in respect of the film; 5
- ‘film’** means—
- (a) a feature film;
- (b) a documentary or documentary series; or
- (c) an animation,
- conforming to the requirements stipulated by the Department of Trade and Industry in the Programme Guidelines for the South African Film and Television Production and Co-production Incentive; 10
- ‘National Film and Video Foundation’** means the National Film and Video Foundation established by the National Film and Video Foundation Act, 1997 (Act No. 73 of 1997); and 15
- ‘special purpose corporate vehicle’** means a company responsible for the production of a film as required by the Department of Trade and Industry in terms of the Programme Guidelines for the South African Film and Television Production and Co-production Incentive.
- (2) There must be exempt from normal tax the receipts and accruals in respect of income derived from the exploitation rights of a film— 20
- (a) if the National Film and Video Foundation has approved the film in terms of section 3(c) read with section 4(1) of the National Film and Video Foundation Act, 1997 (Act No. 73 of 1997), as a local production or co-production whereby a film is co-produced in terms of an international co-production agreement between the government of the Republic and the government of another country, which agreement must be subject to the Constitution; 25
- (b) if income is derived from the exploitation rights of the film—
- (i) by a person who acquired the exploitation rights in respect of that film prior to the date that the principal photography of that film commenced; or
- (ii) by a person who acquired the exploitation rights in respect of that film after the date that principal photography of that film commenced but before the completion date of that film if consideration for those exploitation rights was not directly or indirectly paid or applied for the benefit of a person contemplated in subparagraph (i); and 30 35
- (c) to the extent that the income is received or accrues within a period of 10 years after the completion date of that film. 40
- (3) No exemption shall be allowed under this section to a person that is a broadcaster as defined in section 1 of the Broadcasting Act, 1999 (Act No. 4 of 1999), or any person that is a connected person in relation to that broadcaster.
- (4) (a) A special purpose corporate vehicle or collection account manager— 45
- (i) that manages exploitation rights under a collection account management agreement; and
- (ii) that is approved by the Minister for the purpose of this section by notice in the *Gazette*, 50
- must provide a report to the National Film and Video Foundation containing such information, within such time and in such manner as is prescribed by the Minister when income arising from exploitation rights of a film is distributed to a person within a period of 10 years commencing from the completion date of the film. 55
- (b) The National Film and Video Foundation must provide a report annually to the Minister in respect of all films approved in terms of subsection (2)(a) containing such information, within such time and in such manner as is prescribed by the Minister for a period of 10 years commencing from the completion date of a film if— 60
- (i) any income is received or accrues in respect of the film; and
- (ii) the income is eligible for the exemption under subsection (2).

(5) (a) A taxpayer may deduct from the income of the taxpayer an amount in respect of any expenditure incurred to acquire exploitation rights in respect of a film in accordance with paragraph (b).

(b) The amount of the deduction contemplated in paragraph (a) is equal to the amount of any expenditure incurred as contemplated in that paragraph less any amount received or accrued during any year of assessment in respect of that film.

(c) No deduction may be made under this subsection to the extent that the expenditure was funded from a loan, credit or similar financing.

(d) The deduction contemplated in paragraph (a) may only be made in any year of assessment commencing at least two years after the completion date of the film to the extent that the amount of expenditure incurred exceeds the total amount received by or accrued to that taxpayer in respect of the exploitation rights.

(e) Subsection (2) and paragraph (a) of this subsection cease to apply to any income derived from a film in any year of assessment subsequent to the date of a deduction made under paragraph (a) in respect of that film.

(6) (a) In addition to the exemption under subsection (2), any amount received by or accrued to a special purpose corporate vehicle by way of a grant payable by the State under the South African Film and Television Production and Co-production Incentive administered by the Department of Trade and Industry shall be exempt from normal tax subject to section 8(4).

(b) Where a special purpose corporate vehicle that received a grant contemplated in paragraph (a), or to whom such grant has accrued, pays the whole or any portion of the amount of the grant to another person pursuant to any exploitation rights in respect of that film, the exemption under this paragraph must also apply to the amount received by or accrued to that other person to the extent that the amount does not exceed any amount that the other person contributed to the production of the film.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of all receipts and accruals in respect of films of which principal photography commences on or after that date but before 1 January 2022.

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 12 of Act 85 of 1987, section 12 of Act 90 of 1988, section 12 of Act 113 of 1993, section 11 of Act 46 of 1996, section 22 of Act 53 of 1999, section 20 of Act 59 of 2000, section 13 of Act 19 of 2001, section 30 of Act 60 of 2001, section 3 of Act 4 of 2008 and section 30 of Act 7 of 2010

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

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

“(b) any building the erection of which was commenced by the taxpayer on or after the fifteenth day of March, 1961, if such building was wholly or mainly used by the taxpayer during the year of assessment for the purpose of carrying on therein in the course of his trade (other than mining or farming) any process of manufacture, research and development or any other process which in the opinion of the Commissioner is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein any process as aforesaid in the course of any trade (other than mining or farming); or”;

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

“(d) any building the erection of which was commenced on or after the fifteenth day of March, 1961, if such building has been acquired by

the taxpayer by purchase from any other person who was entitled to an allowance in respect thereof under paragraph (b) or this paragraph or the corresponding provisions of any previous Income Tax Act, and such building was wholly or mainly used during the year of assessment by the taxpayer for the purpose of carrying on therein in the course of his trade (other than mining or farming) a process of manufacture, research and development or any other process which in the opinion of the Commissioner is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein in the course of any trade (other than mining or farming) any process as aforesaid; or”; and

- (c) by the substitution in subsection (1) for paragraph (dA) of the following paragraph:

“(dA) any building that has never been used, if such building has been acquired by the taxpayer by purchase from any other person and such building was wholly or mainly used during the year of assessment by the taxpayer for the purpose of carrying on therein in the course of his trade (other than mining or farming) a process of manufacture, research and development or any other process which in the opinion of the Commissioner is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein in the course of any trade (other than mining or farming) any process as aforesaid; or”.

(2) Subsection (1) comes into operation on 1 April 2012 unless a later date is determined by the Minister by notice in the *Gazette* and applies in respect of buildings in which research and development is carried on on or after 1 April 2012 or such later date determined by the Minister by notice in the *Gazette* but before 1 April 2022.

Amendment of section 13quat of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004, section 19 of Act 32 of 2004, section 23 of Act 31 of 2005, section 16 of Act 8 of 2007, section 5 of Act 4 of 2008, section 29 of Act 60 of 2008, section 29 of Act 17 of 2009 and section 33 of Act 7 of 2010

41. Section 13quat of the Income Tax Act, 1962, is hereby amended—

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

“ ‘**developer**’ means a person who[—

- (a)] erects, extends, adds to or improves a building or part of a building—

- (a) with the [sole] purpose of disposing of that building or part thereof immediately after completion of that erection, extension, addition or improvement; and
(b) [does not use] disposes of the building or part of a building [which is to be disposed of as contemplated in paragraph (a) for purposes of his or her trade in any other manner] within three years after completion of that erection, extension, addition or improvement;”; and

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

“(3B) For purposes of subsection (3) or (3A), where the taxpayer purchased a building or part of a building from a developer—

- (a) 55 per cent of the purchase price of that building or part of a building, in the case of a new building erected, extended or added to by that developer as contemplated in subsection (3)(a) or (3A)(a); and
(b) 30 per cent of the purchase price of that building or part of a building, in the case of a building improved by that developer as contemplated in subsection (3)(b) or (3A)(b),

is deemed to be costs incurred by that taxpayer in respect of the erection, extension, addition to or improvement of that building or part of a building.”.

Amendment of section 14 of Act 58 of 1962, as substituted by section 19 of Act 55 of 1966 and amended by section 17 of Act 85 of 1974, section 12 of Act 103 of 1976, section 11 of Act 104 of 1979, section 10 of Act 65 of 1986, section 14 of Act 21 of 1995, section 14 of Act 28 of 1997, section 23 of Act 59 of 2000 and section 14 of Act 3 of 2008

42. Section 14 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the definition of “adjustable cost” or “adjustable cost price” of the following definition:

“‘**adjustable cost**’ or ‘**adjustable cost price**’, in relation to any ship, means the cost to the taxpayer of such ship, or, if such ship was acquired by the taxpayer to replace a ship **[and the ship so acquired is a ship in relation to which the Commissioner is satisfied in regard to the matters in regard to which he is required to be satisfied in terms of section 8(4)(b)]**, the cost to the taxpayer of the ship so acquired, less so much of any amount referred to in section 8(4)(a) which has on or after 17 August 1966 been recovered or recouped in respect of the ship so replaced as does not exceed such cost, and ‘**adjustable estimated cost price**’ shall be construed accordingly;”.

Amendment of section 18 of Act 58 of 1962, as amended by section 15 of Act 95 of 1967, section 12 of Act 76 of 1968, section 17 of Act 89 of 1969, section 14 of Act 52 of 1970, section 15 of Act 88 of 1971, section 12 of Act 104 of 1980, section 15 of Act 96 of 1981, section 15 of Act 121 of 1984, section 11 of Act 96 of 1985, section 14 of Act 90 of 1988, section 11 of Act 70 of 1989, section 16 of Act 101 of 1990, section 19 of Act 129 of 1991, section 18 of Act 141 of 1992, section 16 of Act 21 of 1995, section 23 of Act 53 of 1999, section 26 of Act 59 of 2000, section 19 of Act 30 of 2002, section 25 of Act 31 of 2005, sections 2 and 17 of Act 8 of 2007, section 30 of Act 35 of 2007, section 1 of Act 3 of 2008, section 33 of Act 60 of 2008. section 31 of Act 17 of 2009 and section 36 of Act 7 of 2010

43. (1) Section 18 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (b), (c) and (d) of the following paragraphs:

“(b) any amounts (other than amounts recoverable by the taxpayer or his or her spouse) which were paid by the taxpayer during the year of assessment to any duly registered—

(i) medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopedist for professional services rendered or medicines supplied to the taxpayer, his or her spouse or his or her children, or any dependant of the taxpayer **[if the taxpayer was a member of a scheme or fund contemplated in paragraph (a) and that dependant was, at the time such amounts were paid, admitted as a dependant of the taxpayer in terms of that scheme or fund]**; or

(ii) nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency in respect of the services of such a nurse, midwife or nursing assistant) in respect of the illness or confinement of the taxpayer, his or her spouse or his or her children, or any dependant of the taxpayer **[contemplated in subparagraph (i)]**; or

(iii) pharmacist for medicines supplied on the prescription of any person mentioned in subparagraph (i) for the taxpayer, his or her spouse or his or her children, or any dependant of the taxpayer **[contemplated in subparagraph (i)]**; and

(c) any amounts (other than amounts recoverable by the taxpayer or his or her spouse) which were paid by the taxpayer during the year of assessment in respect of expenditure incurred outside the Republic

- on services rendered or medicines supplied to the taxpayer or his or her spouse or children, or any dependant of the taxpayer **[contemplated in paragraph (b)(i)]**, and which are substantially similar to the services and medicines in respect of which a deduction may be made under paragraph (b) of this subsection; and 5
- (d) any expenditure that is prescribed by the Commissioner (other than expenditure recoverable by the taxpayer or his or her spouse) necessarily incurred and paid by the taxpayer in consequence of any physical impairment or disability suffered by the taxpayer, his or her spouse or child, or any dependant of the taxpayer **[contemplated in paragraph (b)(i)]**.”; 10
- (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
- “(b) where the taxpayer, his or her spouse or his or her child is a person with a disability, the aggregate of— 15
- (i) the sum of the amounts referred to in subsection **[(1)] (1)(b)**, (c) and (d); and
- (ii) so much of the contributions made by the taxpayer as contemplated in subsection (1)(a) as exceeds four times the amount of the medical scheme fees tax credit in respect of that taxpayer in terms of section 6A; or”; 20
- (c) by the substitution in subsection (2)(c)(i) for items (aa), (bb) and (cc) of the following items:
- “(aa) **[R670] R720** for each month in that year in respect of which those contributions were made solely with respect to the benefits of that taxpayer; 25
- (bb) **[R1 340] R1 440** for each month in that year in respect of which those contributions were made with respect to the benefits of that taxpayer and one dependant; or
- (cc) where those contributions are made with respect to the taxpayer and more than one dependant, the amount referred to in item (bb) in respect of the taxpayer and one dependant plus **[R410] R440** for every additional dependant for each month in that year in respect of which those contributions were made;”; 30
- (d) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 35
- “(c) in any other case—
- (i) so much of the contributions made by the taxpayer during the relevant year of assessment as contemplated in subsection (1)(a), as **[does not exceed—** 40
- (aa) **R720 for each month in that year in respect of which those contributions were made solely with respect to the benefits of that taxpayer;**
- (bb) **R1 440 for each month in that year in respect of which those contributions were made with respect to the benefits of that taxpayer and one dependant; or** 45
- (cc) **where those contributions are made with respect to the taxpayer and more than one dependant, the amount referred to in item (bb) in respect of the taxpayer and one dependant plus R440 for every additional dependant for each month in that year in respect of which those contributions were made]** exceeds four times the amount of the medical scheme fees tax credit in respect of that taxpayer in terms of section 6A; and 50
- (ii) so much of— 55
- (aa) **any contributions contemplated in subsection (1)(a) as have not been allowed as a deduction under subparagraph (i); and** 60
- (bb) **the sum of all amounts contemplated in subsection (1)(b), (c) and (d),**

as in the aggregate exceeds 7,5 per cent of the taxpayer's taxable income (excluding any retirement fund lump sum benefit and retirement fund lump sum withdrawal benefit) as determined before allowing any deduction under this subparagraph.”;

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

“For the purposes of this section **[the expression] ‘child [in relation to the taxpayer]’** means the taxpayer's child or child of his or her spouse who was alive during any portion of the year of assessment, and who on the last day of the year of assessment—”;

- (f) by the deletion in subsection (4) of the proviso; and

- (g) by the insertion after subsection (4) of the following subsection:

“(4A) For the purposes of this section **‘dependant’** in relation to a taxpayer means—

- (a) his or her spouse;
 - (b) his or her child and the child of his or her spouse;
 - (c) any other member of his or her immediate family in respect of whom he or she is liable for family care and support; and
 - (d) any other person who is recognised as a dependant of that person in terms of the rules of a medical scheme or fund contemplated in subsection (1)(a)(i) or (ii),
- at the time the contributions contemplated in subsection (1)(a) were made, the amounts contemplated in subsection (1)(b) or (c) were paid or the expenditure contemplated in subsection (1)(d) was incurred and paid.”.

(2) Paragraphs (a), (b), (d), (e) and (g) of subsection (1) come into operation on 1 March 2012 and apply in respect of years of assessment commencing on or after that date

(3) Paragraphs (c) and (f) of subsection (1) are deemed to have come into operation on 1 March 2011 and apply in respect of the year of assessment commencing on or after that date.

Amendment of section 18A of Act 58 of 1962, as inserted by section 15 of Act 52 of 1970, substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007, section 31 of Act 35 of 2007, section 34 of Act 60 of 2008 and section 37 of Act 7 of 2010

44. (1) Section 18A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words following paragraph (c) of the following words:

“as does not exceed—

- (A) where the taxpayer is a portfolio of a collective investment scheme, an amount determined in accordance with the following formula:

$$A = B \times 0,005$$

in which formula:

- (AA) ‘A’ represents the amount to be determined;
- (BB) ‘B’ represents the average value of the aggregate of all of the participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all of the participatory interests in the portfolio at the end of each day during that year; or

- (B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit and retirement fund lump sum withdrawal benefit) of the taxpayer as calculated before allowing any deduction under this section or section 18.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of amounts paid or transferred during years of assessment commencing on or after that date.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990, section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000, section 12 of Act 5 of 2001, section 24 of Act 74 of 2002, section 37 of Act 45 of 2003, section 16 of Act 3 of 2008, section 36 of Act 60 of 2008 and section 39 of Act 7 of 2010

45. (1) Section 22 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3)(a)(iii) for items (aa) and (bb) of the following items:

- “(aa) a right in a controlled foreign company held directly by a resident, include an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10 of the Eighth Schedule) of that company and of any other controlled foreign company in which that controlled foreign company and that resident directly or indirectly have an interest, which was included in the income of that resident in terms of section 9D during any year of assessment, less the amount of any foreign dividend distributed by that company to that resident during any year of assessment which was exempt from tax in terms of section **[10(1)(k)(ii)(cc)] 10B(2)(c)**; or
- (bb) a right in a controlled foreign company held directly by another controlled foreign company, include an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10 of the Eighth Schedule) of that first-mentioned controlled foreign company and of any other controlled foreign company in which both the first- and second-mentioned controlled foreign companies directly or indirectly have an interest, which during any year of assessment would have been included in the income of that second-mentioned controlled foreign company in terms of section 9D had it been a resident, less the amount of any foreign dividend distributed by that first-mentioned controlled foreign company to the second-mentioned controlled foreign company if that dividend would have been exempt from tax in terms of section **[10(1)(k)(ii)(cc)] 10B(2)(c)** had that second-mentioned controlled foreign company been a resident;”.

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of trading stock acquired during years of assessment commencing on or after that date.

Substitution of section 22B of Act 58 of 1962

46. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 22B of the following section:

“Dividends treated as income on disposal of certain shares

22B. (1) For the purposes of this section, ‘**exempt dividend**’ means any dividend or foreign dividend to the extent that the dividend or foreign dividend is—

- (a) not subject to tax under Part VIII of Chapter II; and
- (b) exempt from normal tax in terms of section 10(1)(k)(i) or section 10B(2)(a) or (b).

(2) Where a taxpayer that is a company disposes of shares in another company, the amount of any exempt dividend received by or accrued to the taxpayer in respect of any share held by the taxpayer in that other company must be included in the income of the taxpayer—

- (a) (i) to the extent that the exempt dividend is received by or accrues to the taxpayer within a period of 18 months prior to or as part of the disposal;

- (ii) if the taxpayer immediately before the disposal—
 - (aa) held the shares disposed of as trading stock; and
 - (bb) held more than 50 per cent of the equity shares in the other company; and
 - (iii) if the other company (or any company in which that other company directly or indirectly holds more than 50 per cent of the equity shares) has, within a period of 18 months prior to that disposal, obtained any loan or advance or incurred any debt by reason of or in consequence of the disposal—
 - (aa) owing to the person acquiring the shares or any connected person in relation to that person; or
 - (bb) that is guaranteed or otherwise secured by the person acquiring the shares or any connected person in relation to that person; and
 - (b) if the share in respect of which the exempt dividend is so received or accrues is disposed of by that company within a period of 45 days after the date of accrual in respect of that exempt dividend.
 - (3) For the purposes of subsection (2)(a), the amount that must be included in the income of the taxpayer is limited to the amount of the loan, advance or debt contemplated in subparagraph (iii) of that subsection.”.
- (2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 23 of Act 58 of 1962, as amended by section 18 of Act 65 of 1973, section 20 of Act 121 of 1984, section 23 of Act 129 of 1991, section 20 of Act 141 of 1992, section 18 of Act 113 of 1993, section 15 of Act 21 of 1994, section 28 of Act 30 of 2000, section 21 of Act 30 of 2002, section 38 of Act 45 of 2003, section 13 of Act 16 of 2004, section 28 of Act 31 of 2005, section 17 of Act 20 of 2006, section 20 of Act 8 of 2007, section 37 of Act 60 of 2008 and section 41 of Act 7 of 2010

47. (1) Section 23 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution after paragraph (o) for the full stop of a semicolon;
 - (b) by the addition after paragraph (o) of the following paragraph:
 - “(p) the value in respect of any cession of a policy of insurance ceded by a taxpayer to—
 - (i) any—
 - (aa) employee (or former employee);
 - (bb) director (or former director); or
 - (cc) dependant or nominee of the employee (or former employee) or director (or former director),
 of the taxpayer; or
 - (ii) any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the benefit of any—
 - (aa) employee (or former employee);
 - (bb) director (or former director); or
 - (cc) dependant or nominee of the employee (or former employee) or director (or former director),
 of the taxpayer;”;
 - (c) by the addition after paragraph (p) of the following paragraph:
 - “(q) any expenditure incurred in the production of income in the form of foreign dividends.”.
- (2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 March 2012 and apply in respect of policies ceded on or after that date.
- (3) Paragraph (c) of subsection (1) comes into operation—
- (a) insofar as it applies to any person that is a natural person, deceased estate, insolvent estate or special trust, on 1 March 2012 and applies in respect of years of assessment commencing on or after that date; and
 - (b) insofar as it applies to any person that is a person other than a natural person, deceased estate, insolvent estate or special trust, on 1 April 2012 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 23B of Act 58 of 1962, as inserted by section 25 of Act 129 of 1991 and amended by section 16 of Act 21 of 1994, section 29 of Act 30 of 2000, section 39 of Act 45 of 2003, section 18 of Act 20 of 2006 and section 42 of Act 7 of 2010

48. (1) Section 23B of the Income Tax Act, 1962, is hereby amended— 5

(a) by the addition after subsection (3) of the following subsection:

“(4) The provisions of subsection (3) shall not apply in respect of the deduction of expenditure incurred in respect of research and development contemplated in section 11D(8).”; and

(b) by the addition after subsection (4) of the following subsection: 10

“(5) No deduction shall be allowed under section 11(a) in respect of any expenditure incurred by a taxpayer in respect of any premium paid under a policy of insurance contemplated in section 11(w).”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 April 2012 unless a later date is determined by the Minister by notice in the *Gazette* and applies in respect of expenditure incurred in respect of research and development on or after 1 April 2012 or such later date determined by the Minister by notice in the *Gazette* but before 1 April 2022. 15

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2012 and applies in respect of premiums incurred on or after that date. 20

Insertion of section 23K in Act 58 of 1962

49. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 23J of the following section:

“Limitation of deductions in respect of reorganisation transactions

23K. (1) For the purposes of this section— 25

‘**acquiring company**’ means a transferee company contemplated in the definition of ‘intra-group transaction’ in section 45(1);

‘**debt instrument**’ means a debt instrument as defined in section 37I(1);

‘**interest**’ means interest as defined in section 24J;

‘**reorganisation transaction**’ means an intra-group transaction as defined in section 45(1) to which section 45 applies. 30

(2) Subject to subsections (3) and (9), no deduction is allowed in respect of any amount of interest incurred by an acquiring company in terms of a debt instrument if that debt instrument was issued or used directly or indirectly— 35

(a) for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction; or

(b) in substitution for any debt instrument issued or used as contemplated in paragraph (a). 40

(3) Subject to subsection (5), the Commissioner may, on application by an acquiring company, issue a directive that subsection (2) does not apply in respect of an amount of interest incurred as contemplated in that subsection.

