

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 28—2010]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To—

- amend the Transfer Duty Act, 1949, so as to clarify a provision; to make new provision; and to correct a reference;
- amend the Estate Duty Act, 1955, so as to correct a reference and to clarify a provision;
- 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 rates of duty in Schedule No. 1; and to make provision for continuation;
- amend the Value-Added Tax Act, 1991, so as to amend certain definitions; to make new provision; and to amend certain provisions;
- amend the Revenue Laws Amendment Act, 2006, so as to amend the special measures relating to 2010 FIFA World Cup South Africa;
- amend the Securities Transfer Tax Act, 2007, so as to effect consequential amendments;
- amend the Revenue Laws Amendment Act, 2007, so as to amend a commencement date;
- amend the Mineral and Petroleum Resources Royalty Act, 2008, so as to amend and insert certain definitions; to clarify certain provisions; to make new provision; and to amend the Schedules;
- amend the Revenue Laws Amendment Act, 2008, so as to change commencement dates;
- amend the Taxation Laws Amendment Act, 2009, so as to change commencement dates; to clarify certain provisions; and to correct a reference;

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 and section 1 of Act 17 of 2009 5

1. (1) Section 1 of the Transfer Duty Act, 1949, is hereby amended by the addition in the definition of “property” of the word “and” at the end of paragraph (f).

(2) Subsection (1) is deemed to have come into operation on 1 September 2009.

Insertion of section 3A in Act 40 of 1949 10

2. (1) The Transfer Duty Act, 1949, is hereby amended by the insertion of the following section:

“Sharia compliant financing arrangements

3A. (1) For the purpose of the payment of duty in respect of any murabaha as defined in section 24JA(1) of the Income Tax Act, 1962 (Act No. 58 of 1962)— 15

(a) the bank 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—
 (i) for an amount equal to the consideration paid by the bank to the seller; and
 (ii) at such time as the bank acquired the property from the seller by virtue of the transaction between the seller and the bank. 20

(2) For the purpose of the payment of the duty in respect of any diminishing musharaka as defined in section 24JA(1) of the Income Tax Act, 1962 (Act No. 58 of 1962)— 25

(a) the bank shall be deemed not to have acquired any property under the sharia arrangement;

(b) (i) where the bank and the client jointly acquire property, the client shall be deemed to have acquired the bank’s interest in the property— 30

(aa) for an amount equal to the amount paid by the bank in respect of the bank’s interest in the property; and

(bb) at the time that the seller of the asset was divested of any interest in the property by virtue of the transaction between the seller and the bank; and 35

(ii) where the bank acquires an interest in property from the client, the bank shall be deemed not to have acquired any interest in property from the client and the client shall be deemed not to have subsequently acquired any interest in that property from the bank.”. 40

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

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 and section 3 of Act 17 of 2009

3. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended—

(a) by the deletion in subsection (1)(l)(iv) of item (aa); and

(b) by the substitution for subsection (20) of the following subsection:

“(20) No duty shall be payable in respect of any acquisition of any interest in a residence as contemplated in paragraph 51 or 51A of the Eighth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), where that acquisition takes place as a result of a transfer or disposal contemplated in **[that paragraph]** either of those paragraphs.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation 1 January 2009 and applies in respect of transactions entered into on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 October 2010 and applies in respect of acquisitions taking place on or after that date and before 1 January 2013.

Amendment of section 4A of Act 45 of 1955, as substituted by section 5 of Act 17 of 2009

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

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

“(b) the amount specified in subsection (1) divided by the number of spouses, reduced by an amount which is determined by dividing the amount deducted, in accordance with **[subsection (1)]** this section, from the net value of the estate of the previously deceased person by the number of spouses of that previously deceased person.”; and

(b) by the addition after subsection (5) of the following subsection:

“(6) Where a person and his or her spouse die simultaneously, the person of whom the net value of the estate, determined in accordance with section 4, is the smallest must be deemed for the purposes of this section to have died immediately prior to his or her spouse.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of the estate of a person who dies on or after that date.

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

5. (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 indicates otherwise.

(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 2010;
- (b) any company for any year of assessment ending during the period of 12 months ending on 31 March 2011; and
- (c) any trust (other than a special trust) for any year of assessment ending on 28 February 2011.

(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 2010.

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 No. 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 No. 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 No. 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 and section 7 of Act 17 of 2009

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

- (a) by the deletion of the definition of “capitalization shares”;
- (b) by the substitution in the definition of “company” for subparagraph (ii) of paragraph (e) of the following subparagraph:
 - “(ii) **[arrangement or]** portfolio comprised in any investment scheme carried on outside the Republic that is comparable to a portfolio of a collective investment scheme in participation bonds or a portfolio of a collective investment scheme in securities in pursuance of any arrangement in terms of which members of the public (as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002)), are invited or permitted to **[invest in a portfolio of a collective investment scheme, where one or more investors]** contribute to and hold **[a]** participatory **[interest]** interests in **[a]** that portfolio **[of the scheme]** through shares, units or any other form of participatory interest; or”;
- (c) by the substitution in the definition of “company” for paragraph (f) of the following paragraph:
 - “(f) a close corporation^[1]”;
- (d) by the addition to the definition of “company” of the following words:
 - “but does not include a foreign partnership”;
- (e) by the substitution in the definition of “connected person” for subparagraphs (iv) and (v) of paragraph (d) of the following subparagraphs:
 - “(iv) any person, other than a company as defined in section 1 of the Companies Act, **[1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008)**, who individually or jointly with any connected person in

- relation to himself, holds, directly or indirectly, at least 20 per cent of **[the company's equity share capital or voting rights]**—
- (aa) the equity shares in the company; or
- (bb) the voting rights in the company;
- (v) any other company if at least 20 per cent of the equity **[share capital of such]** shares in the company **[is]** are held by **[such]** that other company, and no shareholder holds the majority voting rights **[of such]** in the company;”;
- (f) by the substitution for the definition of “contributed tax capital” of the following definition: 10
- “**‘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 shares in that company 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 on or after that date; or
- (b) in the case of any other company, an amount equal to the sum of—
- [(a)]** (i) the stated capital or share capital and share premium of that company immediately before **[the effective date as defined in section 64D]** 1 January 2011 in relation to shares issued by that company before that date, less so much of the 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
- [(b)]** (ii) the consideration received by or accrued to **[the]** that company for the issue of shares on or after that date,
- reduced by so much of that amount as the company has transferred on or after that date 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 **[conferred under the memorandum or articles of association of the company]** to be an amount so transferred: Provided that the amount so transferred to a shareholder of any class of shares is deemed to be an amount that bears to the total of the amount of contributed tax capital attributable to that class of shares immediately before the distribution 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;”;
- (g) by the substitution for the definition of “equity share capital” of the following definition: 30
- “**‘equity share’** means, in relation to any company, any share or similar interest in that company, excluding any share or similar interest that does not carry any right to participate beyond a specified amount in a distribution;”;
- (h) by the insertion after the definition of “financial year” of the following definition: 35
- “**‘foreign company’** means any company which is not a resident;”;
- (i) by the substitution for the definition of “foreign dividend” of the following definition: 40
- “**‘foreign dividend’** means any amount that is paid or payable by a foreign company where that 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 of the country in which that foreign company is incorporated, formed or established; or
- (b) companies of the country in which that foreign company is incorporated, formed or established, where that country does not have any applicable laws relating to tax on income;”;
- (j) by the insertion after the definition of “foreign equity instrument” of the following definition: 55 60

- “**‘foreign partnership’**, in respect of any year of assessment, means any partnership, association or body of persons formed or established under the laws of any country other than the Republic if—
- (a) for the purposes of the laws relating to tax on income of the country in which that partnership, association or body of persons is formed or established—
 - (i) each member of the partnership, association or body of persons 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 when that amount is received by or accrued to the partnership, association or body of persons; and
 - (ii) the partnership, association or body of persons 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 is formed or established does not have any applicable laws relating to tax on income—
 - (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 is allocated concurrently with the receipt, accrual or incurrence to the members of that partnership, association or body of persons in terms of an agreement between those members; and
 - (ii) no amount distributed to a member of a partnership, association or body of persons may exceed the allocation contemplated in subparagraph (i) after taking into account any prior distributions made by the partnership, association or body of persons;”;
- (k) by the insertion before the definition of “government grant” of the following definition:
 - “**‘functional currency’**, in relation to—
 - (a) a person, means the currency of the primary economic environment in which the business operations of that person are conducted; and
 - (b) a permanent establishment of any person, means the currency of the primary economic environment in which the business operations of that permanent establishment are conducted;”;
- (l) by the insertion in the definition of “gross income” after paragraph (l) of the following paragraph:
 - “(lA) any amount received by or accrued to a company or association as contemplated in subparagraph (ii) of section 11E;”;
- (m) by the substitution in paragraph (m) of the definition of “gross income” for the proviso of the following proviso:
 - “: Provided that where—
 - (i) any amount received or accrued under or upon the surrender or disposal of any such policy falls to be included in the taxpayer’s gross income, the amount so to be included in [his] the taxpayer’s gross income shall be reduced by the amount of any loan or advance under or upon security of the policy which has been included in [his] the taxpayer’s gross income, whether in the current or any previous year of assessment [:];
 - (ii) [Provided further that where] any such policy has been terminated by the insurer and a paid-up policy has been issued, the terminated policy and the paid-up policy shall for the purposes of this paragraph be deemed to be one and the same policy;
 - (iii) a lump sum that has been received by or has accrued to the taxpayer under or upon the surrender or disposal of such policy, the amount that falls to be included in the taxpayer’s gross income shall be reduced by an amount (not exceeding such lump sum) equal to so much of the premiums paid by the taxpayer under such policy as has not previously qualified for deduction from the taxpayer’s income; and

- (iv) any amount in respect of a policy as contemplated in—
 (aa) section 11(w) if that policy was concluded prior to 1 January 2011; or
 (bb) section 11(w)(ii) if that policy was concluded on or after 1 January 2011,
 is received by or accrues to a person other than the taxpayer subsequent to a cession of that policy to that other person, this paragraph does not apply”;
- (n) by the insertion in the definition of “gross income” after paragraph (m) of the following paragraph:
 “(mA) any amount in respect of a policy as contemplated in—
 (a) section 11(w) if that policy was concluded prior to 1 January 2011; or
 (b) section 11(w)(ii) if that policy was concluded on or after 1 January 2011,
 that is received by or accrues to a person other than the taxpayer contemplated in paragraph (m) subsequent to a cession of that policy, reduced by an amount not exceeding the amount so received or accrued equal to so much of the premiums paid by any person that ranked for deduction but has been disallowed solely by reason of the fact that the amount exceeded the amount of the deduction allowable in respect of the year of assessment.”;
- (o) by the insertion after the definition of “group of companies” of the following definition:
 “**‘headquarter company’**, in respect of any year of assessment, means any company that is a resident if—
 (a) for the duration of that year of assessment and of all previous years of assessment of that company, each shareholder (whether alone or together with any other company forming part of the same group of companies as the shareholder) held 20 per cent or more of the equity shares and voting rights in that company;
 (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:
 (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 20 per cent of the equity shares and voting rights; and
 (c) 80 per cent or more of the total receipts and accruals of that company for that year of assessment consisted of amounts in the form of one or both of the following:
 (i) any dividend, interest, royalty or 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);”;
- (p) by the substitution in the definition of “listed company” for paragraph (a) of the following paragraph:
 “(a) an exchange as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), and licensed under section 10 of [the **Securities Services Act, 2004**] that Act; or”;
- (q) by the deletion of the definition of “nominal value”;
- (r) by the substitution in the definition of “pension fund” for the further proviso to paragraph (c) of the following further proviso:

- “: Provided further that a fund contemplated in [subparagraph] paragraph (i) of the further proviso to the definition of ‘pension preservation fund’ which is deemed to be approved or which is approved in terms of that definition or which fails to submit its rules as required by that paragraph is deemed with effect from the earlier of the date of the deemed approval or 30 September [2009] 2010 to be a fund which is not approved in terms of this definition”;
- (s) by the substitution in the definition of “pension preservation fund” for item (bb) of paragraph (a)(i) of the proviso of the following item:
- “(bb) the winding up or partial winding up of that fund, if the member elects or is required in terms of the rules to transfer to this fund; or”;
- (t) by the substitution in the definition of “pension preservation fund” for item (aa) of paragraph (a)(ii) of the proviso of the following item:
- “(aa) if that fund was wound up or partially wound up; or”;
- (u) by the substitution in the definition of “pension preservation fund” for the further proviso of the following further proviso:
- “: Provided further that—
- (i) the rules of a pension fund that is doing the business of a preservation fund as prescribed by the Commissioner from time to time must be submitted to the Commissioner for approval in terms of the provisions of this definition before 30 September [2009] 2010; and
- (ii) the rules of a pension fund contemplated in paragraph (i) that are submitted before 30 September [2009] 2010 are deemed to have been approved under this definition with effect from the date that the rules are submitted until the date that the Commissioner notifies the fund of its status under this definition”;
- (v) by the addition to the definition of “permanent establishment” of the following proviso:
- “: Provided that in determining whether a qualifying investor in relation to a partnership, trust or foreign partnership has a permanent establishment in the Republic, any act of that partnership, trust or foreign partnership in respect of any financial instrument must not be ascribed to that qualifying investor”;
- (w) by the substitution for the definition of “person” of the following definition:
- “**‘person’** includes—
- (a) an insolvent estate[,];
- (b) the estate of a deceased person[,];
- (c) any trust; and
- (d) any portfolio of a collective investment scheme **[in securities]** other than a portfolio of a collective investment scheme in property, but does not include a foreign partnership;”;
- (x) by the insertion after the definition of “person” of the following definitions:
- “**‘portfolio of a collective investment scheme’** means any—
- (a) portfolio of a collective investment scheme in participation bonds;
- (b) portfolio of a collective investment scheme in property;
- (c) portfolio of a collective investment scheme in securities; or
- (d) portfolio of a declared collective investment scheme;
- ‘portfolio of a collective investment scheme in participation bonds’** means any portfolio comprised in any collective investment scheme in participation bonds contemplated in Part VI of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), managed or carried on by any company registered as a manager under and for the purposes of that Part;
- ‘portfolio of a collective investment scheme in property’** means any portfolio comprised in any collective investment scheme in property contemplated in Part V of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), managed or carried on by any company registered as a manager under section 51 of that Act for the purposes of that Part;”;

- (y) by the insertion after the definition of “portfolio of a collective investment scheme in securities” of the following definition:
- “**‘portfolio of a declared collective investment scheme’** means any portfolio comprised in any declared collective investment scheme contemplated in Part VII of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), managed or carried on by any company registered as a manager under section 64 of that Act for the purposes of that Part;”;
- (z) by the substitution in the definition of “provident fund” for the further proviso of the following further proviso:
- “: Provided further that a fund contemplated in paragraph (i) of the further proviso to the definition of ‘provident preservation fund’ which is deemed to be approved or which is approved in terms of that definition or which fails to submit its rules as required by that paragraph is deemed with effect from the earlier of the date of the deemed approval or 30 September ~~[2009]~~ 2010 to be a fund which is not approved in terms of this definition”;
- (zA) by the substitution in the definition of “provident preservation fund” for item (bb) of paragraph (a)(i) of the proviso of the following item:
- “(bb) the winding up or partial winding up of that fund, if the members elected or are required in terms of the rules to transfer to this fund; or”;
- (zB) by the substitution in the definition of “provident preservation fund” for item (aa) of paragraph (a)(ii) of the proviso of the following item:
- “(aa) if that fund was wound up or partially wound up; or”;
- (zC) by the substitution in the definition of “provident preservation fund” for the further proviso of the following further proviso:
- “: Provided further that—
- (i) the rules of the provident fund that is doing the business of a preservation fund as prescribed by the Commissioner from time to time must be submitted to the Commissioner for approval in terms of the provisions of this definition before 30 September ~~[2009]~~ 2010; and
- (ii) the rules of a provident fund contemplated in paragraph (i) that are submitted before 30 September ~~[2009]~~ 2010 are deemed to have been approved under this definition with effect from the date that the rules are submitted until the date that the Commissioner notifies the fund of its status under this definition”;
- (zD) by the insertion after the definition of “Public Private Partnership” of the following definition:
- “**‘qualifying investor’** means a member of a partnership or foreign partnership or a beneficiary of a trust if the liability of the member or beneficiary to any creditor of the partnership, trust or foreign partnership is limited to the amount that the member or beneficiary has contributed or undertaken to contribute to the partnership, trust or foreign partnership, unless that member or beneficiary—
- (a) participates in the effective management of the trade or business of the partnership, trust or foreign partnership;
- (b) has the authority to act on behalf of—
- (i) the partnership or foreign partnership;
- (ii) the members of the partnership or foreign partnership; or
- (iii) the trust; or
- (c) renders any services to or on behalf of the partnership, trust or foreign partnership;”;
- (zE) by the substitution in the definition of “retirement annuity fund” for item (cc) of paragraph (b)(xii) of the proviso of the following item:
- “(cc) for the benefit contemplated in ~~[paragraph (b)(x)(cc)]~~ subparagraph (x)(cc);”;

(zF) by the insertion after the definition of “securities lending arrangement” of the following definition:

“**‘severance benefit’** means any amount (other than a lump sum benefit or an amount contemplated in section 23(p) 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—

(a) such person has attained the age of 55 years;

(b) such relinquishment, termination, loss, repudiation, cancellation or variation is due to the person becoming permanently incapable of holding the person’s office or employment due to sickness, accident, injury or incapacity through infirmity of mind or body; or

(c) such termination or loss is due to—

(i) the person’s employer having ceased to carry on or intending to cease carrying on the trade in respect of which the person was employed or appointed; or

(ii) the person having become redundant in consequence of a general reduction in personnel or a reduction in personnel of a particular class by the person’s employer,

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 or members’ interest in the company:

Provided that any such amount which becomes payable in consequence of or following upon the death of a person must be deemed to be an amount which accrued to such person immediately prior to his or her death;”;

(zG) by the substitution in the definition of “shareholder” for paragraphs (a) and (b) of the following paragraphs:

“(a) in relation to any company referred to in paragraph (a), (b) or (d) of the definition of ‘company’ in this section, means the registered shareholder in respect of any share, except that where some person other than the registered shareholder is entitled, whether **[by virtue of any provision in the memorandum or articles of association of the company or under the]** in terms of any agreement or contract[,], or otherwise, to all or part of the benefit of the rights **[of participation in the profits, income or capital]** attaching to the share so registered, that other person shall, to the extent that such other person is entitled to such benefit, also be deemed to be a shareholder; or

(b) in relation to any company referred to in paragraph (e) of the said definition, the registered holder of any participatory interest included in the relevant portfolio, except that where some person other than the holder of any participatory interest is entitled, whether by virtue of any provision in the trust deed entered into for the purposes of the relevant collective investment scheme or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights **[of participation in the profits, income or capital]** attaching to the participatory interest, that other person shall, to the extent that such other person is entitled to such benefit, also be deemed to be a shareholder;”;

(zH) by the insertion after the definition of “taxable income” of the following definition:

“**‘tax benefit’** includes any avoidance, postponement or reduction of any liability for tax;” and

(zI) by the substitution for the definition of “trading stock” of the following definition:

“**‘trading stock’**—

(a) includes—

[(a) anything—]

(i) anything produced, manufactured, constructed, assembled, purchased or in any other manner acquired by a taxpayer for the purposes of manufacture, sale or exchange by **[him]** the taxpayer or on **[his]** behalf of the taxpayer, **or**;

(ii) anything the proceeds from the disposal of which forms or will form part of **[his]** the taxpayer’s gross income, otherwise than—

(aa) in terms of paragraph (j) or (m) of the definition of ‘gross income’[,];

(bb) in terms of paragraph 14(1) of the First Schedule; or

(cc) as a recovery or recoupment contemplated in section 8(4) which is included in gross income in terms of paragraph (n) of **[that]** the definition of ‘gross income’; or

[(b)](iii) any consumable stores and spare parts acquired by **[him]** the taxpayer to be used or consumed in the course of **[his]** the taxpayer’s trade[,]; but

(b) does not include—

(i) a foreign currency option contract **[and]; or**;

(ii) a forward exchange contract,
as defined in section 24I(1);”.

(2) Paragraphs (a), (e), (f), (g), (i), (q) and (zG) of subsection (1) come into operation on 1 January 2011.

(3) Paragraphs (b), (x) and (y) 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.

(4) Paragraphs (c), (d), (j) and (w) of subsection (1) 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 2010; 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.

(5) Paragraphs (h), (k) and (o) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 January 2011.

(6) Paragraph (l) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2008.

(7) Paragraphs (m) and (n) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 January 2011 and apply in respect of receipts and accruals on or after that date.

(8) Paragraphs (r), (u), (z), (zC) and (zE) of subsection (1) are deemed to have come into operation on 1 March 2009.

(9) Paragraphs (s), (t), (zA) and (zB) of subsection (1) are deemed to have come into operation on 1 March 2008 and apply in respect of lump sum benefits transferred on or after that date.

(10) Paragraphs (v) and (zD) of subsection (1) are deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2011.

(11) Paragraph (zF) of subsection (1) comes into operation on 1 March 2011 and applies in respect of amounts received or accrued on or after that date.

(12) Paragraph (zI) of subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of years of assessment ending on or after that date.

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 and section 8 of Act 17 of 2009

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

(a) by the deletion of subsection (1A); and

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

“(10) Where any taxpayer’s income includes any special remuneration, or where the provisions of 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—

$$Y = \left(\frac{A}{B + D - C} \right) \times B$$

in which formula—

(a) ‘Y’ represents the amount of normal tax to be determined;

(b) ‘A’ represents the amount of normal tax (as determined before the deduction of any rebate) calculated at the full rate of tax chargeable for the said year in respect of taxable income equal to the amount represented by the expression ‘B + D — C’ in the formula;

(c) ‘B’ represents the taxpayer’s taxable income (excluding any lump sum benefit) for the said year;

(d) ‘C’ represents an amount equal to the sum of—

(i) the amount of any special remuneration (as defined in subsection (9)) which is included in the taxpayer’s income for the said year;

(ii) where the provisions of paragraph 15(3) of the First Schedule are in the case of the taxpayer applicable in respect of the said year, an amount determined in accordance with those provisions as being the amount, if any, by which the taxable income derived by the taxpayer during the said year from the disposal of plantations and forest produce exceeds the annual average taxable income derived by the taxpayer from that source over the three years of assessment immediately preceding the said year;

(iii) where the provisions of paragraph 17 of the First Schedule are in the case of the taxpayer applicable in respect of the said year, an amount equal to so much of the taxable income of the taxpayer for such year as has been derived from the disposal of sugar cane as a result of fire in the taxpayer’s cane fields and but for such fire would not have been derived by the taxpayer in that year; and

(iv) where the provisions of subparagraph (1) of paragraph 19 of the First Schedule are in the case of the taxpayer applicable in respect of the said year, the amount by which the taxpayer’s taxable income derived from farming for that year exceeds the taxpayer’s average taxable income from farming as determined in relation to that year in accordance with subparagraph (2) of the said paragraph; and

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

Provided that in no case shall the amount of normal tax so payable be less than the amount of normal tax which would be chargeable at the relevant rate fixed in terms of subsection (2) in respect of the first rand of taxable income, and nothing in this section contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of that person's taxable income.”. 5

(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 March 2011.

