

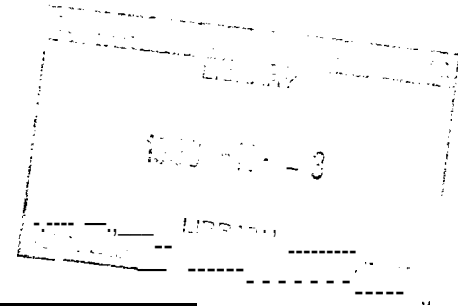
REPUBLIC OF SOUTH AFRICA

REVENUE LAWS AMENDMENT BILL

(As introduced in the National Assembly as a money Bill) (The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 59—99]



REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP INKOMSTEWETTE

(Soos ingedien in die Nasionale Vergadering as 'n Geldwetsonwerp) (Die Afrikaans teks is die amptelike vertaling van die Wetsontwerp)

(MINISTER VAN FINANSIES)

[W 59—99]

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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
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BILL

To amend the Marketable Securities Tax Act, 1948, so as to effect certain textual alterations; to provide for an exemption; to further regulate the set-off of payments against penalty, interest and tax; and to increase the maximum period of imprisonment for certain offences; to amend the Transfer Duty Act, 1949, so as to effect certain textual alterations; to amend the Estate Duty Act, 1955, so as to effect certain textual alterations; and to delete the reference to an obsolete provision; to amend the Income Tax Act, 1962, so as to further define certain expressions; to provide that the secrecy provisions do not prevent the Commissioner from disclosing certain information to the Statistician-General or the Board administering the National Student Financial Aid Scheme; to further regulate the rebates in respect of foreign taxes paid; to effect certain textual alterations; to provide that a certain part of the salary of holders of public office is deemed to be an *allow'ante*; to further regulate the circumstances in which certain amounts received or accrued in relation to the disposal of listed shares are deemed to be of a capital nature; to further regulate the taxation of investment income of controlled foreign entities and investment income arising from donations, settlements or other dispositions; to limit the application of certain exemptions; to provide for further exemptions; to provide for the exemption of the capital element of purchased annuities in the name of a trust created for a person declared to be of unsound mind and incapable of managing his or her own affairs; to further regulate the allowance for tax purposes in respect of intellectual property; to further regulate the deduction of contributions to any retirement annuity fund; to repeal an obsolete provision; to further regulate the allowances for tax purposes in respect of buildings used in a process of manufacture; to further regulate the calculation of gains or losses on foreign exchange transactions; to insert a definition of "lending arrangement" in respect of the incurral and accrual of interest; to regulate the calculation of the incurral and accrual of amounts in respect of option contracts; to further regulate the taxation of long-term insurers; to extend the definition of "international agreement" for the purposes of the determination of taxable income of certain persons in respect of international transactions; to provide that the Commissioner may on his or her own initiative *fix* a different sum of the annual yield for the purposes of the valuation of property disposed of in terms of a donation; to further regulate the levy of secondary tax on companies in consequence of the further regulation of the taxation of long-term insurers; to extend the provisions relating to amounts distributed that are deemed to be dividends for the purposes of secondary tax on companies; to criminalise a failure to retain certain data in electronic form for a

period of four years; to criminalise the conduct of any person who holds himself or herself out as an officer engaged in administering the said Act; to make further provision for the publication of information on tax offenders; to provide that an amount which accrues to the former spouse of a member of a pension fund shall be deemed for tax purposes to have accrued to such member and to provide for a right of recovery; and to provide that the Commissioner may issue estimated assessments for employees' tax; to amend the Customs and Excise Act, 1964, so as to further define certain expressions; to provide for additional powers of inspection of goods and documents relating to originating products; to provide for control over goods in transit to a territory outside the Republic; to provide for control measures over the beer industry; to provide for a prohibition on the mixing of distillate fuels, for the marking of certain distillate fuels and for certain control measures; to provide for a general limitation on liability in the absence of false statements; to provide for the submission of a certificate of origin for goods subject to anti-dumping or countervailing duties; to provide for the insertion of additional columns of duties in Part 1 of Schedule No. 1; to further regulate the power of the Minister to amend Part 1 of Schedule No. 1; to provide for the implementation of Free Trade Agreements; to provide for the implementation of the protocols of the Agreement on Trade Development and Cooperation between the European Community and the Republic and the Treaty Establishing the Southern African Development Community; to further provide for control over imported beer; to provide for more stringent registration measures for agents; to further regulate the licensing of clearing agents; to further regulate the determinations of value for customs duty purposes; to ensure uniformity of value determinations for excise duty purposes with other determination provisions; to provide for certain currency calculations for the purposes of the European Union Free Trade Agreement; to further provide for offences in terms of the said Act; to provide for the publication of information on customs-related offenders; to provide for the forfeiture of vehicles especially adapted to conceal illicit goods; to provide for representations by persons whose goods have been seized or detained; to extend the liability of clearing agents in respect of foreign principals; to provide for the registration of customs consultants; to provide for the production of computer generated documents and data; to provide for representations by persons whose goods are subject to liens; to provide for the delegation of certain powers of the Minister to the Deputy Minister; and to provide for the validation of certain amendments of the Schedules to the said Act; to amend the Stamp Duties Act, 1968, so as to effect certain textual alterations; and to further provide for the recovery of tax and the appointment of agents; to amend the Companies Act, 1973, so as to withdraw an exemption from stamp duty; to amend the Value-Added Tax Act, 1991, so as to further define certain expressions; to include certain activities in the scope of the exemption for financial services; to make certain concessions to persons who cease to be vendors; to further regulate the application of the zero-rate in respect of goods which are exported; to limit the application of the zero-rate on the supply of going concerns; to limit the application of the zero-rate on the supply of services to non-residents; to extend the application of the zero rate to supplies which are paid for from donated funds obtained in terms of international agreements; to further regulate the time at which goods are deemed to be imported, the value to be placed on those goods and exemption from tax in respect of those goods, and to arrange for the payment of tax in respect of those goods; to provide for the documentation to be retained in support of the deduction of input tax in relation to imported goods; to provide for the deduction of input tax in respect of amounts paid to the National Lottery Distribution Trust Fund; to determine the time at which a vendor who accounts for tax on the payments basis has to account for output tax; to increase the 90 per cent or more use for the purposes of making taxable supplies without having