(4) In considering an application for a directive contemplated in subsection (3), the Commissioner— 45

(a) must take into account—

(i) the amount of interest incurred as contemplated in subsection (2) by an acquiring company in terms of a debt instrument contemplated in that subsection; and 50

(ii) all amounts of interest incurred, received or accrued in respect of all debt instruments issued or used directly or indirectly to fund a debt instrument in respect of which any amount of interest is incurred by an acquiring company as contemplated in subsection (2); and 55

(b) may only issue a directive contemplated in subsection (3) if and to the extent that the Commissioner is, having regard to the criteria prescribed by the Regulations contemplated in subsection (7), satisfied

that the issuing of that directive will not lead nor be likely to lead to a significant reduction of the aggregate taxable income of all parties who incur, receive or accrue interest—	
(i) in respect of; and	
(ii) for all periods during which any amounts are outstanding in terms of,	5
any debt instrument contemplated in subparagraphs (i) and (ii) of paragraph (a):	
Provided that in determining whether a reduction of taxable income is significant for the purpose of this subsection, the Commissioner must have regard to the criteria prescribed by the regulations contemplated in subsection (7).	10
(5) Any directive issued by the Commissioner in terms of subsection (3) may be made subject to such conditions and limitations as may be determined by the Commissioner.	15
(6) A directive issued by the Commissioner in terms of subsection (3) in respect of an amount of interest incurred in terms of a debt instrument must be effective from—	
(a) the date on which that debt instrument was issued if the application for that directive is made—	20
(i) on or before 31 December 2011, where that debt instrument was issued before 25 October 2011; or	
(ii) within 60 days of the date of issue of that debt instrument, where that debt instrument is issued on or after 25 October 2011; or	25
(b) the date on which the application for that directive is made if—	
(i) that debt instrument was issued before 25 October 2011 and that application is made after 31 December 2011; or	
(ii) that debt instrument is issued on or after 25 October 2011 and that application is made later than 60 days after the date of issue of that debt instrument.	30
(7) The Minister must make regulations that prescribe criteria that the Commissioner must, in terms of subsection (4)(b), have regard to in considering any application made in terms of subsection (3) by an acquiring company in respect of any amount of interest incurred by such an acquiring company in terms of any debt instrument, which criteria must relate to—	35
(a) amounts of debt in relation to equity of such an acquiring company;	
(b) total amounts of interest to be incurred by such an acquiring company in relation to total income of such an acquiring company;	
(c) terms of such a debt instrument, including the economic effect of such a debt instrument, having regard to any debt or equity features of such a debt instrument;	40
(d) the direct or indirect holding of shares in such an acquiring company by any holder (or any company that forms part of the same group of companies as the holder) of such a debt instrument; and	45
(e) any other factor prescribed by the Minister.	
(8) (a) If, subsequent to the date on which a directive is issued by the Commissioner pursuant to an application made by an acquiring company in terms of subsection (3)—	
(i) there is any material change in respect of any fact or circumstance which influenced any decision of the Commissioner relating to the issuing of that directive; and	50
(ii) that change would, had the change been anticipated by the Commissioner at the time of issuing the directive, have resulted in the Commissioner not issuing the directive or issuing the directive on terms that are less favourable to that acquiring company,	55
the directive will cease to apply with effect from the date on which that change takes effect.	
(b) Where any decision relating to the issuing of a directive by the Commissioner in terms of subsection (3) was made by the Commissioner as a direct or indirect result of fraud, misrepresentation or non-disclosure of material facts, that directive will cease to apply with effect from the date that the directive took effect.	60

(9) The Minister may make regulations prescribing circumstances in which subsection (2) does not apply.”

(2) Subsection (1) is deemed to have come into operation on 3 June 2011 and applies in respect of any amount of interest incurred in terms of a debt instrument where that debt instrument was issued or used for the purpose of procuring, enabling, facilitating or funding the acquisition by an acquiring company of an asset in terms of a reorganisation transaction entered into on or after that date.

Amendment of section 23K of Act 58 of 1962

50. (1) Section 23K of the Income Tax Act, 1962, is hereby amended—

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

“**‘acquiring company’** means—

(a) a transferee company contemplated in the definition of ‘intra-group transaction’ in section 45(1); or

(b) a holding company contemplated in the definition of ‘liquidation distribution’ in section 47(1);”;

(b) by the substitution in subsection (1) for the definition of “reorganisation transaction” of the following definition:

“**‘reorganisation transaction’** means—

(a) an intra-group transaction as defined in section 45(1) to which section 45 applies; or

(b) a liquidation distribution as defined in section 47(1) to which section 47 applies.”.

(2) Subsection (1) is deemed to have come into operation on 3 August 2011 and applies in respect of any amount of interest incurred in terms of a debt instrument where that debt instrument was issued or used for the purpose of procuring, enabling, facilitating or funding the acquisition by an acquiring company of an asset in terms of a reorganisation transaction entered into on or after that date.

Amendment of section 24F of Act 58 of 1962, as amended by section 17 of Act 85 of 1987, section 19 of Act 90 of 1988, section 24 of Act 101 of 1990, section 26 of Act 129 of 1991, section 30 of Act 59 of 2000, section 25 of Act 74 of 2002, section 32 of Act 31 of 2005 and section 22 of Act 8 of 2007

51. (1) Section 24F of the Income Tax Act, 1962, is hereby amended by the addition in subsection (2) after paragraph (c) of the following paragraph:

“(d) No deduction shall be allowed under this section in respect of any expenditure incurred in respect of—

(i) any film of which principal photography commences on or after 1 January 2012; or

(ii) any film after 31 December 2012.”.

(2) Subsection (1) comes into operation on 1 January 2012.

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 90 of 1988 and amended by section 21 of Act 113 of 1993, section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998, section 26 of Act 53 of 1999, section 31 of Act 59 of 2000, section 36 of Act 60 of 2001, section 27 of Act 74 of 2002, section 42 of Act 45 of 2003, section 23 of Act 32 of 2004, section 33 of Act 31 of 2005, section 26 of Act 9 of 2006, section 19 of Act 20 of 2006, section 23 of Act 8 of 2007, section 40 of Act 35 of 2007, section 20 of Act 3 of 2008 and section 47 of Act 7 of 2010

52. (1) Section 24I of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (11A) of the following subsection:

“(11A) **[An]** No amount shall **[not]** be included in or deducted from the income of a **[resident]** person in terms of this section in respect of any exchange difference arising from any forward exchange contract or foreign currency option contract or premium in respect of any foreign currency option contract entered into by that **[resident]** person to hedge the purchase price in respect of the acquisition of the equity shares of a company by that **[resident]** person, or by any other **[resident]**

person forming part of the same group of companies as that **[resident]** person, to the extent that—

- (a) **[that resident, or that other resident, as the case may be, acquires or is entitled to acquire,]** no less than 20 per cent of the equity shares of that company will, after that acquisition, be held by that person or that other person, as the case may be; and 5
- [(b) that company will, after that acquisition, be a controlled foreign company (as defined in section 9D(1)) in relation to that resident or that other resident, as the case may be; and]**
- (c)
 - (i) in the case of an acquisition by that **[resident]** person, that amount is not included in the income statement of that **[resident]** person utilised for financial reporting purposes pursuant to International Financial Reporting Standards[,] ; or 10
 - (ii) in the case of an acquisition by another **[resident]** person forming part of the same group of companies as that **[resident]** person, that amount is not included in the consolidated income statement forming part of the annual financial statements of a group for purposes of financial reporting pursuant to International Financial Reporting Standards or South African Statements of Generally Accepted Accounting Practice in terms of which the 15
aforementioned **[residents]** persons are viewed as part of that group for purposes of those Standards or Statements.”. 20

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 24J of Act 58 of 1962, as inserted by section 21 of Act 21 of 1995 and amended by section 14 of Act 36 of 1996, section 19 of Act 28 of 1997, section 27 of Act 53 of 1999, section 24 of Act 32 of 2004, section 10 of Act 9 of 2005 and section 20 of Act 20 of 2006 25

53. (1) Section 24J of the Income Tax Act, 1962, is hereby amended—

- (a) by the insertion in subsection (1) of the following definition after the definition of “alternative method”: 30

“ **‘date of redemption’**, in relation to an instrument other than a demand instrument, means—

(a) where—

- (i) the terms of that instrument specify a date on which all liability to pay all amounts in terms of that instrument will be discharged; and 35
- (ii) the date so specified is not, in terms of the instrument, subject to change, whether as a result of any right, fixed or contingent, of the holder of that instrument or otherwise, 40

that date; or

(b) where—

- (i) the terms of that instrument do not specify a date as contemplated in paragraph (a)(i); or 45
- (ii) that date, if so specified, is subject to change as contemplated in paragraph (a)(ii), 50

the date on which, on a balance of probabilities, all liability to pay all amounts in terms of that instrument is likely to be discharged;”;

- (b) by the insertion in subsection (1) after the definition of “deferred interest” of the following definition:

“ **‘demand instrument’** means any instrument where the holder of that instrument has, at any time during a year of assessment, a right to require the redemption of that instrument at any time before the date specified in terms of that instrument as the date of redemption of that instrument;”;

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

“(a) any **[stock,]** bond, debenture, bill, promissory note, certificate or similar arrangement;”;

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

“**‘term’**, in relation to—

- (a) a demand instrument, means a period of 365 days commencing on the date of issue or transfer of that instrument; or
 (b) an instrument other than a demand instrument, means the period commencing on the date of issue or transfer of that instrument and ending on the date of redemption of that instrument;”.

(2) Paragraphs (a), (b) and (d) of subsection (1) come into operation on 1 April 2012 and apply in respect of amounts received by or accrued to or incurred by any person during years of assessment commencing on or after that date.

Amendment of section 24JA of Act 58 of 1962, as inserted by section 48 of Act 7 of 2010

54. (1) Section 24JA of the Income Tax Act, 1962, is hereby amended—

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

“**‘murabaha’** means a sharia arrangement between a financier and a client of that financier, one of which is a bank, whereby—

- (a) the financier will acquire an asset from a third party (the seller) for the benefit of the client on such terms and conditions as are agreed upon between the client and the seller;
 (b) the client—
 (i) will acquire the asset from the financier within 180 days after the acquisition of the asset by the financier contemplated in paragraph (a); and
 (ii) agrees to pay to the financier a total amount that—
 (aa) exceeds the amount payable by the financier to the seller as consideration to acquire the asset;
 (bb) is calculated with reference to the consideration payable by the financier to the seller in combination with the duration of the sharia arrangement; and
 (cc) may not exceed the amount agreed upon between the financier and the client when the sharia arrangement is entered into; and
 (c) no amount is received by or accrues to the financier in respect of that asset other than an amount contemplated in paragraph (b)(ii);”;

- (b) by the insertion in subsection (1) after the definition of “sharia arrangement” of the following definition:

“**‘sukuk’** means a sharia arrangement whereby—

- (a) the government of the Republic disposes of an interest in an asset to a trust; and
 (b) the disposal of the interest in the asset to the trust by the government is subject to an agreement in terms of which the government undertakes to reacquire on a future date from that trust the interest in the asset disposed of at a cost equal to the cost paid by the trust to the government to obtain the asset.”;

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

“(2) **[For the purposes of section 10(1)(i)(xv)(bb)(A) and (B), any]** Any amount received by or accrued to a client in terms of a mudaraba is deemed to be interest as defined in section 24J(1).”;

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

“(3) Where any murabaha is entered into between a **[bank]** financier and a client of that **[bank]** financier as contemplated in paragraph (a) of the definition of ‘murabaha’—

- (a) the **[bank]** financier is deemed not to have acquired or disposed of the asset under the sharia arrangement;

- (b) the client is deemed to have acquired the asset from the seller—
 (i) for consideration equal to the amount paid by the **[bank] financier** to the seller; and
 (ii) at such time as the **[bank] financier** acquired the asset from the seller by virtue of the transaction between the seller and the **[bank] financier**; 5
- (c) the murabaha is deemed to be an instrument for the purposes of section 24J;
- (d) the difference between the amount of consideration paid for the asset by the **[bank] financier** to the seller and the consideration payable to the **[bank] financier** by the client to acquire the asset as contemplated in paragraph (a)(ii)(bb) of the definition of ‘murabaha’ is deemed to be a premium paid for the purposes of section 24J; and 10
- (e) the amount of consideration paid by the **[bank] financier** to acquire the asset as contemplated in paragraph (a)(i) of the definition of ‘murabaha’ is deemed to be an issue price for the purposes of section 24J.”; 15
- (e) by the deletion of subsection (4);
- (f) by the substitution for subsection (6) of the following subsection: 20
- “(6) (a) For the purposes of subsection (5), where an instalment is paid by the client to the bank, a portion of that instalment, the amount of which must be determined in accordance with paragraph (b), is deemed to be interest as defined in section 24J(1).
 (b) The amount contemplated in paragraph (a) must be determined in accordance with the formula— 25
- $$X = A - B$$
- in which formula—
- (i) ‘X’ represents the amount to be determined;
- (ii) ‘A’ represents the total amount of the instalment payable by the client to the bank; 30
- (iii) ‘B’ represents the expenditure incurred by the bank to acquire the portion of the interest in the asset transferred to the client in exchange for the instalment payable by the client to the bank.”; 35
- and
- (g) by the addition after subsection (6) of the following subsection:
- “(7) Where any sukuk is entered into—
- (a) the trust is deemed not to have acquired the asset from the government of the Republic under the sharia arrangement;
- (b) the government is deemed not to have disposed of or reacquired the asset; and 40
- (c) any consideration paid by the government in respect of the use of the asset held by the trust is deemed to be interest as defined in section 24J(1).”.
- (2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*. 45

Amendment of section 25BA of Act 58 of 1962, as inserted by section 39 of Act 17 of 2009 and amended by section 49 of Act 7 of 2010

55. (1) Section 25BA of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of the following paragraph: 50
- “(b) to the extent that the amount is not distributed as contemplated in paragraph (a) within 12 months of its receipt by that portfolio[.]—
- (i) be deemed to have accrued to that portfolio on the last day of the period of 12 months commencing on the date of its receipt by that portfolio; and 55

- (ii) to the extent that the amount is attributable to a dividend received by or accrued to that portfolio, be deemed to be income of that portfolio.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of amounts received by or accrued to a portfolio of a collective investment scheme during years of assessment of the portfolio commencing on or after that date. 5

Amendment of section 30B of Act 58 of 1962, as inserted by section 55 of Act 7 of 2010

56. (1) Section 30B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 10

“**[The]** Subject to subsections (3) and (4), the Commissioner must approve an entity for the purposes of section 10(1)(d)(iii) or (iv) if—”.

(2) Subsection (1) is deemed to have come into operation on 31 October 2010.

Substitution of section 31 of Act 58 of 1962 15

57. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 31 of the following section:

“Tax payable in respect of international transactions to be based on arm’s length principle

31. (1) For the purposes of this section— 20

‘**affected transaction**’ means any transaction, operation, scheme, agreement or understanding where—

(a) that transaction, operation, scheme, agreement or understanding has been directly or indirectly entered into or effected between or for the benefit of either or both— 25

- (i) (aa) a person that is a resident; and
(bb) any other person that is not a resident;
- (ii) (aa) a person that is not a resident; and
(bb) any other person that is not a resident that has a permanent establishment in the Republic to which the transaction, operation, scheme, agreement or understanding relates; 30

- (iii) (aa) a person that is a resident; and
(bb) any other person that is a resident that has a permanent establishment outside the Republic to which the transaction, operation, scheme, agreement or understanding relates; or 35

- (iv) (aa) a person that is not a resident; and
(bb) any other person that is a controlled foreign company in relation to any resident, 40

and those persons are connected persons in relation to one another; and
(b) any term or condition of that transaction, operation, scheme, agreement or understanding is different from any term or condition that would have existed had those persons been independent persons dealing at arm’s length; 45

‘**financial assistance**’ includes the provision of any—

- (a) loan, advance or debt; or
- (b) security or guarantee. 50

(2) Where—

(a) any transaction, operation, scheme, agreement or understanding constitutes an affected transaction; and 50

(b) any term or condition of that transaction, operation, scheme, agreement or understanding—

- (i) is a term or condition contemplated in paragraph (b) of the definition of ‘affected transaction’; and
- (ii) results or will result in any tax benefit being derived by a person that is a party to that transaction, operation, scheme, agreement or understanding, 55

the taxable income or tax payable by any person contemplated in paragraph (b)(ii) that derives a tax benefit contemplated in that paragraph must be calculated as if that transaction, operation, scheme, agreement or understanding had been entered into on the terms and conditions that would have existed had those persons been independent persons dealing at arm's length. 5

(3) To the extent that there is a difference between—

- (a) any amount that is, after taking subsection (2) into account, applied in the calculation of the taxable income of any resident that is a party to an affected transaction; and 10
- (b) any amount that would, but for subsection (2), have been applied in the calculation of the taxable income of the resident contemplated in paragraph (a),

the amount of that difference must, for purposes of subsection (2), be deemed to be a loan that constitutes an affected transaction. 15

(4) For the purposes of subsection (2), where any transaction, operation, scheme, agreement or understanding has been directly or indirectly entered into or effected as contemplated in that subsection in respect of—

- (a) the granting of any financial assistance; or
- (b) intellectual property as contemplated in the definition of 'intellectual property' in section 23I(1) or knowledge, 20

'connected person' means a connected person as defined in section 1: Provided that the expression 'and no shareholder holds the majority voting rights in the company' in paragraph (d)(v) of that definition must be disregarded. 25

(5) Where any transaction, operation, scheme, agreement or understanding has been entered into between a headquarter company and—

- (a) any other person that is not a resident and that transaction, operation, scheme, agreement or understanding is in respect of the granting of financial assistance by that other person to that headquarter company, this section does not apply to so much of that financial assistance that is directly applied as financial assistance to any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights; or 30
- (b) any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights and that transaction, operation, scheme, agreement or understanding comprises the granting of financial assistance by that headquarter company to that foreign company, this section does not apply to that financial assistance." 35 40

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of years of assessment commencing on or after that date. 45

Amendment of section 35 of Act 58 of 1962, as amended by section 20 of Act 90 of 1962, section 20 of Act 65 of 1973, section 27 of Act 85 of 1974, section 24 of Act 94 of 1983, section 21 of Act 21 of 1994, section 39 of Act 59 of 2000, section 32 of Act 74 of 2002, section 48 of Act 45 of 2003, section 4 of Act 32 of 2005 and section 45 of Act 35 of 2007 50

58. (1) Section 35 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) Subject to paragraph (b), there must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on royalties, calculated at the rate of 12 per cent of any amount contemplated in section 9(2)(c), (d), (e) or (f) that is received by or accrues to a person (other than a resident or a controlled foreign company). 55

(b) Paragraph (a) does not apply in respect of any amount which is received by or accrues to any person who is not a resident, if such amount is effectively connected with a permanent establishment of that person in the Republic." 60

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of amounts received or accrued during years of assessment commencing on or after that date.

Amendment of section 35A of Act 58 of 1962, as inserted by section 30 of Act 32 of 2004 and amended by section 5 of Act 32 of 2005 and section 3 of Act 61 of 2008 5

59. (1) Section 35A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) If an amount has been withheld in terms of subsection (1) from any amount payable in a foreign currency, that amount so withheld must be translated to the currency of the Republic at the spot rate on the date that the amount is paid to the Commissioner.”. 10

(2) Subsection (1) comes into operation on 1 January 2012.

Amendment of section 36 of Act 58 of 1962, as amended by section 12 of Act 72 of 1963, section 15 of Act 90 of 1964, section 20 of Act 88 of 1965, section 23 of Act 55 of 1966, section 16 of Act 95 of 1967, section 14 of Act 76 of 1968, section 26 of Act 89 of 1969, section 21 of Act 65 of 1973, section 28 of Act 85 of 1974, section 20 of Act 104 of 1980, section 25 of Act 94 of 1983, section 16 of Act 96 of 1985, section 14 of Act 70 of 1989, section 26 of Act 101 of 1990, section 30 of Act 129 of 1991, section 24 of Act 141 of 1992, section 29 of Act 113 of 1993, section 17 of Act 36 of 1996, section 41 of Act 60 of 2001, section 31 of Act 32 of 2004, section 26 of Act 20 of 2006, section 46 of Act 35 of 2007, section 23 of Act 3 of 2008, section 44 of Act 60 of 2008, section 43 of Act 17 of 2009 and section 57 of Act 7 of 2010 15 20

60. (1) Section 36 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (7G)(b) for subparagraph (ii) of the following subparagraph:

“(ii) if the taxpayer is a company and its acquisition of the right to mine or the mineral rights in respect of such mine was financed wholly or partly by the issue of any share in respect of which any dividend or foreign dividend is to be calculated with reference to that portion of the company’s profits which is attributable to the operation of such mine.”. 25

(2) Subsection (1) comes into operation on 1 April 2012. 30

Amendment of section 37J of Act 58 of 1962, as inserted by section 58 of Act 7 of 2010

61. (1) Section 37J of the Income Tax Act, 1962, is hereby amended—

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

“(1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on interest, calculated at the rate of 10 per cent of the amount of any interest that is regarded as having been received or accrued from a source within the Republic in terms of section 9(2)(b) received by or accrued to any foreign person that is not a controlled foreign company.”; and 35 40

(b) by the deletion of subsection (2).

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of any interest that accrues on or after that date.