(3) Paragraph (b) 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. 10

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 and section 7 of Act 60 of 2008 15 20

8. (1) Section 6 of the Income Tax Act, 1962, is hereby amended by the addition after subsection (4) of the following subsection: 25

“(5) Where the taxable income of a taxpayer consists solely of ‘net remuneration’ as defined in paragraph 11B of the Fourth Schedule, the normal tax payable by that taxpayer—

(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; and 30

(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,

of the difference between— 35

(i) the normal 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.”. 35

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 March 2011. 40

Amendment of section 7A of Act 58 of 1962, as inserted by section 6 of Act 69 of 1975 and amended by section 7 of Act 103 of 1976, section 6 of Act 96 of 1981, section 4 of Act 65 of 1986, section 8 of Act 129 of 1991, section 3 of Act 113 of 1993, section 7 of Act 21 of 1995 and section 5 of Act 36 of 1996 45

9. (1) Section 7A of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (4A).

(2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of amounts received or accrued on or after that date.

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 and section 11 of Act 17 of 2009

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

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

“(aa) on travelling on business, as contemplated in paragraph (b), unless an allowance or advance has been granted by an employer in respect of the use of a motor vehicle as contemplated in paragraph 7 of the Seventh Schedule;”; and

(b) by the deletion in subsection (1)(b) of the proviso to subparagraph (ii);

(2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

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

11. (1) Section 8B 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:

“If a person [as a result of a subdivision, consolidation, conversion or restructuring of the equity share capital of the employer or any company that is an associated institution as defined in the Seventh Schedule in relation to that employer] disposes of a qualifying equity share in exchange solely for any other equity share in that employer or any company that is an associated institution as defined in the Seventh Schedule in relation to that employer, that other equity share acquired in exchange is deemed to be—”; and

(b) by the substitution in subsection (3) for the definition of “date of grant” of the following definition:

“‘date of grant’ in relation to an equity share means the date on which the granting of that equity share is approved by the directors of the employer company or some other person or body of persons with comparable authority [conferred under or by virtue of the memorandum and articles of association of the employer company];”.

(2) Paragraph (b) of subsection (1) comes into operation on 1 January 2011.

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 and section 11 of Act 60 of 2008

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

(a) by the deletion in subsection (1)(a) of the word “or” at the end of subparagraph (i);

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

- “(ii) by virtue of any **[other]** restricted equity instrument held by that taxpayer in respect of which this section will apply upon vesting thereof[.]; or”;
- (c) by the addition to subsection (1)(a) after subparagraph (ii) of the following subparagraph: 5
 “(iii) as a restricted equity instrument during the period of his or her employment by or office of director of any company from—
 (aa) that company or any associated institution in relation to that company; or
 (bb) any person employed by or that is a director of— 10
 (A) that company; or
 (B) any associated institution in relation to that company.”;
- (d) by the substitution for subsection (1A) of the following subsection: 15
 “(1A) If a capital distribution as contemplated in paragraph 74 of the Eighth Schedule, other than a capital 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 in his or her income for the year of assessment during which the amount is received or accrues.”; and
- (e) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 20
 “(a) If a taxpayer disposes of a restricted equity instrument which was acquired in the manner contemplated in subsection (1) for an amount which consists of or includes any other restricted equity instrument **[which is acquired from the employer, associated institution or other person by arrangement with the employer]** in the employer of the taxpayer or an associated institution in relation to the employer, that other restricted equity instrument acquired in exchange is deemed to be acquired by that taxpayer by virtue of his or her employment or office of director of any company.”. 30
- (2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on 1 January 2011 and apply in respect of acquisitions on or after that date.
- (3) Paragraph (d) of subsection (1) comes into operation on 1 January 2011 and applies in respect of distributions made on or after that date.
- (4) Paragraph (e) of subsection (1) comes into operation on 1 January 2011 and applies in respect of disposals on or after that date. 35

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 and section 7 of Act 8 of 2007

- 13.** (1) Section 8E of the Income Tax Act, 1962, is hereby amended— 40
- (a) by the substitution in subsection (1) for paragraph (a) of the definition of “hybrid equity instrument” of the following paragraph:
 “(a) any **[redeemable preference]** share other than an equity share which the relevant company is obliged to redeem in whole or in part within a period of three years from the date of issue thereof, or 45
 which may at the option of the holder be redeemed in whole or in part within the said period, or in respect of which the holder has a right of disposal which may be exercised within the said period; or”;
- (b) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (b) of the definition of “hybrid equity instrument” of the following words:
 “any **[other]** share other than a share contemplated in paragraph (a), if—”; and
- (c) by the substitution for subsection (2) of the following subsection: 55
 “(2) Any dividend declared by a company on a hybrid equity instrument which is declared on or after the date that the share becomes a hybrid equity instrument[,], shall for the purposes of this Act be deemed in relation to the recipient thereof only to be an amount of interest **[received by him]** accrued to the recipient from a source within the 60 Republic.”.

(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 January 2011.

Amendment of section 9 of Act 58 of 1962, as amended by section 7 of Act 90 of 1962, section 6 of Act 72 of 1963, section 7 of Act 90 of 1964, section 9 of Act 95 of 1967, section 12 of Act 89 of 1969, section 6 of Act 65 of 1973, section 9 of Act 85 of 1974, section 8 of Act 103 of 1976, section 9 of Act 121 of 1984, section 5 of Act 96 of 1985, section 6 of Act 65 of 1986, section 2 of Act 108 of 1986, section 7 of Act 85 of 1987, section 36 of Act 9 of 1989, section 10 of Act 129 of 1991, section 7 of Act 141 of 1992, section 5 of Act 113 of 1993, section 3 of Act 140 of 1993, section 7 of Act 21 of 1994, section 9 of Act 21 of 1995, section 7 of Act 28 of 1997, section 25 of Act 30 of 1998, section 15 of Act 53 of 1999, section 7 of Act 59 of 2000, section 12 of Act 74 of 2002, section 20 of Act 45 of 2003, section 11 of Act 32 of 2004, section 13 of Act 31 of 2005 and section 8 of Act 20 of 2006

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

(a) by the substitution in subsection (1)(g) for subparagraph (i) of the following subparagraph:

“(i) by the [Government, any provincial administration, or by any municipality in] government of the Republic in the national, provincial or local sphere; or”; and

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

“(bb) 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 [share capital of] shares in that company or ownership or right to ownership of that other entity.”.

(2) Paragraph (b) of subsection (1) comes into operation on 1 January 2011.

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 and section 12 of Act 60 of 2008

15. (1) Section 9C of the Income Tax Act, 1962, is hereby amended 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 [44] 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—”.

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

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 and section 12 of Act 17 of 2009

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

(a) by the substitution in subsection (1) for the words preceding the proviso to the definition of “controlled foreign company” of the following words:

“‘controlled foreign company’ means any foreign company where more than 50 per cent of the total participation rights in that foreign company are directly or indirectly held, or more than 50 per cent of the voting rights in that foreign company are directly or indirectly exercisable, by one or more persons that are residents other than persons that are headquarter companies”;

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

- (c) by the substitution in subsection (1) for paragraph (a) of the definition of “participation rights” of the following paragraph:
 “(a) the right to participate [**directly or indirectly**] in [**the share capital, share premium, current or accumulated profits or reserves of**] all or part of the benefits of the rights (other than voting rights) attaching to a share, or any interest of a similar nature, in that company [**, whether or not of a capital nature**]; or”;
- (d) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “There shall be included in the income for the year of assessment of any resident (other than a resident that is a headquarter company) who directly or indirectly holds any participation rights in a controlled foreign company—”;
- (e) by the substitution in subsection (2) for paragraph (B) of the proviso of the following paragraph:
 “(B) to the extent that the participation rights are held by that resident indirectly through any company (other than a company that is a headquarter company) which is a resident; or”;
- (f) by the substitution in subsection (2A) for subparagraph (aa) of paragraph (i) of the proviso of the following subparagraph:
 “(aa) any transaction, operation [**or**], scheme, agreement or understanding between that controlled foreign company and any connected person in relation to that controlled foreign company is subject to section 31(2); and”;
- (g) by the substitution in subsection (2A) for paragraph (k) of the proviso of the following paragraph:
 “(k) for the purposes of paragraph 43 of the Eighth Schedule, ‘local currency’ of a controlled foreign company otherwise than in relation to a permanent establishment of that controlled foreign company, means the functional currency [**used by**] of that company [**for purposes of financial reporting**];”;
- (h) by the addition to the proviso to subsection (2A) of the following paragraph:
 “(l) where the currency used by a controlled foreign company for the purposes of financial reporting—
 (i) was the currency of a country which—
 (aa) abandoned its currency; and
 (bb) had an official rate of inflation of 100 per cent or more for the foreign tax year preceding the abandonment of the currency; and
 (ii) the controlled foreign company adopted a new currency of financial reporting as a consequence of the abandonment contemplated in subparagraph (i)(aa),
 the controlled foreign company must, for the purposes of determining the cost of an asset of the controlled foreign company, be deemed to have acquired the asset in the new currency contemplated in subparagraph (ii)—
 (A) on the first day of the foreign tax year of the controlled foreign company in which; and
 (B) for an amount equal to the market value of the asset on the date on which,
 the new currency was adopted by the controlled foreign company”;
- (i) by the substitution in paragraph (l) of the proviso to subsection (2A) for the words preceding subparagraph (i) of the following words:
 “(l) where the functional currency [**used by**] of a controlled foreign company [**for the purposes of financial reporting**]—”;
- (j) by the substitution in paragraph (l) of the proviso to subsection (2A) for subparagraph (ii) of the following subparagraph:
 “(ii) the controlled foreign company adopted a new functional currency [**of financial reporting**] as a consequence of the abandonment contemplated in subparagraph (i)(aa),”;

- (k) by the substitution in subsection (2A) for subparagraph (i) of the further proviso of the following subparagraph:
- “(i) the net income of a controlled foreign company in respect of a foreign tax year shall be deemed to be nil where the aggregate amount of tax payable to all spheres of government of any country other than the Republic by the controlled foreign company **[on the net income of that controlled foreign company]** in respect of the foreign tax year of that controlled foreign company is at least 75 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 for that foreign tax year; and”;
- (l) by the substitution for subsection (6) of the following subsection:
- “(6) The net income of a controlled foreign company [,] shall be determined in the functional currency **[used by]** of that controlled foreign company **[for purposes of financial reporting]** 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: Provided that—
- (a) in respect of the disposal of any asset contemplated in paragraph 43(4) of the Eighth Schedule which is not attributable to any permanent establishment of that controlled foreign company outside the Republic, any capital gain or capital loss of that controlled foreign company shall, when applying paragraph 43(4) of the Eighth Schedule, be determined in the currency of the Republic and that capital gain or capital loss shall be translated to the functional currency **[used by]** of that controlled foreign company **[for purposes of financial reporting]** by applying that average exchange rate;
- (b) in respect of the disposal of any foreign equity instrument which constitutes trading stock and which is not attributable to any permanent establishment of that controlled foreign company outside the Republic, the amount to be taken into account in determining the net income of that controlled foreign company must be determined in the currency of the Republic and that amount shall be translated to the functional currency **[so used by]** of that controlled foreign company by applying that average exchange rate; and
- (c) for the purposes of section 24I, ‘local currency’ in relation to an exchange item of a controlled foreign company which is not attributable to any permanent establishment of that company outside the Republic, means the currency of the Republic and any exchange difference determined must be translated to the functional currency **[so used by]** of that controlled foreign company by applying that average exchange rate;
- (d) (i) any asset or foreign equity instrument that is disposed of; and
(ii) any exchange item denominated,
in any currency other than the functional currency **[used by]** of that controlled foreign company **[for purposes of financial reporting]** shall be deemed not to be attributable to any permanent establishment of the controlled foreign company if the functional currency **[used for financial reporting purposes]** is the currency of a country which has an official rate of inflation of 100 per cent or more **[throughout]** for that foreign tax year.”; and
- (m) by the substitution in subsection (9) for paragraph (e) of the following paragraph:
- “(e) is included in the taxable income of the company **[and has not been or will not be exempt or taxed at a reduced rate in the Republic, as a result of the application of any agreement for the avoidance of double taxation]**”.

(2) Paragraphs (a), (b), (d), (e), (g), (i), (j), (l) and (m) of subsection (1) come into operation on 1 January 2011 and apply in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on 1 January 2011.

(4) Paragraph (f) of subsection (1) comes into operation on 1 October 2011 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date. 5

(5) Paragraph (h) of subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment ending on or after that date. 10

(6) Paragraph (k) of subsection (1) is deemed to have come into operation on 1 January 2008 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment ending on or after that date.

Amendment of section 9E of Act 58 of 1962, as inserted by section 14 of Act 60 of 2008 15

17. (1) Section 9E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (j) of the definition of “excluded company” of the following paragraph:

“(j) a foreign company [as defined in section 9D]; or”.

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2011. 20

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 and section 13 of Act 17 of 2009 25 30 35 40

18. (1) Section 10 of the Income Tax Act, 1962, is hereby amended— 45

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

“(a) the receipts and accruals of the [Government or any provincial administration;

(b) the receipts and accruals of municipalities] government of the Republic in the national, provincial or local sphere;” 50

(b) 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)] 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 55

- (Act No. 68 of 1951)) established by or under any law and which, in the furtherance of its sole or principal object—”;
- (c) by the substitution in subsection (1) for paragraph (cE) of the following paragraph:
- “(cE) the receipts and accruals of any political party registered [**under the provisions of section 36 of the Electoral Act, 1979 (Act No. 45 of 1979)**] in terms of section 15 of the Electoral Commission Act, 1996 (Act No. 51 of 1996);”;
- (d) by the substitution in subsection (1)(d) for subparagraph (iii) of the following subparagraph:
- “(iii) mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers) or local publicity association approved by the Commissioner [**subject to such conditions as the Minister may prescribe by regulation**] in terms of section 30B; or”;
- (e) by the substitution in subsection (1)(d)(iv) for the words following item (bb) of the following words:
- “approved by the Commissioner [**subject to such conditions as the Minister may prescribe by regulation**] in terms of section 30B;”;
- (f) 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)**] 2008 (Act No. 71 of 2008), any co-operative, close corporation and trust, but including a non-profit company [**contemplated**] as defined in section [**21**] 1 of the Companies Act, [**1973 (Act No. 61 of 1973)**] 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—”;
- (g) by the insertion in subsection (1) after paragraph (gE) of the following paragraph:
- “(gF) any value required to be taken into account in determining the gross income of any person in respect of the cession by another person of a policy contemplated in section 11(w) ceded to or in favour of that person—
- (i) where that person is—
- (aa) an employee or director of that other person or a connected person in relation to the employee or director;
- (bb) the estate of the employee or director; or
- (cc) any person who is or was wholly or partly dependent for his or her maintenance upon the employee or director; and
- (ii) where that policy was concluded before 1 January 2011;”;
- (h) by the substitution in subsection (1)(i)(xv)(aa) for the words preceding the proviso of the following words:
- “so much of the aggregate of any foreign dividends and interest received by or accrued to him or her from a source outside the Republic, which are not otherwise exempt from tax, as does not during the year of assessment exceed [**R3 500**] R3 700”;
- (i) by the substitution in subsection (1)(i)(xv)(bb) for subitems (A) and (B) of the following subitems:
- “(A) in the case of any natural 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 [**R30 000**] R32 000; or
- (B) in any other case, the amount of [**R21 000**] R22 300;”;
- (j) by the substitution in subsection (1)(k)(i) for the words preceding the proviso of the following words:
- “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”;
- (k) by the deletion in subsection (1)(k) of the word “or” at the end of paragraph (aa) of the proviso to subparagraph (i);

- (l) by the substitution in subsection (1)(k) for paragraph (cc) of the proviso to subparagraph (i) of the following paragraph:
- “(cc) to any dividend received by or accrued to or in favour of any person where such dividend constitutes or forms part of any consideration paid or payable to such person in respect of the disposal of shares (other than affected shares in respect of which the taxpayer has, in terms of the provisions of section 9B, elected the amount received or accrued on disposal to be deemed to be of a capital nature and other than qualifying shares as defined in section 9C), which were held as trading stock by such person in a company and such shares were acquired by such company in terms of **[section 85 of]** the Companies Act, **[1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008); or**”;
- (m) by the addition in subsection (1)(k) to the proviso to subparagraph (i) 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; or
- (B) the dividend constitutes an equity instrument as defined in that section;”;
- (n) by the substitution in subsection (1)(k)(ii) for the words preceding item (aa) of the following words:
- “any foreign dividend or any dividend paid or declared by a headquarter company received by or accrued to a person—”;
- (o) by the substitution in subsection (1)(k)(ii)(aa) for the words preceding subitem (A) of the following words:
- “to the extent that the **[profits]** amounts from which the foreign dividend is distributed—”;
- (p) by the substitution in subsection (1)(k)(ii)(aa) for subitem (A) of the following subitem:
- “(A) **[relate to any amount which has been or will be subject to tax in the Republic in terms of this Act, unless those profits have been or will be exempt or taxed at a reduced rate in the Republic as a result of the application of any agreement for the avoidance of double taxation]** are included in the taxable income of that person; or”;
- (q) by the substitution in subsection (1)(k)(ii)(dd) for the words preceding the proviso of the following words:
- “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 20 per cent of the total equity **[share capital]** shares and voting rights in the company declaring the dividend, or 20 per cent of the total member’s interest and voting rights in the co-operative declaring the dividend, which co-operative is established in terms of the laws of any country other than the Republic”;
- (r) by the substitution in subsection (1)(k)(ii) for the proviso to item (dd) of the following proviso:
- “: Provided that this exemption must not apply in respect of any dividend received by or accrued to any person—
- (i) if—
- (aa) (A) any amount of that dividend is determined directly or indirectly with reference to; or
- (B) that dividend arises directly or indirectly from, any amount paid or payable by any person to any other person; and
- (bb) the amount so paid or payable is deductible by the person and—
- (A) is not subject to normal tax in the hands of that other person; or
- (B) where that other person is a controlled foreign company, is not taken into account in determining the net income, as

- defined in section 9D(2A), of that controlled foreign company; or
- (ii) from any portfolio contemplated in paragraph (e) of the definition of ‘company’ in section 1”;
- (s) by the deletion of the word “or” at the end of item (B) of paragraph (i)(bb) of the proviso to item (dd) of subsection (1)(k)(ii); 5
- (t) by the addition of the word “or” at the end of paragraph (ii) of the proviso to item (dd) of subsection (1)(k)(ii);
- (u) by the addition in subsection (1)(k)(ii) of the following paragraph to the proviso to item (dd): 10
- “(iii) from any foreign financial instrument holding company as defined in section 41;”;
- (v) by the substitution in subsection (1)(x) for paragraph (iv) of the proviso of the following paragraph:
- “(iv) the termination or impending termination of such person’s services is due to his employer having ceased to carry on or intending to cease carrying on the trade in respect of which such person was employed or to such person having become redundant in consequence of his employer having effected a general reduction in personnel or a reduction in personnel of a particular class and, where such person’s employer is a company, such person was not at any time a director of such company and did not at any time hold more than five per cent of the **[issued share capital]** equity shares or members’ interest in such company;”;
- (w) by the deletion of subsection (1)(x); 25
- (x) by the substitution in subsection (1) for paragraph (zE) of the following paragraph:
- “(zE) any amount received by or accrued to the Small Business Development Corporation[,] Limited, by way of any subsidy or assistance payable by the State;”;
- (y) by the substitution in subsection (1)(zJ) for subparagraph (i) of the following subparagraph: 30
- “(i) investment income as defined in **[section 12E]** paragraph 1 of the Sixth Schedule; or”.
- (2) Paragraphs (b), (f), (n), (o), (p), (q) and (v) of subsection (1) come into operation on 1 January 2011. 35
- (3) Paragraphs (d) and (e) of subsection (1) come into operation on the date of promulgation of this Act.
- (4) Paragraph (g) of subsection (1) comes into operation on 1 January 2011 and applies in respect of a policy ceded on or after 1 January 2012. 40
- (5) Paragraphs (h) and (i) of subsection (1) are deemed to have come into operation on 1 March 2010 and apply in respect of years of assessment commencing on or after that date.
- (6) Paragraphs (j) and (n) of subsection (1) come into operation on 1 January 2011 and apply in respect of dividends paid or declared during years of assessment commencing on or after that date. 45
- (7) Paragraphs (k) and (m) of subsection (1) come into operation on 1 January 2011 and apply in respect of dividends received by or accrued to or in favour of any person on or after that date.
- (8) Paragraph (r) of subsection (1) comes into operation on 1 January 2011 and applies in respect of dividends received or accrued during years of assessment commencing on or after that date. 50
- (9) Paragraphs (s), (t) and (u) of subsection (1) come into operation on 1 October 2011 and apply in respect of dividends received or accrued during years of assessment commencing on or after that date. 55
- (10) Paragraph (w) of subsection (1) comes into operation on 1 March 2011 and applies in respect of amounts received or accrued on or after that date.
- (11) Paragraph (y) of subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 March 2011.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1968, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, 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 and section 14 of Act 17 of 2009

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

(a) by the substitution in paragraph (e) for the words preceding the proviso of the following words:

“save as provided in paragraph 12(2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B, 12C, 12DA, [12E] 12E(1) or 37B) owned by the taxpayer or acquired by the 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 used by the taxpayer for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment”;

(b) by the deletion in paragraph (e) of paragraphs (i) and (iv) of the proviso;

(c) by the addition in paragraph (e) of the word “and” at the end of paragraph (vii) of the proviso;

(d) by the substitution in paragraph (g) for paragraph (iii) of the proviso of the following paragraph:

“(iii) if—

(aa) the taxpayer is entitled to such use or occupation for an indefinite period[, he]; or

(bb) the taxpayer or the person by whom such right of use or occupation was granted holds a right or option to extend or renew the original period of such use or occupation, the taxpayer shall for the purposes of this paragraph be deemed to be entitled to such use or occupation for such period as in the opinion of the Commissioner represents the probable duration of such use or occupation;”;

(e) by the deletion in paragraph (g) of paragraph (v) of the proviso;

(f) by the substitution in paragraph (g) for paragraph (vi) of the proviso of the following paragraph:

“(vi) the provisions of this paragraph shall not apply in relation to any such expenditure incurred if the value of such improvements or the amount to be expended on such improvements, as contemplated in paragraph (h) of the definition of ‘gross income’ in section 1, does not for the purposes of this Act constitute income of the person to whom the right to have such improvements effected has accrued[, unless the expenditure was incurred pursuant to an obligation to effect improvements in terms of—

- (aa) a Public Private Partnership; or
- (bb) a right of use or occupation of land or a building owned by—
- (i) the Government, any provincial administration or any municipality; or
 - (ii) any entity, the receipts and accruals of which are exempt in terms of section 10(1)(cA) or 10(1)(t), where the right of use or occupation has a duration of 20 years or more];”;
- (g) by the substitution in paragraph (g) for paragraph (vii) of the proviso of the following paragraph:
- “(vii) if during any year of assessment the agreement whereby the right of use or occupation of the land or buildings is granted is terminated before expiry of the period to which that taxpayer was [initially] entitled to the use or occupation, as contemplated in paragraph (ii) or (iii), so much of the allowance which may be allowed under this paragraph, which has not yet been allowed in that year or any previous year of assessment, shall be allowable as a deduction in that year of assessment;”;
- (h) by the substitution for paragraph (gD) of the following paragraph:
- “(gD) where that trade constitutes the provision of telecommunication services, the exploration, production or distribution of petroleum or the provision of gambling facilities, any expenditure (other than in respect of infrastructure) incurred to acquire a licence from the **[Government, a provincial administration or a municipality]** government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a) **[or (b)]**, or an institution or entity contemplated in Schedule 1 or Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), where that expenditure is incurred in terms of the licence and the licence is required to carry on that trade, which deduction must not exceed for any one year such portion of the expenditure as is equal to the amount of the expenditure divided by the number of years for which the taxpayer has the right to the licence after the date on which the expenditure was incurred, or 30, whichever is the lesser;”;
- (i) by the substitution for paragraph (w) of the following paragraph:
- “(w) expenditure incurred by a taxpayer in respect of any premiums payable under a long-term insurance policy of which the taxpayer is the policyholder, where—
- (i) the amount of expenditure incurred by the taxpayer in respect of the premiums payable under the policy is included in the taxable income of an employee or director of the taxpayer; 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 prior to the maturity date thereof or the death of the employee or director whose life is insured under the policy;
 - (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 other than any person contemplated in paragraph (dd) as security for a debt of the taxpayer; and
 - (dd) no transaction, operation or scheme exists in terms of which any amount recoverable under the policy or an amount equivalent to or in lieu of such amount will be made over by the taxpayer to or in favour of—
 - (A) the employee or director or a connected person in relation to the employee or director;

- (B) the estate of the employee or director; or
- (C) any person who is or was wholly or partly dependent for his or her maintenance upon the employee or director;”.