to apportion input tax, to 95 per cent: to provide that tax invoices must also be issued to persons who are not vendors and that the particulars which should be contained on a tax invoice may be furnished in another manner: to increase the compulsory registration threshold from R150 000 to R300 000 and to provide for a minimum registration threshold of R20 000; to authorise the Commissioner to cancel the registration of persons who do not meet the requirements for registration; to further regulate the circumstances in which a vendor must give notice of a change of status; to provide that certain decisions of the Commissioner are subject to objection and appeal; to determine which appeals are to be referred to a specially constituted board; to authorise the Commissioner to require of a member, shareholder or trustee of a vendor to provide surety for tax which may be due by the vendor; to increase the amount of R10 or less which need not be refunded by the Commissioner to R25; to oblige, a representative vendor to give notice if he or she no longer acts in that capacity; to extend the obligations of an agent; to criminalise the failure to perform certain duties; to restate the penalty provisions; to further determine the circumstances in which additional tax may be levied; to further regulate the publication of information on tax offenders; to further regulate the exemption from tax on imported goods; and to effect certain textual alterations; to amend the Income Tax Act, 1993, so as to further define certain expressions; to amend the Taxation Laws Amendment Act, 1994, so as to extend the application of the rationalisation provisions; to amend the Uncertificated Securities Tax Act, 1998, so as to provide that the Commissioner must administer the Act; and to regulate the set-off of payments against penalty, interest and tax; to amend the Skills Development Levies Act, 1999, so as to further regulate the application of the levy on municipalities; to provide for a further exemption; and to correct a reference; and to repeal certain laws; 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 32 of 1948, as substituted by section 1 of Act 37 of 1996 and amended by section 1 of Act 46 of 1996 and section 34 of Act 34 of 1997

1. Section 1 of the Marketable Securities Tax Act, 1948, is hereby amended— 5
- (a) by the insertion in the Afrikaans text before the definition of “effektebeurs” of the following definitions: 10
- “ ‘aandelebeurs’ ‘n vereniging wat ingevolge die Wet op Beheer van Aandelebeurse, 1985 (Wet No. 1 van 1985), gelisensieer is om die besigheid van ‘n aandelebeurs te dryf; 10
- ‘aandelemakelaar’ ‘n aandelemakelaar soos omskryf in artikel 1 van die Wet op Beheer van Aandelebeurse, 1985 (Wet No. 1 van 1985);”;
- (b) by the deletion in the Afrikaans text of the definition of “effektebeurs”;
- (c) by the deletion in the Afrikaans text of the definition of “effektemakelaar”;
- (d) by the substitution in the Afrikaans text for the definition of “handelseffekte” 15 of the following definition:
- “ ‘handelseffekte’ enige genoteerde [effekte] aandele soos in artikel 1 van die Wet op Beheer van [Effektebeurse] Aandelebeurse, 1985, omskryf;”;
- (e) by the substitution in the Afrikaans text for the definition of “lid” of the 20 following definition:
- “ ‘lid’ ‘n persoon wat as ‘n lid van ‘n [effektebeurs] aandelebeurs toegelaat is; . . .

Amendment of section 3 of Act 32 of 1948, as amended by section 12 of Act 64 of 1960, section 36 of Act 77 of 1968, section 2 of Act 88 of 1974, section 2 of Act 114 of 1977, section 1 of Act 95 of 1978, section 2 of Act 106 of 1980, section 1 of Act 87 of 1982, section 1 of Act 92 of 1983, section 1 of Act 118 of 1984, section 1 of Act 81 of 1985, section 1 of Act 87 of 1988, section 1 of Act 136 of 1992, section 1 of Act 97 5 of 1993, section 3 of Act 37 of 1996, section 2 of Act 27 of 1997, section 1 of Act 30 of 1998 and section 1 of Act 32 of 1999

2. (1) Section 3 of the Marketable Securities Tax Act, 1948, is hereby amended—

(a) by the insertion after paragraph (a) of the following paragraph:

“(b) in respect of the purchase of marketable securities that are acquired 10
in terms of the provisions of section 85 of the Companies Act, 1973
(Act No. 61 of 1973);” and

(b) by the substitution in the Afrikaans text for paragraph (d) of the following paragraph:

“(d) ten opsigte van die koop van enige rentedraende skuldbriewe, met 15
inbegrip van skuldbriefeffekte, skuldbriefverbande en enige ander
sekuriteite van ’n regs persoon, hetsy dit “n las teen die bates van die
regspersoon uitmaak al dan nie, wat deur . n [effektebeurs]
aandelebeurs of deur ’n finansiële beurssoos omskryf in die Wet op
Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989). 20
genoteer is

(2) Subsection (1)(a) shall be deemed to have come into operation on 30 June 1999.