Insertion of section 37JA in Act 58 of 1962

62. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 37J of the following section: 45

“Liability for tax

37JA. A foreign person to which an amount of interest is paid or accrues is liable for the withholding tax on interest.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of any interest that accrues on or after that date. 50

Amendment of section 37K of Act 58 of 1962, as inserted by section 58 of Act 7 of 2010

63. (1) Section 37K of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in subsection (1)(a) of subparagraph (v);
 - (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 5
 “(c) that is deemed to have accrued to any **[non-resident]** foreign person in terms of section 25BA(a).”;
 - (c) by the deletion in subsection (3) of the word “or” at the end of paragraph (a);
 - (d) by the substitution in subsection (3) for the full stop of the expression “; or” 10
 at the end of paragraph (b); and
 - (e) by the addition in subsection (3) after paragraph (b) of the following paragraph:
 “(c) is a controlled foreign company as defined in section 9D.”.
- (2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of 15
 any interest that accrues on or after that date.

Amendment of section 37L of Act 58 of 1962, as inserted by section 58 of Act 7 of 2010

64. (1) Section 37L of the Income Tax Act, 1962, is hereby amended by the deletion 20
 of subsection (2).
- (2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of
 any interest that accrues on or after that date.

Substitution of section 37M of Act 58 of 1962, as inserted by section 58 of Act 7 of 2010

65. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 25
 37M of the following section:

“Payment and recovery of tax

37M. (1) If, in terms of section 37JA, a foreign person is liable for any
 amount of withholding tax on interest in respect of any amount of interest
 that is paid or that accrues to the foreign person, that foreign person must 30
 pay that amount of withholding tax by the last day of the month following
 the month during which the interest is paid, unless the tax has been paid by
 any other person.

(2) Any person that withholds any withholding tax on interest in terms of
 section 37L must pay the tax to the Commissioner by the last day of the 35
 month following the month during which the interest is paid.”.

- (2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of
 any interest that accrues on or after that date.

Insertion of section 37N in Act 58 of 1962

66. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 40
 37M of the following section:

“Refund of withholding tax on interest

37N. (1) Notwithstanding section 102, if—

- (a) an amount is withheld from the payment of interest in terms of section 45
 37L(1);
- (b) a declaration contemplated in section 37L(3)(b) or (4) in respect of
 that interest is not submitted to the person paying that interest by the
 date of the payment of that interest; and
- (c) a declaration contemplated in section 37L(3)(b) or (4) is submitted to 50
 the person paying that interest within three years after the payment of
 the interest in respect of which the declaration is made,

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable to the person to whom the interest was paid.

(2) Subject to subsection (3), if any amount is refundable to any person in terms of subsection (1), the person to whom the interest was paid as contemplated in subsection (1) may recover the refundable amount from the Commissioner.” 5

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of any interest that accrues on or after that date.

Amendment of section 41 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 49 of Act 45 of 2003, section 32 of Act 32 of 2004, section 37 of Act 31 of 2005, section 28 of Act 20 of 2006, section 32 of Act 8 of 2007, section 52 of Act 35 of 2007, section 25 of Act 3 of 2008, section 128 of Act 60 of 2008, section 47 of Act 17 of 2009 and section 61 of Act 7 of 2010 10

67. (1) Section 41 of the Income Tax Act, 1962, is hereby amended— 15

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

“‘**company**’ does not include a headquarter company and, for the purposes of sections 42 and 44, includes any portfolio of a collective investment scheme in securities;” 20

(b) by the deletion in subsection (1) of the definition of “resident”;

(c) by the substitution for subsection (2) of the following subsection:

“(2) The provisions of this Part must, subject to subsection (3), apply in respect of an asset-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections 24B(2) **[and (3)]** and 103 and Part IIA of Chapter III.”; 25

(d) by the substitution in subsection (4)(a) for subparagraph (i) of the following subparagraph: 30

“(i) that company has lodged a resolution authorising the voluntary **[liquidation or]** winding-up of that company**[, for registration]** in terms of—

(aa) section **[200]** 80(2) of the Companies Act, **[1973]** 2008 (Act No. **[61]** 71 of **[1973]** 2008), in the case of a company **[registered in terms of that Act]** to which that section applies; 35

(bb) **[section 67(2) of the Close Corporations Act, 1984 (Act No. 69 of 1984), in the case of a close corporation]** Regulation 21 of the Regulations under the Co-operatives Act, 2005 (Act No. 14 of 2005), published under section 95 of that Act in Government Notice R. 366 of 30 April 2007, in the case of a co-operative; or 40

(cc) a similar provision contained in any foreign law relating to the liquidation of companies, in the case where that company is incorporated in a country other than the Republic, if such foreign law so requires; and”; 45

(e) by the substitution in subsection (4) for paragraphs (b) and (c) of the following paragraphs: 50

“(b) in the case of a deregistration of a company, that company has **[submitted a written statement signed by each of its directors confirming that the company has ceased to carry on business and has no assets or liabilities]** lodged a request for the deregistration of that company in the prescribed manner and form— 55

- (i) to the **[Registrar of Companies]** Companies and Intellectual Property Commission in terms of section **[73(5)] 82(3)(b)(ii)** of the Companies Act, **[1973] 2008**, in the case of a company **[registered in terms of that Act]** to which that section applies; or 5
- [(ii) to the Registrar of Close Corporations in terms of section 26(2) of the Close Corporations Act, 1984, in the case of a close corporation; or]**
- (iii) in the case where that company is incorporated in a country other than the Republic, to a person who, in terms of any similar provision contained in any foreign law, exercises the powers and performs the duties assigned to a **[a Registrar]** the Commission contemplated in subparagraph (i) **[or (ii)]**, if such foreign law so requires; 10
- (c) that company has submitted a copy of the resolution contemplated in paragraph (a)(i) or the **[written statement]** request contemplated in paragraph (b) to the Commissioner; and”; 15
- (f) by the substitution in subsection (8) for paragraph (a) of the following paragraph: 20
 - “(a) This subsection applies where a **[capital distribution]** return of capital in respect of any share as contemplated in paragraph 76(1)(b) of the Eighth Schedule has been received by or has accrued to any person, and that person has disposed of that share, after that receipt or accrual, in terms of a disposal or distribution in respect of which the provisions of sections 42, 44, 45 or 47 apply.”; and 25
- (g) by the substitution in subsection (8)(b) for the words preceding subparagraph (i) of the following words: 30
 - “Where paragraph (a) applies, that **[capital distribution]** return of capital must for purposes of paragraph 76(1)(b) of the Eighth Schedule be deemed to have been received by or to have accrued to—”. 30
- (2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 January 2012.
- (3) Paragraph (c) of subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of shares or debt instruments acquired, issued or disposed of on or after that date.
- (4) Paragraphs (d) and (e) of subsection (1) are deemed to have come into operation 35 on 1 January 2011.
- (5) Paragraphs (f) and (g) of subsection (1) come into operation on 1 April 2012.

Amendment of section 42 of Act 58 of 1962, as amended by section 21 of Act 88 of 1965, section 17 of Act 95 of 1967, section 29 of Act 89 of 1969, section 19 of Act 52 of 1970, section 23 of Act 88 of 1971, section 18 of Act 90 of 1972, section 22 of Act 65 of 1973, section 32 of Act 85 of 1974, section 22 of Act 69 of 1975, section 18 of Act 103 of 1976, section 19 of Act 113 of 1977, section 20 of Act 91 of 1982, section 28 of Act 94 of 1983, section 31 of Act 129 of 1991, section 27 of Act 141 of 1992, section 23 of Act 21 of 1994, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, 45 section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 34 of Act 8 of 2007, section 53 of Act 35 of 2007, section 26 of Act 3 of 2008, section 49 of Act 60 of 2008, section 48 of Act 17 of 2009 and section 62 of Act 7 of 2010

68. (1) Section 42 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for the definition of “asset-for-share transaction” of the following definition: 50
 - “ ‘**asset-for-share transaction**’ means any transaction—
 - (a) (i) in terms of which a person disposes of an asset (other than an asset which constitutes a restraint of trade or personal goodwill), the market value of which is equal to or exceeds— 55
 - [(i)] (aa)** in the case of an asset held as a capital asset, the base cost of that asset on the date of that disposal; or

- (ii) (bb) in the case of an asset held as trading stock, the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2), to a company which is a resident, in exchange for an equity share or shares of that company and that person— 5
- [(aa)] (A) at the close of the day on which that asset is disposed of, holds a qualifying interest in that company; or
- [(bb)] (B) is a natural person who will be engaged on a full-time basis in the business of that company, or a controlled group company in relation to that company, of rendering a service; and 10
- [(b)](ii) as a result of which that company acquires that asset from that person—
- [(i)] (aa) as trading stock, where that person holds it as trading stock; 15
- [(ii)] (bb) as a capital asset, where that person holds it as a capital asset; or
- [(iii)] (cc) as trading stock, where that person holds it as a capital asset and that company and that person do not form part of the same group of companies: 20
- Provided that this [paragraph] subparagraph does not apply in respect of any transaction which meets the requirements of [paragraph (a)] subparagraph (i) in terms of which a person disposes of an equity share in a listed company or in a portfolio of a collective investment scheme in securities to any other company and after that disposal, together with any other transaction that is concluded— 25
- [(i)](aa) on the same terms as that transaction; and 30
- [(ii)](bb) within a period of 90 days after that disposal, that other company holds—
- [(aa)] (A) at least 35 per cent of the equity shares of that listed company or portfolio; or
- [(bb)] (B) at least 25 per cent of the equity shares of that listed company or portfolio if no person other than that other company holds an equal or greater amount of equity shares in the listed company or portfolio; or 35
- (b) in terms of which a person disposes of an asset that constitutes an equity share in a foreign company, the market value of which is equal to or exceeds— 40
- (i) in the case of an equity share held as a capital asset, the base cost of that equity share on the date of that disposal; or
- (ii) in the case of an equity share held as trading stock, the amount taken into account in respect of that equity share in terms of section 11(a) or 22(1) or (2), to another foreign company, in exchange for an equity share in that other foreign company and immediately before and at the close of the day on which the asset is disposed of in terms of that transaction— 50
- (aa) that person holds a qualifying interest in the other foreign company; and
- (bb) the other foreign company is a controlled foreign company in relation to any company that forms part of the same group of companies, as defined in section 1, as that person;” 55
- (b) by the substitution in subsection (1) for the definition of “qualifying interest” of the following definition:
- “ ‘qualifying interest’ of a person [means]—
- (a) for the purposes of paragraph (a) of the definition of ‘asset-for-share transaction’, means— 60
- [(a)] (i) an equity share held by that person in a company which is a listed company or will become a listed company

- within 12 months after the transaction as a result of which that person holds that share;
- [(b)]** (ii) an equity share held by that person in a portfolio of a collective investment scheme in securities;
- [(c)]** (iii) equity shares held by that person in a company that constitute at least 20 per cent of the equity shares and that confer at least 20 per cent of the voting rights of **[a]** that company; or
- [(d)]** (iv) an equity share held by that person in a company which forms part of the same group of companies as that person; or
- (b) for the purposes of paragraph (b) of the definition of ‘asset-for-share transaction’, means equity shares held by that person in a foreign company that constitute at least 20 per cent of the equity shares and that confer at least 20 per cent of the voting rights of the foreign company.”;
- (c) by the substitution in subsection (2)(a) for subparagraph (i) of the following subparagraph:
- “(i) disposed of that asset—
- (aa) in the case of an asset-for-share transaction contemplated in paragraph (a) of the definition of ‘asset-for-share transaction’, for an amount equal to the amount contemplated in **[subparagraphs (i) or (ii) of paragraph (a) of the definition of ‘asset-for-share transaction’]** item (aa) or (bb) of subparagraph (i) of that paragraph, as the case may be; **[and]** or
- (bb) in the case of an asset-for-share transaction contemplated in paragraph (b) of the definition of ‘asset-for-share transaction’, for an amount equal to the amount contemplated in subparagraph (i) or (ii) of that paragraph, as the case may be; and”;
- (d) by the substitution in subsection (3A) for the words preceding paragraph (a) of the following words:
- “For the purposes of the definition of ‘contributed tax capital’, if an asset is disposed of by a person to a company in terms of an asset-for-share transaction contemplated in paragraph (a) of the definition of ‘asset-for-share transaction’ and that person at the close of the day on which that asset is disposed of holds a qualifying interest in that company as contemplated in **[paragraph (c)]** paragraph (a)(iii) of the definition of ‘qualifying interest’, or is a natural person who will be engaged on a full-time basis in the business of that company or a controlled group company in relation to that company of rendering a service, the amount received by or accrued to the company for the issue of the shares is deemed to be equal to—”;
- (e) by the addition in subsection (3A) of the following proviso:
- “: Provided that this subsection does not apply in respect of any asset-for-share transaction in terms of which a person disposes of an equity share in a listed company or in a portfolio of a collective investment scheme in securities to any other company and after that disposal, together with any other asset-for-share transaction that is concluded—
- (i) on the same terms as that asset-for-share transaction; and
- (ii) within a period of 90 days after that disposal, that other company holds—
- (aa) at least 35 per cent of the equity shares of that listed company or portfolio; or
- (bb) at least 25 per cent of the equity shares of that listed company or portfolio if no person other than that other company holds an equal or greater amount of equity shares in the listed company or portfolio”;
- (f) by the substitution in subsection (6) for the words preceding the proviso of the following words:
- “(6) Where a person—
- (a) disposed of **[any]** an asset to a company in terms of an asset-for-share transaction contemplated in paragraph (a) of the

definition of ‘asset-for-share transaction’ and, within a period of 18 months after the date of that disposal, that person ceases—

- (i) to hold a qualifying interest in that company, as contemplated in **[paragraphs (c) and (d)]** paragraph (a)(iii) and (iv) of the definition of ‘qualifying interest’ **[, within a period of 18 months after the date of the disposal of that asset]** (whether or not **[by way]** as a result of the disposal of shares in that company)**[,];** or
- (ii) **[ceases within that period]** to be engaged on a full-time basis in the business of the company, or controlled group company in relation to that company, of rendering the service contemplated in **[subsection (1)(a)(ii)(bb)]** paragraph (a)(i)(B) of the definition of ‘asset-for-share transaction’; or
- (b) disposed of an equity share to a foreign company in terms of an asset-for-share transaction contemplated in paragraph (b) of the definition of ‘asset-for-share transaction’ and, within a period of 18 months after the date of that disposal and whether or not as a result of the disposal of shares in that foreign company—
 - (i) that person ceases to hold a qualifying interest in the foreign company, as contemplated in paragraph (b) of the definition of ‘qualifying interest’; or
 - (ii) the foreign company—
 - (aa) ceases to be a controlled foreign company in relation to that person; or
 - (bb) ceases to form part of the same group of companies as that person (without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41), that person is for purposes of subsection (5), section 22 or the Eighth Schedule deemed to have—
 - [(a)] (A)** disposed of all the equity shares acquired in terms of that asset-for-share transaction that are still held immediately after that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and
 - [(b)] (B)** immediately reacquired all the equity shares contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph.”;
- (g) by the substitution in subsection (8) for the words following paragraph (b) of the following words:
 - “that person must, upon the disposal of any equity share acquired in terms of that asset-for-share transaction and notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraph (a) or (b), treat so much of the face value of that debt as relates to that equity share**[,];**—
 - (aa) where that equity share is held as a capital asset, as a **[capital distribution]** return of capital by way of a distribution of cash in respect of that equity share **[, for the purposes of paragraph 76 of the Eighth Schedule, where that equity share is held as a capital asset]** that accrues to that person immediately after the acquisition by that person of that equity share in terms of that asset-for-share transaction; or **[,]**
 - (bb) where that equity share is held as trading stock, as income to be included in that person’s income for the year of assessment during which that equity share is acquired by that person in terms of that asset-for-share transaction.”; and
- (h) by the substitution in subsection (8A) for paragraph (b) of the following paragraph:
 - “(b) the disposal would not be taken into account for purposes of determining—
 - (i) any taxable income or assessed loss of that person; or
 - (ii) any proportional amount of the net income of a controlled foreign company which is included in the income of that person in terms of section 9D.”.

(2) Paragraphs (a), (b), (c), (d), (f) and (h) come into operation on 1 January 2012 and apply in respect of transactions entered into on or after that date.

(3) Paragraph (e) of subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

(4) Paragraph (g) of subsection (1) comes into operation on 1 April 2012 and applies in respect of transactions entered into on or after that date. 5

Amendment of section 44 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and amended by section 34 of Act 74 of 2002, section 52 of Act 45 of 2003, section 40 of Act 31 of 2005, section 34 of Act 8 of 2007, section 55 of Act 35 of 2007, section 27 of Act 3 of 2008, section 50 of Act 60 of 2008, section 49 of Act 17 of 2009 and section 63 of Act 7 of 2010 10

69. (1) Section 44 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding the definition of “qualifying interest” of the following words:

“For the purposes of this section— 15

‘**amalgamation transaction**’ means any transaction—

(a) (i) in terms of which any company (hereinafter referred to as the ‘amalgamated company’) disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to another company (hereinafter referred to as the ‘resultant company’) which is a resident, by means of an amalgamation, conversion or merger; and 20

[(b)] (ii) as a result of which that amalgamated company’s existence will be terminated[; 25

Provided that the provisions of this section will not apply to a disposal of an asset by an amalgamated company to a resultant company where that resultant company and the person contemplated in subsection (6) form part of the same group of companies immediately before and after that disposal, if that amalgamated company, resultant company and person jointly so elect.]; or 30

(b) (i) in terms of which an amalgamated company which is a foreign company disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to a resultant company which is a foreign company, by means of an amalgamation, conversion or merger; 35

(ii) if—

(aa) that amalgamated company and that resultant company form part of the same group of companies (without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41) immediately before that transaction: Provided that for the purposes of this item an amalgamated company and a resultant company will only form part of the same group of companies if the expression ‘at least 70 per cent’ in paragraphs (a) and (b) of the definition of ‘group of companies’ in section 1 were replaced by the expression ‘at least 95 per cent’; and 40

(bb) that resultant company is a controlled foreign company in relation to any company that is a resident and that forms part of the group of companies contemplated in item (aa) immediately before and after that transaction; and 50

(iii) as a result of which that amalgamated company’s existence will be terminated.”; 55

(b) by the deletion in subsection (1) of the definition of “qualifying interest”; 55

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

“(4) The provisions of subsections (2) and (3) will not apply to a disposal of an asset by an amalgamated company to a resultant company as part of an amalgamation transaction **[only]** to the extent that such asset is so disposed of in exchange for consideration other than— 60

(a) an equity share or shares in that resultant company; or

- (b) the assumption by that resultant company of a debt of that amalgamated company, unless that debt—
- (i) was incurred by that amalgamated company—
 - [(i)] (aa)** more than 18 months before that disposal; or
 - [(ii)] (bb)** within a period of 18 months before that disposal, to the extent that the debt—
 - [(aa)] (A)** constitutes the refinancing of any debt incurred as contemplated in subparagraph **[(i)](aa)**; or
 - [(bb)] (B)** is attributable to and arose in the **[ordinary] normal** course of the disposal, as a going concern, of a business undertaking **[disposed of, as a going concern,]** to that resultant company as part of that amalgamation transaction; and
 - (ii) was not incurred by that amalgamated company for the purpose of procuring, enabling, facilitating or funding the acquisition by that resultant company of any asset in terms of that amalgamation transaction.”;
- (d) by the substitution in subsection (6)(a)(i) for the expression “; and” at the end of item (bb) of a full stop;
- (e) by the deletion in subsection (6)(a) of subparagraph (ii);
- (f) by the substitution in subsection (9) for paragraph (a) of the following paragraph:
- “(a) the disposal by that amalgamated company of those shares must be deemed not to be a dividend **[with respect to that amalgamated company]** for purposes of **[section 64B(3)] Part VIII of Chapter II;** and”;
- (g) by the substitution for subsection (10) of the following subsection:
- “(10) **[For the purposes of section 64B, so]** So much of the amount of any other consideration to which a person becomes entitled as contemplated in subsection (7)(b) as does not exceed the market value of all the assets of the amalgamated company immediately before the amalgamation, conversion or merger less—
- (a) the liabilities; and
 - (b) the sum of the contributed tax capital of all the classes of shares, of the amalgamated company immediately before the amalgamation, conversion or merger must, for the purposes of the definitions of ‘dividend’, ‘foreign dividend’, ‘foreign return of capital’ and ‘return of capital’ in section 1, be deemed to be **[a dividend declared and distributed]** an amount transferred by **[of]** that amalgamated company **[to]** for the benefit or on behalf of that person **[and to have accrued as a dividend to that person on the date on which that person became entitled thereto]** in respect of a share held by that person in the amalgamated company.”;
- (h) by the deletion of subsection (11);
- (i) by the addition to subsection (13) of the following proviso:
- “: Provided that any tax which becomes payable as a result of the application of this subsection may be recovered from the resultant company”;
- (j) by the substitution in subsection (14) for paragraph (bA) of the following paragraph:
- “(bA) the resultant company is a **[company contemplated in paragraph (e)(i) of the definition of ‘company’]** portfolio of a collective investment scheme in securities and the amalgamated company is not a **[company contemplated in that paragraph]** portfolio of a collective investment scheme in securities;”;
- (k) by the substitution for subsection (14) of the following subsection:
- “(14) The provisions of this section do not apply **[in respect of any transaction if]**—

- (a) in respect of any transaction if the resultant company holds at least 70 per cent of the equity shares in the amalgamated company immediately before the amalgamation, conversion or merger;
- (b) in respect of any transaction if the resultant company is a company contemplated in paragraph (c) or (d) of the definition of ‘company’; 5
- (bA) in respect of any transaction if the resultant company is a portfolio of a collective investment scheme in securities and the amalgamated company is not a portfolio of a collective investment scheme in securities;
- (c) in respect of any transaction if the resultant company is a non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008); 10
- (d) in respect of any transaction contemplated in paragraph (a) of the definition of ‘amalgamated company’ if the resultant company is a company contemplated in paragraph (b) or (e)(ii) of the definition of ‘company’ [in section 1] and does not have its place of effective management in the Republic; 15
- (e) in respect of any transaction if any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or to accrue to the resultant company; [or] 20
- (f) in respect of any transaction if the resultant company is a public benefit organisation or recreational club approved by the Commissioner in terms of section 30 or 30A; or
- (g) to a disposal of an asset by an amalgamated company to a resultant company— 25
 - (i) in terms of an amalgamation transaction contemplated in paragraph (a) of the definition of ‘amalgamation transaction’ where that resultant company and the person contemplated in subsection (6) form part of the same group of companies immediately before and after that disposal; or 30
 - (ii) in terms of an amalgamation transaction contemplated in paragraph (b) of the definition of ‘amalgamation transaction’ where that resultant company and the person contemplated in subsection (6) form part of the same group of companies (without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41) immediately before and after that disposal, 35
 if that amalgamated company, resultant company and person jointly so elect.”. 40

(2) Paragraphs (a), (b), (c), (d), (e), (h), (i) and (k) of subsection (1) come into operation on 1 January 2012 and apply in respect of transactions entered into on or after that date.