(2) Paragraphs (d), (e) and (f) of subsection (1) come into operation on the date of promulgation of this Act and apply in respect of agreements entered into on or after that date. 5

(3) Paragraph (i) of subsection (1) comes 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. 10

Amendment of section 11D of Act 58 of 1962, as inserted by section 13 of Act 20 of 2006 and amended by section 13 of Act 8 of 2007, section 3 of Act 9 of 2007, section 19 of Act 35 of 2007, section 11 of Act 3 of 2008, section 19 of Act 60 of 2008 and section 16 of Act 17 of 2009

20. (1) Section 11D of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (2) of the following subsection: 15

“(2A) For the purposes of this section, if a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the taxpayer to complete that improvement shall be deemed to be the cost to that taxpayer of any new and unused building, part thereof, or improvement thereto, contemplated in subsection (2).”.

(2) Subsection (1) comes into operation on the date of the promulgation of this Act. 20

Amendment of section 11E of Act 58 of 1962, as inserted by section 20 of Act 35 of 2007 and amended by section 17 of Act 17 of 2009

21. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 11E of the following section: 25

“Deduction of certain expenditure incurred by sporting bodies

11E. [(1)] For the purpose of determining the taxable income derived by—

[(i)](a) any company contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or a non-profit company as defined in the Companies Act, 2008 (Act No. 71 of 2008); or 30

[(ii)](b) an association of persons that has been incorporated, formed or established in the Republic, from carrying on any sporting activities falling under a code of sport administered and controlled by a national federation as contemplated in section 1 of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998), there shall be allowed as a deduction from the income of that company or association— 35

(i) expenditure, not of a capital nature, incurred by that company or association on the development and promotion, directly by that company or association; or 40

(ii) any payment made to any other company or association contemplated in this section for expenditure to be incurred on the development and promotion, of sporting activities contemplated in paragraph 9 of Part I of the Ninth Schedule falling under that code of sport.”. 45

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2008.

Amendment of section 12D of Act 58 of 1962, as amended by section 23 of Act 30 of 2000, section 19 of Act 59 of 2000, section 28 of Act 60 of 2001, section 16 of Act 30 of 2002, section 23 of Act 35 of 2007, section 21 of Act 60 of 2008 and section 20 of Act 17 of 2009 50

22. (1) Section 12D of the Income Tax Act, 1962, is hereby amended by the insertion of the following subsection: 55

“(2A) For the purposes of this section, if a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the taxpayer to complete that improvement shall be deemed to be the cost actually incurred by the taxpayer in respect of the acquisition of any new and unused affected asset contemplated in subsection (2).”

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

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 14 of Act 20 of 2006, section 24 of Act 9 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 and section 21 of Act 17 of 2009

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

(a) by the substitution in subsection (4)(a) for the words preceding subparagraph (i) of the following words:

“**‘small business corporation’** means any close corporation[,] or co-operative or any private company [**registered as a private company in terms**] as defined in section 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), all the shareholders of which are at all times during the year of assessment natural persons, where—”;

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

“(i) the gross income for the year of assessment does not exceed an amount equal to R14 million: Provided that where the close corporation, co-operative or company during the relevant year of assessment carries on any trade, for purposes of which any asset contemplated in this section is used, for a period which is less than 12 months, that amount shall be reduced to an amount which bears to that amount, the same ratio as the number of months (in the determination of which a part of a month shall be reckoned as a full month), during which that company, co-operative or close corporation carried on that trade bears to 12 months;”;

(c) by the substitution in subsection (4)(a)(ii) for item (cc) of the following item: “(cc) a company contemplated in section [10(1)(e)(i), (ii) or (iii)] 10(1)(e)(i)(aa), (bb) or (cc);”;

(d) by the deletion in subsection (4)(a)(ii) of the word “or” at the end of item (ff);

(e) by the addition in subsection (4)(a)(ii) of the word “or” at the end of item (hh);

(f) by the addition to subsection (4)(a)(ii) after item (hh) of the following item:

“(ii) any company or close corporation if the company or close corporation has taken the steps contemplated in section 41(4) to liquidate, wind up or deregister: Provided that this item ceases to apply if the company or close corporation has at any stage withdrawn any step so taken or does anything to invalidate any step so taken, with the result that the company or close corporation will not be liquidated, wound up or deregistered;”;

(g) by the substitution in subsection (4)(d) for the words preceding subparagraph (i) of the following words:

“**‘personal service’** in relation to a company or close corporation, means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, [broking, commercial arts,] consulting, draftsmanship, education, engineering, [entertainment,] financial service broking, health, information technology, journalism, law, management, [performing arts,] real estate broking, research, [secretarial services,] sport, surveying, translation, valuation or veterinary science, if—”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2011.

(3) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009.

(4) Paragraphs (d), (e), (f) and (g) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 January 2011.

Amendment of section 12F of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 26 of Act 35 of 2007, section 24 of Act 60 of 2008 and section 22 of Act 17 of 2009

24. (1) Section 12F of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) For the purposes of this section where a taxpayer completes improvements as contemplated in section 12N, the expenditure incurred by the taxpayer to complete that improvement shall be deemed to be the cost actually incurred by that taxpayer in respect of the acquisition of a new and unused airport asset or port asset contemplated in subsection (2).”.

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

Amendment of section 12H of Act 58 of 1962, as substituted by section 23 of Act 17 of 2009

25. Section 12H of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) In respect of each year of assessment during which an employer is eligible for any [allowance] deduction contemplated in this section, the employer must submit to the SETA with which the learnership agreement is registered any information relating to that learnership agreement required by the SETA in the form and manner and at the place and time indicated by the SETA.”.

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

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

(a) by the insertion of the following subsection:

“(1A) For the purposes of this section, if a taxpayer completes an improvement as contemplated in section 12N, the improvement shall be deemed to be a new and unused manufacturing asset and the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be the cost of that new and unused manufacturing asset contemplated in subsection (2).”; and

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

“(d) the application for approval of the project by the company is received by the Minister of Trade and Industry not later than 31 December [2014] 2015, in such form and containing such information as the Minister of Trade and Industry may prescribe.”.

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

Amendment of section 12L of Act 58 of 1962, as inserted by section 27 of Act 17 of 2009

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

(a) by the substitution in subsection (1) for paragraph (b) of the definition of “energy efficiency savings certificate” of the following paragraph:

“(b) the [baseline] reporting period energy use at the end of the year of assessment, with the criteria and methodology determined in accordance with the Regulations;”;

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The amount of the allowance contemplated in subsection [(1)] (2) must be determined in accordance with the formula—

$$A = \frac{B \times C}{D}$$

in which formula—”; and

- (c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) ‘B’ represents the energy efficiency savings expressed in kilowatt hours or kilowatt hours equivalent for the year of assessment of the taxpayer as contemplated in paragraph (c) of the definition of energy efficiency savings certificate in [section 1] subsection (1);”.

- (2) Subsection (1) comes into operation on the date on which section 27(1) of the Taxation Laws Amendment Act, 2009, comes into operation.

Amendment of section 12M of Act 58 of 1962, as inserted by section 28 of Act 17 of 2009

28. (1) Section 12M 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:

“In determining the taxable income derived by any taxpayer in any year of assessment from carrying on any trade, there must be allowed as a deduction from the income of that taxpayer so derived any amount[, **to the extent that the amount is not otherwise deductible,**] paid by way of a lump sum during the year of assessment by that taxpayer—”.

- (2) Subsection (1) is deemed to have come into operation on 1 September 2009 and applies in respect of any lump sum paid on or after that date.

Insertion of section 12N in Act 58 of 1962

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

“Deductions in respect of improvements not owned by taxpayer

12N. (1) If a taxpayer—

- (a) holds a right of use or occupation of land or a building;
- (b) incurs an obligation to effect an improvement on the land or to the building in terms of—
 - (i) a Public Private Partnership; or
 - (ii) an agreement in terms of which the right of use or occupation is granted, if the land or building is owned by—
 - (aa) the government of the Republic in the national, provincial or local sphere; or
 - (bb) any entity of which the receipts and accruals are exempt from tax in terms of section 10(1)(cA) or (t);
- (c) incurs expenditure to effect the improvement contemplated in paragraph (b);
- (d) completes the improvement contemplated in paragraph (b); and
- (e) uses or occupies the land or building for the production of income or derives income from the land or building,

the taxpayer must, for the purposes of any deduction contemplated in section 11D, 12D, 12F, 12I, 13, 13bis, 13ter, 13quat, 13quin, 13sex or 36, and for the purposes of the Eighth Schedule, be deemed to be the owner of the improvement so completed.

(2) (a) When the right of use or occupation terminates, the taxpayer must be deemed to have disposed of the improvement to the owner of the land or building on the later of the date when—

- (i) the right of use or occupation terminated; or
- (ii) the use or occupation ended.

(b) If the right of use or occupation terminates and the taxpayer—

- (i) continues to use or occupy the land or building; or
 - (ii) renews the right of use or occupation,
- the renewed right of use or occupation must be deemed to be the same right of use or occupation as the right of use or occupation previously held by the taxpayer.

- (3) This section does not apply if the taxpayer—
- (a) is a person carrying on any banking, financial services or insurance business; or
 - (b) enters into an agreement whereby the right of use or occupation of the land or building is granted to any other person, unless—
 - (i) the land or building is occupied by that other person and that other person is a company that is a member of the same group of companies as that taxpayer in terms of such an agreement;
 - (ii) the cost of maintaining the land or building and of carrying out repairs thereto required in consequence of normal wear and tear is borne by the taxpayer; and
 - (iii) subject to any claim that the taxpayer may have against the other person by reason of the other person's failure to take proper care of the land or building, the risk of destruction or loss of or other disadvantage to the land or building is not assumed by that other person.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of a right of use or occupation granted on or after that date.

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 and section 3 of Act 4 of 2008

30. (1) Section 13 of the Income Tax Act, 1962, is hereby amended by the addition to the proviso to subsection (1) of the following paragraph:

“(d) in the case of an improvement completed by a taxpayer as contemplated in section 12N, the expenditure incurred by the taxpayer to complete the improvement shall for the purposes of this section be deemed to be the cost to the taxpayer of any building or improvement contemplated in this subsection.”.

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

Amendment of section 13bis of Act 58 of 1962, as inserted by section 15 of Act 88 of 1965 and amended by section 18 of Act 55 of 1966, section 14 of Act 95 of 1967, section 14 of Act 88 of 1971, section 14 of Act 69 of 1975, section 13 of Act 94 of 1983, section 46 of Act 97 of 1986, section 13 of Act 90 of 1988, section 13 of Act 113 of 1993, section 12 of Act 21 of 1994, section 21 of Act 59 of 2000 and section 4 of Act 4 of 2008

31. (1) Section 13bis of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) For the purposes of this section where a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be the cost to the taxpayer of any building, portion of a building or portion of any building improvements contemplated in subsection (1).”.

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

Amendment of section 13ter of Act 58 of 1962, as inserted by section 13 of Act 91 of 1982 and amended by section 14 of Act 94 of 1983, section 22 of Act 59 of 2000 and section 28 of Act 60 of 2008

32. (1) Section 13ter of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) For the purposes of this section where a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the

taxpayer to complete the improvement shall be deemed to be the cost to the taxpayer of a residential unit contemplated in subsection (2).”.

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

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 and section 29 of Act 17 of 2009 5

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

(a) by the insertion after subsection (2) of the following subsection:

“(2A) For the purposes of this section, if a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be the cost of the erection, extension, addition or improvement contemplated in subsection (2).”;

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

“(b) the total amount of the costs to the taxpayer (other than a taxpayer contemplated in paragraph (d)) of the erection, extension, addition or improvement and the extent that those costs relate to any portion of [the] a building [in respect of which a certificate of occupancy has been granted];”;

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

“(a) a municipality does not provide an annual report as contemplated in subsection (9) [or a quarterly report as contemplated in subsection (6)(f)] or the Commissioner reports to the Minister that the municipality has issued a certificate contemplated in subsection (4)(a) in respect of a building that is located outside an urban development zone; and”.

(2) Paragraph (a) of subsection (1) comes into operation on the date of the promulgation of this Act. 30

Amendment of section 13quin of Act 58 of 1962, as inserted by section 28 of Act 35 of 2007 and amended by section 30 of Act 60 of 2008

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

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

“(1) Daar word as ’n aftrekking van die inkomste van ’n belastingpligtige toegelaat ’n vermindering gelykstaande aan vyf persent van die koste vir daardie belastingpligtige van enige nuwe en ongebruikte gebou deur daardie belastingpligtige besit, of enige nuwe en ongebruikte verbetering tot enige gebou deur die belastingpligtige besit, indien daardie gebou of verbetering in geheel of [gedeeltelik] hoofsaaklik deur daardie belastingpligtige gebruik word gedurende die jaar van aanslag vir doeleindes van die voortbrenging van inkomste in die loop van die belastingpligtige se bedryf, behalwe die voorsiening van residensiële verblyf.”;

(b) by the insertion after subsection (1) of the following subsection:

“(1A) For the purposes of this section, if a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be the cost to the taxpayer of any new and unused building or of any new and unused improvement to a building contemplated in subsection (1).”.

(2) Paragraph (b) of subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 13sex of Act 58 of 1962, as inserted by section 31 of Act 60 of 2008

35. (1) Section 13sex of the Income Tax Act, 1962, is hereby amended by the addition to subsection (1) of the following proviso:

“: Provided that if a taxpayer completes an improvement as contemplated in section 12N, the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be the cost to the taxpayer of any new and unused residential unit (or of any new and unused improvement to a residential unit), for the purposes of this section”.

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

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 and section 31 of Act 17 of 2009

36. (1) Section 18 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)(c)(i) for items (aa), (bb) and (cc) of the following items:

- “(aa) [R625] R670 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 250] R1 340 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 [R380] R410 for every additional dependant for each month in that year in respect of which those contributions were made;”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of years 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 and section 34 of Act 60 of 2008

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

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

“(c) **[the Government, any provincial administration or municipality]** any department of government of the Republic in the national, provincial or local sphere as contemplated in section 10(1)(a) **[or (b)]** to be used for purpose of any activity contemplated in Part II of the Ninth Schedule.”;

- (b) by the substitution for subsection (1A) of the following subsection:

“(1A) The Minister may, by regulation, prescribe additional requirements with which a public benefit organisation, institution, board or body or the **[government, provincial administration or municipality]** department carrying on any specific public benefit activity identified by the Minister in the regulations, must comply before any donation made to that public benefit organisation, institution, board or body or the **[government, provincial administration or municipality]** department shall be allowed as a deduction under subsection (1).”;

- (c) by the substitution in subsection (1C)(a) for subparagraph (i) of the following subparagraph:
 “(i) that donation is made by that person on or after 1 August 2002[, **but on or before 31 March 2010**]; and”;
- (d) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 5
 “(a) a receipt issued by the public benefit organisation, institution, board, body or agency or the **[government, provincial administration or municipality]** department concerned, on which the following details are given, namely— 10
 (i) the reference number of the public benefit organisation, institution, board, body or agency issued by the Commissioner for the purposes of this section;
 (ii) the date of the receipt of the donation;
 (iii) the name of the public benefit organisation, institution, board, body or agency or the **[government, provincial administration or municipality]** department which received the donation, together with an address to which enquiries may be directed in connection therewith; 15
 (iv) the name and address of the donor; 20
 (v) the amount of the donation or the nature of the donation (if not made in cash);
 (vi) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board, body or agency concerned or, in the case of **[the government, provincial administration or municipality]** a department in carrying on the relevant public benefit activity; 25
 or”; 30
- (e) by the substitution in subsection (2A) for the words preceding paragraph (a) of the following words:
 “A public benefit organisation, institution, board, body [, **government, provincial administration or municipality]** or department may only issue a receipt contemplated in subsection (2) in respect of any donation to the extent that—”; 35
- (f) by the substitution in subsection (2A) for paragraph (c) of the following paragraph:
 “(c) in the case of **[the government, provincial administration or municipality]** a department, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule.”; 40
- (g) by the substitution for subsection (2C) of the following subsection:
 “(2C) The Accounting Authority contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), for the **[government, provincial administration or municipality]** department which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).”; 45
 and 50
- (h) by the substitution in subsection (3)(a) for subparagraphs (i) and (ii) of the following subparagraphs:
 “(i) a financial instrument which is trading stock of the taxpayer, the lower of fair market value of that financial instrument on the date of that donation or the amount which has been taken into account for the purposes of section 22(8)(C); or 55
 (ii) any other trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22(8)(C) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property; or”. 60

(2) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 April 2010.

Insertion of section 20C in Act 58 of 1962

38. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 20B of the following section:

“Ring-fencing of interest incurred by headquarter companies

20C. (1) For the purposes of this section, ‘financial assistance’ means financial assistance contemplated in section 31(1).

(2) Where a headquarter company has during any year of assessment incurred any interest in respect of any financial assistance granted to that headquarter company by a person that is not a resident, the amount of the interest in respect of which a deduction is allowable to that headquarter company in that year of assessment is limited to so much of the amount of interest received by or accrued to the headquarter company as relates to any portion 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 20 per cent of the equity shares and voting rights.

(3) Any amount that is disallowed as a deduction in any year of assessment of a headquarter company in terms of subsection (2) must be—

- (i) carried forward to the immediately succeeding year of assessment of the headquarter company; and
- (ii) deemed to be an amount of interest actually incurred by the headquarter company during that succeeding year in respect of financial assistance granted to that headquarter company by a person that is not a resident.”.

(2) Subsection (1) comes into operation on 1 October 2011 and applies in respect of 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 and section 36 of Act 60 of 2008

39. (1) Section 22 of the Income Tax Act, 1962, is hereby amended—

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

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

(b) by the substitution in subsection (8)(b) for subparagraph (iii) of the following subparagraph:

“(iii) trading stock of any company has on or after 21 June 1993 been distributed *in specie* [(whether such distribution occurred by means of a dividend, including a liquidation dividend, a total or partial reduction of capital (including any share premium), a redemption of redeemable preference shares or an

acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973)),] to any shareholder of that company;”.

(2) Paragraph (a) of subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2011. 5

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2011.

Amendment of section 22B of Act 58 of 1962, as inserted by section 34 of Act 17 of 2009

40. (1) Section 22B of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph: 10

“(ii) holds more than 50 per cent of the equity [**share capital of** shares in the resident company; and”; and

(b) by the substitution in subsection (2)(c) for the words preceding subparagraph (i) of the following words: 15

“if the resident company or any company in which that resident company directly or indirectly holds more than 50 per cent of the equity [**share capital**] shares has, within a period of 18 months prior to the disposal, obtained any loan or advance or incurred any debt—”.

(2) Subsection (1) comes into operation on 1 January 2011. 20

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 and section 37 of Act 60 of 2008 25

41. (1) Section 23 of the Income Tax Act, 1962, is hereby amended by the addition after paragraph (o) of the following paragraphs:

“(p) any amount paid or payable to a person contemplated in section 11(w)(ii)(dd) that is funded directly or indirectly from any amount recoverable under a policy contemplated in— 30

(i) section 11(w) if that policy was concluded prior to 1 January 2011; or
(ii) section 11(w)(ii) if that policy was concluded on or after 1 January 2011, or an amount equivalent to or in lieu of such amount;

(q) the value in respect of any cession of a policy ceded as contemplated in section 10(1)(gF).” 35

(2) Subsection (1) comes into operation on 1 January 2011 and applies in respect of expenditure incurred 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 and section 18 of Act 20 of 2006 40

42. (1) Section 23B of the Income Tax Act, 1962, is hereby amended by the addition after subsection (3) of the following subsection:

“(4) 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 long-term insurance policy— 45

(a) of which the taxpayer is the policyholder; and
(b) in terms of which the taxpayer is insured against any loss by reason of the death, disablement or severe illness of an employee or director of the taxpayer.” 50

(2) Subsection (1) comes 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 23H of Act 58 of 1962, as inserted by section 31 of Act 30 of 2000 and amended by section 29 of Act 59 of 2000, section 34 of Act 60 of 2001, section 36 of Act 35 of 2007 and section 19 of Act 3 of 2008

43. (1) Section 23H of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 5

“(a) which is allowable as a deduction in terms of the provisions of section 11(a), (c) **[or]**, (d) or (w), section 11A, section 11D(1), or section 28(2)(a); and”.

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2011 and applies in respect of premiums 10 incurred on or after that date.

Amendment of section 23I of Act 58 of 1962, as substituted by section 38 of Act 60 of 2008 and amended by section 36 of Act 17 of 2009

44. Section 23I of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (b) of the definition of “taxable person” of the following 15 paragraph:

“(b) the **[Government, a provincial administration or a municipality]** government of the Republic in the national, provincial or local sphere contemplated in section 10(1)(a) **[or (b)]**”.

Insertion of section 24E in Act 58 of 1962 20

45. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 24D of the following section:

“Allowance in respect of future expenditure by sporting bodies

24E. (1) If income is received by or accrued to a taxpayer contemplated in section 11E in respect of an event that will not recur in the following year of assessment, the taxpayer may for the purposes of determining taxable income deduct so much of that income as will be required to fund expenditure contemplated in section 11E that will be incurred in a future year of assessment. 25

(2) Any amount allowed to be deducted in terms of subsection (1) in any year of assessment must be deemed to be income received by or accrued to the taxpayer in the following year of assessment.”. 30

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2008.

Amendment of section 24H of Act 58 of 1962, as inserted by section 21 of Act 90 of 1988 and amended by section 26 of Act 74 of 2002 35

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

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

“(1) For the purposes of this section, **‘limited partner’** means any member of a partnership *en commandite*, an anonymous partnership **[or]**, 40 any similar partnership or a foreign partnership, if such member’s liability towards a creditor of the partnership is limited to the amount which **[he]** the member has contributed or undertaken to contribute to the partnership or is in any other way limited.”; and

(b) by the substitution in subsection (5) for paragraph (a) of the following 45 paragraph:

“(a) Where any income has in common been received by or accrued to the members of any partnership or foreign partnership, a portion (determined in accordance with any agreement between such members as to the ratio in which the profits or losses of the partnership are to be 50 shared) of such income shall, notwithstanding anything to the contrary contained in any law or the relevant agreement of partnership, be deemed to have been received by or to have accrued to each such member

individually on the date upon which such income was received by or accrued to them in common.”.

(2) Subsection (1) comes 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 2010; 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.