Amendment of section 6 of Act 32 of 1948, as substituted by section 2 of Act 97 of 1993 and amended by section 7 of Act 37 of 1996

3. (1) Section 6 of the Marketable Securities Tax Act, 1948, is hereby amended— 25

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

“Where, in addition to any amount of tax which is payable by any person in terms of this Act, an amount of penalty or interest is payable by him in terms of the provisions of this Act, any payment made by that person [on 30 or after 1 April 1994] in respect of such tax. [or] penalty or interest, which is less than the total amount due by him in respect of such tax. [and] penalty and interest shall for the purposes of this Act be deemed to be made—.”;

(b) by the substitution for paragraph (b) of subsection (2) of the following 35 paragraph:

“(b) to the extent that such payment exceeds the amount of such penalty. in respect of such [tax] interest: and”; and

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

“(c) to the extent that such payment exceeds the amount of such penalty 40
and interest, in respect of such tax

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

Amendment of section 10 of Act 32 of 1948, as amended by section 7 of Act 37 of 1996 and section 3 of Act 46 of 1997

4. (1) Section 10 of the Marketable Securities Tax Act, 1948, is hereby amended by 45 the substitution for the words following on paragraph (c) of subsection (1) of the following words:

‘shall be guilty of an offence and liable on conviction to a fine [not exceeding two hundred and fifty pounds] or to imprisonment for a period not exceeding [twelve months or both such fine and such imprisonment] two years.’. 50

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any offence committed on or after that date.

Substitution of long title of Act 32 of 1948, as substituted by section 6 of Act 37 of 1996

5. The long title in the Afrikaans text of the Marketable Securities Tax Act, 1948, is 55 hereby substituted by the following long title:

"WET

"Om voorsiening te maak vir die oplegging van 'n belasting op die koop van handelseffekte deur die tussenkoms van of by 'n lid van 'n [effektebeurs] aandeelbeurs."

Amendment of section 8 of Act 40 of 1949, as amended by section 2 of Act 81 of 1985

6. Section 8 of the Transfer Duty Act, 1949, is hereby amended by the substitution in the Afrikaans text for subparagraph (i) of paragraph (c) by the following subparagraph:

"(i) in die geval van aandele of sekuriteite wat op die datum van die transaksie op enige erkende [effektebeurs] aandeelbeurs genoteer word, hulle middel - markprys op daardie datum is of"

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Amendment of section 1 of Act 45 of 1955, as amended by section 1 of Act 59 of 1957, section 1 of Act 65 of 1960, section 7 of Act 77 of 1964, section 3 of Act 92 of 1971, section 9 of Act 106 of 1980, section 5 of Act 86 of 1987, section 7 of Act 87 of 1988, section 6 of Act 97 of 1993, section 2 of Act 140 of 1993, section 8 of Act 88 of 1996, section 5 of Act 27 of 1997 and section 34 of Act 34 of 1997

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7. Section 1 of the Estate Duty Act, 1955, is hereby amended by the substitution in the Afrikaans text for the definition of "familiemaatskappy" in subsection (1) of the following definition:

"'familiemaatskappy', met betrekking tot 'n oorlede persoon, 'n maatskappy (behalwe 'n maatskappy waarvan die aandele op 'n erkende [effektebeurs] aandeelbeurs gekwoteer word) wat op enige tersaaklike tydstip regstreeks of onregstreeks, hetsy deur 'n meerderheid van die aandele daarvan of 'n ander belang daarin of op watter ander wyse ook al, deur die oorledene of deur die oorledene en een of meer van sy familielede beheer is of kon geword het:"

Amendment of section 5 of Act 45 of 1955, as amended by section 3 of Act 59 of 1957, section 4 of Act 65 of 1960, section 10 of Act 71 of 1961, section 10 of Act 77 of 1964, section 4 of Act 81 of 1965, section 2 of Act 56 of 1966, section 7 of Act 114 of 1977, section 7 of Act 81 of 1985, section 12 of Act 87 of 1988, section 2 of Act 136 of 1991 and section 9 of Act 97 of 1993

8. Section 5 of the Estate Duty Act, 1955, is hereby amended by the substitution in the Afrikaans text for the words preceding subparagraph (i) of paragraph (f) bis of subsection (1) of the following words:

"in die geval van aandele in 'n maatskappy wat nie op enige [effektebeurs] aandeelbeurs gekwoteer word nie, die waarde van sodanige aandele in die besit van die oorledene op die datum van sy dood soos bepaal, behoudens die bepalings van artikel 8, deur een of ander deur die Kommissaris aangestelde onpartydige persoon onderworpe aan die volgende bepalings, te wete—"

Amendment of section 24 of Act 45 of 1955, as substituted by section 15 of Act 77 of 1962 and amended by section 12 of Act 77 of 1964, section 2 of Act 104 of 1976, section 8 of Act 86 of 1987, section 10 of Act 97 of 1993 and section 8 of Act 27 of 1997

9. Section 24 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (8) of the following subsection:

"(8) The provisions of subsections (8), (9), (10), (11), (12), (14), (15), (16) and (17) of section 83, and of sections 84, 85 [86] and 86A, of the income Tax Act, 1962, and any regulations made under that Act and relating to any appeal to the special court referred to in subsection (4) and to any appeal in terms of the said [sections 86 and] section 86A, shall *mutatis mutandis* apply with reference to any appeal under this section."