(3) Paragraphs (f) and (g) of subsection (1) come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation and apply in respect of disposals made on or after that date. 45

(4) Paragraph (j) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

Amendment of section 45 of Act 58 of 1962, as amended by section 24 of Act 55 of 1966, section 18 of Act 95 of 1967, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 53 of Act 45 of 2003, section 35 of Act 32 of 2004, section 41 of Act 31 of 2005, section 35 of Act 8 of 2007, section 56 of Act 35 of 2007, section 28 of Act 3 of 2008 and section 51 of Act 60 of 2008 and section 64 of Act 7 of 2010 50

70. (1) Section 45 of the Income Tax Act, 1962, is hereby amended— 55

(a) by the insertion after subsection (3) of the following subsection:

“(3A) (a) This subsection applies where an asset is acquired by a transferee company from a transferor company in terms of an intra-group transaction and—

- (i) any amount incurred by that transferee company as consideration for the acquisition of that asset from that transferor company is funded directly or indirectly by the issue of any—
 - (aa) debt instrument as defined in section 37I(1); or
 - (bb) share other than an equity share; and
 - (ii) that debt instrument or share—
 - (aa) is issued by a company that forms part of the same group of companies as the transferee company or the transferor company; and
 - (bb) is issued or used for the purposes of directly or indirectly facilitating or funding that intra-group transaction.
- (b) The holder of any debt instrument or share contemplated in paragraph (a) who is part of the same group of companies as the issuer of that debt instrument or share must, for the purposes of—
 - (i) paragraph 20 of the Eighth Schedule, be deemed to have acquired that debt instrument or share for an amount of expenditure of nil; and
 - (ii) section 11(a) or 22(1) or (2), be deemed to have acquired that debt instrument or share for an amount of expenditure or cost of nil.
- (c) Where an amount, other than an amount of interest, is received by or accrued to a holder in respect of a debt instrument contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied by the holder in settlement of the amount outstanding in respect of that debt instrument, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder.
- (d) Where an amount, other than an amount that constitutes a dividend, is received by or accrued to a holder in respect of a share contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied in reduction of the capital subscribed for that share, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder.”;
- (b) by the substitution in subsection (5)(a) for subparagraph (i) of the following paragraph:
 - “(i) so much of any [a] capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that transferee company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that transferee company; or”; and
- (c) by the substitution in subsection (6) for paragraph (c) of the following paragraph:
 - “(c) the asset was disposed of by the transferor company in exchange for equity shares issued by the transferee company;”.
- (2) Paragraph (a) of subsection (1) comes into operation on 1 January 2012 and applies in respect of years of assessment commencing on or after that date.
- (3) Paragraphs (b) and (c) of subsection (1) come into operation on 30 August 2010 and apply in respect of transactions entered into—
 - (a) on or after that date; and
 - (b) on or before 31 December 2012.

Amendment of section 46 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 54 of Act 45 of 2003, section 36 of Act 32 of 2004, section 42 of Act 31 of 2005, section 36 of Act 8 of 2007, section 57 of Act 35 of 2007, section 29 of Act 3 of 2008, section 52 of Act 60 of 2008 and section 65 of Act 7 of 2010

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71. (1) Section 46 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding the proviso of the following words:

“For purposes of this section, ‘unbundling transaction’ means any transaction—

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(a) (i) in terms of which all the equity shares of a company (hereinafter referred to as the ‘unbundled company’) which is a resident **[or a controlled foreign company (hereinafter referred to as the ‘unbundled company’)]** that are held by a company (hereinafter referred to as the ‘unbundling company’) which **[, if listed,]** is a resident, are distributed by that unbundling company to the shareholder or shareholders of that unbundling company in accordance with the effective interest of that shareholder or those shareholders, as the case may be, in the shares of that unbundling company, but only to the extent to which those shares are so distributed—

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[(a)] (aa) where that unbundling company is a listed company and the shares of the unbundled company are listed shares or will **[be] become** listed shares within 12 months after that distribution, to the shareholders of that unbundling company;

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[(b)] (bb) where that unbundling company is an unlisted company, to any shareholder of that unbundling company that forms part of the same group of companies as that unbundling company; or

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[(c)] (cc) pursuant to an order in terms of the Competition Act, 1998 (Act No. 89 of 1998), made by the Competition Tribunal or the Competition Appeal Court, to the shareholders of that unbundling company; **[or**

(d) where that unbundled company is a controlled foreign company, to a person that holds at least 95 per cent of the equity shares in that unbundling company] and

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(ii) if the shares distributed as contemplated in subparagraph (i) constitute—

(aa) where that unbundled company is a listed company immediately before that distribution—

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(A) and no shareholder in the unbundled company other than the unbundling company holds the same number of equity shares as or more equity shares than the unbundling company in that unbundled company, more than 25 per cent of the equity shares of the unbundled company; or

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(B) and any shareholder in the unbundled company other than the unbundling company holds the same number of equity shares as or more equity shares than the unbundling company in that unbundled company, at least 35 per cent of the equity shares of that unbundled company; or

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(bb) where that unbundled company is an unlisted company immediately before that distribution, more than 50 per cent of the equity shares of that unbundled company; or

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(b) (i) in terms of which all the equity shares of an unbundled company which is a controlled foreign company that are held by an unbundling company which is a resident or a controlled foreign company are distributed by that unbundling company to the shareholder or shareholders of that unbundling company in accordance with the effective interest of that shareholder or those

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- shareholders, as the case may be, in the shares of that unbundling company, but only to the extent to which those shares are so distributed to shareholders of that unbundling company that form part of the same group of companies as that unbundling company (without regard to paragraph (i)(ee) of the proviso to the definition of 'group of companies' in section 41) immediately after that distribution; and 5
- (ii) if, immediately before the distribution contemplated in subparagraph (i), the unbundling company holds more than 50 per cent of the equity shares of the unbundled company.”; 10
- (b) by the deletion of the proviso and the further proviso to subsection (1);
- (c) by the substitution for subsection (5) of the following subsection:
- “(5) Where shares are distributed by an unbundling company to a shareholder in terms of an unbundling transaction[—
- (a)] , the distribution by that unbundling company of the shares must, for the purposes of the definition of 'dividend' and the definition of 'return of capital' in section 1, be deemed not to be **[a dividend with respect to] an amount transferred by that unbundling company for the purposes of [section 64B(3)] Part VIII of Chapter II. [and** 15
- (b) **any shares acquired by a company in terms of that distribution must be deemed not to be a dividend which accrued to that company for the purposes of section 64B(3).]**” 20
- (d) by the substitution in subsection (7)(b) for subparagraph (i) of the following subparagraph:
- “(i) a person that is not a resident, unless that person is a controlled foreign company;” 25
- (e) by the substitution for subsection (8) of the following subsection:
- “(8) Where an unlisted unbundling company disposes of shares in an unlisted unbundled company in terms of an unbundling transaction to a shareholder and that unbundled company is a controlled group company in relation to that shareholder immediately before and after that disposal, the provisions of this section will not apply to that disposal if that shareholder and that unbundling company **[jointly so elect]** agree in writing that this section does not apply to that disposal.”. 30
- (2) Paragraphs (a), (b), (d) and (e) of subsection (1) come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date. 35
- (3) Paragraph (c) of subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation and applies in respect of distributions made on or after that date.

Amendment of section 47 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 34 of Act 74 of 2002, section 55 of Act 45 of 2003, section 37 of Act 32 of 2004, section 43 of Act 31 of 2005, section 31 of Act 20 of 2006, section 37 of Act 8 of 2007, section 58 of Act 35 of 2007, section 31 of Act 3 of 2008, section 53 of Act 60 of 2008, section 50 of Act 17 of 2009 and section 66 of Act 7 of 2010 40

72. (1) Section 47 of the Income Tax Act, 1962, is hereby amended— 45
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) in terms of which any company (hereinafter referred to as the 'liquidating company') distributes all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company, but only to the extent to which those assets are so disposed of to another company (hereinafter referred to as the 'holding company') which is a resident and which—” 50
- (b) by the deletion in subsection (1)(a)(i) of item (aa);
- (c) by the insertion in subsection (1)(a)(i) of the word “or” at the end of item (cc);
- (d) by the substitution in subsection (1)(a) for subparagraph (ii) of the following paragraph: 55

- “(ii) on the date of that disposal forms part of the same group of companies as the liquidating company **[or holds at least 95 per cent of the equity shares in that company.]; or**”;
- (e) by the addition in subsection (1) after paragraph (a) of the following paragraph: 5
- “(b) in terms of which a liquidating company distributes all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company, if those assets are so disposed of to a holding company which— 10
- (i) forms part of the same group of companies as the liquidating company (without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41) immediately before that distribution; and 15
- (ii) is a controlled foreign company in relation to any resident that forms part of the group of companies contemplated in subparagraph (i) immediately before and after that distribution.”;
- (f) by the substitution in subsection (5) for paragraph (b) of the following paragraph: 20
- “(b) in anticipation of or in the course of the liquidation, winding up or deregistration of a liquidating company, a **[capital distribution]** return of capital by way of a distribution of cash or an asset *in specie* by that company is received by or accrues to a holding company,”; 25
- (g) by the substitution in subsection (5) for the words following paragraph (b) of the following words: 30
- “the holding company must disregard that disposal or **[distribution]** return of capital for purposes of determining its taxable income, assessed loss, aggregate capital gain or aggregate capital loss.”;
- (h) by the substitution in subsection (6) for paragraph (bA) of the following paragraph: 35
- “(bA) the distribution would not be taken into account—
- (i) for purposes of determining any taxable income or assessed loss of the liquidating company; or
- (ii) where the liquidating company is a controlled foreign company, for purposes of determining the net income, as contemplated in section 9D(2A), of the liquidating company; or”; and
- (i) by the substitution in subsection (6) for the proviso to paragraph (c) of the following proviso: 40
- “: Provided that any tax which becomes payable as a result of the application of this paragraph shall be recoverable from the holding company or, where the holding company is a controlled foreign company, from any resident who directly or indirectly holds any participation rights in that controlled foreign company as contemplated in section 9D(2).” 45
- (2) Paragraphs (a), (b), (c), (d), (e), (h) and (i) of subsection (1) come into operation on 1 January 2012 and apply in respect of transactions entered into on or after that date.
- (3) Paragraphs (f) and (g) of subsection (1) come into operation on 1 April 2012 and apply in respect of transactions entered into on or after that date. 50

Substitution of section 57 of Act 58 of 1962

73. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 57 of the following section:

“Disposals by companies under donations at the instance of any person 55

57. If—

- (a) any property is disposed of by any company at the instance of any person; and

- (b) that disposal would have been treated as a donation had that disposal been made by that person,
that property must for the purposes of this Part be deemed to be disposed of under a donation by that person.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation. 5

Amendment of section 64C of Act 58 of 1962, as inserted by section 20 of Act 95 of 1967 and amended by section 15 of Act 76 of 1968, section 36 of Act 89 of 1969, section 21 of Act 52 of 1970, section 26 of Act 88 of 1971, section 20 of Act 90 of 1972, section 42 of Act 85 of 1974, section 22 of Act 113 of 1977, section 14 of Act 104 of 1979, section 22 of Act 104 of 1980, section 24 of Act 96 of 1981, section 21 of Act 91 of 1982, section 34 of Act 94 of 1983, section 29 of Act 121 of 1984, section 18 of Act 65 of 1986, section 8 of Act 108 of 1986, section 22 of Act 85 of 1987, section 33 of Act 90 of 1988, section 34 of Act 113 of 1993, section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000, section 37 of Act 74 of 2002, section 38 of Act 12 of 2003, section 59 of Act 45 of 2003, section 41 of Act 32 of 2004, section 48 of Act 31 of 2005, section 60 of Act 35 of 2007, section 33 of Act 3 of 2008, section 52 of Act 17 of 2009 and section 69 of Act 7 of 2010 10 15 20

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

- (a) by the deletion in subsection (1) of the word “or” at the end of paragraph (a) of the definition of “share incentive scheme”;
- (b) by the insertion in subsection (1) after paragraph (a) of the definition of “share incentive scheme” of the following paragraph: 25
“(b) held by a trustee for the benefit of such directors and employees under an employee share scheme as defined in section 95(1)(c) of the Companies Act, 2008 (Act No. 71 of 2008); or”;
- (c) by the insertion in subsection (4) before paragraph (b) of the following paragraph: 30
“(a) where the amount constitutes a dividend;”; and
- (d) by the substitution in subsection (4) for paragraph (i) of the following paragraph: 35
“(i) to any loan or credit granted to a trust by a company to enable that trust to purchase shares in—
(i) that company [or];
(ii) the controlling company in relation to that company; or
(iii) an associated institution, as defined in paragraph 1 of the
Seventh Schedule, in relation to that company,
with a view to the resale of those shares by that trust to employees
of that company or that associated institution, under a share
incentive scheme operated by the company or the associated
institution for the benefit of those employees;”. 40

(2) Subsection (1) is deemed to have come into operation on 1 January 2011.

Amendment of section 64D of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 70 of Act 7 of 2010 45

75. (1) Section 64D of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “dividend” of the following definition:

“**‘dividend’** means any dividend or foreign dividend as defined in section 1 that is— 50

- (a) paid by a company that is a resident; or
- (b) paid by a company that is not a resident—
(i) if the share in respect of which that [dividend] foreign dividend is
paid is a listed share; and
(ii) to the extent that that foreign dividend does not consist of a
distribution of an asset in specie;”. 55

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 64E of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 71 of Act 7 of 2010

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

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

“(2) For the purposes of this Part, a dividend is deemed to be paid on the earlier of the date on which [it accrues to a shareholder] the dividend is paid or becomes payable by the company that declared the dividend.”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) Where a company declares and pays a dividend and that dividend consists of a distribution of an asset *in specie*, the amount of the dividend must, for the purposes of subsection (1), be deemed to be equal to the market value of the asset on the date that the dividend is, in terms of subsection (2), deemed to be paid.”;

(c) by the addition after subsection (3) of the following subsections:

“(4) (a) Where, during any year of assessment, any amount is owing to a company in respect of a loan or advance provided by the company to—

(i) a person that is—

(aa) not a company;

(bb) a resident; and

(cc) a connected person in relation to that company; or

(ii) a person that is—

(aa) not a company;

(bb) a resident; and

(cc) a connected person in relation to a person contemplated in subparagraph (i),

that company must, for the purposes of this Part, be deemed to have paid a dividend if that loan or advance is provided by the company by virtue of any share held in that company by a person contemplated in subparagraph (i).

(b) The amount of the dividend that is deemed to have been paid in terms of paragraph (a) must, for the purposes of subsection (1), be deemed to be equal to the greater of—

(i) the market-related interest in respect of that loan or advance, less the amount of interest that is payable to that company in respect of that loan or advance for that year of assessment; or

(ii) nil.

(c) Where during any year of assessment a company is deemed to have paid a dividend in terms of paragraph (a), that dividend must be deemed to have been paid on the last day of that year of assessment.

(d) For the purposes of this subsection, ‘**market-related interest**’, in relation to any loan or advance provided by a company means the amount of interest that would be payable to that company on the amount owing to that company in respect of that loan or advance for a period during a year of assessment if the loan or advance had been provided for that period at the official rate of interest as defined in paragraph (1) of the Seventh Schedule.

(5) For the purposes of subsection (1), where any amount of any dividend is denominated in any currency other than the currency of the Republic, that amount must be translated to the currency of the Republic by applying the spot rate applicable at the time that the dividend is paid.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Insertion of section 64EA in Act 58 of 1962

77. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 64E of the following section:

“Liability for tax

64EA. Any—

- (a) beneficial owner of a dividend, to the extent that the dividend does not consist of a distribution of an asset *in specie*; or
- (b) company that is a resident that declares and pays a dividend to the extent that the dividend consists of a distribution of an asset *in specie*, is liable for the dividends tax in respect of that dividend.”

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 64F of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 72 of Act 7 of 2010

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

- (a) by the substitution for the title of the following title:

“**Exemption from tax in respect of dividends other than dividends *in specie***”;

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

“**[A]** Any dividend is exempt from the dividends tax to the extent that it does not consist of a dividend *in specie* if the beneficial owner is—”;

- (c) by the deletion of paragraphs (i) and (iA).

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Insertion of section 64FA in Act 58 of 1962

79. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 64F of the following section:

“Exemption from and reduction of tax in respect of dividends *in specie*

64FA. (1) Where a company declares and pays a dividend that consists of a distribution of an asset *in specie*, that dividend is exempt from the dividends tax to the extent that it constitutes a distribution of an asset *in specie* if—

- (a) the person to whom the payment is made has, by the date of payment of the dividend, submitted to the company—

- (i) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the portion of the dividend that constitutes a distribution of an asset *in specie* would, if that portion had not constituted a distribution of an asset *in specie*, have been exempt from the dividends tax in terms of section 64F; and

- (ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the beneficial owner cease to be a beneficial owner;

- (b) the beneficial owner forms part of the same group of companies, as defined in section 41, as that company; or

- (c) the dividend constitutes a disposal as contemplated in paragraph 51A of the Eighth Schedule.

(2) A company that declares and pays a dividend that consists of a distribution of an asset *in specie* is liable for the dividends tax at a reduced rate in respect of the portion of the dividend that constitutes the distribution of an asset *in specie* if the person to whom the payment is made has, by the date of payment of the dividend, submitted to the company—

- (a) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the portion of the dividend that constitutes a distribution of an asset *in specie* would, if that portion had not constituted a distribution of an asset *in specie*, have been subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation; and 5
- (b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the beneficial owner cease to be the beneficial owner.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation. 10

Amendment of section 64G of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 73 of Act 7 of 2010

80. (1) Section 64G of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(1) Subject to subsections (2) and (3), a company that declares and pays a dividend, to the extent that the dividend does not consist of a distribution of an asset *in specie*, must withhold dividends tax from that payment at a rate of 10 per cent of the amount of that dividend.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation. 20

Amendment of section 64H of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 74 of Act 7 of 2010

81. (1) Section 64H of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection: 25

“(1) Subject to subsections (2) and (3), a regulated intermediary that pays a dividend, to the extent that the dividend does not consist of a distribution of an asset *in specie*, that was declared by any other person must withhold dividends tax from that payment at a rate of 10 per cent of the amount of that dividend.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation. 30

Substitution of section 64I of Act 58 of 1962

82. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 64I of the following section:

“Withholding of dividends tax by insurers 35

64I. If a dividend, to the extent that the dividend does not consist of a distribution of an asset *in specie*, is paid to an insurer as defined in section 29A, the insurer must be deemed to be a regulated intermediary and the dividend must, to the extent that the dividend is allocated to a fund contemplated in section 29A(4)(b), be deemed to be paid to a natural person that is a resident by the regulated intermediary on the date that the dividend is paid to the insurer.”. 40

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 64J of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 45

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

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

“(b) the dividends accrued to that company on or after the effective date, to the extent that the person paying the dividend submits **[prior]** a written notice to the company prior to paying the dividend of the amount by which the dividend reduces the STC credit of **[that person or any other** 50

person on behalf of whom the dividend is paid by that person] the company paying the dividend,”; and

(b) by the substitution for subsection (3) of the following subsection

“(3) For purposes of subsections (1)(b) and (2)(b), the amount by which the STC credit of a company **[or person]** is reduced is deemed to be equal to an amount which bears to the dividend paid by that company **[or person]** to the person or company contemplated in those subsections the same ratio as the amount by which the STC credit of that company **[or person]** is reduced as a result of the payment of that dividend to all shareholders bears to the total dividend paid to all shareholders.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 64K of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009

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

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

“(1) (a) **[A]** If, in terms of section 64EA(a), a beneficial owner is liable for **[the]** any amount of dividends tax **[and]** in respect of a dividend, that beneficial owner must pay **[the tax]** that amount to the Commissioner by the last day of the month following the month during which **[the]** that dividend is paid by the company that declared the dividend, unless the tax has been paid by any other person.

(b) If, in terms of section 64EA(b), a company is liable for any amount of dividends tax in respect of a dividend, that company must pay that amount to the Commissioner by the last day of the month following the month during which that dividend is paid by the company.

(c) If, in terms of this Part, a person is required to withhold any amount of dividends tax in respect of a dividend, that person must pay that amount, less any amount refundable in terms of section 64L or 64M, to the Commissioner by the last day of the month following the month during which that dividend is paid by that person as contemplated in section 64G or 64H.

(d) If, in terms of this Part, a person is required to make payment of any amount of dividends tax, that person must, together with that payment, submit a return to the Commissioner.”;

(b) by the deletion of subsection (2); and

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

“(4) Where a person—

(a) has, in terms of section 64G(3) or 64H(3), withheld dividends tax in accordance with a reduced rate in respect of the payment of any dividend; or

(b) that is a company which was, in terms of section 64FA(2), liable for dividends tax at a reduced rate in respect of the declaration and payment of any dividend,

[the] that person must submit to the Commissioner any declaration—

(i) submitted to the person by or on behalf of a beneficial owner; and

(ii) relied upon by the person in determining the amount of dividends tax so withheld,

at the time and in the manner prescribed by the Commissioner.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

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

85. (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the repeal of Part IX.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 68 of Act 58 of 1962, as substituted by section 20 of Act 5 of 2001

86. Section 68 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

- “(a) income received by or accrued to or in favour of any person married **[with or without]** in or out of community of property which in terms of section 7(2) is deemed to be income received by or accrued to such person’s spouse; or”.