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 and section 20 of Act 3 of 2008

47. (1) Section 24I of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “local currency” of the following definition:

“‘**local currency**’ means in relation to—

- (a) any person in respect of an exchange item which is attributable to any permanent establishment [of a person] outside the Republic, the functional currency [used by] of that permanent establishment [for purposes of financial reporting]: Provided that for purposes of this paragraph any exchange item shall be deemed not to be attributable to any such permanent establishment if the functional currency [used by] of that permanent establishment [for purposes of financial reporting] is the currency of a country which has an official rate of inflation of 100 per cent or more throughout the relevant year of assessment;
- (b) any resident other than a headquarter company in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, the currency of the Republic; [or]
- (c) any person that is not a resident in respect of any exchange item which is attributable to a permanent establishment in the Republic, the currency of the Republic; or
- (d) any headquarter company in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, the functional currency of that headquarter company;”.

(2) Subsection (1) comes into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.

Insertion of section 24JA in Act 58 of 1962

48. (1) The Income Tax Act, 1962, is hereby amended by the insertion after 24J of the following section:

“Sharia compliant financing arrangements

24JA. (1) For the purposes of this section—

‘**bank**’ means any—

- (a) bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);
- (b) mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993); or
- (c) co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);

‘**diminishing musharaka**’ means a sharia arrangement between a bank and a client of that bank whereby—

- (a) (i) the bank and the client jointly acquire an asset from a third party (the seller); or
- (ii) the bank acquires an interest in an asset from the client;

- (b) the client will acquire the bank's interest in the asset after the acquisition of the asset by the bank as contemplated in paragraph (a); and
 - (c) the amount of consideration payable by the client to the bank for the acquisition of the interest of the bank in the asset will be paid over a period of time as agreed between the client and the bank; 5
- 'mudaraba'** means a sharia arrangement between a bank and a client of that bank whereby—
- (a) funds are deposited with the bank by the client;
 - (b) the anticipated return in respect of the sharia arrangement is dependent on the amount deposited by the client in combination with the duration of the period for which the funds are deposited; 10
 - (c) the bank invests the funds deposited by the client in other sharia arrangements;
 - (d) the client bears the risk of the loss in respect of the sharia arrangements contemplated in paragraph (c); and 15
 - (e) the return in respect of the sharia arrangements contemplated in paragraph (c) is divided between the client and the bank as agreed at the time that the client deposits the funds with the bank;
- 'murabaha'** means a sharia arrangement between— 20
- (a) a bank and a client of that bank whereby—
 - (i) the bank will acquire an asset from a third party (the seller) for the benefit of the client on such terms and conditions as are agreed between the client and the seller; and
 - (ii) the client— 25
 - (aa) will acquire the asset from the bank within 30 days after the acquisition of the asset by the bank contemplated in subparagraph (i); and
 - (bb) agrees to pay to the bank a total amount that—
 - (A) exceeds the amount payable by the bank to the seller as consideration to acquire the asset; 30
 - (B) is calculated with reference to the consideration payable by the bank to the seller in combination with the duration of the sharia arrangement; and
 - (C) may not exceed the amount agreed between the bank and the client when the sharia arrangement is entered into; or 35
 - (b) a portfolio of a collective investment scheme in securities and a bank whereby—
 - (i) the portfolio of a collective investment scheme in securities will acquire an asset from a third party (the seller) for the benefit of the bank on such terms and conditions as are agreed upon between the bank and the seller; and 40
 - (ii) the bank—
 - (aa) will acquire the asset from the portfolio of a collective investment scheme in securities within 30 days after the acquisition of the asset by the portfolio of a collective investment scheme in securities contemplated in subparagraph (i); and 45
 - (bb) agrees to pay to the portfolio of a collective investment scheme in securities a total amount that—
 - (A) exceeds the amount payable by the portfolio of a collective investment scheme in securities to the seller as consideration to acquire the asset;
 - (B) is calculated with reference to the consideration payable by the portfolio of a collective investment scheme in securities to the seller in combination with the duration of the sharia arrangement; and 55
 - (C) may not exceed the amount agreed upon between the portfolio of a collective investment scheme in securities and the bank when the sharia arrangement is entered into; 60

‘sharia arrangement’ means an arrangement that is—

- (a) open for participation by members of the general public; and
- (b) presented as compliant with sharia law when the members of the general public are invited to participate therein.

(2) For the purposes of section 10(1)(i)(xv)(bb)(A) and (B), any amount received by or accrued to a client in terms of a mudaraba is deemed to be interest. 5

(3) Where any murabaha is entered into between a bank and a client of that bank as contemplated in paragraph (a) of the definition of ‘murabaha’— 10

- (a) the bank 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 to the seller; and 15
 - (ii) at such time as the bank acquired the asset from the seller by virtue of the transaction between the seller and the bank;
- (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 to the seller and the consideration payable to the bank 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 20
- (e) the amount of consideration paid by the bank 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. 25

(4) Where any murabaha is entered into between a portfolio of a collective investment scheme in securities and a bank as contemplated in paragraph (b) of the definition of ‘murabaha’— 30

- (a) the portfolio of a collective investment scheme in securities is deemed not to have acquired or disposed of the asset under the sharia arrangement;
- (b) the bank is deemed to have acquired the asset—
 - (i) from the seller for consideration equal to the amount paid by the portfolio of a collective investment scheme in securities to the seller; and 35
 - (ii) at such time as the portfolio of a collective investment scheme in securities acquired the asset from the seller by virtue of the transaction between the seller and the portfolio of a collective investment scheme in securities; 40
- (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 portfolio of a collective investment scheme in securities to the seller and the consideration paid to the portfolio of a collective investment scheme in securities by the bank to acquire the asset as contemplated in paragraph (b)(ii)(bb) of the definition of ‘murabaha’ is deemed to be a premium paid for the purposes of section 24J; and 45
- (e) the amount of consideration paid by the portfolio of a collective investment scheme in securities to acquire the asset as contemplated in paragraph (b)(ii)(aa) of the definition of ‘murabaha’ is deemed to be an issue price for the purposes of section 24J. 50

(5) For the purposes of determining the tax on income of the client in respect of a diminishing musharaka— 55

- (a) where the bank and the client jointly acquire an asset, the client is deemed to have acquired the bank’s interest in the asset—
 - (i) for an amount equal to the amount paid by the bank in respect of its interest in the asset; and

- (ii) at the time that the seller of the asset was divested of its interest in the asset by virtue of the transaction between the seller and the bank; or
- (b) where the bank acquires an interest in an asset from the client, the client is deemed not to have disposed of the interest in the asset or to have acquired that interest from the bank.
- (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 not to be of a capital nature.
- (b) The amount contemplated in paragraph (a) must be determined in accordance with the formula—
- $$X = A - \frac{B}{C}$$
- in which formula—
- (i) 'X' represents that amount;
- (ii) 'A' represents the amount of any individual instalment paid by the client to the bank as part of the consideration as contemplated in paragraph (c) of the definition of 'diminishing musharaka';
- (iii) 'B' represents the total amount of expenditure incurred by the bank in terms of the arrangement in respect of the asset; and
- (iv) 'C' represents the total number of instalments payable by the client to the bank in respect of the consideration contemplated in paragraph (c) of the definition of 'diminishing musharaka'."
- (2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Amendment of section 25BA of Act 58 of 1962, as inserted by section 39 of Act 17 of 2009

49. (1) Section 25BA of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the heading of the following heading:
- "Amounts received by or accrued to certain portfolios of collective investment schemes [in securities] and holders of participatory interests in portfolios";** and
- (b) by the substitution for the words preceding paragraph (a) of the following words:
- "Any amount, other than an amount of a capital nature, received by or accrued to any portfolio of a collective investment scheme [in securities], other than a portfolio of a collective investment scheme in property, must—"**
- (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 and applies in respect of—
- (a) amounts received by or accrued to a portfolio of a collective investment scheme; and
- (b) amounts distributed by a portfolio of a collective investment scheme that are derived from amounts contemplated in paragraph (a),
- on or after that date.

Amendment of section 25D of Act 58 of 1962, as inserted by section 33 of Act 59 of 2000 and amended by section 37 of Act 60 of 2001, section 28 of Act 74 of 2002, section 44 of Act 45 of 2003, section 35 of Act 31 of 2005 and section 41 of Act 35 of 2007

50. (1) Section 25D of the Income Tax Act, 1962 is hereby amended—
- (a) by the substitution for subsections (1) and (2) of the following subsections:
- "(1) Subject to subsections (2), [and] (3) and (4), any amount received by or accrued to, or expenditure or loss incurred by, a person during any year of assessment in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the spot rate on the date on which that amount was so received or accrued or expenditure or loss was so incurred.**

- (2) Any amounts received by or accrued to, or expenditure incurred by, a person in any currency other than the currency of the Republic which are attributable to a permanent establishment of that person outside the Republic must be determined in the functional currency [**used by**] of that permanent establishment [**for purposes of financial reporting**] (other than the currency of any country in the common monetary area) and be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.”;
- (b) by the substitution in subsection (2A) for paragraphs (a) and (b) of the following paragraphs:
- “(a) the other currency contemplated in that subsection is not the functional currency [**used by**] of that permanent establishment [**for purposes of financial reporting**]; and
- (b) the functional currency [**used for financial reporting purposes**] is the currency of a country which has an official rate of inflation of 100 per cent or more throughout the relevant year of assessment.”;
- and
- (c) by the addition of the following subsection:
- “(4) Where, during any year of assessment—
- (a) any amount—
- (i) is received by or accrued to; or
- (ii) of expenditure is incurred by, a headquarter company in any currency other than the functional currency of the headquarter company; and
- (b) the functional currency of that headquarter company is a currency other than the currency of the Republic, that amount must be determined in the functional currency of the headquarter company and must be translated to the currency of the Republic by applying the average exchange rate for that year of assessment.”.

(2) Subsection (1) comes into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 28 of Act 58 of 1962, as amended by section 17 of Act 90 of 1962, section 22 of Act 55 of 1966, section 24 of Act 89 of 1969, section 21 of Act 88 of 1971, section 19 of Act 65 of 1973, section 19 of Act 91 of 1982, section 22 of Act 94 of 1983, section 17 of Act 65 of 1986, section 23 of Act 90 of 1988, section 13 of Act 70 of 1989, section 25 of Act 101 of 1990, section 29 of Act 129 of 1991, section 24 of Act 113 of 1993, section 19 of Act 21 of 1994, section 33 of Act 30 of 2000, section 42 of Act 35 of 2007, section 40 of Act 60 of 2008 and section 40 of Act 17 of 2009

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

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

“(cA) the liabilities contemplated in section 32(1)(a) and (b) of the Short-Term Insurance Act, 1998 (Act No. 53 of 1998), that have been included as liabilities of that person in respect of a year of assessment[, **subject to such adjustments as may be made by the Commissioner**]: Provided that no deduction shall be made in terms of this paragraph in respect of a liability incurred as contemplated in paragraph (b).”;

- (b) by the addition in subsection (7) of the following proviso to paragraph (c):
- “: Provided that no deduction shall be made in terms of this paragraph in respect of a liability incurred as contemplated in paragraph (b)”; and
- (c) by the substitution for subsection (9) of the following subsection:

“(9) [**The**] Any deduction contemplated in subsection (2) or (7) shall be subject to such adjustments as may be made by the Commissioner.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of years of assessment commencing on or after that date.

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001, section 39 of Act 60 of 2001, section 30 of Act 74 of 2002, section 16 of Act 16 of 2004, section 23 of Act 20 of 2006 and section 21 of Act 3 of 2008

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52. Section 29A of the Income Tax Act, 1962, is hereby amended by the deletion of subsections (13) and (14).

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by section 36 of Act 59 of 2000, section 16 of Act 19 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002, section 45 of Act 45 of 2003, section 16 of Act 16 of 2004, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007, section 22 of Act 3 of 2008, section 41 of Act 60 of 2008 and section 41 of Act 17 of 2009

53. (1) Section 30 of the Income Tax Act, 1962, is hereby amended— 15

(a) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the definition of “public benefit organisation” of the following subparagraph:

“(i) a non-profit company [contemplated] as defined in section [21] 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), or a trust or an association of persons that has 20 been incorporated, formed or established in the Republic; or”;

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

“: Provided that the provisions of this subparagraph shall not apply in respect of any trust established in terms of a will of any person [who died 25 on or before 31 December 2003]”;

(c) by the substitution in subsection (3)(b)(iii) for item (cc) of the following item:

“(cc) [any department of state or administration] the government of the Republic in the national [or], provincial or local sphere [of government of the Republic], contemplated in section 10(1)(a) 30 [or (b)],”;

(d) by the substitution for subsection (6) of the following subsection:

“(6) Where the Commissioner has so withdrawn his approval of such organisation, such organisation shall, within six months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any [other organisation which is—

(a) approved in terms of this section; and

(b) not a connected person in relation to such organisation]

public benefit organisation, institution, board or body or the government as contemplated in subsection (3)(b)(iii).”;

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

“(6A) As part of—

(a) the dissolution of an organisation contemplated in paragraph (a)(i) of the definition of ‘public benefit organisation’ in subsection (1); or 45
(b) the termination of the activities of a branch contemplated in paragraph (a)(ii) of that definition, if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic, 50

the organisation or branch must transfer its assets to any public benefit organisation, institution, board or body or the government contemplated in subsection (3)(b)(iii).”;

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

“(7) If the organisation fails to transfer, or to take reasonable steps to transfer, its assets, as contemplated in subsection (6) or (6A), an amount equal to the market value of those assets which have not been transferred, less an amount equal to the *bona fide* liabilities of the organisation, must for purposes of this Act be deemed to be an amount of taxable income which accrued to such organisation during the year of assessment in 60

which approval was withdrawn or the dissolution of the organisation or termination of activities took place.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2011.

(3) Paragraphs (c), (d), (e) and (f) of subsection (1) come into operation on the date of promulgation of this Act and apply in respect of the transfer of assets occurring on or after that date. 5

Amendment of section 30A of Act 58 of 1962, as inserted by section 25 of Act 20 of 2006 and amended by section 26 of Act 8 of 2007, section 42 of Act 60 of 2008 and section 42 of Act 17 of 2009

54. (1) Section 30A of the Income Tax Act, 1962, is hereby amended— 10

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

“(1) For purposes of this Act, ‘**recreational club**’ means any non-profit company [contemplated] as defined in section [21] 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), society or other association of which the sole or principal object is to provide social and recreational amenities or facilities for the members of that company, society or other association.”; 15

(b) by the substitution in subsection (2)(a) for subparagraph (iii) of the following subparagraph:

“(iii) it is required on dissolution to transfer its assets and funds to— 20
 (aa) any other recreational club which is approved by the Commissioner in terms of this section [or to];
 (bb) a public benefit organisation contemplated in paragraph (a)(i) of the definition of a ‘public benefit organisation’ in section 30(1) which has been approved in terms of section 30(3); 25
 (cc) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity; or
 (dd) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a);”; 30

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

“(7) If the Commissioner has withdrawn the approval of a recreational club, that club must within six months after the date of that withdrawal (or such longer period as the Commissioner may allow) transfer or take reasonable steps to transfer its remaining assets to [another recreational club approved in terms of this section or to a public benefit organisation contemplated in terms of paragraph (a)(i) of the definition of ‘public benefit organisation’ which has been approved in terms of section 30(3) and which club or organisation is not a connected person in relation to that club] any recreational club, public benefit organisation, institution, board or body or the government, as contemplated in subsection (2)(a)(iii).”; 35 40

(d) by the insertion after subsection (7) of the following subsection: 45

“(7A) As part of its dissolution the club must transfer its assets to a recreational club, public benefit organisation, institution, board or body or the government, as contemplated in subsection (2)(a)(iii).”; and

(e) by the substitution for subsection (8) of the following subsection:

“(8) If the recreational club fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (7) or (7A), an amount equal to the market value of those assets which have not been transferred less an amount equal to the *bona fide* liabilities of that recreational club must for purposes of this Act be deemed to be an amount of taxable income which accrued to that recreational club during the year of assessment in which approval was withdrawn or the dissolution took place.”. 50 55

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2011.

(3) Paragraphs (b), (c), (d) and (e) of subsection (1) come into operation on the date of promulgation of this Act and apply in respect of the transfer of assets occurring on or after that date. 60

Insertion of section 30B in Act 58 of 1962

55. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 30A of the following section:

“Associations

30B. (1) For the purposes of this section—	5
‘entity’ means—	
(a) any mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry (or an association of such chambers) or local publicity association; or	
(b) any—	10
(i) non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);	
(ii) society; or	
(iii) other association of persons, established to promote the common interests of persons (being members of the company, society or association of persons) carrying on any particular kind of business, profession or occupation, approved by the Commissioner in accordance with subsection (2);	15
‘member’ in the case of a fidelity or indemnity fund includes a contributor to that fund;	20
‘mutual loan association’ means an association of which the sole or principal object is to function as a voluntary savings association where participants make regular contributions into a common pool managed by the members for the mutual financial benefit of those members.	
(2) The Commissioner must approve an entity for the purposes of section 10(1)(d)(iii) or (iv) if—	25
(a) that entity has submitted to the Commissioner a copy of the constitution or written instrument under which it has been established;	
(b) the constitution or written instrument contemplated in paragraph (a) provides that—	30
(i) the entity must have a committee, board of management or similar governing body consisting of at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that entity;	
(ii) no single person may directly or indirectly control the decision-making powers relating to that entity;	35
(iii) the entity may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;	
(iv) the entity is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;	40
(v) no member may directly or indirectly have any personal or private interest in that entity;	
(vi) substantially the whole of the activities of the entity must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;	45
(vii) the entity may not have a share or other interest in any business, profession or occupation which is carried on by its members;	50
(viii) the entity must not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;	55
(ix) substantially the whole of the entity’s funding must be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere;	60

- (x) the entity must as part of its dissolution transfer its assets to—
 - (aa) another entity approved by the Commissioner in terms of this section;
 - (bb) a public benefit organisation approved in terms of section 30;
 - (cc) an institution, board or body which is exempt from tax under section 10(1)(cA)(i); or
 - (dd) the government of the Republic in the national, provincial or local sphere;
 - (xi) the persons contemplated in paragraph (b)(i) will submit any amendment of the constitution or written instrument of the entity to the Commissioner within 30 days of its amendment;
 - (xii) the entity will comply with such reporting requirements as may be determined by the Commissioner from time to time; and
 - (xiii) the entity is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5).
- (3) The requirements contained in subsection (2)(b)(iii) and (v) do not apply in respect of a mutual loan association.
- (4) Where the constitution or written instrument of an entity does not comply with subsection (2)(b), the Commissioner may deem it to so comply if the persons who have accepted fiduciary responsibility for the funds and assets of that entity furnish the Commissioner with a written undertaking that the entity will be administered in compliance with that subsection.
- (5) Where the Commissioner is—
- (a) satisfied that any entity approved in terms of subsection (2) has during any year of assessment in any material respect; or
 - (b) during any year of assessment satisfied that any such entity has on a continuous or repetitive basis,
- failed to comply with this section, or the constitution or written instrument under which it was established to the extent that it relates to this section, the Commissioner must notify the entity that he or she intends to withdraw approval of the entity if corrective steps are not taken by the entity within the period stated in the notice.
- (6) If no corrective steps are taken by the entity contemplated in subsection (5), the Commissioner must withdraw approval of that entity with effect from the commencement of the year of assessment contemplated in subsection (5).
- (7) If the Commissioner has withdrawn the approval of an entity as contemplated in subsection (6) the entity must within six months after the date of the withdrawal of approval (or such longer period as the Commissioner may allow) transfer, or take reasonable steps to transfer, its remaining assets to any entity, public benefit organisation, institution, board or body or the government of the Republic, contemplated in subsection (2)(b)(x).
- (8) If an entity is wound up or liquidated, the entity must, as part of the winding-up or liquidation, transfer its assets remaining after the satisfaction of its liabilities to any entity, public benefit organisation, institution, board or body or the government of the Republic, contemplated in subsection (2)(b)(x).
- (9) If an entity fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (7) or (8), an amount equal to the market value of those assets which have not been transferred less an amount equal to the *bona fide* liabilities of that entity must for the purposes of this Act be deemed to be an amount of taxable income which accrued to that entity during the year of assessment in which the withdrawal of approval in terms of subsection (6) or the winding-up or liquidation contemplated in subsection (8) took place.”.

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

Substitution of section 31 of Act 58 of 1962

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

“Taxable income in respect of international transactions to be based on arm’s length principle 5

“31. (1) For the purposes of this section, ‘**financial assistance**’ includes the provision of any—

- (a) loan, advance or debt; or
- (b) security or guarantee. 10

(2) Where—

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

- (i) (aa) a person that is a resident; and 15
 - (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; 20

- (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, 25

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—

- (i) is different from any term or condition that would have existed had those persons been independent persons dealing at arm’s length; and 30

- (ii) results or will result in any tax benefit being derived by any person that is a party to that transaction, operation, scheme, agreement or understanding,

the taxable income of each person that is a party to that transaction, operation, scheme, agreement or understanding that derives the tax benefit 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. 40

(3) 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, 45

‘**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. 50

(4) 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 55

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 20 per cent of the equity shares and voting rights; or

- (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 20 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.”.

(2) Subsection (1) comes into operation on 1 October 2011 and applies in respect of years of assessment commencing on or after that date.

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 and section 43 of Act 17 of 2009

57. (1) Section 36 of the Income Tax Act, 1962, is hereby amended by the addition in subsection (11) to the proviso to paragraph (d) of the definition of “capital expenditure” of the following paragraph:

“(dd) where a taxpayer completes an improvement as contemplated in section 12N in respect of the items contemplated in subparagraph (i), (ii), (iii), (iv) or (v), the expenditure incurred by the taxpayer to complete the improvement shall be deemed to be expenditure for the purposes of this section;”.

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

Insertion of Part IA in Chapter I of Act 58 of 1962

58. (1) Chapter I of the Income Tax Act, 1962, is hereby amended by the insertion after section 37H of the following Part:

“PART IA

Withholding Tax on Interest

“Definitions

37I. (1) In this Part—

‘bank’ means any—

- (a) bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);
 (b) mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993); or
 (c) co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);

‘debt instrument’ means any loan, advance, debt, bond, debenture, bill, promissory note, banker’s acceptance, negotiable certificate of deposit or similar instrument;

‘foreign person’ means any person that is not a resident;

‘goods’ means any corporeal movable thing;

‘Government debt instrument’ means any debt instrument issued by the government of the Republic in the national, provincial or local sphere;

‘interest’ means interest as defined in section 24J(1) or deemed interest as contemplated in section 8E(2);

‘listed debt instrument’ means any debt instrument that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;
‘South African Reserve Bank’ means the central bank of the Republic regulated in terms of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).

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Levy of withholding tax on interest

37J. (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 received by or accrued to any foreign person that is not a controlled foreign company.

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(2) Any foreign person that is not a controlled foreign company that receives any interest or to which any interest accrues is liable for the withholding tax on interest.

Exemption from withholding tax on interest

37K. (1) Subject to subsection (2), there must be exempt from the withholding tax on interest any amount of interest—

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(a) received by or accrued to any foreign person during any year of assessment—

- (i) in respect of any government debt instrument;
- (ii) in respect of any listed debt instrument;
- (iii) in respect of any debt owed by—
 - (aa) any bank; or
 - (bb) the South African Reserve Bank;

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- (iv) in respect of any bill of exchange, letter of credit or similar instrument—

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- (aa) to the extent that the interest is payable in respect of the purchase price of goods imported into the Republic; and
- (bb) if an authorised dealer as defined in the Exchange Control Regulation 1961 (as promulgated by Government Notice No. R.1111 of 1 December 1961 and amended up to Government Notice No. R.885 in *Government Gazette* No. 20299 of 23 July 1999), has certified on the instrument that a bill of lading or other document covering the importation of the goods has been exhibited to it;

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- (v) in respect of any other debt owed by a foreign person, unless the foreign person—

- (aa) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during that year; or
- (bb) at any time during that year carried on business through a permanent establishment in the Republic; or

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- (vi) if that interest is paid or payable—

- (aa) by a headquarter company; and
- (bb) in respect of financial assistance that is not subject to section 31 as a result of the application of section 31(4);

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(b) payable as contemplated in section 27(6) of the Securities Services Act, 2004 (Act No. 36 of 2004), to any foreign person that is a client as defined in section 1 of that Act; or

(c) that is deemed to have accrued to any non-resident in terms of section 25BA(a).