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Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R.780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997 and section 19 of Act 30 of 1998

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

(a) by the substitution for paragraph (b) of the definition of “benefit fund” of the following paragraph:

“(b) any medical scheme registered under the provisions of the Medical Schemes Act. [1967 (Act No. 72 of 1967)] 1998 (Act No. 131 of 1998); or ;”

(b) by the substitution for paragraph (c) of the definition of “dividend” of the following paragraph:

“(c) in the event of the partial reduction or redemption of the capital of a company, including the acquisition of shares in terms of section 85 of the Companies Act. 1973 (Act No. 61 of 1973), so much of the sum of any cash and the value of any asset given to a shareholder as exceeds the cash equivalent of—

(i) the amount by which the nominal value of the shares of that shareholder is reduced; or

(ii) the nominal value of the shares so acquired from such shareholder, as the case maybe; and.”;

(c) by the substitution for paragraph (f) of the definition of “dividend” of the following paragraph:

“(f) subject to the provisions of the [second] first proviso to this definition, any cash and the value of any asset given to a shareholder to the extent to which the cash and the value of the asset represents a reduction of the share premium account of a company: or.”;

(d) by the deletion of paragraph (g) of the definition of “dividend”;

(e) by the substitution for paragraph (h) of the definition of “dividend” of the following paragraph:

“(h) the nominal value of any capitalization shares awarded to shareholders as part of the equity share capital of a company [if—

(i) such shares are or were awarded on or before 30 June 1975 and during the period of ten years ending the day before the date of such award the company has not made any partial reduction of its paid-up share capital involving a distribution to shareholders of cash or other assets; or

(ii) such shares are awarded on or after 1 July 1975];”;

(f) by the deletion of the first proviso to the definition of “dividend”;

(g) by the substitution for the words preceding paragraph (i) of the second proviso to the definition of “dividend” of the following words:

“Provided [further] that, for the purposes of this definition—”;

(h) by the substitution for the words preceding subparagraph (aa) of paragraph (iii) of the second proviso to the definition of "dividend" of the following words:

"if, in the event of the subsequent partial reduction or redemption of the share capital (including any share premium) of the company, including any acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973), or the reconstruction of the company. any cash or asset is given to shareholders and such cash or asset (or a portion thereof) represents a return of share capital or share premium. the amount of share capital or share premium so returned—":

(i) by the substitution for subparagraph (bb) of paragraph (eA) of the definition of "gross income" of the following subparagraph:

"(bb) in the case of a conversion, of the amount representing the amount converted for the benefit or ultimate benefit of the member or the defendants or nominees of the deceased member, and such amount shall be deemed to have been received by or accrued to or in favour of such member. defendants or nominees, as the case may be: Provided that where any endorsement has been made in the records of the fund which provides that any part of such amount shall be paid to the former spouse of such member, as provided for in section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), such part shall for the purposes of this paragraph be deemed to be an amount converted for the benefit or ultimate benefit of such member; or":

(j) by the substitution for subparagraph (iii) of paragraph (g) of the definition of "gross income" of the following subparagraph:

"(iii) for the use or right of use of any patent as defined in the Patents Act, 1978 (Act No. 57 of 1978), or any design as defined in the Designs Act, [1967 (Act No. 57 of 1967)] 1993 (Act No. 195 of 1993), or any trade mark as defined in the Trade Marks Act, [1963 (Act No. 62 of 1963)] 1993 (Act No. 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978), or any model, pattern, plan, formula or process or any other property or right of a similar nature;":

(k) by the substitution for the definition of "trade" of the following definition:

"trade. includes every profession, trade, business, employment, calling, occupation or venture. including the letting of any property and the use of or the grant of permission to use any patent as defined in the Patents Act, 1978 (Act No. 57 of 1978), or any design as defined in the Designs Act, [1967 (Act No. 57 of 1967)] 1993 (Act No. 195 of 1993), or any trade mark as defined in the Trade Marks Act, [1963 (Act No. 62 of 1963)] 1993 (Act No. 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978), or any other property which is of a similar nature;":

(2) (a) Subsection (1)(b) to (h) shall be deemed to have come into operation on 30 June 1999.

(b) Subsection (1)(i) shall—

(i) in so far as it adds words to the words preceding the proviso, be deemed to have come into operation on 12 March 1997, and shall apply in respect of any conversion on or after that date; and

(ii) in so far as it adds the proviso, come into operation on the date of promulgation of this Act and shall apply in respect of any amount converted on or after that date.

Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 32 of Act 104 of 1980, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996, section 34 of Act 34 of 1997 and section 21 of Act 30 of 1998

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11. Section 4 of the Income Tax Act, 1962, is hereby amended—

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

“(c) the provisions of this subsection shall not be construed as preventing the Commissioner from disclosing to the [**Chief of the Central Statistical Services**] Statistician-General such information in relation to any person as may be required by such [**Chief**] Statistician-General in connection with the collection of statistics in complying with the provisions of the Statistics Act. [1976 (Act No. 66 of 1976)] 1999 (Act No. 6 of 1999), or any [regulation] rule made thereunder.”;

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

“(d) the provisions of this subsection shall not be construed as preventing the Commissioner from disclosing to the Board administering the National Student Financial Aid Scheme, any information relating to the name and address of the employer of any borrower or bursar to whom any loan or bursary has been granted in terms of such scheme.”; and

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

“(1 A) The [**Chief of the Central Statistical Services**] Statistician-General or any person acting under the direction and control of such [**Chief**] Statistician-General, shall not disclose any information supplied under subsection (1)(c) to any person or permit any person to have access thereto, except in the exercise of his powers or the carrying out of his duties to publish statistics in any anonymous form.”.