Amendment of section 80T, as inserted by section 6 of Act 20 of 2006

87. (1) Section 80T of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “arrangement” of the following definition:

“**‘arrangement’** means any transaction, operation **[or]**, scheme, agreement or understanding (whether enforceable or not), including all steps therein or parts thereof, and includes any of the foregoing involving the alienation of property;”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of section 101 of Act 58 of 1962, as amended by section 29 of Act 90 of 1962, section 22 of Act 52 of 1970, section 39 of Act 94 of 1983, section 40 of Act 129 of 1991, section 27 of Act 36 of 1996, section 49 of Act 30 of 2000, section 50 of Act 74 of 2002 and section 13 of Act 61 of 2008

88. (1) Section 101 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every company carrying on business or having an office in the Republic and every portfolio of a collective investment scheme **[constituting a company in terms of paragraph (e)(i) of the definition of ‘company’ in section one,**] shall at all times be represented by an individual residing therein.”.

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

Amendment of section 103 of Act 58 of 1962, as amended by section 14 of Act 101 of 1978, section 37 of Act 121 of 1984, section 19 of Act 70 of 1989, section 29 of Act 36 of 1996, section 45 of Act 30 of 1998, section 52 of Act 59 of 2000, section 33 of Act 5 of 2001, section 42 of Act 32 of 2004 and section 36 of Act 20 of 2006

89. (1) Section 103 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Where under any transaction, operation or scheme—

- (a) any taxpayer has ceded the right to receive any amount in exchange for the right to receive any amount of dividends; and
- (b) in consequence of that cession the liability for normal tax of the taxpayer or any other party to the transaction, operation or scheme, as determined before applying the provisions of this subsection, has been reduced or extinguished, the Commissioner shall determine the liability for normal tax of the taxpayer and any other party to the transaction, operation or scheme as if that cession had not been effected.”.

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of amounts received or accrued on or after that date.

Amendment of paragraph 2C of Second Schedule to Act 58 of 1962, as inserted by section 49 of Act 8 of 2007 and amended by section 39 of Act 3 of 2008 and section 61 of Act 60 of 2008

90. The Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 2C of the following paragraph:

“2C. Any lump sum benefit, or part thereof, received by or accrued to a person subsequent to the person’s retirement or death, or withdrawal or resignation from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or the winding up of any such fund, and in consequence of or following upon an event that is prescribed by the Minister by notice in the *Gazette* and contemplated by the rules of any such fund or the

approval of a scheme in terms of section 15B of the **[Pensions]** Pension Funds Act, 1956 (Act No. 24 of 1956), or paragraph 5.3(1)(b) of the Schedule which amends regulation 30 of the Regulations under the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), shall not constitute gross income of that person.”.

Amendment of paragraph 4 of Second Schedule to Act 58 of 1962, as amended by section 20 of Act 72 of 1963, section 24 of Act 90 of 1964, section 36 of Act 21 of 1995, section 41 of Act 3 of 2008, section 63 of Act 60 of 2008, section 60 of Act 17 of 2009 and section 83 of Act 7 of 2010

91. (1) Paragraph 4 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding paragraph (a) of the following words:

“Notwithstanding the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, and subject to paragraphs 3 and 3A, any lump sum benefit shall be deemed to have accrued to **[such]** a member of such fund on the earliest of the date—”.

Amendment of paragraph 6 of Second Schedule to Act 58 of 1962, as substituted by section 62 of Act 17 of 2009 and amended by section 84 of Act 7 of 2010

92. (1) Paragraph 6 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1)(a)(i) for subsubitem (bb) of the following subsubitem:

“(bb) pension preservation fund into any pension fund **[or]**, pension preservation fund or retirement annuity fund;”;

(b) by the substitution in subparagraph (1)(a)(i) for subsubitem (cc) of the following subsubitem:

“(cc) provident fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;”;

(c) by the substitution in subparagraph (1)(a)(i) for subsubitem (dd) of the following subsubitem:

“(dd) provident preservation fund into any pension preservation fund, provident fund **[or]**, provident preservation fund or retirement annuity fund; and”;

(d) by the substitution in subparagraph (1)(a)(ii) for subsubitem (bb) of the following subsubitem:

“(bb) pension preservation fund into any pension fund **[or]**, pension preservation fund or retirement annuity fund;”;

(e) by the substitution in subparagraph (1)(a)(ii) for subsubitem (cc) of the following subsubitem:

“(cc) provident fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;”;

(f) by the substitution in subparagraph (1)(a)(ii) for subsubitem (dd) of the following subsubitem:

“(dd) provident preservation fund into any pension preservation fund, provident fund **[or]**, provident preservation fund or retirement annuity fund; and”.

(2) Subsection (1) comes into effect on 1 March 2012.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001, section 32 of Act 30 of 2002, section 46 of Act 32 of 2004, section 49 of Act 31 of 2005, section 28 of Act 9 of 2006, section 39 of Act 20 of 2006, section 54 of Act 8 of 2007, section 64 of Act 35 of 2007, section 43 of Act 3 of 2008, section 17 of Act 18 of 2009 and section 18 of Act 8 of 2010

93. Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in paragraph 1 for paragraph (cc) of the exclusion in the definition of “provisional taxpayer” of the following paragraph:
 - “(cc) any body corporate, share block company or association of persons contemplated in section 10(1)(e);”;
- (b) by the substitution in the definition of “remuneration” for the words preceding the proviso in paragraph (cB) of the following words:
 - “80 per cent of the amount of the **[fringe]** taxable benefit as determined in terms of paragraph 7 of the Seventh Schedule”.

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 30 of Act 103 of 1976, section 28 of Act 113 of 1977, section 29 of Act 104 of 1980, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000, section 54 of Act 59 of 2000, section 20 of Act 19 of 2001, section 21 of Act 16 of 2004, section 50 of Act 31 of 2005, section 40 of Act 20 of 2006, section 55 of Act 8 of 2007, section 65 of Act 35 of 2007 and section 18 of Act 18 of 2009

94. (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962 is hereby amended—

- (a) by the insertion in subparagraph (4) after item (c) of the following item:
 - “(cA) any premium deemed to have been paid by the employee in terms of paragraph 12C(2) of the Seventh Schedule;”;
- (b) by the deletion in subparagraph (4) of item (e); and
- (c) by the substitution in subparagraph (4)(f) for subitem (i) of the following subitem:
 - “(i) as does not exceed 5 per cent of that remuneration after deducting therefrom the amounts contemplated in items (a) to **[(e)] (d)**; and”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2012 and applies in respect of premiums incurred on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 March 2012 and apply in respect of years of assessment commencing on or after that date.

Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962, as amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980, section 46 of Act 101 of 1990, section 46 of Act 28 of 1997, section 55 of Act 59 of 2000, section 21 of Act 19 of 2001, section 41 of Act 20 of 2006, section 56 Act 8 of 2007, sections 66 and 116 of Act 35 of 2007, section 66 of Act 3 of 2008, section 68 of Act 60 of 2008 and section 20 of Act 18 of 2009

95. (1) Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition after subparagraph (5) of the following subparagraph:

- “(6) There must be deducted from the amount to be withheld or deducted by way of employees’ tax as contemplated in paragraph 2 the amount of the medical scheme fees tax credit that applies in respect of that employee in terms of section 6A if—

- (a) the employer effects payment of the medical scheme fees as contemplated in section 6A(2)(a); or
- (b) the employer does not effect payment of the medical scheme fees as contemplated in section 6A(2)(a), at the option of the employer, if proof of payment of those fees has been furnished to the employer.”.

(2) Subsection (1) comes into operation on 1 March 2012 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 90 of 1964, section 42 of Act 88 of 1971, section 49 of Act 58 of 1974, section 19 of Act 104 of 1979, section 26 of Act 65 of 1986, section 9 of Act 108 of 1986, section 24 of Act 19 of 2001, section 58 of Act 74 of 2002, section 34 of Act 30 of 2002, section 24 of Act 16 of 2004, section 47 of Act 32 of 2004, section 53 of Act 31 of 2005, section 1 of Act 3 of 2008 and section 22 of Act 18 of 2009

96. (1) Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1)(c) for subsubitem (ii) of the following subsubitem:
 - “(ii) the taxable income of that person for the relevant year of assessment which is derived from interest, foreign dividends and rental from the letting of fixed property will not exceed R20 000;”;
- (b) by the substitution in subparagraph (1)(d) for subsubitem (iii) of the following subsubitem:
 - “(iii) will not be derived otherwise than from remuneration, interest, foreign dividends, or rental from the letting of fixed property.”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of paragraph 3 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 63 of Act 17 of 2009 and section 86 of Act 7 of 2010

97. (1) Paragraph 3 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the addition in paragraph (g) of the word “or” at the end of item (ii);
- (b) by the substitution in paragraph (g) for the expression “; or” of a full stop at the end of subparagraph (iii);
- (c) by the deletion in subparagraph (g) of item (iv); and
- (d) by the deletion of subparagraph (h).

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 March 2012.

Amendment of paragraph 6 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 88 of Act 7 of 2010

98. (1) Paragraph 6 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (b) of the following subparagraph:

- “(b) in the case of a company, investment income (other than dividends and foreign dividends).”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of paragraph 8 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008

99. (1) Paragraph 8 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

- “(3) A person that is deregistered in terms of—
 - (a) paragraph 9 or 10 may not again be registered as a micro business [for a period of three years commencing from the beginning of the year of assessment during which it is deregistered; or
 - (b) paragraph 10, may not again be registered as a micro business for a period of three years commencing from the beginning of the year of

assessment following upon the year of assessment during which it is deregistered].”.

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 March 2012.

Amendment of paragraph 10 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 5

100. (1) Paragraph 10 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (4).

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 March 2012. 10

Amendment of paragraph 1 of Seventh Schedule to Act 58 of 1962, as amended by section 26 of Act 96 of 1985, section 33 of Act 65 of 1986, section 28 of Act 85 of 1987, section 24 of Act 70 of 1989, section 55 of Act 101 of 1990, section 49 of Act 129 of 1991, section 35 of Act 141 of 1992, section 52 of Act 113 of 1993, section 30 of Act 21 of 1994, section 40 of Act 36 of 1996, section 54 of Act 30 of 2000, section 59 of Act 59 of 2000, section 62 of Act 74 of 2002, section 47 of Act 3 of 2008 and section 90 of Act 7 of 2010 15

101. (1) Paragraph 1 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in the definition of “taxable benefit” of the word “or” after paragraphs (a) and (b); 20

(b) by the substitution in the definition of “taxable benefit” for paragraph (d) of the following paragraph:

“(d) any benefit or privilege received by or accrued to a person contemplated in section 9(1)(e) 9(2)(g) or (h) stationed outside the Republic which is attributable to that person’s services rendered outside the Republic~~].~~; or”; and 25

(c) by the addition in the definition of “taxable benefit” after paragraph (d) of the following paragraph:

“(e) any severance benefit.”. 30

(2) Paragraph (b) of subsection (1) comes into operation on 1 January 2012 and applies in respect of amounts received or accrued during years of assessment commencing on or after that date.

(3) Paragraph (c) of subsection (1) is deemed to have come into effect on 1 March 2011. 35

Amendment of paragraph 2 of Seventh Schedule to Act 58 of 1962, as inserted by section 46 of Act 121 of 1984 and amended by section 27 of Act 96 of 1985, section 56 of Act 101 of 1990, section 49 of Act 28 of 1997, section 54 of Act 30 of 1998, section 50 of Act 32 of 2004, section 55 of Act 31 of 2007 and section 64 of Act 17 of 2009 40

102. (1) Paragraph 2 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for item (b) of the following item:

“(b) the employee has been granted the right to use any asset (other than any residential accommodation or household goods supplied with such accommodation) for his or her private or domestic purposes either free of charge or for a consideration payable by the employee which is less than the value of such use, as determined under paragraph [6(2)] 6 in the case of an asset other than a motor vehicle or under paragraph [7(4) or (7)] 7 in the case of a motor vehicle; or”; 45

(b) by the substitution for subparagraph (e) of the following subparagraph:

“(e) any service (other than a service to which the provisions of **[item]** subparagraph (j) or (k) or paragraph 9(4)(a) apply) has at the expense of the employer been rendered to the employee (whether by the employer or by some other person), where that service has been utilized by the employee for his or her private or domestic purposes 55

and no consideration has been given by the employee to the employer in respect of that service or, if any consideration has been given, the amount thereof is less than the amount of the lowest fare referred to in item (a) of subparagraph (1) of paragraph 10, or the cost referred to in item (b) of that subparagraph, as the case may be; or”; and

(c) by the addition after subparagraph (j) of the following subparagraph:

“(k) the employer has during any period made any payment to any insurer under an insurance policy directly or indirectly for the benefit of the employee or his or her spouse, child, dependant or nominee.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 March 2012 and apply in respect of premiums incurred on or after that date.

Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 30 of Act 96 of 1985, section 10 of Act 108 of 1986, Government Notice 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice R.764 of 29 March 1990, section 58 of Act 101 of 1990, section 50 of Act 129 of 1991, section 36 of Act 141 of 1992, section 32 of Act 21 of 1994, section 47 of Act 21 of 1995, section 50 of Act 28 of 1997, section 45 of Act 53 of 1999 and section 56 of Act 31 of 2005 and section 91 of Act 7 of 2010

103. (1) Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (8) of the following subparagraph:

“(8A) For the purposes of subparagraphs (7) and (8), if the employee contemplated in those subparagraphs is a ‘judge’ or a ‘Constitutional Court judge’ as defined in section 1 of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), the kilometres travelled between the judge’s place of residence and the court over which the judge presides must be deemed to be kilometres travelled for business purposes and not for private purposes.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment ending on or after that date.

Amendment of paragraph 9 of Seventh Schedule to Act 58 of 1962, as amended by section 31 of Act 96 of 1985, section 34 of Act 65 of 1986, section 29 of Act 85 of 1987, section 59 of Act 101 of 1990, section 53 of Act 113 of 1993, section 33 of Act 21 of 1994, section 51 of Act 28 of 1997, section 55 of Act 30 of 1998, section 55 of Act 30 of 2000, section 57 of Act 31 of 2005, section 29 of Act 9 of 2006, section 2 of Act 8 of 2007, section 68 of Act 35 of 2007, sections 1 and 48 of Act 3 of 2008 and section 65 of Act 17 of 2009

104. (1) Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3)(a)(ii) for the words preceding the proviso of the following words:

“(ii) ‘B’ represents an abatement equal to an amount of [R54 200] R59 750”.

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 March 2011.

Amendment of paragraph 12A of Seventh Schedule to Act 58 of 1962, as inserted by section 56 of Act 30 of 1998 and amended by section 59 of Act 31 of 2005, section 2 of Act 80 of 2007, section 1 of Act 3 of 2008 and section 66 of Act 17 of 2009

105. (1) Paragraph 12A of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in subparagraph (5) of item (d).

(2) Subsection (1) comes into operation on 1 March 2012 and applies in respect of taxable benefits derived on or after that date.

Insertion of paragraph 12C in Seventh Schedule to Act 58 of 1962

106. (1) The Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 12B of the following paragraph:

“BENEFITS IN RESPECT OF INSURANCE POLICIES

12C. (1) The cash equivalent of the value of a taxable benefit deemed to have been granted as contemplated in paragraph 2(k) is the amount of any expenditure incurred by an employer during a year of assessment in respect of any premiums payable under a policy of insurance directly or indirectly for the benefit of an employee or his or her spouse, child, dependant or nominee.

(2) Where any premium is paid in terms of a policy of insurance contemplated in section 23(m)(iii), the amount of any premium paid by the employer of that employee must, to the extent that the amount has been deemed to be a taxable benefit in terms of paragraph 2(k), be deemed to have been paid by that employee.

(3) Where an appropriate portion of any expenditure contemplated in subparagraph (1) cannot be attributed to the employee for whose benefit the premium is paid, the amount of that expenditure in relation to that employee is deemed, for the purposes of subparagraph (1), to be an amount equal to the total expenditure incurred by the employer during that year of assessment for the benefit of all employees divided by the number of employees in respect of whom the expenditure is incurred.”.

(2) Subsection (1) comes into operation on 1 March 2012 and applies in respect of premiums incurred on or after that date.

Amendment of paragraph 5 of Eighth Schedule to Act 58 of 1962, as amended by section 32 of Act 9 of 2006, section 2 of Act 8 of 2007, section 1 of Act 3 of 2008 and section 67 of Act 17 of 2009

107. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 5 of the following paragraph:

“Annual exclusion

5. (1) Subject to subparagraph (2), the annual exclusion of a natural person and a special trust in respect of a year of assessment is **[R17 500]** R20 000.

(2) Where a person dies during a year of assessment, that person’s annual exclusion for that year is **[R120 000]** R200 000.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as amended by section 72 of Act 60 of 2001, section 68 of Act 74 of 2002, section 93 of Act 45 of 2003, section 56 of Act 32 of 2004, section 67 of Act 31 of 2005, section 71 of Act 35 of 2007, section 50 of Act 3 of 2008, section 75 of Act 60 of 2008 and section 94 of Act 7 of 2010

108. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (2)(a) for the words preceding subitem (i) of the following words:

“a person that commences **[or ceases]** to be a resident or a controlled foreign company that commences or ceases to be a resident, in respect of all assets of that person other than—”; and

(b) by the deletion in subparagraph (2)(a) of subitems (ii) and (iii).

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of paragraph 19 of Eighth Schedule to Act 58 of 1962, as amended by section 94 of Act 45 of 2003, section 72 of Act 35 of 2007 and section 69 of Act 17 of 2009

109. (1) Paragraph 19 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) Where a person disposes of a share in a company—

(a) as a result of the acquisition by the company from that person of that share or as part of the liquidation, winding-up or deregistration of that company, that person must disregard so much of any capital loss resulting from the disposal as does not exceed any exempt dividends; or

(b) in circumstances other than those contemplated in item (a), that person must disregard so much of any capital loss resulting from the disposal as does not exceed any extraordinary exempt dividends, received by or accrued to that person in respect of that share within a period of 18 months prior to or as part of the disposal.”; and

(b) by the substitution in subparagraph (3) for items (b) and (c) of the following items:

“(b) ‘**exempt dividend**’ means any dividend or foreign dividend to the extent that the dividend or foreign dividend is—

(i) not subject to any tax under Part VIII of Chapter II; and

(ii) exempt from normal tax in terms of section 10(1)(k)(i) or section 10B(2)(a) or (b);

(c) ‘**extraordinary exempt dividends**’ means so much of the amount of the aggregate of any exempt dividends received or accrued within the period of 18 months contemplated in subparagraph (1) as [exceed] exceeds 15 per cent of the proceeds received or accrued from the disposal [of the share] contemplated in that subparagraph.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as amended by section 26 of Act 19 of 2001, section 75 of Act 60 of 2001, section 71 of Act 74 of 2002, section 95 of Act 45 of 2003, section 58 of Act 32 of 2004, section 68 of Act 31 of 2005, section 45 of Act 20 of 2006, section 60 of Act 8 of 2007, section 73 of Act 35 of 2007, section 52 of Act 3 of 2008, section 77 of Act 60 of 2008 and section 95 of Act 7 of 2010

110. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)(h)(iii) for subsubitems (aa) and (bb) of the following subsubitems:

“(aa) a right in a controlled foreign company held directly by a resident, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) of that company and of any other controlled foreign company in which that controlled foreign company and that resident directly or indirectly have an interest, which was included in the income of that resident in terms of section 9D during any year of assessment, less the amount of any foreign dividend distributed by that company to that resident during any year of assessment which was exempt from tax in terms of section [10(1)(k)(ii)(cc)] 10B(2)(a) or (b); or

(bb) a right in a controlled foreign company held directly by another controlled foreign company, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) of that first-mentioned controlled foreign company and of any other controlled foreign company in which both the first- and second-mentioned controlled foreign companies directly or indirectly have an interest, which during any year of assessment would have been included in the income of that second-mentioned controlled foreign company in terms of section 9D had it been a resident, less the amount of any foreign dividend distributed by that first-mentioned controlled foreign company to the

second-mentioned controlled foreign company if that dividend would have been exempt from tax in terms of section **[10(1)(k)(ii)(cc)]** 10B(2)(a) or (b) had that second-mentioned controlled foreign company been a resident;”.

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of disposals made on or after that date.

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as amended by section 91 of Act 60 of 2001, section 84 of Act 74 of 2002, section 101 of Act 45 of 2003, section 75 of Act 31 of 2005, section 51 of Act 33 of 2006, section 76 of Act 35 of 2007 and section 100 of Act 7 of 2010

111. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (4) for item (b) of the following item:

“(b) asset (other than an amount in foreign currency owing to that person in respect of any loan, advance or debt payable to that person) the capital gain or capital loss from the disposal of which is derived or deemed to have been derived from a source in the Republic, as contemplated in section 9(2) **[(other than an asset contemplated in paragraph (b) of the definition of ‘foreign currency asset’ in paragraph 84)],**”; and

(b) by the substitution in subparagraph (4) for item (b) of the following item:

“(b) asset (other than an amount in foreign currency owing to that person in respect of any loan, advance or debt payable to that person) the capital gain or capital loss from the disposal of which is **[derived or deemed to have been derived]** from a source in the Republic, **[as contemplated in section 9(2),]**”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2012.

Substitution of paragraph 43A of Eighth Schedule to Act 58 of 1962

112. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 43A of the following paragraph:

“Dividends treated as proceeds on disposal of certain shares

43A. (1) For the purposes of this section, ‘**exempt dividend**’ means any dividend or foreign dividend to the extent that the dividend or foreign dividend is—

(a) not subject to any tax under Part VIII of Chapter II; and
(b) exempt from normal tax in terms of section 10(1)(k)(i) or section 10B(2)(a) or (b).