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(2) Interest received by or accrued to a foreign person during any year of assessment in respect of any amount advanced, whether directly or indirectly, by the foreign person to a bank will not be exempt from the withholding tax on interest if the amount is advanced in the course of any arrangement, transaction, operation or scheme to which the foreign person and any other person are parties and in terms of which the bank advances any amount to that other person on the strength directly or indirectly of the amount advanced by the foreign person to the bank.

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- (3) A foreign person will be exempt from the withholding tax on interest if that foreign person—
- (a) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during that year; or
 - (b) at any time during that year carried on business through a permanent establishment in the Republic.

Withholding and payment of withholding tax on interest by payers of interest

- 37L.** (1) Any person who makes payment of any amount of interest for the benefit of a foreign person that is not a controlled foreign company must withhold an amount equal to 10 per cent of that amount of interest from that payment.
- (2) Any amount withheld in terms of subsection (1) must be paid to the Commissioner within 14 days after the end of the month during which the amount is withheld.
- (3) A person must not withhold any amount from any payment contemplated in subsection (1)—
- (a) to the extent that the interest is exempt from the withholding tax on interest in terms of section 37K(1); or
 - (b) if the person to which the amount of interest is to be paid has, by the date of the payment of the amount of interest, submitted to that person a declaration in such form as may be prescribed by the Commissioner that the person to which the amount of interest is to be paid is exempt from the withholding tax on interest in terms of section 37K(3).
- (4) The rate referred to in subsection (1) must, for the purposes of that subsection, be reduced if the person to which the amount of interest is to be paid has, by the date of the payment of the amount of interest, submitted to the person paying that amount of interest a declaration in such form as may be prescribed by the Commissioner that the interest is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation.

Recovery of unpaid withholding tax on interest

- 37M.** (1) If the Commissioner is satisfied that any withholding tax on interest has not been paid in full, he or she may estimate the unpaid amount and issue to the person by which the tax is due a notice of assessment of the unpaid amount.
- (2) If a person fails to pay any amount due to the Commissioner in terms of this Part, interest must be paid by that person on the balance of the amount outstanding at the prescribed rate reckoned from the date that the amount is due.
- (3) The provisions of this Act relating to assessment and recovery of tax and administrative penalties in the event of default or omission apply, with the changes required by the context, in respect of any amount due to the Commissioner in terms of this Part.
- (4) Every person that controls or is regularly involved in the management of the overall financial affairs of an unlisted company as defined in section 41 that is liable to withhold or make payment of any amount in terms of this Part and that is a shareholder or director of that company is personally liable for any amount due to the Commissioner in terms of this Part, as well as any additional tax, penalty or interest for which that company may be liable as a result of the application of this Part.”.

- (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 38 of Act 58 of 1962, as amended by section 21 of Act 90 of 1962, section 16 of Act 90 of 1964, section 28 of Act 89 of 1969, section 31 of Act 85 of 1974, section 27 of Act 94 of 1983, section 24 of Act 121 of 1984, section 32 of Act 53 of 1999, section 36 of Act 30 of 2000, section 43 of Act 60 of 2001, section 34 of Act 74 of 2002, section 213 of Act 45 of 2003, section 30 of Act 8 of 2007, section 24 of Act 3 of 2008 and section 45 of Act 17 of 2009 5

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

- (a) by the substitution in subsection (2)(a) for subparagraph (iii) of the following subparagraph:
 - “(iii) that the memorandum **[and articles of association of the company contain no]** of incorporation prohibits such restrictions on the right to acquire or transfer any of its shares as are likely to preclude members of the general public from becoming shareholders in any class of the company’s shares; and”;
- (b) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words:
 - “any other company, not being a private company as defined in section [20] 1 of the Companies Act, **[1973 (Act No. 61 of 1973) (as in force on 1 January 1974)]** 2008 (Act No. 71 of 2008), nor a close corporation, in respect of which the Commissioner is satisfied—”;
- (c) by the substitution in subsection (4)(a) for subparagraph (v) of the following subparagraph:
 - “(v) any man or his wife or any minor child of any man or his wife, if one or more of such persons are directly or indirectly interested (otherwise than by virtue of any shareholding in any public company or any private company which is interested in the shares of the company through a direct or indirect interest in the **[issued share capital of]** equity shares in a public company) in altogether more than **[fifteen] 15** per cent[.] of any class of equity shares issued by the company;”;
- (d) by the substitution in subsection (4)(c) for the words following subparagraph (ii) of the following words:
 - “by virtue of **[his]** the said person being a shareholder in any private company and such interest is not attributable to a direct or indirect interest of such private company in the **[issued share capital of]** equity shares in a public company, the said person shall be deemed to be interested in only that portion of such shares as the Commissioner is satisfied such person would be entitled to receive if every company through which that person is interested in those shares were to be wound up or liquidated and the assets of each such company were, without regard to its liabilities, to be distributed among its shareholders;”;
- (e) by the substitution in subsection (4) for paragraph (d) of the following paragraph:
 - “(d) where persons are jointly interested, whether directly or indirectly, but otherwise than through a direct or indirect interest in the **[issued share capital]** equity shares of a public company, in the shares of any company, each such person shall be deemed to be interested in only such proportion of those shares as the Commissioner is satisfied he would be entitled to receive if the joint interest of all such persons in such shares were to be divided between such persons.”.

(2) Subsection (1) comes into operation on 1 January 2011.

Amendment of section 40A of Act 58 of 1962, as inserted by section 25 of Act 121 of 1984 and amended by section 28 of Act 101 of 1990

60. (1) Section 40A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection: 55

- “(1) Where **[any company registered under the Companies Act, 1973 (Act No. 61 of 1973), has under the provisions of section 27 of the Close Corporations Act, 1984 (Act No. 69 of 1984), been converted into a close corporation, or]** any close corporation has **[under the provisions of section 29C** 60

of the Companies Act, 1973,] been converted into a company, such company and such close corporation shall for the purposes of this Act be deemed to be and to have been one and the same company.”.

(2) Subsection (1) comes into operation on 1 January 2011.

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 and section 47 of Act 17 of 2009

61. (1) Section 41 of the Income Tax Act, 1962, is hereby amended— 10

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

“**‘allowance asset’** means—

(a) a capital asset in respect of which a deduction or allowance is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss; or 15

(b) any debt contemplated in section 11(i) or (j);”;

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “foreign financial instrument holding company” of the following words: 20

“**‘foreign financial instrument holding company’** means any foreign company [as defined in section 9D], where more than the prescribed proportion of all the assets of that company, together with the assets of all influenced companies in relation to that foreign company, consist of financial instruments, other than—”; 25

(c) by the substitution in subsection (1) for subparagraph (bb) of paragraph (i) of the proviso to the definition of “group of companies” of the following subparagraph:

“(bb) that company is a non-profit company [contemplated] as defined in section [21] 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008);”;

(d) by the substitution in subsection (1) for the proviso to paragraph (a) of the definition of “prescribed proportion” of the following proviso:

”: Provided that in relation to the assets of a foreign company [as defined in section 9D(1)] and influenced companies (if any) the expression ‘or two-thirds of the actual cost’ shall be disregarded if any asset disposed of by that foreign company is deemed not to be attributable to a permanent establishment of that company in terms of paragraph (d) of the proviso to section 9D(6)”;

(e) by the substitution in subsection (1) for the words preceding paragraph (b)(i) of the definition of “prescribed proportion” of the following words: 40

“where equity shares in [the equity share capital of] that company are to be disposed of between members of the same group of companies, either—”;

(f) by the insertion in subsection (1) of the following definition before the definition of “shareholder”: 45

“**‘resident’** does not include any headquarter company;”;

(g) by the deletion of the word “and” at the end of paragraph (a) of the definition of “trading stock”;

(h) by the deletion in subsection (1) of paragraph (b) of the definition of “trading stock”; and 50

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

“(7) An amount contemplated in paragraph (j) of the definition of ‘gross income’ in section 1 and an amount to be included in gross income in terms of paragraph 14 of the First Schedule must for purposes of this Part be deemed to be an [amount] allowance that must be recovered or recouped.”. 55

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of transfers taking place on or after that date.

(3) Paragraphs (c) and (e) of subsection (1) come into operation on 1 January 2011. 60

(4) Paragraph (f) of subsection (1) comes into operation on 1 January 2011 and applies in respect of transactions entered into during years of assessment commencing on or after that date.

(5) Paragraph (h) of subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of transactions entered into on or after that date. 5

(6) Paragraph (i) of subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of transactions entered into on or after that date.

**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, 10
section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 34 of Act 8 of 2007, 15
section 53 of Act 35 of 2007, section 26 of Act 3 of 2008, section 49 of Act 60 of 2008
and section 48 of Act 17 of 2009**

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

(a) by the addition in subsection (1) to paragraph (b) of the definition of “asset-for-share transaction” of the following proviso: 20

“: Provided that this paragraph does not apply in respect of any transaction which meets the requirements of paragraph (a) 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) on the same terms as that transaction; and

(ii) within a period of 90 days after that disposal,

that other company holds— 30

(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”; 35

(b) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words:

“[**subject to paragraph (bA),**] that person and that company must, for purposes of determining—”; 40

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

“: Provided that this paragraph 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— 45

(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— 50

(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”; 55

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

“(bA) that company must, where that company is a listed company or a [**company contemplated in paragraph (e)(i) of the definition of ‘company’**] portfolio of a collective investment scheme in 60

securities and the asset was acquired by that company from any person who does not hold more than 20 per cent of the equity share capital of that company after the asset-for-share transaction, be deemed to have acquired the asset at a cost equal to the market value of the asset; and”;

(e) by the deletion in subsection (2) of paragraph (bA);

(f) by the addition in subsection (7)(b) to subparagraph (i) of the following proviso:

“: Provided that this subparagraph does not apply to any asset that constitutes trading stock that is regularly and continuously disposed of by that company”; and

(g) by the substitution in subsection (8A) for paragraph (a) of the following paragraph:

“(a) the person and the company **[jointly elect]** agree in writing that this section does not apply; or”.

(2) Paragraphs (a), (b), (c) and (e) of subsection (1) come into operation on the date of promulgation of this Act and apply in respect of transactions entered into on or after that date.

(3) Paragraph (d) 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.

(4) Paragraph (f) of subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of transactions entered into on or after that date.

(5) Paragraph (g) of subsection (1) comes into operation on 1 January 2011 and applies in respect of transactions entered into during years of assessment ending on or after that date.

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 and section 49 of Act 17 of 2009

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

(a) by the addition in subsection (5)(b) to subparagraph (i) of the following proviso:

“: Provided that this subparagraph does not apply to any asset that constitutes trading stock that is regularly and continuously disposed of by that resultant company”;

(b) by the deletion of subsection (9A);

(c) by the substitution for subsection (10) of the following subsection:

“(10) For the purposes of section 64B, 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 **[amalgamated company’s profits which are available for distribution as contemplated in section 64C(4)(c)]** 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 be deemed to be a dividend declared and distributed **[out of profits of]** by that amalgamated company to that person and to have accrued as a dividend to that person on the date on which that person became entitled thereto.”; and

(d) by the substitution in subsection (14) for paragraph (c) of the following paragraph:

“(c) the resultant company is a non-profit company **[contemplated]** as defined in section **[21]** 1 of the Companies Act, **[1973 (Act No. 61 of 1973)]** 2008 (Act No. 71 of 2008);”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of transactions entered into on or after that date.

(3) Paragraphs (b), (c) and (d) of subsection (1) come into operation on 1 January 2011.

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

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

(a) by the addition in subsection (4) to paragraph (a) of the following proviso:

“: Provided that this subsection does not apply to any asset that constitutes trading stock that is regularly and continuously disposed of by the transferee company”;

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(b) by the substitution in subsection (4)(b)(ii) for item (aa) of the following item:

“(aa) the greatest amount contemplated in paragraph (j) or (n) of the definition of ‘gross income’ that would have been included in income as a result of any disposal of the asset in terms of an intra-group transaction within the period of six years preceding the date on which the transferee company ceases to form part of the group of companies, had subsection (3) not applied in respect of that disposal; or”;

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

“(4A) Subsection 4(b) does not apply in respect of any asset disposed of—

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(a) prior to 21 February 2008, where that transferee company and that transferor company contemplated in that subsection cease to form part of a group of companies by reason of the coming into operation of section 52(1)(c) of the Revenue Laws Amendment Act, 2007 (Act No. 35 of 2007); or

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(b) on or after 1 January 2011, where that transferee company and that transferor company contemplated in that subsection cease to form part of a group of companies by reason of the coming into operation of section 6(1)(g) of the Taxation Laws Amendment Act, 2010.”;

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(d) by the addition to subsection (5)(b)(i) of the following proviso:

“: Provided that this subparagraph does not apply to any asset that constitutes trading stock that is regularly and continuously disposed of by that transferee company”;

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(e) by the substitution in subsection (6) for paragraph (g) of the following paragraph:

“(g) at the time of the disposal of the asset, the transferor company and the transferee company **[jointly elect]** agree in writing that this section does not apply to that disposal.”.

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(2) Paragraphs (a) and (d) of subsection (1) are deemed to have come into operation on 1 January 2010 and apply in respect of transactions entered into on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of cessations on or after that date.

(4) Paragraph (c) of subsection (1) comes into operation on 1 January 2011.

(5) Paragraph (e) of subsection (1) comes into operation on 1 January 2011 and applies in respect of transactions entered into during years of assessment ending on or after that date.

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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 and section 52 of Act 60 of 2008

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

(a) by the deletion of subsection (6); and

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

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“(ii) the **[Government, a provincial administration or a municipality]** government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a);”.

(2) Subsection (1)(a) comes into operation on 1 January 2011.

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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 and section 50 of Act 17 of 2009

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66. (1) Section 47 of the Income Tax Act, 1962, is hereby amended—

(a) by the addition to subparagraph (i) of subsection (4)(b) of the following proviso:

“: Provided that this subparagraph does not apply to any asset that constitutes trading stock that is regularly and continuously disposed of by that holding company”; and

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(b) by the substitution in subsection (6) for paragraph (b) of the following paragraph:

“(b) the holding company and the liquidating company [jointly elect] agree in writing that this section does not apply;”.

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(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of transactions entered into on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2011 and applies in respect of transactions entered into during years of assessment ending on or after that date.

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Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 96 of 1981, section 31 of Act 94 of 1983, section 4 of Act 30 of 1984, section 28 of Act 121 of 1984, section 18 of Act 96 of 1985, section 21 of Act 85 of 1987, section 26 of Act 90 of 1988, section 28 of Act 141 of 1992, section 32 of Act 113 of 1993, section 18 of Act 36 of 1996, section 39 of Act 30 of 1998, section 38 of Act 30 of 2000, section 41 of Act 59 of 2000, section 45 of Act 60 of 2001, section 24 of Act 30 of 2002, section 35 of Act 74 of 2002, section 56 of Act 45 of 2003, section 38 of Act 32 of 2004, section 45 of Act 31 of 2005, section 27 of Act 9 of 2006 and section 38 of Act 8 of 2007

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67. Section 56 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (h) of the following paragraph:

“(h) by or to any person (including any sphere of government) referred to in section 10(1)(a)[, (b)], (cA), (cE), (cN), (cO), (d) or (e);”.

Amendment of section 64B of Act 58 of 1962, as inserted by section 20 of Act 95 of 1967 and amended by section 35 of Act 89 of 1969, section 20 of Act 52 of 1970, section 19 of Act 90 of 1972, section 41 of Act 85 of 1974, section 33 of Act 94 of 1983, section 7 of Act 108 of 1986, section 32 of Act 90 of 1988, section 34 of Act 113 of 1993, section 34 of Act 113 of 1993, section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001, section 25 of Act 30 of 2002, section 36 of Act 74 of 2002, section 58 of Act 45 of 2003, section 40 of Act 32 of 2004, section 47 of Act 31 of 2005, section 32 of Act 20 of 2006, section 39 of Act 8 of 2007, section 85 of Act 35 of 2007, section 32 of Act 3 of 2008, section 55 of Act 60 of 2008 and section 51 of Act 17 of 2009

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

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

“**“declared”**, in relation to any dividend (including a dividend *in specie*), means the approval of the payment or distribution thereof by the directors of the company or by some other person [under] with comparable authority [conferred by the memorandum and articles of association of the company] or, in the case of the liquidation of a company, by the liquidator thereof;”.

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

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“(2) There shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the secondary tax on companies, which is calculated at the rate of 10 per cent of the net amount, as

- determined in terms of subsection (3), of any dividend declared by any company, other than a headquarter company, which is a resident.”;
- (c) by the deletion in subsection (3A) of the word “or” at the end of paragraph (c);
- (d) by the substitution in subsection (3A) for the full stop at the end of paragraph (d) of the expression “; or”;
- (e) by the addition to subsection (3A) after paragraph (d) of the following paragraph:
 “(e) any dividend declared by a headquarter company.”;
- (f) by the deletion in subsection (5) of paragraph (c);
- (g) by the substitution in subsection (5)(f) for subparagraph (i) of the following subparagraph:
 “(i) that shareholder is a company forming part of the same group of companies as the company declaring the dividend **[and that dividend is taken into account in the determination of the profits of that shareholder]**,”;
- (h) by the deletion in subsection (5) of the word “and” at the end of paragraph (i);
- (i) by the substitution in subsection (5) for paragraph (k) of the following paragraph:
 “(k) any dividend declared by a company to a natural person which constitutes a transfer of an interest in a residence as contemplated in paragraph 51 of the Eighth Schedule; **[and]**”;
- (j) by the insertion in subsection (5) of the following paragraph:
 “(kA) any dividend declared by a company which constitutes a disposal of an interest in a residence as contemplated in paragraph 51A of the Eighth Schedule; and”.
- (2) Paragraphs (a), (f) and (g) of subsection (1) come into operation on 1 January 2011.
- (3) Paragraphs (b), (c), (d) and (e) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 January 2011.
- (4) Paragraph (h) of subsection (1) is deemed to have come into operation on 1 January 2009.
- (5) Paragraph (i) of subsection (1) is deemed to have come into operation on 11 February 2009 and applies in respect of transfers made on or after that date in respect of disposals made before 1 October 2010.
- (6) Paragraph (j) of subsection (1) comes into operation on 1 October 2010 and applies in respect of disposals made on or after that date and before 1 January 2013.

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 and section 52 of Act 17 of 2009

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

- (a) by the addition in subsection (1) of the word “or” at the end of paragraph (a) of the definition of “share incentive scheme”;
- (b) by the deletion in subsection (1) of paragraph (b) of the definition of “share incentive scheme”;

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

“(e) that amount represents the greater of—

(i) the difference between—

- (aa) the taxable income or assessed loss of that company; and
(bb) the taxable income or assessed loss of that company without regard to section 31(2); and

(ii) nil.”.

- (d) by the substitution in subsection (2) for paragraph (f) of the following paragraph:

“(f) the company ceases to be a resident to the extent **[profits and reserves of that company are available for distribution immediately before so ceasing to be a resident (including any amount deemed in terms of the definition of ‘dividend’ in section 1 to be a profit available for distribution) : Provided that any prohibition or limitation on any distribution contained in the company’s memorandum and articles of association or founding statement or any agreement must be disregarded]** that the market value of all the assets of the company on the date immediately before the day on which the company ceases to be a resident exceeds—

- (i) the liabilities of that company as at that date; and
(ii) the sum of the contributed tax capital of all the classes of shares of that company as at that date;”;

- (e) by the substitution for the proviso to subsection (2) of the following proviso:

“: Provided that, for purposes of this subsection, in determining whether a person is a shareholder or connected person in relation to a shareholder in relation to any company, no regard must be had to any share that is a listed share”;

- (f) by the deletion in subsection (4) of paragraph (a);

- (g) by the substitution in subsection (4) for paragraph (c) of the following paragraph:

“(c) to so much of any amount **[(other than an amount)]** contemplated in **[subsection (2)(e)]** as exceeds the company’s profits and reserves which are available for distribution, including any amount deemed in terms of the definition of ‘dividend’ in section 1 to be a profit available for distribution: **Provided that any prohibition or limitation on any such distribution contained in the company’s memorandum and articles of association or founding statement or any agreement shall be disregarded in the application of this paragraph]** subsection (2)(a), (b), (c), (d) or (g) that—

- (i) is distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available for the benefit of any person; and
(ii) reduces the market value of all the assets of the company to an amount that is less than the liabilities of the company;”;

- (h) by the substitution in subsection (4)(l) for subparagraphs (i) and (ii) of the following subparagraphs:

- “(i) the company (whether alone or together with any other company forming part of the same group of companies as the company) directly or indirectly holds at least 20 per cent of the total equity **[share capital of] shares** in that other company; and
(ii) that other company does not hold any **[equity]** shares in the company **[, or in any company forming part of the same group of companies as the company]**.”.

(2) Paragraphs (a), (b), (d), (f), (g) and (h) of subsection (1) come into operation on 1 January 2011.

(3) Paragraph (c) of subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 October 2011.

(4) Paragraph (e) of subsection (1) is deemed to have come into operation on 1 January 2009.

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

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

- (a) by the deletion of the word “or” at the end of paragraph (d) of the definition of “regulated intermediary”; 5
- (b) by the addition of the word “or” at the end of paragraph (e) of the definition of “regulated intermediary”; and
- (c) by the insertion in the definition of “regulated intermediary” of the following paragraph: 10

“(f) transfer secretary that is a person other than a natural person and that has been approved by the Commissioner subject to such conditions and requirements as may be determined 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. 15

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

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

- (a) by the substitution for subsection (1) of the following subsection: 20

“(1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the dividends tax, calculated at the rate of 10 per cent of the amount of any dividend paid by [a] any company other than a headquarter company.”; and
- (b) by the substitution in subsection (3)(a) for subparagraph (ii) of the following paragraph: 25

“(ii) some other person or body of persons with comparable authority **[conferred under the memorandum and articles of association of the company making the distribution or]** under a law, rule or regulation to which that company is subject; or”.

(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

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

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

- (a) by the substitution for paragraph (i) of the following paragraph: 35

“(i) a shareholder that is a natural person and the dividend constitutes a **[transfer]** disposal of an interest in a residence as contemplated in paragraph **[51(2)] 51A** of the Eighth Schedule; or”;
- (b) by the insertion of the following paragraph: 40

“(iA) the dividend constitutes a disposal of an interest in a residence as contemplated in paragraph 51A of the Eighth Schedule; or”.

(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 dividends paid on or after that date.