Amendment of section 6 of Act 58 of 1962, as inserted by section 5 of Act 85 of 1987 and amended by section 5 of Act 28 of 1997

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12. Section 6 of the Income Tax Act, 1962, is hereby amended—

(a) by the addition of the word “or” at the end of paragraph (b) of subsection (1);

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

“(c) any income payable to such resident from the Republic, where such income is deemed to be from a **source within the Republic** in terms of the provisions of paragraphs (d), (d)bis and (f) of section 9(1).”;

(c) by the substitution in subsection (1) for the words following on paragraph (b) and preceding paragraph (i) of the following words:

“a rebate equal to the sum of any taxes on income proved to be payable, without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment) by—”.

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 9 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991, section 5 of Act 141 of 1992, section 6 of Act 21 of 1995 and section 23 of Act 30 of 1998

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13. Section 7 of the income Tax Act, 1962, is hereby amended by the substitution for subparagraph (i) of paragraph (c) of subsection (2C) of the following subparagraph:

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“(i) registered holder of a patent as defined in the Patents Act, 1978 (Act No. 57 of 1978), or any design” as defined in the Designs Act, [1967 (Act No. 57 of 1967)] 1993 (Act No. 195 of 1993), or any trade mark as defined in the Trade Marks Act, [1963 (Act No. 62 of 1963)] 1993 (Act No. 194 of 1993); or”.

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 and section 24 of Act 30 of 1998

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

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

“(i) the President, Deputy President, a Minister, Deputy Minister, a member of [Parliament] the National Assembly, a permanent delegate to the National Council of Provinces, a Premier, a member of an Executive Council or a member of a provincial legislature;

(ii) any member of [any institution or body contemplated in section 84(1)(f) of the Republic of South Africa constitution Act, 1961 (Act No. 32 of 1961)] a municipal council, a traditional leader, a member of a provincial House of Traditional Leaders and a member of the Council of Traditional Leaders; and”; and

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

“(f) Where it is expected of any person contemplated in paragraph (e)(i) to defray any expenditure referred to in paragraph (d) out of his salary received as the holder of any public office, an amount equal to a portion (which shall be determined [from time to time by the Minister by notice in the Gazette] by the National Assembly or the President, as the case may be, as provided for in the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998)) of such salary shall for the purposes of paragraph (d) be deemed to be an allowance granted to such person.”.

(2)(a) Subsection (1)(a) shall—

(i) in so far as it amends subparagraph (i) of paragraph (e), be deemed to have come into operation on 1 March 1999; and

(ii) in so far as it amends subparagraph (ii) of paragraph (e), come into operation on 1 March 2000.

(b) Subsection (1)(b) shall be deemed to have come into operation on 1 March 1999.

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 and section 25 of Act 30 of 1998

15. Section 9 of the income Tax Act, 1962, is hereby amended—

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

“(i) any patent as defined in the Patents Act, 1978 (Act No. 57 of 1978), or any design as defined in the Designs Act, [1967 (Act No. 57 of 1967)] 1993 (Act No. 195 of 1993), or any trade mark as defined in the Trade Marks Act.

[1963 (Act No. 62 of 1963)] 1993 (Act No. 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978), or any model, pattern, plan, formula or process or any other property or right of a similar nature: or”: and

(b) by the substitution for paragraph (fA) of subsection (1) of the following paragraph: 5

“(fA) any services rendered by such person to, or work or labour done by such person for, any other person upon, beneath or above the continental shelf referred to in section [7] 8 of the **[Territorial Waters Act, 1963 (Act No. 87 of 1963)] Maritime Zones Act, 1994 (Act No. 15 of 1994)**, in the course of any operations connected with operations carried on by any person under any prospecting permit or mining authorization issued or which may be issued under the Minerals Act, 1991 (Act No. 50 of 1991), or any prospecting or mining lease granted under the Mining Rights Act, 1967 (Act No. 20 of 1967), or under any sublease granted or which may be granted under any such lease, wheresoever payment for such services or work or labour is or is to be made;”.

Amendment of section 9B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1990 and amended by section 11 of Act 129 of 1991, section 9 of Act 141 of 1992, section 6 of Act 113 of 1993, section 7 of Act 36 of 1996 and section 26 of Act 30 of 1998 20

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

(a) by the substitution for the words preceding the proviso to subsection (1) of the following words: 25

“For the purposes of this section ‘affected share’, in relation to any taxpayer, means a share listed on a **[licensed] stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)**, which has been disposed of by the taxpayer **[and of which he] who immediately prior to such disposal had been the owner of such share as a listed share** for a continuous period of at least five years:”;

(b) by the insertion after subsection (4) of the following subsection: 30

“(5) The provisions of this section shall not apply to any affected shares where such shares constitute shares which were deemed to be trading stock of the taxpayer in terms of section 24A(2)(u) of this Act.” 35

(2) Subsection (1)(b) shall come into operation on the date of promulgation of this Act and shall apply in respect of any share acquired on or after that date.