(2) The proceeds from the disposal by a taxpayer that is a company of shares in another company must be increased by an amount equal to the amount of any dividend or foreign dividend that is exempt in terms of section 10B(2)(a) received by or accrued to that taxpayer in respect of any share held by the taxpayer in that other company—

(a) (i) to the extent that that dividend is received by or accrues to the taxpayer within a period of 18 months prior to or as part of the disposal;
(ii) if the taxpayer immediately before the disposal—
(aa) held the shares disposed of as a capital asset (as defined in section 41); and
(bb) held more than 50 per cent of the equity shares in the other company; and
(iii) if the other company (or any company in which that other company directly or indirectly holds more than 50 per cent of the equity shares) has, within a period of 18 months prior to that disposal, by reason of or in consequence of the disposal obtained any loan or advance or incurred any debt—

- (aa) owing to the person acquiring the shares or any connected person in relation to that person; or
- (bb) that is guaranteed or otherwise secured by the person acquiring the shares or any connected person in relation to that person;
- (b) if the share in which the dividend or foreign dividend is so received or accrues is disposed of by that company within a period of 45 days after the date of accrual in respect of that dividend or foreign dividend.
- (3) For the purposes of subparagraph (2)(a), the amount by which the proceeds must be increased is limited to the amount of the loan, advance or debt contemplated in subitem (iii) of that subparagraph.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of paragraph 51A of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 7 of 2010

113. (1) Paragraph 51A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Disposal of residence by company or trust and liquidation, winding up, deregistration or [revocation] termination of company or trust”;
- (b) by the substitution in subparagraph (1) for item (b) of the following item:
“(b) the residence to which that interest relates is mainly used for domestic purposes during the period commencing on 11 February 2009 and ending on the date of the disposal contemplated in item (a) by one or more natural persons who [ordinarily resided in that residence during that period] are connected persons in relation to the company or trust at the time of that disposal; and”;
- (c) by the deletion in subparagraph (1) of item (c);
- (d) by the substitution in subparagraph (1)(d) for subitem (ii) of the following subitem:
“(ii) in the case of a trust making the disposal, steps have been taken to terminate the trust.”;
- (e) by the substitution in subparagraph (3)(c) for subitem (ii) of the following subitem:
“(ii) be deemed to have acquired that interest at a cost equal to the base cost of the shares contemplated in subitem (i) as at the date of the acquisition by the person of those shares plus the cost of any improvements effected in respect of that interest subsequent to that date of acquisition.”;
- (f) by the substitution in subparagraph (4)(b) for subitem (iii) of the following subitem:
“(iii) any valuation of that interest effected by that [trust] company as contemplated in paragraph 29(4).”;
- (g) by the substitution in subparagraph (6) for the words preceding item (a) of the following words:
“This paragraph does not apply to any disposal made to a person [that is a company or trust] unless—”;
- (h) by the substitution in subparagraph (6)(a) for subitem (ii) of the following subitem:
“(ii) where that person is a trust, steps have been taken to terminate the trust.”; and
- (i) by the deletion of subsection (7).

(2) Paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) of subsection (1) are deemed to have come into operation on 1 October 2010 and apply in respect of disposals made on or after that date and before 1 January 2013.

(3) Paragraph (i) of subsection (1) comes into operation on 1 April 2012 and applies in respect of disposals made on or after that date and before 1 January 2013.

Amendment of paragraph 55 of Eighth Schedule to Act 58 of 1962, as amended by section 31 of Act 19 of 2001, section 98 of Act 60 of 2001, section 87 of Act 74 of 2002, section 102 of Act 45 of 2003, section 76 of Act 31 of 2005 and section 57 of Act 3 of 2008

114. (1) Paragraph 55 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 5

- (a) by the deletion in subparagraph (1) of the word “or” after paragraph (c);
- (b) by the substitution in subparagraph (1) for the full stop at the end of paragraph (d) of a semicolon; and
- (c) by the addition in subparagraph (1) after paragraph (d) of the following paragraphs: 10
 - “(e) in respect of a risk policy with no cash value or surrender value; or
 - (f) if the amount received or accrued constitutes an amount contemplated in section 10(1)(gG) or (gH).”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of disposals made on or after that date. 15

Amendment of paragraph 57 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 89 of Act 74 of 2002 and section 34 of Act 9 of 2006

115. (1) Paragraph 57 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph: 20

“(3) The sum of the amounts to be disregarded by a natural person as contemplated in subparagraph (2) may not exceed **[R750 000]** R900 000 during that natural person’s lifetime.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date. 25

Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 45 of 2003 and amended by section 79 of Act 31 of 2005, section 35 of Act 9 of 2006, section 65 of Act 8 of 2007, section 77 of Act 35 of 2007, section 58 of Act 3 of 2008, section 81 of Act 60 of 2008 and section 108 of Act 7 of 2010 30

116. (1) Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (1) of the definition of “foreign company”;
- (b) by the substitution in subparagraph (2)(a) for subitem (i) of the following subitem: 35
 - “(i) held at least **[20]** 10 per cent of the equity shares and voting rights in that controlled foreign company; and”;
- (c) by the deletion in subparagraph (2)(b) of the word “or” at the end of subitem (ii);
- (d) by the substitution in subparagraph (2)(b) for the full stop at the end of subitem (ii) of the expression “; or”;
- (e) by the insertion in subparagraph (2)(b) of the following subitem:
 - “(iv) by a person that is a headquarter company.”;
- (f) by the substitution in subparagraph (3)(c)(ii) for subsubitem (bb) of the following subsubitem: 45
 - “(bb) was included in the income of a shareholder of that company or would but for the provisions of section **[10(1)(k)(ii)(dd)]** 10B(2)(a) or (b) have been so included; or”;
- (g) by the substitution in subparagraph (3)(c)(iii)(bb) for subsubitem (B) of the following subsubitem: 50
 - “(B) was included in the income of a shareholder of that company or would but for the provisions of section **[10(1)(k)(ii)(dd)]** 10B(2)(a) or (b) have been so included; and”;
- (h) by the substitution in subparagraph (3) for item (d) of the following item: 55
 - “(d) that foreign company ceased in terms of any transaction, operation or scheme of which the disposal of the equity share capital forms part, to be a controlled foreign company in relation to that person or

other company in the same group of companies as that person (having regard solely to any rights contemplated in paragraph (a) of the definition of ‘participation rights’ in section 9D **[and without having regard to any election exercised in terms of section 9D (13)]**.”;

- (i) by the substitution in subparagraph (4) for item (b) of the following item:
 “(b) would have been included in the income of the company to which that distribution was made but for section **[10(1)(k)(ii)(dd)] 10B(2)(a) or (b)**.”; and

- (j) by the substitution in subparagraph (5) for the words preceding the proviso of the following words:

“A person must disregard any capital gain **[or capital loss]** determined in respect of any **[capital distribution contemplated in paragraph 67A, 76, 76A or 77]** foreign return of capital received by or accrued to that person from a ‘foreign company’ as defined in section 9D (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2(2)) where that person (whether alone or together with any other person forming part of the same group of companies as that person) holds at least **[20] 10** per cent of the total equity share capital and voting rights in that company”.

(2) Paragraphs (a), (c), (d) and (e) of subsection (1) come into operation on 1 January 2012 and apply in respect of disposals made on or after that date.

(3) Paragraphs (b), (f), (g), (h), (i) and (j) of subsection (1) come into operation on 1 April 2012 and apply in respect of disposals made on or after that date.

Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962, as amended by section 106 of Act 60 of 2001, section 95 of Act 74 of 2002, section 113 of Act 45 of 2003, section 83 of Act 35 of 2007, section 59 of Act 3 of 2008, section 78 of Act 17 of 2009 and section 110 of Act 7 of 2010

117. (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of the definition of “capital distribution”;
 (b) by the substitution in the definition of “date of distribution” for the words preceding subparagraph (a) of the following words:

“**‘date of distribution’**, in relation to any distribution, means the date of **[approval] payment** of the distribution **[by the directors or by some other person or body of persons with comparable authority under a law, regulation or rule to which that company is subject, except where the distribution is made]**—”;

- (c) by the deletion of the definition of “distribution”; and
 (d) by the deletion of the definition of “share”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of paragraph 75 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 114 of Act 45 of 2003, section 29 of Act 16 of 2004 and section 79 of Act 17 of 2009

118. (1) Paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) Where a company makes a distribution of an asset *in specie* to a person holding a share in that company, that company must be treated as having disposed of that asset to that shareholder on the date of distribution for an amount received or accrued equal to the market value of that asset on that date.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962, as amended by section 107 of Act 60 of 2001, section 96 of Act 74 of 2002, section 115 of Act 45 of 2003, section 30 of Act 16 of 2004, section 81 of Act 31 of 2005, section 84 of Act 35 of 2007, section 60 of Act 3 of 2008 and section 84 of Act 60 of 2008

119. (1) Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 5

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

“Returns of capital by way of distributions of cash or assets *in specie*”;

(b) by the substitution for subparagraph (1) of the following subparagraph: 10

“(1) Subject to subparagraph (2), where a **[capital distribution]** return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share **[distributed]** in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share, that shareholder must 15 where the date of distribution of that **[capital distribution]** cash or asset occurs—

(a) before valuation date, reduce the expenditure contemplated in paragraph 20 actually incurred before valuation date in respect of that share by the amount of that cash or the market value of that asset **[in specie]**; 20

(b) on or after valuation date but before 1 October 2007 and that share is disposed of by the shareholder on or before 31 December 2011, treat the amount of that cash or the market value of that asset **[in specie]** as proceeds when that share is disposed of; **[and]** 25

(c) on or after 1 October 2007 but before 1 April 2012, treat the amount of that cash or the market value of that asset **[in specie]** as proceeds when that share is partly disposed of in terms of paragraph 76A.”; and

(c) by the substitution for subparagraphs (2), (3) and (4) of the following subparagraphs: 30

“(2) Where a shareholder uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32(3A)(a) and a **[capital distribution]** return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share **[distributed]** in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to that shareholder in respect of those shares on or after valuation date but before 1 October 2007, the weighted average base cost of those shares must be determined by— 35

(a) deducting the amount of that cash or the market value of that asset **[in specie]** from the base cost of those shares held when that **[capital distribution]** return of capital was received or accrued; and 40

(b) dividing the result by the number of those shares held when that **[capital distribution]** return of capital was received or accrued. 45

(3) **[Any]** Where a return of capital is effected by way of a distribution of an asset *in specie* **[received by or accrued to a shareholder]**, that asset must be treated as having been acquired by the person to whom the distribution is made on the date of distribution and for expenditure equal to the market value of that asset on that date, which expenditure must be treated as an amount of expenditure actually incurred **[and paid]** for the purposes of paragraph 20(1)(a). 50

(4) Every company that makes a distribution to any other person and every person that pays a distribution to any other person on behalf of a company must by the time of the distribution or payment notify that other person in writing of the extent to which the distribution or payment constitutes a return of capital.”. 55

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of paragraph 76A of Eighth Schedule to Act 58 of 1962, as inserted by section 85 of Act 35 of 2007 and amended by section 61 of Act 3 of 2008

120. (1) Paragraph 76A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph: 5

“(1) Where—

(a) a return of capital by way of a distribution of cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share; and 10

(b) that return of capital is received by or accrues to that shareholder on or after 1 October 2007 and before 1 April 2012, that shareholder must be deemed to have disposed of part of that share on the date that the return of capital is received by or accrues to the shareholder.”; 15

(b) by the insertion of the following subparagraph:

“(1A) Subject to paragraph 76(2), where—

(a) a return of capital by way of a distribution of cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share; 20

(b) that return of capital is received by or accrues to that shareholder on or after valuation date but before 1 October 2007; and

(c) that share is not disposed of before 1 April 2012, that return of capital must be treated as having been distributed on 1 April 2012.”; 25

(c) by the substitution for subparagraph (2) of the following paragraph:

“(2) If paragraph 76(2) applies and the base cost of those shares is a negative amount at the end of [30 June 2011] 31 March 2012—

(a) that shareholder must be treated as having a capital gain on [30 June 2011] 31 March 2012 equal to that negative amount; and 30

(b) the base cost of those shares at the end of [30 June 2011] 31 March 2012 must be treated as nil.”; and

(d) by the substitution for subparagraph (3) of the following subparagraph:

“(3) For purposes of paragraph 33(1) the market value of the part 35 disposed of under this paragraph must be treated as being equal to the amount of the cash or the market value of the asset [*in specie*] received or accrued by way of a [capital distribution] return of capital.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2011.

Insertion of paragraph 76B in Eighth Schedule to Act 58 of 1962 40

121. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 76A of the following paragraph:

“Reduction in base cost of shares as result of distributions

76B. (1) Where—

(a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* is received by or accrues to a shareholder in respect of a share; 45

(b) that return of capital or foreign return of capital is received by or accrues to that shareholder on or after 1 April 2012 and prior to the disposal of that share; and 50

(c) that share constitutes a pre-valuation date asset in relation to that shareholder,

for purposes of determining the date of acquisition of that share and the expenditure in respect of the cost of acquisition of that share, that shareholder must be treated as— 55

(i) having disposed of that share at a time immediately before the return of capital or foreign return of capital is received or accrues for an amount equal to the market value of the share at that time; and

- (ii) having immediately reacquired that share at that time at an expenditure equal to that market value—
 - (aa) less any capital gain that would have been determined had the share been disposed of at market value at that time; and
 - (bb) increased by any capital loss that would have been determined had the share been disposed of at market value at that time, which expenditure must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a).
- (2) Where—
 - (a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* is received by or accrues to a shareholder in respect of a share; and
 - (b) that return of capital or foreign return of capital is received by or accrues to that shareholder on or after 1 April 2012 and prior to the disposal of that share,
 the shareholder must reduce the expenditure in respect of the share by the amount of that cash or the market value of that asset on the date that the asset is received by or accrues to that shareholder.
- (3) Where the amount of a return of capital or foreign return of capital contemplated in subparagraph (2) exceeds the expenditure in respect of the share in respect of which that return of capital or foreign return of capital is received or accrues, the amount of the excess must be treated as a capital gain in determining that shareholder's aggregate capital gain or aggregate capital loss for the year of assessment in which that return of capital or foreign return of capital is received by or accrues to the shareholder.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of returns of capital received or accrued on or after that date.

Amendment of paragraph 77 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

122. (1) Paragraph 77 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

“(2) **[Any capital distribution]** Where—

- (a) a return of capital by way of a distribution of cash or assets *in specie* is received by or [accrued] accrues to [that] a shareholder contemplated in subparagraph (1) in respect of [those shares] a share that is treated as having been disposed of in terms of that subparagraph; and
- (b) that return of capital is received by or accrues to that shareholder after the [disposal of those shares] date contemplated in subparagraph (1)(a) or (b), the return of capital must be treated as a capital gain in determining that shareholder's aggregate capital gain or aggregate capital loss for that year of assessment.”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of paragraph 78 of Eighth Schedule to Act 58 of 1962, as amended by section 97 of Act 74 of 2002, section 116 of Act 45 of 2003, section 31 of Act 16 of 2004, section 85 of Act 60 of 2008 and section 111 of Act 7 of 2010

123. (1) Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (2) of the following subparagraph:

“(1) Where a company makes a distribution of shares for no consideration, those shares must be treated as having been acquired on the date of distribution for expenditure incurred and paid of nil, except to the extent that the distribution of those shares constitutes a dividend, in which case they must be treated as having been acquired on the date of distribution for expenditure incurred and paid equal to the amount of that dividend.”; and

- (b) by the substitution for subparagraph (3) of the following subparagraph:

“(3) Where a company issues shares in substitution of previously held shares as contemplated in subparagraph (2) and also **[makes a capital**

distribution] effects a return of capital by way of a distribution of cash or assets *in specie* with respect to those previously held shares—

- (a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution but not in respect of the transfer of those previously held shares exchanged for that **[capital distribution]** return of capital; and 5
- (b) both the substitution and that **[capital distribution]** return of capital must be treated as separate transactions with the expenditure allowable in terms of paragraph 20 and any market value adopted or determined in terms of paragraph 29(4) in respect of those 10 previously held shares allocated between both transactions based on the relative market values of the newly issued shares on the date of distribution and that **[capital distribution]** return of capital received in exchange therefor.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2011. 15

(3) Paragraph (b) of subsection (1) comes into operation on 1 April 2012.

Repeal of Part XIII of Eighth Schedule to Act 58 of 1962

124. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of Part XIII. 20

(2) Subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 8 of Tenth Schedule to Act 58 of 1962, as substituted by section 89 of Act 35 of 2007

125. (1) Paragraph 8 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (7) for item (a) of the following item: 25

“(a) an ‘oil and gas right’ means **[an]** any—

- (i) exploration right or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or any right or interest therein; 30
- (ii) exploration right acquired by virtue of a conversion contemplated in item 4 of Schedule II to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or any interest therein; or
- (iii) production right acquired by virtue of a conversion contemplated in item 5 of Schedule II to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or any interest therein; and”.

(2) Subsection (1) is deemed to have come into operation on 30 October 2007 and applies in respect of conversions taking place on or after that date. 40

Amendment of section 47B of Act 91 of 1964, as inserted by section 59 of Act 30 of 2000 and amended by section 40 of Act 12 of 2003, section 13 of Act 9 of 2005, section 92 of Act 35 of 2007 and section 87 of Act 17 of 2009

126. (1) Section 47B of the Customs and Excise Act, 1964 (Act No. 91 of 1964), is hereby amended by the substitution in subsection (2)(b)(i) for the words preceding the proviso of the following words: 45

“The tax shall be charged at the rate of **[R150]** R190 on the carriage of each chargeable passenger departing on a flight”.

(2) Subsection (1) is deemed to have come into operation on 1 October 2011 and applies in respect of the carriage of a chargeable passenger on any flight which commences on or after that date. 50

Amendment of Schedule 1 to Act 91 of 1964, as amended by section 19 of Act 95 of 1965, section 15 of Act 57 of 1966, section 2 of Act 96 of 1967, section 22 of Act 85 of 1968, section 37 of Act 105 of 1969, section 9 of Act 98 of 1970, section 2 of Act 89 of 1971, section 12 of Act 103 of 1972, section 6 of Act 68 of 1973, section 3 of Act 64 of 1974, section 13 of Act 71 of 1975, section 13 of Act 105 of 1976, section 38 of Act 112 of 1977, section 3 of Act 114 of 1981, section 27 of Act 86 of 1982, section 10 of Act 89 of 1984, section 14 of Act 101 of 1985, section 11 of Act 69 of 1988, section 19 of Act 68 of 1989, section 40 of Act 59 of 1990, section 3 of Act 111 of 1991, section 15 of Act 105 of 1992, section 13 of Act 98 of 1993, section 12 of Act 19 of 1994, section 74 of Act 45 of 1995, section 8 of Act 44 of 1996, section 15 of Act 27 of 1997, section 75 of Act 30 of 1998, section 7 of Act 32 of 1999, section 64 of Act 30 of 2000, section 52 of Act 19 of 2001, section 53 of Act 30 of 2002, section 41 of Act 12 of 2003, section 155 of Act 45 of 2003, section 36 of Act 16 of 2004, section 14 of Act 9 of 2005, section 36 of Act 9 of 2006, section 76 of Act 8 of 2007, section 66 of Act 3 of 2008, section 88 of Act 17 of 2009 and section 117 of Act 7 of 2010

127. (1) Schedule 1 to the Customs and Excise Act, 1964, is hereby amended as set out in Appendix II to this Act.

(2) Schedule 1 to the Customs and Excise Act, 1964, is hereby amended as set out in Appendix III to this Act.

(3) For the purposes of Appendix II and Appendix III to this Act any word or expression to which a meaning has been assigned in the Customs and Excise Act, 1964, bears the meaning so assigned unless the context otherwise indicates.

(4) Subject to section 58(1) of the Customs and Excise Act, 1964, subsection (1) is deemed to have come into operation on 23 February 2011.

(5) Subject to section 58(1) of the Customs and Excise Act, 1964, subsection (2) is deemed to have come into operation on 1 March 2011.

Continuation of certain amendments of Schedules to Act 91 of 1964

128. Every amendment or withdrawal of or insertion in Schedule No. 1 to 6, 8 and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56, 56A, 57, 60 or 75(15) of that Act during the period 1 August 2010 up to and including 31 July 2011, shall not lapse by virtue of section 48(6), 49, 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act.

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006, section 81 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008, section 104 of Act 60 of 2008 and section 119 of Act 7 of 2010

129. (1) Section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), is hereby amended—

- (a) by the addition in the proviso to the definition of “enterprise” after paragraph (x) of the following paragraph:

“(xi) the supply of services by a mutual association licensed in terms of section 30 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), to carry on the business of insurance of employers against their liabilities to employees in terms of that Act in respect of which that mutual association pays compensation that is no greater than compensation that would have been paid in similar circumstances in terms of that Act shall be deemed not to be the carrying on of an enterprise;”;

- (b) by the addition in the proviso to the definition of “enterprise” after paragraph (xi) of the following paragraph:

“(xii) any activity carried on by a trust contemplated in the definition of ‘sukuk’ in section 24JA(1) of the Income Tax Act shall be deemed not to be the carrying on of an enterprise;” and

(c) by the deletion in the definition of “input tax” of the proviso to paragraph (b).

(2) Paragraph (a) of subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of services supplied on or after that date. 5

(3) Paragraph (b) of subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

(4) Paragraph (c) of subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of goods consisting of fixed property supplied on or after that date. 10

Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, paragraph 2 of Government Notice 2695 of 8 November 1991, section 13 of Act 136 of 1992, section 10 of Act 20 of 1994, section 19 of Act 37 of 1996, section 24 of Act 27 of 1997, section 87 of Act 30 of 1998, section 82 of Act 53 of 1999, section 149 of Act 60 of 2001, section 115 of Act 74 of 2002, section 44 of Act 16 of 2004, section 93 of Act 32 of 2004 and section 41 of Act 9 of 2006 15

130. (1) Section 2 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (iiiA) of the following paragraph: 20

“(iiiA) ‘**derivative**’ means a derivative as defined [for purposes of **Statement AC 133 of generally accepted accounting practice**] in International Accounting Standard 39 of the International Accounting Standards issued by the International Accounting Standards Board;” and 25

(b) by the substitution in subsection (2) for paragraph (vii) of the following paragraph:

“(vii) ‘**superannuation scheme**’ means a scheme whereby provision is made for the payment or granting of benefits by a benefit fund, pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as defined in section 1 of the Income Tax Act.”. 30

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

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001, section 151 of Act 60 of 2001, section 166 of Act 45 of 2003, section 95 of Act 32 of 2004, section 102 of Act 31 of 2005, section 172 of Act 34 of 2005, section 42 of Act 9 of 2006, section 79 of Act 20 of 2006, section 27 of Act 36 of 2007, section 106 of Act 60 of 2008, section 91 of Act 17 of 2009 and section 120 of Act 7 of 2010 35

131. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (2C).