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

73. (1) Section 64G of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

- “(2) A company must not withhold any dividends tax from the payment of a dividend contemplated in subsection (1) if— 50
 - (a) the person to whom the payment is made has—
 - (i) by a date determined by the company; or
 - (ii) if the company did not determine a date as contemplated in subparagraph (i), by the date of payment of the dividend, submitted to the company— 55

- (aa) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is exempt from the dividends tax in terms of section 64F; and
- (bb) 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; 5
- (b) the beneficial owner forms part of the same group of companies, as defined in section 41, as the company that paid the dividend; or
- (c) the payment is made to a regulated intermediary. 10
- (3) A company must withhold dividends tax from the payment of a dividend contemplated in subsection (1) at a reduced rate if the person to whom the payment is made has—
- (a) by a date determined by the company; or
- (b) if the company did not determine a date as contemplated in paragraph (a), by the date of payment of the dividend, 15
- submitted to the company—
- (i) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation; and 20
- (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 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. 25

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

- 74.** (1) Section 64H of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:
- “(2) A regulated intermediary must not withhold any dividends tax from the payment of a dividend contemplated in subsection (1) if— 30
- (a) the person to whom the payment is made has—
- (i) by a date determined by the regulated intermediary; or
- (ii) if the regulated intermediary did not determine a date as contemplated in subparagraph (i), by the date of payment of the dividend, 35
- submitted to the regulated intermediary—
- (aa) a **[written]** declaration by the beneficial owner in such form as may be prescribed by the Commissioner **[may prescribe]** that the dividend is exempt from the dividends tax in terms of section 64F; and 40
- (bb) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing should the beneficial owner cease to be the beneficial owner; or
- (b) the payment is made to another regulated intermediary. 45
- (3) A regulated intermediary must withhold dividends tax from the payment of a dividend contemplated in subsection (1) at a reduced rate if the person to whom the payment is made has—
- (a) by a date determined by the regulated intermediary; or
- (b) if the regulated intermediary did not determine a date as contemplated in paragraph (a), by the date of payment of the dividend, 50
- submitted to the regulated intermediary—
- (i) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation; and 55
- (ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary 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. 60

Amendment of section 64O of Act 58 of 1962, as inserted by section 54 of Act 17 of 2009

75. (1) Section 64O of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “market-related rate” of the following definition:

“**‘market-related rate’**, in relation to financial assistance provided by a company for a period during a year of assessment, means[—

(a) **where the financial assistance is provided to a natural person or a trust, the average of the official rate of interest, as defined in paragraph (1) of the Seventh Schedule, for that period; or**

(b) **where the financial assistance is provided to a person other than a natural person or a trust—**

(i) **in the case of financial assistance that is denominated in rands, a rate of interest equal to the average of the South African repurchase rate plus 100 basis points for the period; or**

(ii) **in the case of financial assistance that is denominated in any currency other than rands, a rate of interest equal to the average of the equivalent of the South African repurchase rate applicable in that currency plus 100 basis points for the period]**

a rate of interest equal to the rate that would have been applicable to that financial assistance had the company and the person to whom the financial assistance is granted been independent persons dealing at arm’s length;”.

(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 64Q of Act 58 of 1962, as inserted by section 54 of Act 17 of 2009

76. (1) Section 64Q of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) the company (whether alone or together with any other company forming part of the same group of companies as the company) directly or indirectly holds at least 20 per cent of the [total] equity [share capital of] shares in that other company; and”.

(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 dividends paid on or after that date.

Amendment of section 80L of Act 58 of 1962, as inserted by section 34 of Act 20 of 2006 and amended by section 42 of Act 8 of 2007

77. Section 80L of the Income Tax Act, 1962, is hereby amended by the deletion of the definition of “tax benefit”.

Amendment of paragraph 11 of First Schedule to Act 58 of 1962, as substituted by section 44 of Act 113 of 1993 and amended by section 32 of Act 36 of 1996 and section 41 of Act 53 of 1999

78. (1) Paragraph 11 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (c) for item (iii) of the following item:

“(iii) where the farmer is a company, has on or after 21 June 1993 been distributed *in specie* [(whether such distribution occurred by means of a dividend, including a liquidation dividend, a total or partial reduction of capital (including any share premium), a redemption of redeemable preference shares or an acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973),] to a shareholder of such company; or”.

(2) Subsection (1) comes into operation on 1 January 2011.

Amendment of paragraph 1 of Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 23 of Act 90 of 1964, section 34 of Act 88 of 1971, section 34 of Act 69 of 1975, section 26 of Act 113 of 1977, section 17 of Act 104 of 1979, section 27 of Act 104 of 1980, section 28 of Act 96 of 1981, section 46 of Act 94 of 1983, section 24 of Act 65 of 1986, section 24 of Act 65 of 1986, section 43 of Act 101 of 1990, section 35 of Act 21 of 1995, section 41 of Act 28 of 1997, section 47 of Act 30 of 1998, section 82 of Act 45 of 2003, section 43 of Act 32 of 2004, section 46 of Act 8 of 2007, section 61 of Act 35 of 2007, section 36 of Act 3 of 2008, section 58 of Act 60 of 2008 and section 56 of Act 17 of 2009

79. (1) Paragraph 1 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “lump sum benefit” of the following definition:

“**‘lump sum benefit’** includes—

- (a) any amount determined in respect of the commutation of an annuity or portion of an annuity—
 - (i) payable by; or
 - (ii) provided in consequence of membership or past membership of, a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and
- (b) any fixed or ascertainable amount (other than an annuity)—
 - (i) payable by; or
 - (ii) provided in consequence of membership or past membership of, a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund,
 whether in one amount or in instalments, other than any amount deemed to be income accrued to a person in terms of section 7(11);”

(2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of any lump sum benefit accrued on or after that date.

Amendment of paragraph 2 of Second Schedule to Act 58 of 1962, as substituted by section 57 of Act 17 of 2009

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

- (a) by the deletion in subparagraph (1)(a) of the word “or” at the end of subitem (i);
- (b) by the substitution in subparagraph (1)(a)(ii) for the words preceding subsubitem (AA) of the following words:

“the termination or loss of his or her employment due to—”;
- (c) by the substitution in subparagraph (1)(a)(ii) for subsubitem (AA) of the following subsubitem:

“(AA) his or her employer having ceased to carry on or intending to cease carrying on the trade in respect of which he or she was employed or appointed; or”;
- (d) by the substitution in subparagraph (1)(a) for the proviso to subitem (ii) of the following proviso:

“Provided that this subitem does not apply to any amount received by or accrued to a person by way of a lump sum where that person’s employer is a company and that person was at any time a director of that company or at any time held more than five per cent of the [issued share capital] equity shares or members’ interest in that company[.]; or”;
- (e) by the substitution in subparagraph (1)(a) for the proviso to subitem (ii) of the following proviso:

“Provided that this subitem does not apply to any amount received by or accrued to a person by way of a lump sum where that person’s employer is a company and that person [was at any time a director of that company or] at any time held more than five per cent of the equity shares or members’ interest in that company; or”;
- (f) by the addition to subparagraph (1)(a) of the following subitem:

“(iii) the commutation of an annuity or portion of an annuity.”;

- (g) by the substitution in subparagraph (1)(a) for the words following subitem (iii) of the following words:
 “less any deduction permitted under the provisions of paragraph 5 or 6; and”;
- (h) by the substitution in subparagraph (1)(b) for subitem (iA) of the following subitem: 5
 “(iA) assigned in terms of a divorce order granted on or after 13 September 2007 under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), to the extent that the amount so assigned is deducted from the minimum individual reserve of that person’s former spouse in terms of section 37D(1)(d)(i) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or is so deducted in terms of section 37D(1)(d)(ii) of that Act as a result of the deduction contemplated in section 37D(1)(d)(i) of that Act;”.
- (2) Paragraphs (a), (b), (c), (e) and (f) of subsection (1) come into operation on 1 March 2011. 15
- (3) Paragraph (d) of subsection (1) comes into operation on 1 January 2011.
- (4) Paragraph (g) of subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of any lump sum benefit received or accrued on or after that date. 20
- (5) Paragraph (h) of subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of amounts deducted on or after that date.

Amendment of paragraph 3 of Second Schedule to Act 58 of 1962, as amended by section 47 of Act 94 of 1983, section 50 of Act 30 of 1998, section 50 of Act 8 of 2007, section 40 of Act 3 of 2008, section 62 of Act 60 of 2008 and section 59 of Act 17 of 2009 25

81. (1) Paragraph 3 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for that paragraph of the following paragraph:

“3. Any lump sum benefit which becomes recoverable from—

- (a) a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or 30
 (b) an insurer as defined in section 29A(1) if that lump sum benefit is payable by, or provided in consequence of membership or past membership of, a fund contemplated in subparagraph (a),

in consequence of or following upon the death of a member or past member of [a **pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity**] that fund must, on the date of payment of that lump sum benefit [in terms of section 37C of the Pension Funds Act, 1956 (Act No. 24 of 1956),] be deemed to have accrued to that member or past member immediately prior to the death of that member or past member: Provided that— 35 40

- (i) so much of any tax payable as is due to the provisions of this paragraph may be recovered from the person [to] by whom [or in whose favour] the lump sum benefit in question [accrues] is received;
- (ii) where any annuity or portion of an annuity (including a living annuity) which becomes payable on or in consequence of or following upon the death of a member or past member of any such fund has been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum benefit which has become recoverable in consequence of or following upon the death of such member or past member; 45
- (iii) where any such lump sum benefit becomes payable but the dependants or nominees of that member or past member elect an annuity (including a living annuity) that is purchased or provided by that fund, no lump sum benefit shall be deemed to have so accrued to the extent that the lump sum benefit was utilised to purchase or provide the annuity; and 50
- (v) where any such lump sum benefit is paid to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), no lump sum benefit shall be deemed to have so accrued.”. 55

(2) Subsection (1) comes into operation on 1 March 2011.

Insertion of paragraph 3A in Second Schedule to Act 58 of 1962

82. (1) The Second Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 3 of the following paragraph:

“3A. Any lump sum benefit which becomes recoverable from—

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| <p>(a) a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or</p> <p>(b) an insurer as defined in section 29A(1) if that lump sum benefit is payable by or provided in consequence of membership or past membership of a fund contemplated in subparagraph (a),</p> <p>in consequence of or following upon the death of any person other than a member or past member of that fund shall, on the date of payment of that lump sum benefit, be deemed to have accrued to that person immediately prior to the death of that person: Provided that—</p> <p>(i) so much of any tax payable as is due to the provisions of this paragraph may be recovered from the person by whom the lump sum benefit in question is received;</p> <p>(ii) where any annuity or portion of an annuity (including a living annuity) which becomes payable on or in consequence of or following upon the death of a person other than a member or past member of any such fund has been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum benefit which has become recoverable in consequence of or following upon the death of such person;</p> <p>(iii) where any such lump sum benefit becomes payable but the dependants or nominees of that person elect an annuity (including a living annuity) that is purchased or provided by that fund, no lump sum benefit shall be deemed to have so accrued to the extent that the lump sum benefit was utilised to purchase or provide the annuity; and</p> <p>(iv) where any such lump sum benefit is paid to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), no lump sum benefit shall be deemed to have so accrued.”.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
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(2) Subsection (1) comes into operation on 1 March 2011.

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 and section 60 of Act 17 of 2009

83. (1) Paragraph 4 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

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| <p>“(1) Notwithstanding the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, any lump sum benefit shall be deemed to have accrued to such member on the earliest of the date—</p> <p>(a) on which an election is made in respect of which the benefit becomes recoverable;</p> <p>(b) on which any amount is deducted from the benefit in terms of section 37D(1)(a), (b) or (c) of the Pension Funds Act, 1956 (Act No. 24 of 1956);</p> <p>(c) on which the benefit is transferred to another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;</p> <p>(d) of his or her retirement; or</p> <p>(e) of his or her death,</p> <p>and shall be assessed to tax in respect of the year of assessment during which such lump sum benefit is deemed to accrue.”.</p> | <p>40</p> <p>45</p> <p>50</p> |
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(2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of lump sum benefits deemed to have accrued on or after that date.

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Amendment of paragraph 6 of Second Schedule to Act 58 of 1962, as substituted by section 62 of Act 17 of 2009

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

- (a) by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

“The deduction to be allowed for the purposes of paragraph **[2(1)(b)]** 5
2(1)(a)(ii) or (b) is an amount equal to—”; and

- (b) by the substitution in subparagraph (1)(b) for subitem (v) of the following subitem: 10

“(v) any other amounts in respect of which formula C applies, which have been paid into **[such funds]** a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the taxpayer’s benefit by a pension fund contemplated in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1, less the amount represented by symbol A when applying that formula,”. 15

- (2) Subsection (1) is deemed to have come into operation on 1 March 2009.

Amendment of paragraph 1 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 20

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

- (a) by the insertion before the definition of “micro business” of the following definition:

“**‘investment income’** means— 25

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

(ii) any proceeds derived from the disposal of financial instruments;”;
and 30

- (b) by the substitution for the definition of “professional service” of the following definition:

“**‘professional service’** means a service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, **[broking, commercial arts,]** consulting, draftsmanship, education, 35
engineering, **[entertainment,]** financial service broking, health, information technology, journalism, law, management, **[performing arts,]** real estate broking, research, **[secretarial services,]** sport, surveying, translation, valuation or veterinary science;”.

- (2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 March 2011. 40

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

86. (1) Paragraph 3 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended— 45

- (a) by the substitution for subparagraph (b) of the following subparagraph:

“(b) more than **[10]** 20 per cent of that person’s total receipts during that year of assessment consists of **[investment income as defined in section 12E]**—

(i) where that person is a natural person (or the deceased or insolvent estate of a natural person that was a registered micro business at the time of death or insolvency), income from the rendering of a professional service; and 50

(ii) where that person is a company, investment income and income from the rendering of a professional service;”;
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- (b) by the deletion of subparagraph (d);

- (c) by the substitution in subparagraph (e) for items (i) and (ii) of the following items:

- “(i) immovable property [, **to the extent that it was**] used mainly for business purposes; and
- (ii) any other asset of a capital nature used mainly for business purposes, other than any financial instrument,”;
- (d) by the substitution in the proviso to subparagraph (f)(iii) for paragraphs (aa) 5 and (bb) of the following paragraphs:
 “(aa) has not during any year of assessment—
 (A) carried on any trade; and
[(bb) has not during any year of assessment]
 (B) owned assets, the total market value of which exceeds R5 000; or 10
 (bb) has taken the steps contemplated in section 41(4) to liquidate, wind up or deregister: Provided further that this paragraph ceases to apply if the company has at any stage withdrawn any step so taken or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered;”;
- (e) by the deletion of the word “or” at the end of item (ii) in subparagraph (g);
- (f) by the addition of the expression “; or” at the end of item (iii) in subparagraph (g);
- (g) by the addition to subparagraph (g) of the following item:
 “(iv) that partnership is registered as a vendor in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991),”; and 20
- (h) by the addition after subparagraph (g) of the following subparagraph:
 “(h) that person is registered as a vendor in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).”.
- (2) Subsection (1) comes into operation as from the commencement of years of 25 assessment commencing on or after 1 March 2011.

Amendment of paragraph 5 of Sixth Schedule to Act 58 of 1962

87. (1) The Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 5 of the following paragraph:

“Taxable Turnover 30

5. The taxable turnover of a registered micro business in relation to any year of assessment consists of all amounts not of a capital nature received by that registered micro business during that year of assessment from carrying on business activities in the Republic, including amounts described in paragraph 6 and excluding amounts described in paragraph 7, 35 less any amounts refunded to any person by that registered micro business in respect of goods or services supplied by that registered micro business to that person during that year of assessment or any previous year of assessment.”.

(2) Subsection (1) comes into operation as from the commencement of years of 40 assessment commencing on or after 1 March 2011.

Amendment of paragraph 6 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008

88. (1) Paragraph 6 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended— 45

- (a) by the substitution in subparagraph (a) for items (i) and (ii) of the following items:
 “(i) immovable property[, **to the extent that it was**] mainly used for business purposes, other than trading stock; and
 (ii) any other asset used mainly for business purposes, other than any financial instrument; and”;
- (b) by the substitution for subparagraph (b) of the following subparagraph: “
 (b) in the case of a company, investment income [**as defined in section 12E**] (other than dividends)[; and]”; and 50
- (c) by the deletion of subparagraph (c). 55

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 March 2011.

Amendment of paragraph 7 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008

89. (1) Paragraph 7 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (a) of the following subparagraph: 5
“(a) in the case of a natural person, investment income **[as defined in section 12E]**”;;
- (b) by the addition of the expression “; and” at the end of subparagraph (c); and
- (c) by the addition after subparagraph (c) of the following subparagraph: 10
“(d) any amount received by that registered micro business from any person by way of a refund in respect of goods or services supplied by that person to that registered micro business.”.

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 March 2011.

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 and section 47 of Act 3 of 2008 15 20

90. (1) Paragraph 1 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “official rate of interest” of the following definition:

“**‘official rate of interest’** means—

- (a) in the case of a loan which is denominated in the currency of the Republic, 25
[the] a rate of interest [fixed by the Minister from time to time by notice in the Gazette] equal to the South African repurchase rate plus 100 basis points; or
- (b) in the case of a loan which is denominated in any other currency, a **[market related]** rate of interest that is the equivalent of the South African repurchase 30
rate applicable in that currency plus 100 basis points:

Provided that where a new repurchase rate or equivalent rate is determined, the new rate of interest applies for the purposes of this definition from the first day of the month following the date on which that new repurchase rate or equivalent rate came into operation;”.

(2) Subsection (1) comes into operation on 1 March 2011.

Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 30 of Act 96 of 1985, section 10 of Act 108 of 1986, Government Notice No. 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice No. R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice No. R.764 of 29 March 1990, section 58 of Act 101 of 1990, section 50 of Act 129 of 1991, section 36 of Act 141 of 1992, 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 40

91. (1) Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended— 45

- (a) by the substitution in subparagraph (1) for item (a) of the following item: 50
“(a) where such motor vehicle (not being a vehicle in respect of which paragraph (b)(ii) of this definition applies) was acquired by the employer under a *bona fide* agreement of sale or exchange concluded by parties acting at arm’s length, the original cost thereof to **[him] the employer** (excluding any finance charge[, or interest **[or sales tax]** payable by **[him, or value-added tax borne by him ,] the employer** in respect of **[his] the employer’s** acquisition thereof); or”; 55

- (b) by the substitution in subparagraph (1)(b) for the words following subitem (ii) of the following words:
- “the retail market value thereof at the time the employer first obtained the right of use of the vehicle or, where at such time such lease was **[a financial lease for the purposes of the Sales Tax Act, 1978 (Act No. 103 of 1978), the cash value thereof as determined under Schedule 4 to that Act or, where at such time the lease was]** a lease contemplated in paragraph (b) of the definition of ‘instalment credit agreement’ in section 1 of the Value-added Tax Act, 1991 (Act No. 89 of 1991), the cash value thereof as contemplated in the definition of ‘cash value’ in the said section[, **but excluding the tax referred to therein**]; or”;
- (c) by the substitution for subparagraph (2) of the following subparagraph:
- “(2) Where an employee has been granted the right to use any motor vehicle as contemplated in paragraph 2(b), the cash equivalent of the value of the taxable benefit shall be so much of the value of the private use of such vehicle (as determined under this paragraph in respect of the period of use) as exceeds any consideration given by the employee to the employer for the use of such vehicle during such period **[Provided that where the employee receives an allowance or advance contemplated in section 8(1)(b), such value of the private use of such vehicle shall not be reduced by any such consideration]**, other than consideration in respect of the cost of the licence, insurance, maintenance or fuel in respect of such vehicle.”;
- (d) by the substitution in subparagraph (4) for the words preceding item (a) of the following words:
- “Subject to **[the provisions of subparagraphs (9) and]** subparagraph (10), the value to be placed on the private use of such vehicle shall be determined for each month or part of a month during which the employee was entitled to use the vehicle for private purposes (including travelling between the employee’s place of residence and his or her place of employment) and the said value shall—”;
- (e) by the substitution in subparagraph (4) for item (a) of the following item:
- “(a) as respects each such month, be an amount equal to 3,5 per cent of the determined value of such motor vehicle: Provided that where the motor vehicle is the subject of a maintenance plan at the time the employer acquired the motor vehicle or the right of use thereof, that amount shall be reduced to an amount equal to 3,25 per cent of the determined value of the motor vehicle; and”;
- (f) by the substitution for subparagraph (5) of the following subparagraph:
- “(5) **[Subject to the provisions of subparagraph (7), no]** No reduction in the value determined under subparagraph (4) shall be made for the purposes of item (b) of that subparagraph by reason of the fact that the vehicle in question was during any period for any reason temporarily not used by the employee for private purposes.”;
- (g) by the substitution for subparagraph (7) of the following subparagraph:
- “(7) Where it is proved to the satisfaction of the Commissioner that accurate records of distances travelled for business purposes in such vehicle are kept, the Commissioner must upon the assessment of the employee’s liability for normal tax for the year of assessment reduce the value placed on the private use of the vehicle, calculated under subparagraph (4), by an amount that bears to that calculated value the same ratio as the number of kilometres travelled for business purposes bears to the total amount of kilometres travelled in such vehicle during that year of assessment.”;
- (h) by the substitution for subparagraph (8) of the following subparagraph:
- “(8) Where it is proved to the satisfaction of the Commissioner that accurate records of distances travelled for private purposes in such vehicle are kept and the employee bears—
- (a) (i) the full cost of the licence for such vehicle, the Commissioner must upon the assessment of the employee’s liability for normal tax for the year of assessment reduce the value placed on the private use of such vehicle calculated under subparagraph (4) by an amount that bears to the amount of

- the cost of the licence for such vehicle the same ratio as the number of kilometres travelled for private purposes bears to the total number of kilometres travelled in such vehicle during that year of assessment;
- (ii) the full cost of the insurance of such vehicle, the Commissioner must upon the assessment of the employee's liability for normal tax for the year of assessment reduce the value placed on the private use of such vehicle calculated under subparagraph (4) by an amount that bears to the amount of the cost of the insurance for such vehicle the same ratio as the number of kilometres travelled for private purposes bears to the total number of kilometres travelled in such vehicle during that year of assessment; or
- (iii) the full cost of the maintenance of such vehicle, the Commissioner must upon the assessment of the employee's liability for normal tax for the year of assessment reduce the value placed on the private use of such vehicle calculated under subparagraph (4) by an amount that bears to the amount of the cost of the maintenance for such vehicle the same ratio as the number of kilometres travelled for private purposes bears to the total number of kilometres travelled in such vehicle during that year of assessment;
- (b) the full cost of fuel for private use of such vehicle, the Commissioner must upon the assessment of the employee's liability for normal tax for the year of assessment reduce the value placed on the private use of the vehicle during that year of assessment calculated under subparagraph (4) by an amount determined for the total kilometres travelled for private purposes by applying the rate per kilometre for fuel fixed by the Minister in the *Gazette* for the purposes of section 8(1)(b)(ii) and (iii).";
- (i) by the deletion of subparagraph (9); and
- (j) by the addition after subparagraph (10) of the following subparagraph:
- “(11) For the purposes of this paragraph, **‘maintenance plan’**, in relation to a motor vehicle, means a contractual obligation undertaken by a provider in the ordinary course of trade with the general public to underwrite the costs of all maintenance of that motor vehicle, other than the costs related to top-up fluids, tyres or abuse of the motor vehicle, for at least a period of not less than three years and a distance travelled by the motor vehicle of not less than 60 000 kilometres from the date that the provider undertakes the contractual obligation: Provided that the contractual obligation may terminate at the earlier of—
- (a) the end of the period of three years; or
- (b) the date on which the distance of 60 000 kilometres is travelled by that motor vehicle.”.
- (2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 13 of Seventh Schedule to Act 58 of 1962, as amended by section 51 of Act 129 of 1991, section 37 of Act 30 of 2002 and section 61 of Act 31 of 2005

- 92.** (1) Paragraph 13 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:
- “(2) No value shall be placed under this paragraph on the value of any taxable benefit derived by reason of the fact that an employer has paid—
- (b) **[has paid]** subscriptions due by his or her employee to a professional body, if membership of such body is a condition of the employee's employment;
- (bA) insurance premiums indemnifying an employee solely against claims arising from negligent acts or omissions on the part of the employee in rendering services to the employer; or
- (c) **[has paid]** any portion of the value of a benefit which is payable by a former member of a non-statutory force or service as defined in the Government

Employees Pension Law, 1996 (Proclamation No. 21 of 1996), to the Government Employees' Pension Fund as contemplated in Rule 10(6)(d) or (e) of the Rules of the Government Employees Pension Fund contained in Schedule 1 to that Proclamation.”.