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998

17. Section 9D of the Income Tax Act, 1962, is hereby amended— 40

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

“there shall be included in the income of such resident by whom such donation, settlement or other disposition was made, so much of the amount of any investment income as is attributable to such donation settlement or other disposition.” 45

(b) by the substitution for paragraph (a) of the second proviso to subsection (8) of the following paragraph:

“(a) any **[such] deductions or allowances allowable in terms of this subsection shall be limited to the amount of such investment income;** 50 and”;

(c) by the substitution in subsection (9) for the words preceding the proviso to paragraph (a) of the following words:

“where the foreign tax actually paid or payable without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment) in any country other than the Republic, relating to the proportional amount contemplated in subsection (2) or (4), after taking into consideration any deductions or allowances under the taxation provisions of such other country determined at the ratio as contemplated in subsection (2) or (4), as the case may be, is more than 55 per cent of the normal tax payable in the Republic:”..

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, 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 10 of Act 28 of 1997 and section 29 of Act 30 of 1998

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

(a) by the substitution for item (bb) of subparagraph (vii) of paragraph (cI) of subsection (1) of the following item:

“(bb) in securities listed on a [licensed] stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);”;

(b) by the substitution for item (bb) of subparagraph (iv) of paragraph (cJ) of subsection (1) of the following item:

“(bb) in securities listed on a [licensed] stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);”;

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

“(v) [at least one of the members is a local authority] the business directly connected with the sole or principal object was previously carried on by a municipal council and the control of the company is exercised by such municipal council; and.”;

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

“(e) any levv received by or accrued to—

(i) any body corporate established in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986), from its members;

(ii) a share block company established in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), from its shareholders; or

(iii) 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), and any co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), and any close corporation and any trust, but including a company incorporated under section 21 of the Companies Act, 1973), from its members, where the Commissioner is satisfied that, subject to such conditions as he may deem necessary, such association of persons—

- (aa) has been formed solely for the purposes of managing the collective interests common to all its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members are liable; and 5
- (bb) is not permitted to distribute any of its funds to any person other than a similar association of persons:
 Provided that such body, company or association is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by the Commissioner;” 10 15
- (e) by the substitution for subitem (B) of item (bb) of subparagraph (ii) of paragraph (fA) of subsection (1) of the following subitem:
 “(B) in securities listed on a **[licensed] stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or’;** 20
- (f) by the addition of the word “or” at the end of subparagraph (B) of paragraph (bb) of the proviso to subparagraph (i) of paragraph (k) of subsection (1);
- (g) by the addition to the proviso to subparagraph (i) of paragraph (k) of subsection (1) 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), 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).” 25 30
- (h) by the substitution for paragraph (o) of subsection (1) of the following paragraph:
 “(o) any remuneration derived by any person as an officer or crew member of a ship engaged— 35
 (i) in the international transportation for reward of passengers or goods; or
 (ii) in the prospecting (including surveys and other exploratory work) for, or the mining of, any minerals (including natural oils) from the seabed outside the continental shelf of the Republic as contemplated in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), where such officer or crew member is employed on board such ship solely for the purposes of the ‘passage’ of such ship, as defined in the Marine Traffic Act, 1981 (Act No. 2 of 1981). 40 45
 if such person was outside the Republic for a period or periods exceeding 183 days in aggregate during the year of assessment;” and
- (i) by the deletion of subparagraph (xi) of paragraph (t).
- (2) (a) Subsection (1)(d) shall come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment commencing on or after that date. 50
 (b) Subsection (1)(g) shall be deemed to have come into operation on 30 June 1999.
 (c) Subsection (1)(h) shall come into operation on 1 March 2000.
 (d) Subsection (1)(i) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 10A of Act 58 of 1962, as inserted by section 8 of Act 65 of 1973 and amended by section 11 of Act 85 of 1974, section 8 of Act 113 of 1993, section 11 of Act 21 of 1995 and section 11 of Act 28 of 1997

19. Section 10.4 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “annuity contract.” of the following words: 5

“ ‘annuity contract. means an agreement concluded between an insurer in the course of his insurance business and a [natural person (hereinafter referred to as the] purchaser, in terms of which-’:

(b) by the insertion in subsection (1) after the definition of “expected return” of the following definitions: 10

“‘purchaser’, in relation to an annuity contract means—

(a) any natural person and includes such person’s deceased or insolvent estate: or 15

(b) a curator bonis of, or a trust created solely for the benefit of, any natural person where the High Court has declared such person to be of unsound mind and incapable of managing his own affairs and such Court has ordered the appointment of such curator or creation of such trust, as the case may be: 20

‘statutory actuary’ means an actuary appointed in accordance with section 20(1) or 21(1)(b) of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998);”;

(c) by the deletion of the definition of “valuator” in subsection (1);

(d) by the substitution for subsection (2) of the following subsection: 25

“(2) There shall be exempt from normal tax so much of any annuity amount payable to a purchaser [or his deceased or insolvent ‘estate] or his spouse or surviving spouse (as contemplated in paragraph (a) of the definition of ‘annuity contract’ in subsection (1)), or to the deceased or insolvent estate of such spouse or surviving spouse as is determined in accordance with subsection (3) to represent the capital element of such amount.”; and 30

(e) by the substitution for the word “valuator” in subsections (4), (5) and (6)(b) of the words “statutory actuary . . .”