(2) Subsection (1) comes into operation on 1 March 2012. 45

Amendment of section 8A of Act 89 of 1991, as inserted by section 121 of Act 7 of 2010

132. (1) Section 8A of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraphs (a), (b) and (c) of the following paragraphs:

“(a) the [bank] financier shall be deemed not to have acquired or supplied goods under the sharia arrangement; 50

(b) the client shall be deemed to have acquired the goods—

(i) from the seller for consideration equal to the amount paid by the [bank] financier to the seller; and

(ii) at such time as the supply was made by the seller by virtue of the transaction between the seller and the [bank] financier; and 55

- (c) any premium paid or payable to the **[bank]** financier by the client shall be deemed to be consideration in respect of **[an exempt]** a financial service supplied by the **[bank]** financier as contemplated in section 2(1)(f): Provided that this paragraph shall not apply to the extent to which the consideration constitutes any fee, commission or similar charge.” 5

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

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, paragraph 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, section 21 of Act 37 of 1996, section 22 of Act 46 of 1996, section 27 of Act 27 of 1997, section 84 of Act 53 of 1999, section 68 of Act 19 of 2001, section 152 of Act 60 of 2001, section 168 of Act 45 of 2003, section 97 of Act 32 of 2004, section 104 of Act 31 of 2005, section 43 of Act 9 of 2006, section 80 of Act 20 of 2006, section 82 of Act 8 of 2007, section 107 of Act 60 of 2008 and section 122 of Act 7 of 2010 10 15

133. (1) Section 10 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the deletion of subsection (5A); and

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

“(7) Where goods or services are deemed by section 18(1) or 18B(3) to be supplied by a vendor, the supply shall, subject to the provisions of subsection (8), be deemed to be made for a consideration in money equal to the open market value of such supply.” 20

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2012.

(3) Paragraph (b) of subsection (1) comes into operation on the date of promulgation of this Act. 25

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003, section 46 of Act 16 of 2004, section 98 of Act 32 of 2004, section 21 of Act 9 of 2005, section 105 of Act 31 of 2005, section 44 of Act 9 of 2006, section 81 of Act 20 of 2006, section 105 of Act 35 of 2007, section 29 of Act 36 of 2007 and Government Notice R.1024 in *Government Gazette* 32664 of 30 October 2009 30

134. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended— 35

(a) by the substitution in subsection (1)(n) for subparagraph (i) of the following subparagraph:

“(i) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), **[wholly or partially continuing in force or wholly or partially]** converted into a new right pursuant to **[the same]** item 7(3) of that Schedule if that supply is made pursuant to that conversion; or”; and 40

(b) by the deletion in subsection (1)(n) of subparagraph (ii).

(2) Subsection (1) comes into operation on the date of promulgation of this Act. 45

Amendment of section 13 of Act 29 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 34 of Act 34 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001, section 155 of Act 60 of 2001, section 170 of Act 45 of 2003, section 100 of Act 32 of 2004, section 106 of Act 31 of 2005 and section 110 of Act 60 of 2008 50

135. (1) Section 13 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (2) of the following subsections:

“(2A) The value to be placed on the importation of goods into the Republic which have been imported and entered for storage in a licensed Customs and Excise storage warehouse but have not been entered for home consumption shall be deemed to be the greater of the value determined in terms of subsection (2)(a) or the value of acquisition determined under section 10(3) if those goods while stored 55

in that storage warehouse are supplied to any person before being entered for home consumption.

(2B) Notwithstanding subsection (2), the value to be placed on the importation of goods into the Republic where Note 5(a)(ii)(aa) of Item No. 470.03/00.00/02.00 of Schedule 1 to this Act is applicable shall be the value determined under section 10(3).”

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of goods imported on or after that date.

Amendment of section 14 of Act 89 of 1991, as amended by section 171 of Act 45 of 2003, section 101 of Act 32 of 2004 and section 28 of Act 8 of 2010

136. (1) Section 14 of the Value-Added Tax Act, 1991, is hereby amended by the addition in subsection (5) after paragraph (d) of the following paragraph:

“(e) a supply of services of which the value in respect of that supply does not exceed R100 per invoice.”

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of services imported on or after that date.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007 and section 29 of Act 8 of 2010

137. (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

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

“No deduction of input tax in respect of a supply or of goods or services, the importation of any goods into the Republic[,] or any other deduction[,] shall be made in terms of this Act, unless—”;

(b) by the substitution in subsection (3)(a)(ii) for item (aa) of the following item:

“(aa) subject to the provisions of item (bb), in respect of supplies of second-hand goods to which paragraph (b) of the definition of ‘input tax’ in section 1 applies **[(other than supplies in respect of which the provisions of subparagraph (bb) apply),]** to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price for those supplies has been made during that tax period;”;

(c) by the substitution in subsection (3)(a)(ii)(bb) for subitems (A) and (B) of the following subitems respectively:

“(A) fixed property in respect of **[the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable]** which the provisions of section 9(3)(d) apply if transfer of that fixed property was effected by registration in a deeds registry and the fixed property was registered in the name of the vendor that makes the deduction during that tax period;

(B) a share in a share block company **[in respect of the original issue or registration of transfer of which stamp duty is, in terms of the Stamp Duties Act, payable,]** which confers a right to or an interest in the use of immovable property if a signed use agreement has been entered into between the company that operates the share block scheme and a member of that company;”;

(d) by the deletion in subsection (3)(a)(ii)(bb) of the words following subitem (B); and

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

“(i) an amount equal to the tax fraction of any payment made by the vendor during the tax period in respect of the redemption with him,

or his agent, of the monetary value of any token, voucher or stamp contemplated in section 10(20), to a supplier of goods or services who has granted a discount on the surrender to him of such token, voucher or stamp by a recipient of a supply of goods or services if those goods or services are not charged with tax at the rate of zero per cent under section 11;” 5

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of supplies made on or after that date.

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 10 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998, section 89 of Act 53 of 1999, section 174 of Act 45 of 2003, section 103 of Act 32 of 2004, section 109 of Act 31 of 2005, section 49 of Act 9 of 2006, section 85 of Act 20 of 2006, section 112 of Act 60 of 2008 and section 123 of Act 7 of 2010

138. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (4) for paragraph “D” of the formula of the following paragraph: 15

“ ‘D’ where paragraph (c) applies, **[other than in respect of second-hand goods to which the proviso to paragraph (b) of the definition of ‘input tax’ in section 1 applies,]** represents the ratio that the amount paid, which payment 20 reduces or discharges any obligation (whether an existing obligation or an obligation which will arise in the future) in respect of or consequent upon, whether directly or indirectly, the consideration in money for the supply of second-hand goods, bears to the total consideration in money, expressed as a percentage.” 25

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of supplies made on or after that date.

Insertion of section 18B in Act 89 of 1991

139. (1) The Value-Added Tax Act, 1991, is hereby amended by the insertion after section 18A of the following section: 30

“Temporary letting of residential fixed property

18B. (1) For the purposes of this section ‘**developer**’ means a vendor who continuously or regularly constructs, extends or substantially improves fixed property consisting of any dwelling or continuously or regularly constructs, extends or substantially improves parts of that fixed property for the purpose of disposing of that fixed property after the construction, extension or improvement. 35

(2) Notwithstanding the provisions of section 18(1), where goods being fixed property consisting of any dwelling—

- (a) is developed by a vendor who is a developer wholly for the purpose of making taxable supplies or is held or applied for that purpose; and 40
- (b) is subsequently temporarily applied by that vendor for supplying accommodation in a dwelling under an agreement for the letting and hiring thereof,

the supply of such fixed property shall, subject to subsection (3), be deemed not to be a taxable supply in the course or furtherance of that vendor’s enterprise. 45

(3) The fixed property contemplated in subsection (2) shall be deemed to have been supplied by that vendor by way of a taxable supply for a consideration as contemplated in section 10(7) in the course or furtherance of that vendor’s enterprise at the earlier of— 50

- (a) a period of 36 months after the conclusion of the agreement contemplated in subsection (2)(b); or
- (b) the date that the vendor applies that fixed property permanently for a purpose other than that of making taxable supplies. 55

(4) Where a vendor makes a supply of fixed property as contemplated in subsection (2) the vendor shall within 30 days of making that supply furnish the Commissioner with a declaration (in such form or manner as the

Commissioner may prescribe) containing such information as may be required.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act and ceases to apply on 1 January 2015.

Amendment of section 22 of Act 89 of 1991, as amended by section 33 of Act 136 of 1991, paragraph 13 of Government Notice 2695 of 8 November 1991, section 27 of Act 136 of 1992, section 25 of Act 37 of 1996, section 36 of Act 27 of 1997, section 95 of Act 30 of 1998, section 177 of Act 45 of 2003, section 110 of Act 31 of 2005 and section 86 of Act 20 of 2006

140. (1) Section 22 of the Value-Added Tax Act, 1991, is hereby amended— 10
(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“**[Where]** Subject to subsection (6), where a vendor—”;

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 15

“**[Where]** Subject to subsection (3A), where a vendor who is required to account for tax payable on an invoice basis in terms of section 15—”;

(c) by the substitution in subsection (3) for paragraph (iii) of the proviso of the following paragraph:

“(iii) **[subparagraph]** paragraph (ii) shall not be applicable where a vendor has already accounted for tax payable in accordance with this subsection.”; 20

(d) by the insertion after subsection (3) of the following subsection:

“(3A) Subject to subsection (6)(a), subsection (3) shall not be applicable in respect of a taxable supply made by a vendor which is a member of a group of companies, to another vendor which is a member of the same group of companies for as long as both vendors are members of the same group of companies.”; and 25

(e) by the addition of the following subsection:

“(6) (a) Where a vendor which is a member of a group of companies makes a taxable supply to another vendor which is a member of the same group of companies, the vendor who made the taxable supply may not make a deduction in terms of subsection (1) read with section 16(3) of any amount of tax that has become irrecoverable for as long as both vendors are members of the same group of companies. 30
(b) For the purposes of paragraph (a) and subsection (3A), a ‘group of companies’ means a group of companies as defined in section 1 of the Income Tax Act if any other company would be part of the same group of companies as that company if the expression ‘at least 70 per cent of the equity shares of’ in paragraphs (a) and (b) of that definition were replaced by the expression ‘100 per cent of the equity shares of’.”. 35

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

Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005, section 14 of Act 10 of 2006, section 24 of Act 4 of 2008, section 113 of Act 60 of 2008, section 93 of Act 17 of 2009 and section 23 of Act 7 of 2010 45

141. (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (9).

(2) Subsection (1) comes into operation on 1 March 2012. 50

Amendment of section 58 of Act 89 of 1991, as amended by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993, section 25 of Act 46 of 1996, section 102 of Act 53 of 1999, section 72 of Act 19 of 2001, section 173 of Act 60 of 2001, section 119 of Act 74 of 2002, section 43 of Act 34 of 2004, section 42 of Act 32 of 2005 and section 41 of Act 18 of 2009 55

142. (1) Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (i) of the following paragraph:

- “(i) fails to notify the Commissioner of anything of which he is required by section 18B(4), 24(3), 25 or 48(7) to notify the Commissioner; or”.
- (2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of Schedule 1 to Act 89 of 1991 as amended by section 48 of Act 136 of 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 31 July, 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996, section 53 of Act 27 of 1997, substituted by section 177 of Act 60 of 2001, amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice R.111 in *Government Gazette* 24274 of 17 January 2003, section 189 of Act 45 of 2003, section 52 of Act 16 of 2004, section 53 of Act 16 of 2004, section 54 of Act 16 of 2004, section 55 of Act 16 of 2004, section 108 of Act 32 of 2004, section 111 of Act 31 of 2005, section 112 of Act 31 of 2005, section 113 of Act 31 of 2005, section 114 of Act 31 of 2005, section 115 of Act 31 of 2005, section 116 of Act 31 of 2005, section 117 of Act 31 of 2005, section 118 of Act 31 of 2005, section 119 of Act 31 of 2005, section 120 of Act 31 of 2005, section 121 of Act 31 of 2005, section 122 of Act 31 of 2005, section 123 of Act 31 of 2005, section 52 of Act 9 of 2006, section 53 of Act 9 of 2006, section 89 of Act No. 20 of 2006, section 85 of Act 8 of 2007, Government Notice R.958 in *Government Gazette* 30370 of 12 October 2007, section 107 of Act 35 of 2007 and Government Notice R.766 in *Government Gazette* 32416 of 24 July 2009

143. (1) Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition to Item No. 470.00 of the following Note:

“5. For the purposes of Item No. 470.03/00.00/02.00:

(a) Where the importer is contractually entitled to keep a portion of the goods manufactured, processed, finished, equipped or packed in lieu of payment for the operations carried out, that importer must—

(i) also export those goods within the period of 12 months contemplated in Note 2(a); or

(ii) (aa) process a bill of entry at the office of the Controller for payment of the value-added tax on the goods retained; and

(bb) adjust by voucher of correction the rebate bill of entry in respect of the quantity and value of the goods used to manufacture the goods retained.

(b) The importer is required to maintain the records prescribed in terms of section 75 of the Customs and Excise Act.”; and

(b) by the insertion after Item No. 470.03/00.00/01.00 of the following item:

“470.03/00.00/02.00 Goods free of duty, for use in the manufacture, processing, finishing, equipping or packing of goods exclusively for export.”.

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

Amendment of section 4 of Act 4 of 2002

144. (1) Section 4 of the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), is hereby amended—

(a) by the deletion in subsection (4) of the word “and” at the end of paragraph (c);

(b) by the deletion in subsection (4) of the full stop at the end of paragraph (d) and the insertion of a semi-colon at the end of that paragraph; and

(c) by the addition in subsection (4) after paragraph (d) of the following paragraphs:

“(e) the President, Deputy President, a Minister, Deputy Minister, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a Premier, a member of an Executive Council or a member of a provincial legislature;

(f) any member of a municipal council, a traditional leader, a member of a provincial House of Traditional Leaders and a member of the Council of Traditional Leaders.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2002.

Amendment of section 1 of Act 25 of 2007

145. (1) Section 1 of the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007), is hereby amended—

- (a) by the addition in subsection (1) of the word “or” at the end of paragraph (a) of the definition of “security”; 5
 - (b) by the substitution in subsection (1) for the expression “; or” at the end of paragraph (b) of the definition of “security” of a comma; and
 - (c) by the deletion in subsection (1) of paragraph (c) of the definition of “security”.
- (2) Subsection (1) comes into operation on 1 April 2012. 10

Amendment of section 4 of Act 25 of 2007

146. (1) Section 4 of the Securities Transfer Tax Act, 2007, is hereby amended—

- (a) by the substitution in subsection (1) for the expression “; or” at the end of paragraph (a) of a full stop; and
 - (b) by the deletion in subsection (1) of paragraph (b). 15
- (2) Subsection (1) comes into operation on 1 April 2012.

Amendment of section 5 of Act 25 of 2007, as amended by section 126 of Act 60 of 2008

147. (1) Section 5 of the Securities Transfer Tax Act, 2007, is hereby amended—

- (a) by the substitution in subsection (1) for the expression “; or” at the end of paragraph (a) of a full stop; and 20
 - (b) by the deletion in subsection (1) of paragraph (b).
- (2) Subsection (1) comes into operation on 1 April 2012.

Amendment of section 8 of Act 25 of 2007, as amended by section 127 of Act 60 of 2008, section 97 of Act 17 of 2009 and section 127 of Act 7 of 2010 25

148. (1) Section 8 of the Securities Transfer Tax Act, 2007, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (m); and
- (b) by the substitution in subsection (1) for paragraph (q) of the following paragraph: 30

“(q) if the person to whom that security is transferred is a member who has purchased the security **[for the account and benefit of that person]** in that member’s capacity as principal; or”.

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2011 and applies in respect of transactions entered into—

- (a) on or after that date; and 35
- (b) on or before 31 December 2012.

Substitution of section 8A of Act 25 of 2007, as inserted by section 128 of Act 7 of 2010

149. (1) The Securities Transfer Tax Act, 2007, is hereby amended by the substitution for section 8A of the following section: 40

“**8A.** (1) In the case of any murabaha as defined in section 24JA(1) of the Income Tax Act, 1962 (Act No. 58 of 1962)—

- (a) the financier shall be deemed not to have acquired any beneficial ownership of the security under the sharia arrangement; and
- (b) the client shall be deemed to have acquired beneficial ownership of the security from the seller— 45
 - (i) for an amount equal to the consideration paid by the financier to the seller; and
 - (ii) at such time as the financier acquired the beneficial ownership of the security from the seller by virtue of the transaction between the seller and the financier.”. 50

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

Amendment of section 8A of Act 28 of 2008, as inserted by section 135 of Act 7 of 2010

150. (1) Section 8A of the Mineral and Petroleum Resources Royalty Act, 2008 (Act No. 28 of 2008), is hereby amended by the substitution for the heading of the following heading:

“Rollover relief for transfers between extractors”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of section 10 of Act 28 of 2008, as amended by section 101 of Act 17 of 2009

151. (1) Section 10 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) is deemed to be **[an extractor]** a person while that **[registration]** election remains in effect; and”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of section 15 of Act 28 of 2008

152. (1) The Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution for section 15 of the following section:

“Foreign currency

15. Any amount received by or accrued to, or expenditure or loss incurred by[,]**—**

(a) an oil and gas company as defined in paragraph 1 of the Tenth Schedule to the Income Tax Act in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the average exchange rate for the year in which that amount was so received or accrued or expenditure or loss was so incurred;

(b) an extractor in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the spot rate, as defined in section 1 of the Income Tax Act, on the date on which that amount was so received or accrued or expenditure or loss was so incurred.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of Schedule 2 to Act 28 of 2008, as amended by section 103 of Act 17 of 2009 and section 137 of Act 7 of 2010

153. (1) Schedule 2 to the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution for the words in the “Unrefined condition” column corresponding to “Vanadium” of the following words:

“Concentrate < 10% V₂O₅ equivalent and less than 2% calcium and silica bearing gangue minerals (SiO₂ + CaO)”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of section 4 of Act 60 of 2008, as amended by section 138 of Act 7 of 2010

154. (1) Section 4 of the Revenue Laws Amendment Act, 2008 (Act No. 60 of 2008), is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) **[Paragraphs]** Paragraph (b) [and (c)] of subsection (1) **[come]** comes into operation on 1 January 2011.”.

(2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Amendment of section 14 of Act 60 of 2008

155. (1) Section 14 of the Revenue Laws Amendment Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on **[the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation]** 1 April 2013.”. 5
(2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Repeal of section 55 of Act 17 of 2009

156. The Taxation Laws Amendment Act, 2009 (Act No. 17 of 2009), is hereby amended by the repeal of section 55.

Amendment of section 69 of Act 17 of 2009, as amended by section 152 of Act 7 of 2010

157. (1) Section 69 of the Taxation Laws Amendment Act, 2009, is hereby amended—

- (a) by the insertion in subsection (1) of the word “and” at the end of paragraph (bC); 15
- (b) by the deletion in subsection (1) of paragraph (c); and
- (c) by the substitution for subsection (2) of the following subsection:
 “(2) Paragraphs (a), (b)[, (c)] and (d) of subsection (1), except insofar as they insert the words ‘or as part of’, come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.”. 20

(2) Subsection (1) is deemed to have come into operation on 30 September 2009.

Repeal of section 79 of Act 17 of 2009

158. (1) The Taxation Laws Amendment Act, 2009, is hereby amended by the repeal of section 79. 25

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 6 of Act 7 of 2010

159. (1) Section 6 of the Taxation Laws Amendment Act, 2010 (Act No. 7 of 2010), is hereby amended— 30

- (a) by the deletion in subsection (1) of paragraphs (m) and (n);
- (b) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
 “(a) in the case of any foreign partnership that is established or formed before 24 August 2010, as from the commencement of years of assessment commencing on or after 1 October **[2010]** 2011; and”; 35
 and
- (c) by the deletion of subsection (7).

(2) Paragraph (a) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2011 and applies in respect of receipts and accruals on or after that date. 40

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 24 August 2010.

(4) Paragraph (c) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2011 and applies in respect of receipts and accruals on or after that date. 45

Amendment of section 18 of Act 7 of 2010

160. (1) Section 18 of the Taxation Laws Amendment Act, 2010, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (g); 50
- (b) by the substitution for subsection (2) of the following subsection:

“(2) Paragraphs (b), (f), (l), (n), (o), (p), (q) and (v) of subsection (1) come into operation on 1 January 2011.”; and

(c) by the deletion of subsection (4).

(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 1 January 2011.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 24 August 2010.

Amendment of section 19 of Act 7 of 2010

161. (1) Section 19 of the Taxation Laws Amendment Act, 2010, is hereby amended—

(a) by the deletion in subsection (1) of paragraph (i); and

(b) by the deletion of subsection (3).

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2011 and applies in respect of premiums incurred on or after that date.

Repeal of section 41 of Act 7 of 2010

162. (1) The Taxation Laws Amendment Act, 2010, is hereby amended by the repeal of section 41.

(2) Subsection (1) is deemed to have come into operation on 1 January 2011 and applies in respect of expenditure incurred on or after that date.

Repeal of section 42 of Act 7 of 2010

163. (1) The Taxation Laws Amendment Act, 2010, is hereby amended by the repeal of section 42.

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2011 and applies in respect of premiums incurred on or after that date.

Amendment of section 46 of Act 7 of 2010

164. (1) Section 46 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) in the case of any foreign partnership that is established or formed before 24 August 2010, as from the commencement of years of assessment commencing on or after 1 October **[2010]** 2011; and”.

(2) Subsection (1) is deemed to have come into operation on 24 August 2010.

Repeal of section 56 of Act 7 of 2010

165. (1) Section 56 of the Taxation Laws Amendment Act, 2010, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 1 October 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 137 of Act 7 of 2010

166. (1) Section 137 of the Taxation Laws Amendment Act, 2010, is hereby amended by the deletion of paragraph (g).

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of section 138 of Act 7 of 2010

167. (1) Section 138 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) by the deletion in subsection (1) of **[paragraph]** paragraphs (c) and (d); and”.

(2) Subsection (1) is deemed to have come into operation on 24 August 2010.

Amendment of section 145 of Act 7 of 2010

168. (1) Section 145 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) Paragraph (a) of subsection (1) comes into operation on **[1 January 2011 and applies in respect of years of assessment commencing on or after that date]** the date of promulgation of this Act. 5

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on **[1 October 2009] 1 January 2011.**”.