(2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date. 5

Amendment of paragraph 2 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 25 of Act 19 of 2001, section 66 of Act 60 of 2001, section 64 of Act 74 of 2002, section 91 of Act 45 of 2003, section 52 of Act 32 of 2004 and section 64 of Act 31 of 2005 10

93. (1) Paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (b) of the following item:

“(b) 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 [**share capital of**] shares in that company or ownership or right to ownership of that other entity.”. 15

(2) Subsection (1) comes into operation on 1 January 2011.

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 and section 75 of Act 60 of 2008 20

94. Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (5)(a)(aa) for subsubitem (B) of the following subsubitem:

“(B) has been taken into account in terms of section 8(4)(m) or 20(1)(a)(ii), paragraph 2(h) of the Seventh Schedule or paragraph 20(3);”. 25

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 and section 77 of Act 60 of 2008 30

95. Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) (i) is or was allowable or is deemed to have been allowed as a deduction in determining the taxable income of that person [**before the inclusion of any taxable capital gain**]; and 35
(ii) is not included in the taxable income of that person in terms of section 9C(5), 40
before the inclusion of any taxable capital gain; or”.

Amendment of paragraph 29 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 81 of Act 60 of 2001, section 38 of Act 30 of 2002, section 76 of Act 74 of 2002, section 47 of Act 20 of 2006 and section 61 of Act 8 of 2007 45

96. (1) Paragraph 29 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

“(3) For the purposes of this paragraph, ‘**controlling interest**’ in a company [,] means an interest in more than 35 per cent of the equity [**share capital of**] shares in that company.”. 50

(2) Subsection (1) comes into operation on 1 January 2011.

Amendment of paragraph 31 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 83 of Act 60 of 2001, section 78 of Act 74 of 2002, section 49 of Act 20 of 2006 and section 62 of Act 8 of 2007

97. (1) Paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)(c) for subitem (i) of the following subitem: 5

“(i) any **[company contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1 of the Act]** portfolio of a collective investment scheme in securities, or any portfolio **[comprised in any]** of a collective investment scheme in property **[contemplated in Part V of the Collective Investment Schemes Control Act, 2002]**, carried on in the Republic, the price at which a participatory interest can be sold to the management company of the scheme on that date; or”.

(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. 15

Amendment of paragraph 38 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 87 of Act 60 of 2001, section 81 of Act 74 of 2002, section 63 of Act 32 of 2004 and section 72 of Act 31 of 2005

98. Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in subparagraph (2) of item (d). 20

Amendment of paragraph 42 of Eighth Schedule to Act 58 of 1962, as amended by section 90 of Act 60 of 2001, section 74 of Act 31 of 2005, section 74 of Act 35 of 2007 and section 55 of Act 3 of 2008

99. Paragraph 42 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (c) of the following item: 25

“(c) has otherwise diminished risk of loss in respect of that **[share]** financial instrument by holding one or more contrary positions with respect to a financial instrument of the same kind and of the same or equivalent quality.”.

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 and section 76 of Act 35 of 2007 30

100. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (2) for the words preceding item (a) of the following words: 35

“Where a person disposes of an asset, (other than an asset contemplated in subparagraph (1) or (4)), for proceeds which are **[either]** received or accrued **[or denominated for purposes of financial reporting of a permanent establishment of that person]** in any currency (hereinafter referred to as the ‘currency of disposal’) after having incurred expenditure in respect of that asset which is **[either]** actually incurred **[or so denominated]** in another currency (hereinafter referred to as the ‘currency of expenditure’), that person must for purposes of determining the capital gain or capital loss on the disposal of that asset—”; and 40

(b) by the substitution in subparagraph (7) for the definition of “local currency” of the following definition: 45

“‘**local currency**’ means—

(a) in relation to a permanent establishment of a person, the functional currency [used by] of that permanent establishment **[for purposes of financial reporting]** (other than the currency of any country in the common monetary area); 50

(b) **[in any other case, the currency of the Republic]** in relation to a headquarter company, the functional currency of that headquarter company; or 55

(c) in any other case, the currency of the Republic.”.

(2) Subsection (1) comes into operation on 1 January 2011 and applies in respect of disposals made during years of assessment commencing on or after that date.

Insertion of paragraph 43B in Eighth Schedule to Act 58 of 1962

101. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 43A of the following paragraph:

“Base cost of assets of controlled foreign companies

43B. Where the currency used by a controlled foreign company for the purposes of financial reporting—

(a) was the currency of a country which—

(i) abandoned its currency; and

(ii) had an official rate of inflation of 100 per cent or more for the foreign tax year preceding the abandonment of the currency; and

(b) the controlled foreign company adopted a new currency of financial reporting as a consequence of the abandonment contemplated in subparagraph (a)(i),

the controlled foreign company must, for the purposes of determining the base cost of an asset of the controlled foreign company, be deemed to have acquired the asset in that new currency—

(A) on the first day of the foreign tax year of the controlled foreign company in which; and

(B) for an amount equal to the market value of the asset on the date on which,

the new currency was adopted by the controlled foreign company.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2009 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 paragraph 43B of Eighth Schedule to Act 58 of 1962, as inserted by section 101 of Taxation Laws Amendment Act of 2010

102. (1) Paragraph 43B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words preceding subparagraph (a) of the following words:

“Where the functional currency **[used by]** of a controlled foreign company **[for the purposes of financial reporting]**—”; and

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

“(b) the controlled foreign company adopted a new functional currency **[of financial reporting]** as a consequence of the abandonment contemplated in subparagraph (a)(i).”.

(2) Subsection (1) comes into operation on 1 January 2011 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 paragraph 45 of Eighth Schedule to Act 58 of 1962, as substituted by section 93 of Act 60 of 2001 and amended by section 33 of Act 9 of 2006, section 2 of Act 8 of 2007 and section 73 of Act 17 of 2009

103. (1) Paragraph 45 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (b) of the following item:

“(b) a capital gain **[or capital loss]** determined in respect of the disposal of the primary residence of that person or that special trust if the proceeds from the disposal of that primary residence do not exceed R2 million.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 51 of Eighth Schedule to Act 58 of 1962, as substituted by section 74 of Act 17 of 2009

104. (1) Paragraph 51 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for items (c) and (d) of the following items: 5
 - “(c) no allowance or deduction allowed to that company or trust in respect of that interest must be recovered or recouped by that company or trust or be included in the income of that company or trust in the year in which the transfer takes place; and 10
 - (d) that company or trust and that natural person must be deemed to be one and the same person for purposes of determining the amount of any allowance or deduction [—
 - (i) **to which that company or trust may be entitled in respect of that interest; or** 15
 - (ii)] that is to be recovered or recouped by or included in the income of that **[company or trust]** natural person in respect of that interest.”; and
- (b) by the substitution in subparagraph (2) for item (a) of the following item: 20
 - “(a) that natural person acquires that interest from the company or trust no later than **[31 December 2011]** 30 September 2010.”;
- (c) by the addition in subparagraph (2)(b) of the word “and” at the end of subitem (ii);
- (d) by the deletion in subparagraph (2) of the expression “; and” at the end of item (c); and 25
- (e) by the deletion in subparagraph (2) of item (d).

(2) Subsection (1) is deemed to have come into operation on 11 February 2009 and applies in respect of transfers made on or after that date in respect of disposals made before 1 October 2010.

Insertion of paragraph 51A in Eighth Schedule to Act 58 of 1962 30

105. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 51 of the following paragraph:

“Disposal of residence by company or trust and liquidation, winding up, deregistration or revocation of company or trust

- 51A.** (1) Subject to subparagraph (6), this paragraph applies where a 35
company or trust disposes of an interest in a residence and—
- (a) the disposal takes place on or before 31 December 2012;
 - (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; 40
 - (c) the natural persons contemplated in item (b) are connected persons in relation to the company or trust;
 - (d) within a period of six months commencing on the date of the disposal contemplated in item (a)— 45
 - (i) in the case of a company making the disposal, that company has taken steps to liquidate, wind up or deregister as contemplated in section 41(4); or
 - (ii) in the case of a trust making the disposal— 50
 - (aa) the founder, the trustees and the beneficiaries of that trust have agreed in writing to the revocation of the trust; or
 - (bb) application has been made to a competent court for the revocation of the trust.
- (2) Where a company or a trust makes a disposal of an interest in a residence as contemplated in subparagraph (1), that company or trust must be deemed to have made that disposal for an amount equal to the base cost of that interest as at the date of that disposal. 55

- (3) Where—
- (a) an interest in a residence has been acquired by a person as a result of a disposal by a company of that interest to that person as contemplated in subparagraph (1);
 - (b) that person (together with all other persons holding shares in that company) acquired all the shares in the company subsequent to the date of acquisition by the company of that interest; and
 - (c) 90 per cent or more of the market value of the assets held by the company during the period commencing on 11 February 2009 and ending on the date of the disposal contemplated in subparagraph (1)(a) is attributable to that interest,
- that person must—
- (i) disregard the disposal of all shares held by that person in that company for purposes of determining his or her taxable income, assessed loss, aggregate capital gain or aggregate capital loss if that disposal is made in anticipation of or in the course of the liquidation, winding up or deregistration of that company; and
 - (ii) be deemed to have acquired that interest at a cost equal to the base cost of the shares contemplated in subitem (1) 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.
- (4) Where an interest in a residence has been acquired by a person as a result of a disposal by a company of that interest to that person as contemplated in subparagraph (1) and where subparagraph (3) does not apply—
- (a) that person must disregard the disposal of any share in that company for purposes of determining his or her taxable income, assessed loss, aggregate capital gain or aggregate capital loss if that disposal is made in anticipation of or in the course of the liquidation, winding up or deregistration of that company; and
 - (b) that person and that company must be deemed to be one and the same person with respect to—
 - (i) the date of acquisition of that interest by that company;
 - (ii) the amount and date of incurral by that company of any expenditure in respect of that interest allowable in terms of paragraph 20; and
 - (iii) any valuation of that interest effected by that trust as contemplated in paragraph 29(4).
- (5) Where an interest in a residence has been acquired by a person as a result of a disposal by a trust of that interest to that person as contemplated in subparagraph (1), that person and that trust must for purposes of determining any capital gain or capital loss in respect of the disposal by that person of that interest so acquired be deemed to be one and the same person with respect to—
- (a) the date of acquisition of that interest by that trust;
 - (b) the amount and date of incurral by that trust of any expenditure in respect of that interest allowable in terms of paragraph 20; and
 - (c) any valuation of that interest effected by that trust as contemplated in paragraph 29(4).
- (6) This paragraph does not apply to any disposal made to a person that is a company or trust unless—
- (a) within a period of six months commencing on the date of that disposal—
 - (i) where that person is a company, that company has taken steps to liquidate, wind up or deregister as contemplated in section 41(4); or
 - (ii) where that person is a trust—
 - (aa) the founder, the trustees and the beneficiaries of that trust have agreed in writing to the revocation of the trust; or
 - (bb) application has been made to a competent court for the revocation of the trust; and

(b) one or more natural persons contemplated in subparagraph (1)(b) acquire the residence contemplated in that subparagraph on or before 31 December 2012.

(7) For the purposes of this paragraph, ‘share’ means a share as defined in paragraph 74.”

(2) Subsection (1) comes into operation on 1 October 2010 and applies in respect of disposals made on or after that date and before 1 January 2013.

Amendment of paragraph 61 of Eighth Schedule to Act 58 of 1962, as substituted by section 90 of Act 74 of 2002 and by section 75 of Act 17 of 2009

106. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 61 of the following paragraph:

“Collective investment schemes in securities

61. (1) A holder of a participatory interest in a portfolio of a collective investment scheme in securities must **[disregard any]** determine a capital gain or capital loss in respect of the participatory interest only upon the disposal of that participatory interest.

(2) The capital gain or capital loss to be determined in terms of subparagraph (1) must be determined with reference to the proceeds from the disposal of that participatory interest and its base cost.”

(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 paragraph 62 of Eighth Schedule to Act 58 of 1962, as substituted by section 103 of Act 45 of 2003 and amended by section 52 of Act 20 of 2006

107. Paragraph 62 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(a) the **[Government or any provincial administration]** government of the Republic in the national, provincial or local sphere, as contemplated in section 10(1)(a);” and

(b) by the substitution for subparagraph (d) of the following subparagraph:

“(d) a person referred to in section **[10(1)(b), (cE) or (e)]** 10(1)(cE) or (e); or”.

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 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 and section 81 of Act 60 of 2008

108. (1) Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“Disposal of [interest in] equity [share capital of] shares in foreign [company] companies”;

(b) by the substitution in subparagraph (1) for the definition of “foreign company” of the following definition:

“‘foreign company’ means—

(a) a foreign company [as defined in section 9D]; or

(b) a headquarter company;”;

(c) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

“Subject to subparagraph (5), a person must disregard any capital gain or capital loss determined in respect of the disposal of any **[interest in the] equity share [capital of] in** any foreign company (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2(2)), if—”;

- (d) by the substitution in subparagraph (2)(a) for subitem (i) of the following subitem:
 “(i) held at least 20 per cent of the equity [**share capital**] shares and voting rights in that foreign company; and”;
- (e) by the substitution in subparagraph (2) for the proviso to item (a) of the following proviso: 5
 “: Provided that in determining the total equity [**share capital**] shares in a foreign company, there shall not be taken into account any share which would have constituted a hybrid equity instrument, as contemplated in section 8E, but for the three year period requirement contained in that section”;
- (f) by the substitution in subparagraph (3) for the words preceding item (a) of the following words:
 “Paragraph 8(b) applies in respect of any capital gain determined in respect of any disposal of any [**interest in the**] equity share [**capital of**] in any foreign company by a person which is or was disregarded in terms of subparagraphs (2) and (5) in any year of assessment, if—”;
- (g) by the substitution in subparagraph (3) for item (b) of the following item:
 “(b) the [**interest in the**] equity share [**capital of**] in that foreign company was disposed of to a connected person in relation to that person either before or after that disposal;”;
- (h) by the substitution in subparagraph (3)(c) for subitem (i) of the following subitem:
 “(i) disposed of that equity share [**capital**] for no consideration or for consideration which does not reflect an arm’s length price, other than a distribution contemplated in subitem (ii);”;
- (i) by the substitution in subparagraph (3)(c)(ii) for the words preceding subsubitem (aa) of the following words:
 “disposed of that equity share [**capital**] by means of a distribution unless the full amount of that distribution—”;
- (j) by the substitution in subparagraph (3)(c)(iii) for the words preceding subsubitem (aa) of the following words:
 “disposed of any consideration received or accrued from the disposal of that equity share [**capital**] (or any amount received in exchange therefor) in terms of any transaction, operation or scheme of which the disposal of the equity share [**capital**] forms part—”;
- (k) by the substitution in subparagraph (4) for the words following item (b) of the following words:
 “and the company to which that distribution was made, disposes of any amount of that distribution in the circumstances contemplated in subparagraph (3)(c)(i), (ii) or (iii), that company must be treated as having disposed of the [**interest in the**] equity share [**capital of**] in that foreign company by means of a disposal which is or was disregarded in terms of subparagraph (2).”;
- (l) by the substitution in subparagraph (5) for the words preceding the proviso of the following words: 45
 “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 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 per cent of the total equity [**share capital**] shares and voting rights in that company”;
- (m) by the substitution in paragraph (5) for paragraph (a) of the proviso of the following paragraph:
 “(a) in determining the total equity [**share capital of**] shares in a company, there shall not be taken into account any share which would have constituted a hybrid equity instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; and”;

(n) by the substitution in subparagraph (6) for item (a) of the following item:

“(a) the disposal of any **[interest in the]** equity share **[capital of]** in any portfolio contemplated in paragraph (e) of the definition of ‘company’ in section 1; and”.

(2) Paragraphs (a), (c), (d), (e), (f), (g), (h), (i), (j), (k), (m), and (n) of subsection (1) come into operation on 1 January 2011.

(3) Paragraphs (b) and (l) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 January 2011.

Amendment of paragraph 67A of Eighth Schedule to Act 58 of 1962, as substituted by section 93 of Act 74 of 2002 and amended by section 109 of Act 45 of 2003, section 81 of Act 35 of 2007 and section 82 of Act 60 of 2008

109. (1) Paragraph 67A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A holder of a participatory interest in a portfolio **[comprised in any]** of a collective investment scheme **[managed or carried on by any company registered as a manager under section 42 of the Collective Investment Schemes Control Act, 2002, for the purposes of Part V of that Act]** in property must determine a capital gain or capital loss in respect of any participatory interest in that portfolio only upon the disposal of that interest.”.

(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 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 and section 59 of Act 3 of 2008

110. (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in the definition of “date of distribution” for the words preceding paragraph (a) of the following words:

“**‘date of distribution’**, in relation to any distribution, means the date of approval of the distribution by the directors or by some other person or body of persons with comparable authority **[conferred under the memorandum and articles of association of the company making the distribution or]** under a law, regulation or rule to which that company is subject, except where the distribution is made—”;

(b) by the substitution in the definition of “share” for paragraph (a) of the following paragraph:

“(a) any share **[capital of]**, or member’s interest, in [,] that company **[and any right or interest in or to such share capital or member’s interest,]** whether or not that share **[capital]** or **[member’s]** similar interest carries a right to participate **[in dividends or a capital]** beyond a specified amount in a distribution; or]”; and

(c) by the deletion in the definition of “share” of paragraph (b).

(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 January 2011.

(3) 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 2010.

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 and section 85 of Act 60 of 2008

111. (1) Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Where a company **[issues capitalisation]** makes a distribution of shares for no consideration, those **[capitalisation]** 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 **[issue]** 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.”.

(2) Subsection (1) comes into operation on 1 January 2011.

Amendment of paragraph 96 of Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002 and amended by section 123 of Act 45 of 2003

112. (1) Paragraph 96 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The provisions of paragraphs 11(2)(a)[, (e)] and (i), 12(1), 12(2)(a), 13, 14, 36, 38, 39, 40, 56, 62, 63, 68, 69, 70, 71, 72, 73, 80, 82 and 83 of [the Eighth] this Schedule [to the Act,] shall apply *mutatis mutandis* in respect of the determination of any foreign currency capital gain or foreign currency capital loss resulting from the disposal of any foreign currency asset.”.

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009.

Amendment of paragraph 1 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 70 of Act 8 of 2007, section 87 of Act 35 of 2007, section 65 of Act 3 of 2008 and section 84 of Act 17 of 2009

113. (1) Paragraph 1 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in paragraph (1) for the definition of “oil and gas right” of the following definition:

“‘oil and gas right’ means—

- (a) any reconnaissance permit, technical co-operation permit, 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;
- (b) any 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
- (c) any 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;”.

(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.

Amendment of paragraph 4 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006

114. (1) Paragraph 4 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraphs (1) and (2) of the following subparagraphs:

“(1) Currency gains or losses of an oil and gas company during any year of assessment (regardless of whether those gains or losses are realised or unrealised) must be determined solely with reference to—

(a) the functional currency of that company; and

(b) the [currency and] translation method used by that company for purposes of financial reporting.

(2) Any amount received by or accrued to, or expenditure incurred by, an oil and gas company during any year of assessment in any currency other than that of the Republic must be—

(a) determined in the functional currency of that company; and

(b) [in accordance with the translation method used by that oil and gas company for purposes of financial reporting for the relevant year of assessment and any tax in respect of that year must be] translated to the currency of the Republic by applying the average exchange rate for that year.”; and

- (b) by the deletion of subparagraph (3).

(2) Subsection (1) comes into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 5 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 73 of Act 8 of 2007 and section 86 of Act 17 of 2009

115. (1) Paragraph 5 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (2) of the following subparagraph: 5

“(2A) For the purposes of determining the taxable income of an oil and gas company during the first year of assessment of that oil and gas company commencing on or after 2 November 2006, there will be brought forward and allowed as a deduction from the oil and gas income of that oil and gas company the amount determined in terms of section 36(7E) in respect of the immediately preceding year of assessment.”. 10

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 2 November 2006.

Amendment of paragraph 6 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 74 of Act 8 of 2007 15

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

(a) by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

“For purposes of determining the taxable income of an oil and gas company during any year of assessment, the Commissioner may not disallow a deduction of expenditure in respect of loans, advances and debts (or of any other financial assistance) on the grounds that those loans, advances and debts are excessive in relation to the **[fixed capital of]** market value of all the shares in that company (as determined on the last day of such year of assessment of that company) unless—”; and 20

(b) by the substitution in subparagraph (1) for item (b) of the following item:

“(b) all interest bearing loans, debts and advances contemplated in item (a) in the aggregate exceed an amount equal to three times the **[total fixed capital (being share capital, share premium and accumulated net realised and unrealised profits) of]** market value of all the shares in that company.”. 25 30

(2) Subsection (1) comes into operation on 1 January 2011.

Amendment of Schedule No. 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 and section 88 of Act 17 of 2009 35 40 45

117. (1) Schedule No. 1 to the Customs and Excise Act, 1964, is hereby amended as set out in Appendix II to this Act. 50

(2) For the purposes of Appendix II 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 indicates otherwise.

(3) Subject to section 58(1) of the Customs and Excise Act, 1964, subsection (1) is deemed to have come into operation on 17 February 2010. 55

Continuation of certain amendments of Schedules to Act 91 of 1964

118. 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 2009 up to and including 31 July 2010, shall not lapse by virtue of section 48(6), 49, 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act. 5

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 and section 104 of Act 60 of 2008 10 15

119. (1) Section 1 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in the definition of “exported” for paragraph (b) of the following paragraph: 20

“(b) delivered by the vendor to the owner or charterer of any foreign-going ship contemplated in paragraph (a) or (c) of the definition of ‘foreign-going ship’ or to a foreign-going aircraft when such ship or aircraft is going to a destination in an export country and such goods are for use or consumption in such ship or aircraft, as the case may be; or”; 25

(b) by the substitution for the definition of “foreign-going aircraft” of the following definition:

“‘**foreign-going aircraft**’ means any—

(a) aircraft engaged in the transportation for reward of passengers or goods wholly or mainly on flights between airports in the Republic and airports in export countries or between airports in export countries; or 30

(b) foreign military aircraft;”; 35

(c) by the deletion in the definition of “foreign-going ship” of the word “or” at the end of paragraph (a);

(d) by the addition in the definition of “foreign-going ship” of the word “or” at the end of paragraph (b); and

(e) by the addition to the definition of “foreign-going ship” of the following paragraph: 40

“(c) any foreign naval ship;”.

(2) Subsection (1) comes into operation on the date of the 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 and section 91 of Act 17 of 2009 45 50

120. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (2) for the full stop at the end of paragraph (iv) of the proviso of a semi-colon;

(b) by the addition in subsection (2) to the proviso of the following paragraphs: 55

“(v) this subsection shall not apply to any such goods or right to the extent that output tax has been paid in terms of section 16(4) read with section 22(3) in respect of such goods or right; and

- (vi) this proviso shall not apply to the extent that input tax in respect of such goods or right has been deducted in terms of section 16(3) read with section 22(4).”; and
- (c) by the substitution for subsection (23) of the following subsection:
- “(23) For the purposes of this Act a vendor shall be deemed to supply services to any public authority or municipality to the extent of any payment **[in terms of the Housing Subsidy Scheme referred to in section 3(5)(a) of the Housing Act, 1997 (Act No. 107 of 1997),]** made to or on behalf of that vendor in **[respect] terms of [the taxable supply of goods and services by the vendor]** a national housing programme contemplated in the Housing Act, 1997 (Act No. 107 of 1997), which is approved by the Minister by regulation after consultation with the Minister responsible for Human Settlements.”.
- (2) Paragraphs (a) and (b) of subsection (1) come into operation on the date of the promulgation of this Act.
- (3) Paragraph (c) of subsection (1) comes into operation on 1 April 2011 and applies in respect of supplies made on or after that date.