(2) Subsection (1) is deemed to have come into operation on 24 August 2010.

Special zero-rating in respect of goods and services supplied by Cricket South Africa 10

169. (1) The supply of goods and services by Cricket South Africa in respect of the hosting of—

(a) the International Cricket Council Championship Trophy South Africa 2009 event shall be subject to value-added tax imposed in terms of section 7(1) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), at the rate of zero per cent to the extent that the consideration for that supply is received from the International Cricket Council; and 15

(b) the Champions League Twenty20 (2010) event shall be subject to value-added tax imposed in terms of section 7(1) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), at the rate of zero per cent to the extent that the consideration for that supply is received from the Governing Council of the Champions League Twenty20. 20

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2009. 25

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2010.

Short title and commencement

170. (1) This Act is called the Taxation Laws Amendment Act, 2011.

(2) Except insofar as otherwise provided for in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2012. 30

Appendix I

(Section 6)

RATES OF NORMAL TAX AND REBATES

1. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit) of any natural person, deceased estate, insolvent estate or special trust (other than a public benefit organisation or recreational club referred to in paragraph 5) in respect of any year of assessment commencing on 1 March 2011 is set out in the table below:

Taxable income	Rate of tax
Not exceeding R150 000	18 per cent of taxable income
Exceeding R150 000 but not exceeding R235 000	R27 000 plus 25 per cent of amount by which taxable income exceeds R150 000
Exceeding R235 000 but not exceeding R325 000	R48 250 plus 30 per cent of amount by which taxable income exceeds R235 000
Exceeding R325 000 but not exceeding R455 000	R75 250 plus 35 per cent of amount by which taxable income exceeds R325 000
Exceeding R455 000 but not exceeding R580 000	R120 750 plus 38 per cent of amount by which taxable income exceeds R455 000
Exceeds R580 000	R168 250 plus 40 per cent of amount by which taxable income exceeds R580 000

2.

Description	Reference to Income Tax Act, 1962	Amount
Primary rebate	Section 6(2)(a)	R10 755
Secondary rebate	Section 6(2)(b)	R6 012
Tertiary rebate	Section 6(2)(c)	R2 000

3. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of a trust (other than a special trust or a public benefit organisation referred to in paragraph 5) in respect of any year of assessment ending on 29 February 2012 is 40 per cent.

4. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of a company (other than a public benefit organisation or recreational club referred to in paragraph 5 or a small business corporation referred to in paragraph 6) in respect of any year of assessment ending during the period of 12 months ending on 31 March 2012 is, subject to the provisions of paragraph 11, as follows:

- (a) 28 per cent of the taxable income of any company (excluding taxable income referred to in subparagraphs (b), (c), (d), (e), (f) and (g)) or, in the case of such a company which mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, 35 per cent;
- (b) in respect of the taxable income derived by any company from mining for gold on any gold mine with the exclusion of so much of the taxable income as the Commissioner of the South African Revenue Service determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the Income Tax Act, 1962, but after the set-off of any assessed loss in terms of section 20(1) of that Act, a percentage determined in accordance with the formula:

$$y = 34 - \frac{170}{x}$$

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

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

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

- (c) in respect of the taxable income of any company, the sole or principal business of which in the Republic is, or has been, mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Commissioner of the South African Revenue Service determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the Income Tax Act, 1962, a rate equal to the average rate of normal tax or 28 per cent, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of its aggregate taxable income from mining for gold on any gold mine for the period from which that company commenced its gold mining operations on that gold mine to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;
- (d) in respect of the taxable income derived by any company from carrying on long-term insurance business in respect of its—
 - (i) individual policyholder fund, 30 per cent; and
 - (ii) company policyholder fund and corporate fund, 28 per cent;
- (e) in respect of the taxable income of any personal service provider, as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, 33 per cent;
- (f) in respect of the taxable income (excluding taxable income referred to in subparagraphs (b), (c), (d), (e) and (g)) derived by a company which is not a resident, 33 per cent; and
- (g) in respect of the taxable income derived by a qualifying company contemplated in section 37H of the Income Tax Act, 1962, subject to the provisions of the said section, zero per cent.

5. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of any public benefit organisation that has been approved by the Commissioner for the South African Revenue Service in terms of section 30(3) of the Income Tax Act, 1962, or any recreational club that has been approved by the Commissioner of the South African Revenue Service in terms of section 30A(2) of that Act is 28 per cent—

- (a) in the case of an organisation or club that is a company, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2012; or
- (b) in the case of an organisation that is a trust, in respect of any year of assessment ending on 29 February 2012.

6. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of any company which qualifies as a small business corporation as defined in section 12E of the Income Tax Act, 1962, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2012 is, subject to the provisions of paragraph 11, set out in the table below:

Taxable income	Rate of tax
Not exceeding R59 750	0 per cent of taxable income
Exceeding R59 750 but not exceeding R300 000	10 per cent of amount by which taxable income exceeds R59 750
Exceeding R300 000	R24 025 plus 28 per cent of amount by which taxable income exceeds R300 000

7. The rate of tax referred to in section 6(2) of this Act to be levied in respect of the taxable turnover of a person that is a registered micro business as defined in paragraph 1 of the Sixth Schedule to the Income Tax Act, 1962, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2012 is set out in the table below:

Taxable turnover	Rate of tax
Not exceeding R150 000	0 per cent of taxable turnover
Exceeding R150 000 but not exceeding R300 000	1 per cent of amount by which taxable turnover exceeds R150 000
Exceeding R300 000 but not exceeding R500 000	R1 500 plus 2 per cent of amount by which taxable turnover exceeds R300 000
Exceeding R500 000 but not exceeding R750 000	R5 500 plus 4 per cent of amount by which taxable turnover exceeds R500 000
Exceeding R750 000	R15 500 plus 6 per cent of amount by which taxable turnover exceeds R750 000

8. (a) (i) If a retirement fund lump sum withdrawal benefit accrues to a person in any year of assessment commencing on or after 1 March 2011, the rate of tax referred to in section 6(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—

- (aa) that retirement fund lump sum withdrawal benefit;
- (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa); and
- (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa);
- (dd) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa),

is set out in the table below:

Taxable income from lump sum benefits	Rate of tax
Not exceeding R22 500	0 per cent of taxable income
Exceeding R22 500 but not exceeding R600 000	18 per cent of taxable income exceeding R22 500
Exceeding R600 000 but not exceeding R900 000	R103 950 plus 27 per cent of taxable income exceeding R600 000
Exceeding R900 000	R184 950 plus 36 per cent of taxable income exceeding R900 000

(ii) The amount of tax levied in terms of item (i) must be reduced by an amount equal to the tax that would be leviable on the person in terms of that item in respect of taxable income comprising the aggregate of—

- (aa) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in item (i)(aa);
- (bb) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in item (i)(aa); and
- (cc) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in item (i)(aa).

(b) (i) If a retirement fund lump sum benefit accrues to a person in any year of assessment commencing on or after 1 March 2011, the rate of tax referred to in section 6(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—

- (aa) that retirement fund lump sum benefit;
- (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa);
- (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa); and
- (dd) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa),

is set out in the table below:

Taxable income from lump sum benefits	Rate of tax
Not exceeding R315 000	0 per cent of taxable income
Exceeding R315 000 but not exceeding R630 000	R0 plus 18 per cent of taxable income exceeding R315 000
Exceeding R630 000 but not exceeding R945 000	R56 700 plus 27 per cent of taxable income exceeding R630 000
Exceeding R945 000	R141 750 plus 36 per cent of taxable income exceeding R945 000

(ii) The amount of tax levied in terms of item (i) must be reduced by an amount equal to the tax that would be leviable on the person in terms of that item in respect of taxable income comprising the aggregate of—

- (aa) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa);
- (bb) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa); and
- (cc) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa).

(c) (i) If a severance benefit accrues to a person in any year of assessment commencing on or after 1 March 2011, the rate of tax referred to in section 6(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—

- (aa) that severance benefit;
- (bb) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the severance benefit contemplated in subitem (aa);
- (cc) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the severance benefit contemplated in subitem (aa); and
- (dd) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the severance benefit contemplated in subitem (aa),

is set out in the table below:

Taxable income from severance benefits	Rate of tax
Not exceeding R315 000	0 per cent of taxable income
Exceeding R315 000 but not exceeding R630 000	R0 plus 18 per cent of taxable income exceeding R315 000
Exceeding R630 000 but not exceeding R945 000	R56 700 plus 27 per cent of taxable income exceeding R630 000
Exceeding R945 000	R141 750 plus 36 per cent of taxable income exceeding R945 000

(ii) The amount of tax levied in terms of item (i) must be reduced by an amount equal to the tax that would be leviable on the person in terms of that item in respect of taxable income comprising the aggregate of—

- (aa) severance benefits received by or accrued to that person prior to the accrual of the severance benefit contemplated in item (1)(aa);
- (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the severance benefit contemplated in item (i)(aa); and
- (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the severance benefit contemplated in item (i)(aa).

9. The rates of tax set out in paragraphs 1, 3, 4, 5, 6 and 8 are the rates required to be fixed by Parliament in accordance with the provisions of section 5(2) of the Income Tax Act, 1962.

10. The rate of tax set out in paragraph 7 is the rate required to be fixed by Parliament in accordance with the provisions of section 48B(1) of the Income Tax Act, 1962.

11. For the purposes of this Appendix, income derived from mining for gold includes any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold and any other income which results directly from mining for gold.

Appendix II

AMENDMENT OF SCHEDULE NO. 1 TO CUSTOMS AND EXCISE ACT, 1964

(Section 127)

Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.00		Prepared foodstuffs; beverages, spirits and vinegar; tobacco		
104.01	19.01	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included:		
.10		Traditional African beer powder as defined in Additional Note 1 to Chapter 19	34,7 c/kg	34,7 c/kg
104.10	22.03	Beer made from malt:		
.10		Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82 c/li	7,82 c/li
.20		Other	R53,97/li aa	R53,97/li aa
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must (excluding that of heading 20.09):		
	22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:		
.02		Sparkling wine	R6,97/li	R6,97/li
.03		Unfortified wine of heading 22.04, with an alcoholic strength by volume exceeding 6,5 per cent vol. but not exceeding 16,5 per cent vol.	R2,32/li	R2,32/li
.04		Unfortified wine of heading 22.05, with an alcoholic strength by volume exceeding 6,5 per cent vol. but not exceeding 15 per cent vol.	R2,32/li	R2,32/li
.05		Fortified wine of heading 22.04 and 22.05 with an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 22 per cent vol.	R4,33/li	R4,33/li
.06		Other	R93,03/li aa	R93,03/li aa
104.17	22.06	Other fermented beverages (for example cider, perry and mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included:		
.03		Sparkling beverages	R6,97/li	R6,97/li
.05		Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82 c/li	7,82 c/li
.15		Other fermented beverages, unfortified, with an alcoholic strength by volume not exceeding 9 per cent vol.	R2,71/li	R2,71/li
.16		Other fermented beverages, unfortified, with an alcoholic strength by volume exceeding 9 per cent vol. but not exceeding 15 per cent vol.	R2,71/li	R2,71/li

Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
.17		Other fermented beverages, fortified, with an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38,00/ li aa	R38,00/ li aa
.22		Other, mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages	R2,71/ li	R2,71/ li
.25		Other, mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, with an alcoholic strength by volume exceeding 9 per cent vol. but not exceeding 15 per cent vol.	R2,71/ li	R2,71/ li
.90		Other	R93.03/li aa	R93.03/li aa
104.20	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher; ethyl alcohol and other spirits, denatured, of any strength:		
	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages:		
.10		Wine spirits, manufactured by the distillation of wine	R93,03/ li aa	R93,03/ li aa
.15		Spirits, manufactured by the distillation of any sugar cane product	R93,03 /li aa	R93,03/ li aa
.25		Spirits, manufactured by the distillation of any grain product	R93,03/ li aa	R93,03/ li aa
.29		Other spirits	R93,03/ li aa	R93,03/ li aa
		Liqueurs and other spirituous beverages:		
.41		With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38,00/li aa	R38,00/ li aa
.42		Other	R93,03/ li aa	R93,03/ li aa
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:		
	2402.10	Cigars, cheroots and cigarillos containing tobacco:		
.01	2402.10.10	Imported from Switzerland	N/A	R2 196,65/ kg net
.03	2402.10.90	Other	R2 196,65/ kg net	R2 196,65/ kg net
	2402.20	Cigarettes containing tobacco		
.05	2402.20.10	Imported from Switzerland	N/A	R4,87/10 cigarettes
.07	2402.20.90	Other	R4,87/10 cigarettes	R4,87/10 cigarettes
	2402.90.1	Cigars, cheroots and cigarillos of tobacco substitutes:		
.09	2402.90.12	Imported from Switzerland	N/A	R2 196,65/ kg net
.11	2402.90.14	Other	R2 196,65/ kg net	R2 196,65/ kg net
	2402.90.2	Cigarettes of tobacco substitutes:		
.13	2402.90.22	Imported from Switzerland	N/A	R4,87/10 cigarettes

Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
.15	2402.90.24	Other	R4,9/10 cigarettes	R4,9/10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; “homogenised” or “reconstituted” tobacco; tobacco extracts and essences:		
	2403.10	Smoking tobacco, whether or not containing tobacco substitutes in any proportions:		
.01	2403.10.10	Pipe tobacco, in immediate packings of a content of less than 5 kg	R119,16/ kg net	R119,16/ kg net
.03	2403.10.20	Other pipe tobacco	R119,16/ kg net	R119,16/ kg net
.05	2403.10.30	Cigarette tobacco	R210,51/ kg	R210,51 / kg
	2403.99	Other:		
.07	2403.99.30	Other cigarette tobacco substitutes	R210,51/ kg	R210,51/ kg
.09	2403.99.40	Other pipe tobacco substitutes	R119,16/ kg net	R119,16/ kg net

Appendix III

AMENDMENT OF SCHEDULE NO. 1 TO CUSTOMS AND EXCISE ACT, 1964

(Section 127)

Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.00		Prepared foodstuffs; beverages, spirits and vinegar; tobacco		
104.01	19.01	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included:		
104.01.10	1901.90.20	Traditional African beer powder as defined in Additional Note 1 to Chapter 19	34,7c/kg	34,7c/kg
104.10	22.03	Beer made from malt:		
104.10.10	2203.00.05	Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82c/li	7,82c/li
104.10.20	2203.00.90	Other	R53,97/li aa	R53,97/li aa
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must (excluding that of heading 20.09):		
104.15.01	2204.10	Sparkling wine:	R6,97/li	R6,97/li
	2204.21	In containers holding 2li or less:		
	2204.21.4	Unfortified wine:		
104.15.03	2204.21.41	With an alcoholic strength by volume exceeding 6,5 per cent vol. but not exceeding 16,5 per cent vol.	R2,32/li	R2,32/li
104.15.04	2204.21.42	Other	R93,03/li aa	R93,03/li aa
	2204.21.5	Fortified wine:		
104.15.05	2204.21.51	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 22 per cent vol.	R4,33/li	R4,33/li
104.15.06	2204.21.52	Other	R93,03/li aa	R93,03/li aa
	2204.29	Other:		
	2204.29.4	Unfortified wine:		
104.15.07	2204.29.41	With an alcoholic strength by volume exceeding 6,5 per cent vol. but not exceeding 16,5 per cent vol.	R2,32/li	R2,32/li
104.15.08	2204.29.42	Other	R93,03/li aa	R93,03/li aa
	2204.29.5	Fortified wine:		
104.15.09	2204.29.51	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 22 per cent vol.	R4,33/li	R4,33/li
104.15.10	2204.29.52	Other	R93,03/li aa	R93,03/li aa
104.16	22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:		
	2205.10	In containers holding 2li or less:		
104.16.01	2205.10.10	Sparkling	R6,97/li	R6,97/li
	2205.10.2	Unfortified:		
104.16.03	2205.10.21	With an alcoholic strength by volume exceeding 6,5 per cent vol. but not exceeding 15 per cent vol.	R2,32/li	R2,32/li

Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.16.04	2205.10.22	Other	R93,03/li aa	R93,03/li aa
	2205.10.3	Fortified:		
104.16.05	2205.10.31	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 22 per cent vol.	R4,33/li	R4,33/li
104.16.06	2205.10.32	Other	R93,03/li aa	R93,03/li aa
	2205.90	Other:		
	2205.90.2	Unfortified:		
104.16.09	2205.90.21	With an alcoholic strength by volume exceeding 6,5 per cent vol. but not exceeding 15 per cent vol.	R2,32/li	R2,32/li
104.16.10	2205.90.22	Other	R93,03/li aa	R93,03/li aa
	2205.90.3	Fortified:		
104.16.11	2205.90.31	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 22 per cent vol.	R4,33/li	R4,33/li
104.16.12	2205.90.32	Other	R93,03/li aa	R93,03/li aa
104.17	22.06	Other fermented beverages (for example, cider, perry, mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included:		
104.17.03	2206.00.05	Sparkling beverages	R6,97/li	R6,97/li
104.17.05	2206.00.15	Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82c/li	7,82c/li
104.17.15	2206.00.81	Other fermented beverages, unfortified, with an alcoholic strength by volume not exceeding 9 per cent vol.	R2,71/li	R2,71/li
104.17.16	2206.00.82	Other fermented beverages, unfortified, with an alcoholic strength by volume exceeding 9 per cent vol. but not exceeding 15 per cent vol.	R2,71/li	R2,71/li
104.17.17	2206.00.83	Other fermented beverages, fortified, with an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38,00/li aa	R38,00/li aa
104.17.22	2206.00.85	Other, mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, with an alcoholic strength by volume not exceeding 9 per cent vol.	R2,71/li	R2,71/li
104.17.25	2206.00.87	Other, mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, with an alcoholic strength by volume exceeding 9 per cent vol. but not exceeding 15 per cent vol.	R2,71/li	R2,71/li
104.17.90	2206.00.90	Other	R93,03/li aa	R93,03/li aa
104.21	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent vol. or higher; ethyl alcohol and other spirits, denatured, of any strength:		
104.21.01	2207.10	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent vol. or higher	R93,03/li aa	R93,03/li aa
104.21.03	2207.20	Ethyl alcohol and other spirits, denatured, of any strength	R93,03/li aa	R93,03/li aa
104.23	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent vol.; spirits, liqueurs and other spirituous beverages:		

Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
	2208.20	Spirits obtained by distilling grape wine or grape marc:		
104.23.01	2208.20.10	In containers holding 2li or less	R93,03/li aa	R93,03/li aa
104.23.03	2208.20.90	Other	R93,03/li aa	R93,03/li aa
	2208.30	Whiskies:		
104.23.05	2208.30.10	In containers holding 2li or less	R93,03/li aa	R93,03/li aa
104.23.07	2208.30.90	Other	R93,03/li aa	R93,03/li aa
	2208.40	Rum and other spirits obtained by distilling fermented sugarcane products:		
104.23.09	2208.40.10	In containers holding 2li or less	R93,03/li aa	R93,03/li aa
104.23.11	2208.40.90	Other	R93,03/li aa	R93,03/li aa
	2208.50	Gin and Geneva:		
104.23.13	2208.50.10	In containers holding 2li or less	R93,03/li aa	R93,03/li aa
104.23.15	2208.50.90	Other	R93,03/li aa	R93,03/li aa
	2208.60	Vodka:		
104.23.17	2208.60.10	In containers holding 2li or less	R93,03/li aa	R93,03/li aa
104.23.19	2208.60.90	Other	R93,03/li aa	R93,03/li aa
	2208.70	Liqueurs and cordials:		
	2208.70.2	In containers holding 2li or less:		
104.23.21	2208.70.21	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38,00/li aa	R38,00/li aa
104.23.22	2208.70.22	Other	R93,03/li aa	R93,03/li aa
	2208.70.9	Other:		
104.23.23	2208.70.91	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38,00/li aa	R38,00/li aa
104.23.24	2208.70.92	Other	R93,03/li aa	R93,03/li aa
	2208.90	Other:		
	2208.90.2	In containers holding 2li or less:		
104.23.25	2208.90.21	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38,00/li aa	R38,00/li aa
104.23.26	2208.90.22	Other	R93,03/li aa	R93,03/li aa
	2208.90.9	Other:		
104.23.27	2208.90.91	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38,00/li aa	R38,00/li aa
104.23.28	2208.90.92	Other	R93,03/li aa	R93,03/li aa
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:		
	2402.10	Cigars, cheroots and cigarillos, containing tobacco:		
104.30.01	2402.10.10	Imported from Switzerland	N/A	R2 196,65/kg net
104.30.03	2402.10.90	Other	R2 196,65/kg net	R2 196,65/kg net
	2402.20	Cigarettes containing tobacco:		
104.30.05	2402.20.10	Imported from Switzerland	N/A	R4,87/10 cigarettes
104.30.07	2402.20.90	Other	R4,87/10 cigarettes	R4,87/10 cigarettes
	2402.90.1	Cigars, cheroots and cigarillos of tobacco substitutes:		
104.30.09	2402.90.12	Imported from Switzerland	N/A	R2 196,65/kg net
104.30.11	2402.90.14	Other	R2 196,65/kg net	R2 196,65/kg net

Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
	2402.90.2	Cigarettes of tobacco substitutes:		
104.30.13	2402.90.22	Imported from Switzerland	N/A	R4,87/10 cigarettes
104.30.15	2402.90.24	Other	R4,87/10 cigarettes	R4,87/10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; “homogenised” or “reconstituted” tobacco; tobacco extracts and essences:		
	2403.10	Smoking tobacco, whether or not containing tobacco substitutes in any proportions:		
104.35.01	2403.10.10	Pipe tobacco, in immediate packings of a content of less than 5 kg	R119,16/ kg net	R119,16/ kg net
104.35.03	2403.10.20	Other pipe tobacco	R119,16/ kg net	R119,16/ kg net
104.35.05	2403.10.30	Cigarette tobacco	R210,51/ kg	R210,51/ kg
	2403.99	Other:		
104.35.07	2403.99.30	Other cigarette tobacco substitutes	R210,51/ kg	R210,51/ kg
104.35.09	2403.99.40	Other pipe tobacco substitutes	R119,16/ kg net	R119,16/ kg net

Printed by Creda Communications

ISBN 978-1-77037-894-0