Insertion of section 8A in Act 89 of 1991

121. (1) The Value-Added Tax Act, 1991, is hereby amended by the insertion after section 8 of the following section:

“Sharia compliant financing arrangements

- 8A.** (1) For the purposes of this Act, in the case of any murabaha as defined in section 24JA(1) of the Income Tax Act—
- (a) the bank shall be deemed not to have acquired or supplied goods under the sharia arrangement;
- (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 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; and
- (c) any premium paid or payable to the bank by the client shall be deemed to be consideration in respect of an exempt financial service supplied by the bank 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.
- (2) For the purposes of this Act, in the case of any diminishing musharaka as defined in section 24JA(1) of the Income Tax Act—
- (a) the bank shall be deemed not to have acquired or supplied goods under the sharia arrangement;
- (b) (i) where the bank and the client jointly acquire goods, the client shall be deemed to have acquired the bank’s interest in the goods—
- (aa) for an amount equal to the amount payable by the bank in respect of its interest in the goods; and
- (bb) at the time that the seller of the goods was divested of any interest in the goods by virtue of the transaction between the seller and the bank; or
- (ii) where the bank acquires an interest in the goods from the client, the client shall be deemed not to have supplied an interest in the goods to the bank; and
- (c) any amount contemplated in section 24JA(5)(d) of the Income Tax Act paid or payable to the bank by the client shall be deemed to be consideration in respect of an exempt financial service supplied by the bank 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.”.
- (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 and section 107 of Act 60 of 2008

122. (1) Section 10 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (5A) of the following subsection:

“(5A) Where goods or services are deemed to be supplied by a vendor in terms of section 8(2) and where section 8(2C) is applicable, the supply shall be deemed to be made for a consideration in money equal to the consideration as determined in subsection (5) reduced by R100 000: Provided that where the consideration as determined in subsection (5) is less than R100 000, the consideration in money, for the purposes of this section, shall be deemed to be nil;”.

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

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 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 and section 112 of Act 60 of 2008

123. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended by the deletion in subsection (4) of the proviso to symbol “B”.

(2) Subsection (1) comes into operation on the date of the 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 and section 93 of Act 17 of 2009

124. (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (8).

(2) Subsection (1) comes into operation on 1 March 2011.

Insertion of paragraph 7A in Schedule 1 to Act 20 of 2006

125. (1) Schedule 1 to the Revenue Laws Amendment Act, 2006, is hereby amended by the insertion after paragraph 7 of the following paragraph:

“Secondary tax on companies treatment of dividends

7A. There shall be exempt from the secondary tax on companies so much of any dividend declared in the course or in anticipation of the liquidation, deregistration or final termination of the corporate existence of a company which was incorporated in the Republic with the sole purpose of carrying out the obligations of its shareholders as—

- (a) a *FIFA Designated Service Provider*;
- (b) a *Hospitality Service Provider*; or
- (c) an affiliated entity in relation to such *FIFA Designated Service Provider* or *Hospitality Service Provider* as contemplated in paragraph 1(2),

as is shown by the company to be from any receipt or accrual that was excluded from ‘gross income’ as defined in the Income Tax Act, 1962, by paragraph 7.”.

(2) Subsection (1) is deemed to have come into operation on 1 July 2010 and applies in respect of dividends declared on or after that date.

Insertion of paragraph 17 in Schedule 1 to Act 20 of 2006

126. (1) Schedule 1 to the Revenue Laws Amendment Act, 2006, is hereby amended by the addition after paragraph 16 of the following paragraph:

“Exemption from fringe benefit tax on 2010 FIFA World Cup South Africa clothing, other goods or match tickets supplied to employees” 5

17. Notwithstanding anything to the contrary contained in the Seventh Schedule to the Income Tax Act, 1962, no value must be determined for any clothing, other goods or match tickets related to 2010 FIFA World Cup South Africa supplied to an employee on or before 11 July 2010, to the extent that the aggregate of the cash equivalent of the value of the clothing, other goods or match tickets does not exceed an amount of R750 in respect of the employee.”. 10

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

Amendment of section 8 of Act 25 of 2007, as amended by section 127 of Act 60 of 2008 and section 97 of Act 17 of 2009 15

127. (1) Section 8 of the Securities Transfer Tax Act, 2007, is hereby amended by the deletion in subsection (1)(a)(vi) of item (A).

(2) Subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of disposals effected on or after that date. 20

Insertion of section 8A in Act 25 of 2007

128. (1) The Securities Transfer Tax Act, 2007, is hereby amended by the insertion after section 8 of the following section:

“Sharia compliant financing arrangements

8A. In the case of a murabaha between a collective investment scheme in securities and a bank as contemplated in paragraph (b) of the definition of ‘murabaha’ in section 24JA(1) of the Income Tax Act, 1962 (Act No. 58 of 1962), the collective investment scheme in securities is deemed not to have acquired beneficial ownership of the security under the sharia arrangement.”. 25 30

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

Amendment of section 125 of Act 35 of 2007, as substituted by section 76 of Act 3 of 2008 and amended by section 132 of Act 60 of 2008

129. (1) Section 125 of the Revenue Laws Amendment Act, 2007, is hereby amended by the substitution for subsection (10) of the following subsection: 35

“(10) Subsections (1) to (9) come into operation on 1 January 2008 and shall apply to any **[disposal] transaction concluded** on or before 31 December **[2009] 2012**.”. 40

(2) Subsection (1) is deemed to have come into operation on 1 January 2008. 40

Amendment of section 1 of Act 28 of 2008

130. (1) Section 1 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

(a) by the addition to the definition of “transfer” of the word “or” at the end of paragraph (a); 45

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

(c) by the substitution in the definition of “transfer” for the words following paragraph (c) of the following words:

“if that mineral resource has not previously been disposed of, **[exported,]** consumed, stolen, destroyed or lost;”. 50

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of mineral resources transferred on or after that date.

Amendment of section 2 of Act 28 of 2008

131. (1) The Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution for section 2 of the following section:

“Imposition of royalty

2. A person **[that wins or recovers a mineral resource from within the Republic]** must pay a royalty for the benefit of the National Revenue Fund in respect of the transfer of **[that]** a mineral resource extracted from within the Republic.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of mineral resources transferred on or after that date.

Amendment of section 5 of Act 28 of 2008, as amended by section 98 of Act 17 of 2009

132. (1) Section 5 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

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

“less any amount which in terms of that Act—

- (i) is **[allowed to be deducted]** deductible from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those refined mineral resources to the condition specified in Schedule 1 for those mineral resources; or
- (ii) would have been deductible from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those refined mineral resources had those mineral resources been developed to the condition specified in Schedule 1 for those mineral resources.”;

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

“less any amount which in terms of that Act—

- (i) is **[allowed to be deducted]** deductible from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those unrefined mineral resources to the condition specified in Schedule 2 for those mineral resources; or
- (ii) would have been deductible from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those unrefined mineral resources had those mineral resources been developed to the condition specified in Schedule 2 for those mineral resources.”; and

(c) by the substitution in subsection (3) for paragraph (e) of the following paragraph:

“(e) any deduction allowed in terms of section 24I of the Income Tax Act other than a deduction in respect of the adjustment referred to in section 6(5);”.

(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 6 of Act 28 of 2008, as amended by section 99 of Act 17 of 2009

133. (1) Section 6 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the addition after subsection (4) of the following subsection:

“(5) The amount of gross sales in respect of the transfer of any mineral resource must be adjusted if the total amount received is—

- (a) more than the amount accrued, by including the difference between those amounts in the gross sales; or
 - (b) less than the amount accrued, by subtracting the difference between those amounts when determining the gross sales.”.
- (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. 5

Insertion of section 6A in Act 28 of 2008

134. (1) The Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the insertion after section 6 of the following section:

“Application of Schedule 2

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6A. (1) If any unrefined mineral resource—

- (a) is transferred below the minimum condition specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been brought to the minimum condition specified for that mineral resource; or 15
 - (b) is transferred at a condition beyond the minimum condition specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been transferred at the higher of the minimum condition specified for that mineral resource or the condition in which that mineral resource was extracted. 20
- (2) If—
- (a) a concentrate mainly consists of a mineral resource listed in Schedule 2; and
 - (b) the price of the concentrate at disposal thereof is determined solely with reference to the mineral resource listed in Schedule 2, the specified condition for the other minerals in the concentrate must not be taken into account for the purposes of the application of that Schedule.”. 25

(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. 30

Insertion of section 8A in Act 28 of 2008

135. (1) The Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the insertion after section 8 of the following section:

“Exemption for domestic refining

- 8A.** (1) An extractor that transfers a mineral resource to another extractor is exempt from the royalty in respect of the transfer of that mineral resource if— 35
- (a) the mineral resource is transferred between extractors that are registered in terms of the Administration Act; and
 - (b) both extractors agree in writing that this section applies to that transfer. 40
- (2) An extractor to whom a mineral resource is transferred under subsection (1) must be treated as the person that wins or recovers the mineral resource.
- (3) This section does not apply to a transfer of a mineral resource from an extractor that is registered in terms of section 2(1)(c) of the Administration Act.”. 45

(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 1 to Act 28 of 2008

136. (1) Schedule 1 to the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

- (a) by the insertion in the “Mineral resource name” column after “Talc” of the following word:
“Vanadium”; and
- (b) by the insertion in the “Refined condition” column after “98.5% and minus 325µm mesh” and corresponding to “Vanadium” of the following words:
“Vanadium as chemically extracted and refined to a minimum purity of 10% V₂O₅ equivalent and above”.

(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

137. (1) Schedule 2 to the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

- (a) by the substitution for the words in the “Unrefined condition” column corresponding to “Coal” of the following words:
“minimum calorific value of 19.0MJ/kg”;
- (b) by the substitution for the words in the “Unrefined condition” column corresponding to “Iron Ore” of the following words:
“plant feed with a minimum 61.5% Fe content”;
- (c) by the deletion of the words “Mineral Sand” and “(Titanium)” in the “mineral resource” column;
- (d) by the substitution for the words in the “Unrefined condition” column corresponding to “Ilminite” of the following words:
“a minimum of 80% FeTiO₃”;
- (e) by the substitution for the words in the “Unrefined condition” column corresponding to “Rutile” of the following words:
“a minimum of 70% TiO₂ concentrate”;
- (f) by the substitution for the words in the “Unrefined condition” column corresponding to “Zircon” of the following words:
“a minimum of 90% ZrO₂ + SiO₂+HfO₂”; and
- (g) by the insertion in the “Refined condition” column after “98.5% and minus 325µm mesh” and corresponding to “Vanadium” of the following words:
“Vanadium as chemically extracted and refined to a minimum purity of 10% V₂O₅ equivalent and above”.

(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

138. (1) Section 4 of the Revenue Laws Amendment Act, 2008, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (d); and
- (b) by the substitution for subsection (2) of the following subsection:
“(2) Paragraphs (b)[,] and (c) [**and (d)**] 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**] 1 January 2011.”

(2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Amendment of section 47 of Act 60 of 2008

139. (1) Section 47 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 January 2011.”.

(2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Amendment of section 49 of Act 60 of 2008

140. (1) Section 49 of the Revenue Laws Amendment Act, 2008, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Subsection (1)(g) comes into operation on **[the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation]** 1 January 2011.”.

(2) Subsection (1) is deemed to have come into operation on 21 October 2009.

Amendment of section 50 of Act 60 of 2008

141. (1) Section 50 of the Revenue Laws Amendment Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1)(a) comes into operation on **[the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation]** 1 January 2011.”.

(2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Amendment of section 52 of Act 60 of 2008

142. (1) Section 52 of the Revenue Laws Amendment Act, 2008, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Subsection (1)(b) comes into operation on **[the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation]** 1 January 2011.”.

(2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Amendment of section 85 of Act 60 of 2008

143. (1) Section 85 of the Revenue Laws Amendment Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Paragraph (a) 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]** 1 January 2011.”.

(2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Amendment of section 3 of Act 17 of 2009

144. (1) Section 3 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 11 February 2009 and applies in respect of **[distributions made]** acquisitions taking place on or after that date and before [1 January 2012] 1 October 2010.”.

(2) Subsection (1) is deemed to have come into operation on 30 September 2009.

Amendment of section 7 of Act 17 of 2009

145. (1) Section 7 of the Taxation Laws Amendment Act, 2009, is hereby amended—
(a) by the insertion in subsection (1) after paragraph (g) of the following paragraph:

“(gA) by the insertion in the definition of ‘dividend’ of the following paragraph:

‘(k) any amount that constitutes an acquisition by a company of its own securities as contemplated in paragraph 5.67 of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with the requirements prescribed by paragraphs 5.67 to 5.84 of section 5 of the JSE Limited Listings Requirements;’ ”; and

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

“(3) Paragraphs (g), (h) and (l) 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]** 1 January 2011.”.

(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.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 October 2009.

Amendment of section 12 of Act 17 of 2009

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146. (1) Section 12 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 1 January 2008 and apply in respect of foreign tax years of controlled foreign companies ending during [years] any year of assessment—

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(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 1 September 2009.”.

(2) Subsection (1) is deemed to have come into operation on 1 September 2009.

Amendment of section 51 of Act 17 of 2009

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147. (1) Section 51 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) to the extent that it inserts paragraph (k) into section 64B(5) is deemed to have come into operation on 11 February 2009 and applies to distributions made on or after that date and before [1 January 2012] 1 October 2010; and”.

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(2) Subsection (1) is deemed to have come into operation on 30 September 2009.

Amendment of section 53 of Act 17 of 2009

148. Section 53 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*, which date must be at least three months after the date of the notice, and applies in respect of any dividend declared and paid on or after that date.”.

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Amendment of section 54 of Act 17 of 2009

149. (1) Section 54 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (2) of the following subsection: 30

“(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) financial assistance provided on or after that date to the extent that the amount of that financial assistance was not deemed to be a dividend as contemplated in section 64C of that Act; 35

(b) any release or relief from any obligation measurable in money effected on or after that date to the extent that the amount of the obligation in respect of which the release or relief applies was not deemed to be a dividend as contemplated in section 64C of that Act; 40

(c) the payment or settlement of any debt on or after that date to the extent that the amount of that debt was not deemed to be a dividend as contemplated in section 64C of that Act; and

(d) any person that ceases to be a resident as defined in that Act on or after that date.”. 45

(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 59 of Act 17 of 2009

150. (1) Section 59 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (3) of the following subsection: 50

“(3) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of lump sum benefits that—

- (a) accrue on or after that date; and
 - (b) are not paid to a beneficiary fund as defined in section 1 of the **[Income Tax Act, 1962]** Pension Funds Act, 1956 (Act No. 24 of 1956), on or after 1 March 2009 and before 1 September 2009.”.
- (2) Subsection (1) is deemed to have come into operation on 1 March 2009. 5

Amendment of section 60 of Act 17 of 2009

151. (1) Section 60 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following subparagraph:

- “(a) by the substitution for subparagraph (4) of the following subparagraph: 10
- ‘(4) If a person is awarded an amount in terms of an order of divorce **[granted before 13 September 2007]**, that amount shall be deemed to have accrued to **[that person]** the member of the pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund on the date on which that person makes an election contemplated in section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or on the date the amount is **[payable]** paid in terms of section 37D(4)(b)(iv) of that Act, to the extent that the amount is payable by a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.’; and”.

- (2) Subsection (1) is deemed to have come into operation on 1 November 2008 and applies in respect of amounts awarded on or after that date. 20

Amendment of section 69 of Act 17 of 2009

152. (1) Section 69 of the Taxation Laws Amendment Act, 2009, is hereby amended—

- (a) by the insertion in subsection (1) after paragraph (b) of the following paragraphs: 25
- “(bA) by the deletion in subparagraph (3)(b) of the word ‘and’ at the end of item (ii);
- (bB) by the addition in subparagraph (3)(b) of the word ‘and’ at the end of item (iii); and
- (bC) by the addition to subparagraph (3)(b) of the following item: 30
- ‘(iv) any dividend comprising a capital distribution as defined in paragraph 74;’;
- (b) by the substitution for subsection (2) of the following subsection: 35
- “(2) **[Subsection (1)]** Paragraphs (a), (b), (c) and (d) of subsection (1), except insofar as **[it inserts]** they insert the words ‘or as part of’, **[comes]** come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.”; and
- (c) by the addition after subsection (2) of the following subsection: 40
- “(3) Paragraphs (bA), (bB) and (bC) of subsection (1) come into operation on 1 January 2011.”.

- (2) Subsection (1) is deemed to have come into operation on 30 September 2009.

Amendment of section 74 of Act 17 of 2009

153. (1) Section 74 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (2) of the following subsection: 45

- “(2) Subsection (1) is deemed to have come into operation on 11 February 2009 and applies in respect of transfers made on or after that date **[and] in respect of disposals made before [1 January 2012] 1 October 2010.**”.

- (2) Subsection (1) is deemed to have come into operation on 30 September 2009.

Amendment of section 78 of Act 17 of 2009

154. (1) Section 78 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (2) of the following subsection: 50

- “(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 January 2011.**”.

- (2) Subsection (1) is deemed to have come into operation on 30 September 2009. 55

Amendment of Appendix I of Act 17 of 2009

155. Appendix I of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for paragraph 6 of the following paragraph:

“**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 that is a]** personal service provider as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, that is a company, in respect of any year of assessment commencing on or after 1 March 2009 is 33 per cent.”. 5

Short title and commencement

156. (1) This Act is called the Taxation Laws Amendment Act, 2010. 10

(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 2011. 15

Appendix I

(Section 5)

RATES OF NORMAL TAX AND REBATES

1. The rate of tax referred to in section 5(1) of this Act to be levied in respect of the taxable income (excluding any retirement fund lump sum benefit or retirement fund lump sum withdrawal 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 2010 is set out in the table below:

Taxable income	Rate of tax	
Not exceeding R140 000	18 per cent of taxable income	10
Exceeding R140 000 but not exceeding R221 000	R25 200 plus 25 per cent of amount by which taxable income exceeds R140 000	15
Exceeding R221 000 but not exceeding R305 000	R45 450 plus 30 per cent of amount by which taxable income exceeds R221 000	
Exceeding R305 000 but not exceeding R431 000	R70 650 plus 35 per cent of amount by which taxable income exceeds R305 000	20
Exceeding R431 000 but not exceeding R552 000	R114 750 plus 38 per cent of amount by which taxable income exceeds R431 000	
Exceeds R552 000	R160 730 plus 40 per cent of amount by which taxable income exceeds R552 000	25

2.

Description	Reference to Income Tax Act, 1962	Amount	
Primary rebate	Section 6(2)(a)	R10 260	30
Secondary rebate	Section 6(2)(b)	R5 675	

3. The rate of tax referred to in section 5(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 28 February 2011 is 40 per cent.

4. The rate of tax referred to in section 5(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 2011 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; 5 10 15
- (d) in respect of the taxable income derived by any company from carrying on long-term insurance business in respect of its— 20
 - (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 25
- (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. 30

5. The rate of tax referred to in section 5(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— 35

- (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 2011; or 40
- (b) in the case of an organisation that is a trust, in respect of any year of assessment ending on 28 February 2011.

6. The rate of tax referred to in section 5(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 2011 is, subject to the provisions of paragraph 11, set out in the table below: 45 50

Taxable income	Rate of tax	
Not exceeding R57 000	0 per cent of taxable income	
Exceeding R57 000 but not exceeding R300 000	10 per cent of amount by which taxable income exceeds R57 000	
Exceeding R300 000	R24 300 plus 28 per cent of amount by which taxable income exceeds R300 000	55

7. The rate of tax referred to in section 5(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 2011 is set out in the table below: 60

Taxable turnover	Rate of tax	
Not exceeding R100 000	0 per cent of taxable turnover	
Exceeding R100 000 but not exceeding R300 000	1 per cent of amount by which taxable turnover exceeds R100 000	5
Exceeding R300 000 but not exceeding R500 000	R2 000 plus 3 per cent of amount by which taxable turnover exceeds R300 000	
Exceeding R500 000 but not exceeding R750 000	R8 000 plus 5 per cent of amount by which taxable turnover exceeds R500 000	10
Exceeding R750 000	R20 500 plus 7 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 2010, the rate of tax referred to in section 5(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),

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	30
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	35
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); and
- (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).

(b) (i) If a retirement fund lump sum benefit accrues to a person in any year of assessment commencing on or after 1 March 2010, the rate of tax referred to in section 5(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); 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 benefit contemplated in subitem (aa),

is set out in the table below:

Taxable income from lump sum benefits	Rate of tax	
Not exceeding R300 000	0 per cent of taxable income	60
Exceeding R300 000 but not exceeding R600 000	R0 plus 18 per cent of taxable income exceeding R300 000	
Exceeding R600 000 but not exceeding R900 000	R54 000 plus 27 per cent of taxable income exceeding R600 000	65

Taxable income from lump sum benefits	Rate of tax
Exceeding R900 000	R135 000 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— 5

(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); and 10

(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).

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. 15

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. 20

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. 25

Appendix II

AMENDMENT OF SCHEDULE NO. 1 TO CUSTOMS AND EXCISE ACT, 1964

(Section 117)

Tariff Item	Tariff heading	Description	Rate of duty		
			Excise	Customs	
104.00		Prepared foodstuffs; beverages, spirits and vinegar; tobacco			5
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 15 20
.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:			25
.10		Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82 c/li	7,82 c/li	
.20		Other	R50,20/li aa	R50,20/li aa	
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must (excluding that of heading 20.09):			30
	22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:			
.02		Sparkling wine	R6,67/li	R6,67/li	
.04		Unfortified wine	R2,14/li	R2,14/li	35
.06		Fortified wine	R4,03/li	R4,03/li	
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:			40
.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	R2,52/li	R2,52/li	45
.17		Other fermented beverages, fortified	R5,15/li	R5,15/li	
.22		Mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages	R2,52/li	R2,52/li	50
.90		Other	R5.15/li	R5.15/li	
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:			55
	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages:			60
.10		Wine spirits, manufactured by the distillation of wine	R84,57/li aa	R84,57/li aa	
.15		Spirits, manufactured by the distillation of any sugar cane product	R84,57/li aa	R84,57/li aa	

Tariff Item	Tariff heading	Description	Rate of duty		
			Excise	Customs	
.25		Spirits, manufactured by the distillation of any grain product	R84,57/li aa	R84,57/li aa	5
.29		Other spirits	R84,57/li aa	R84,57/li aa	
.40		Liqueurs and other spirituous beverages	R84,57/li aa	R84,57/li aa	
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:			10
.10		Cigars, cheroots and cigarillos, of tobacco or of tobacco substitutes	R2 072,31/ kg net	R2072,31/ kg net	15
.20		Cigarettes, of tobacco or of tobacco substitutes	R4,47/10 cigarettes	R4,47/10 cigarettes	20
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; “homogenised” or “reconstituted” tobacco; tobacco extracts and essences:			20
.10		Cigarette tobacco and substitutes thereof	R194,60/ kg	R194,60/ kg	25
.20		Pipe tobacco and substitutes thereof	R108,08/ kg net	R108,08/ kg net	