(2) Subsection (1)(a), (b) and (d) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount payable on or after that date. 35

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, 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 and section 30 of Act 30 of 1998 40 45 50

20. Section 11 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (iii) of paragraph (f) of the following subparagraph:

“(iii) the right of use of any patent as defined in the Patents Act, 1978 (Act No. 57 of 1978), or any design as defined in the Designs Act, [1967 (Act No. 57 of 1967)] 1993 (Act No. 195 of 1993), or any trade mark as defined in the Trade Marks Act, [1963 (Act No. 62 of 1963)] 1993 (Act No. 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act No. 55

- 98 of 1978), or of any other property which is of a similar nature. if such patent, design, trade mark, copyright or other property is used for the production of income or income is derived therefrom: or”;
- (b) by the substitution for subparagraphs (i) and (ii) of paragraph (gA) of the following subparagraphs: 5
- “(i) in devising or developing any invention as defined in the Patents Act, 1978 (Act No. 57 of 1978), or in creating or producing any design as defined in the Designs Act, [1967 (Act No. 57 of 1967)] **1993 (Act No. 195 of 1993), or any trade mark as defined in the Trade Marks Act, [1963 (Act No. 62 of 1963)] 1993 (Act No. 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978), or any other property** which is of a similar nature; or 10
 - (ii) in obtaining any patent or the restoration of any patent under the Patents Act, [1952] **1978, or the registration of any design under the Designs Act, [1967] 1993, or the registration of any trade mark under the Trade Marks Act, [1963] 1993; or”;** 15
- (c) by the substitution for paragraph (aa) of the proviso to paragraph (gA) of the following paragraph:
- “(aa) where such expenditure exceeds R3 000, and was incurred— 20
 - (A) before 29 October 1999, the allowance shall not exceed for any one year such portion of the amount of the expenditure as is equal to such amount divided by the number of years, which in the opinion of the Commissioner, represents the probable duration of use of the invention, patent, design, trade mark, copyright, other property or knowledge, or [one twenty-fifth] four per cent of the said amount, whichever is the greater; 25
 - (B) on or after 29 October 1999, the allowance shall not for any one year exceed an amount equal to—
 - (AA) five per cent of the amount of the expenditure in the case of any invention, patent, trade mark, copyright or other property of a similar nature or any knowledge connected with the use of such invention, patent, trade mark, copyright or other property or the right to have such knowledge imparted; or 30
 - (BB) 10 per cent of the amount of the expenditure in the case of any design or other property of a similar nature or any knowledge connected with the use of such design or other property or the right to have such knowledge imparted.”; 35
- (d) by the addition to the proviso to paragraph (gA) of the following paragraph: 40
- “(ee) no allowance shall be made in respect of any expenditure incurred by such taxpayer on or after 29 October 1999, in respect of the acquisition from any other person of any trade mark or other property of a similar nature or any knowledge connected with the use of such trade mark or the right to have such knowledge imparted.”; 40
- (e) by the substitution for paragraph (gB) of the following paragraph: 45
- “(gB) expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section) actually incurred by the taxpayer during the year of assessment in obtaining the extension of the term of any patent under the Patents Act, 1978 (Act No. 57 of 1978), or the extension of the registration period of any design under the Designs Act, [1967 (Act No. 57 of 1967)] **1993 (Act No. 195 of 1993), or the renewal of the registration of any trade mark under the Trade Marks Act, [1963 (Act No. 62 of 1963)] 1993 (Act No. 194 of 1993),** if such patent, design or 50

trademark is used by the taxpayer in the production of his income or income is derived by him therefrom:";

(f) by the substitution for item (A) of subparagraph (aa) of paragraph (n) of the following item:

“(A) 15 per cent of an amount equal to the amount remaining after deducting 5 from, or setting off against, the income derived by the taxpayer during the year of assessment (excluding income derived from any retirement-funding employment (being the income or part thereof referred to in the definition of retirement-funding employment, in section 1)) the deductions or assessed losses admissible against such income under this Act 10 (excluding this paragraph, sections 17A, 18, 18A and 19(3) of this Act and paragraph 12(1)(c) to (i), inclusive, of the First Schedule): or”;

(g) by the substitution for item (ii) of the proviso to paragraph (n) of the following item:

“(ii) the deductions in terms of subparagraph (au) shall not exceed an amount 15 equal to the amount remaining after deducting from or setting off against the income derived by the taxpayer during the year of assessment the deductions and assessed losses admissible against such income under this Act (excluding the said subparagraph, sections 17A and 19(3) of this Act and paragraph 12(1)(c) to (i), inclusive, of the First Schedule);”. 20

Repeal of section 11 oct of Act 58 of 1962, as inserted by section 10 of Act 91 of 1982

- 21. (1) Section 11 oct of the Income Tax Act, 1962, is hereby repealed,
(2) Subsection (1) shall come into operation on 1 March 2000.**

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 25 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971, section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974, section 13 of Act 69 of 1975, section 7 of Act 101 of 1978, section 10 of Act 104 of 1980, section 14 of Act 96 of 1981, section 10 of Act 96 of 1985, section 12 of Act 85 of 1987, section 12 of Act 90 of 1988, section 12 30 of Act 113 of 1993 and section 11 of Act 46 of 1996

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

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

“(b) in the case of any such building the erection of which has or is 35 commenced on or after 1 January 1989 and any such improvements which have or are commenced on or after that date, other than any building or improvements in respect of which the increased allowance contemplated in paragraph (c) of this proviso applies, the allowance under this subsection shall be increased to 5 per cent of the cost (after the 40 deduction of any amount as provided in subsection (3)) to the taxpayer of such building or improvements; and”.; and

(b) by the substitution for the words following on subparagraph (ii) of paragraph (c) of the proviso to subsection (1) of the following words:

“where such building has or is or such improvements have been or are 45 brought into use by the taxpayer on or before 31 March 2000, the allowance under this subsection shall be increased to 10 per cent of the cost (after the deduction of any amount as provided for in subsection (3)) to the taxpayer of such building or improvements

Amendment of section 18 of Act 58 of 1962, as inserted by section 12 of Act 104 of 1980 and amended by section 15 of Act 96 of 1981, section 15 of Act 121 of 1984, section 11 of Act 96 of 1985, section 14 of Act 90 of 1988, section 11 of Act 70 of 1989, section 16 of Act 101 of 1990, section 19 of Act 129 of 1991, section 18 of Act 141 of 1992 and section 16 of Act 21 of 1995

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23. Section 18 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) any contributions made by him during the year of assessment to any medical scheme registered under the provisions of the Medical Schemes Act. [1967 (Act No. 72 of 1967)] 1998 (Act No. 131 of 1998); and”.

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Repeal of section 21ter of Act 58 of 1962, as inserted by section 20 of Act 89 of 1969 and amended by section 17 of Act 52 of 1970, section 18 of Act 88 of 1971, section 17 of Act 90 of 1972, section 16 of Act 65 of 1973, section 21 of Act 85 of 1974, section 19 of Act 69 of 1975, section 14 of Act 103 of 1976, section 16 of Act 113 of 1977, section 17 of Act 91 of 1982 and section 1 of Act 49 of 1996

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24. (1) Section 21ter of the Income Tax Act, 1962, is hereby repealed.
(2) Subsection (1) shall come into operation on 1 March 2000.

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 and section 12 of Act 36 of 1996

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

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

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

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(b) by the substitution for subparagraph (iii) of paragraph (b) of subsection (8) 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), [or] 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; or”.

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

(b) Subsection (1)(b) shall be deemed to have come into operation on 30 June 1999.

Amendment of section 241 of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993 and amended by section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997 and section 35 of Act 30 of 1998

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26. Section 241 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (6) of the following subsection:

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“(6) Any inclusion in or deduction from income in terms of this section in respect of an exchange difference, transitional exchange difference or a premium or discount in respect of a forward exchange contract or a premium or other

consideration in respect of or in terms of a foreign currency option contract, shall be in lieu of any deduction or inclusion which may otherwise be allowed or included under any other provision of this Act.”.

Amendment of section 24J of Act 58 of 1962, as inserted by section 21 of Act 21 of 1995 and amended by section 14 of Act 36 of 1996 and section 19 of Act 2S of 1997 5

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

- (a) by the substitution in subsection (1) for paragraph (b) of the definition of “interest” of the following paragraph:
 “(b) **[gross amount of any] amount (or portion thereof) payable by a borrower to the lender [in respect of any interest-bearing] in terms of any lending arrangement [irrespective of the term of such arrangement, which would have constituted a ‘lending arrangement’ as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968), had the term of such arrangement been less than six months] as represents compensation for any amount to which the lender would, but for such lending arrangement, have been entitled; and**” 15
- (b) by the insertion in subsection (1) after the definition of “issuer.” of the following definition:
 “ ‘lending arrangement means any arrangement or agreement in terms of which— 20
 (a) a person (in this section referred to as the lender) lends any instrument to another person (in this section referred to as the borrower); and
 (b) the borrower in return undertakes to return any instrument of the same kind and of the same or equivalent quantity and quality to the lender.”;
- (c) by the substitution for paragraph (a) of subsection (9) of the following paragraph: 25
 “(a) Any company whose business comprises the dealing in instruments (including the short selling of instruments), **[or] interest rate agreements or option contracts** may elect that the provisions of subsections (2) to (8), inclusive, **[and] section 24K and section 24L** shall not apply to all such instruments. **[or] interest rate agreements or option contracts** in respect of which it so deals in.”; 30
- (d) by the substitution for subparagraph (ii) of paragraph (b) of subsection (9) of the following subparagraph: 35
 “(ii) be accompanied by a statement setting forth full details of the methodology to be applied by the company to determine the market value as contemplated in paragraph (c) in relation to all instruments, **[or] interest rate agreements or option contracts** contemplated in paragraph (a);”;
- (e) by the substitution for items (A) and (B) of subparagraph (iii) of paragraph (b) of subsection (9) of the following items: 40
 “(A) the methodology to be applied by such company to determine the market value as contemplated in paragraph (c) in respect of such instruments. **[or] interest rate agreements or option contracts**; and
 (B) the manner in which such market value in relation to such instruments. **[or] interest rate agreements or option contracts** is to be taken into account in the determination of the taxable income of such company during any year of assessment: and”;
- (f) by the substitution for subparagraph (iv) of paragraph (b) of subsection (9) of the following subparagraph: 50
 “(iv) subject to the provisions of paragraphs (e) and (f), be binding upon such company in respect of all such instruments, **[and] interest rate agreements and option contracts** during the year of assessment in which it took effect and every succeeding year of assessment.”;
- (g) by the substitution for paragraphs (c) and (d) of subsection (9) of the following paragraphs: 55
 “(c) The market value in relation to all instruments. **[and] interest rate agreements and option contracts** contemplated in paragraph (a) of a company

which made an election as contemplated in such paragraph shall be determined in accordance with commercially accepted practice which is applied by such company consistently in respect of all such instruments, **[and]** interest rate agreements and option contracts for financial reporting purposes to its shareholders. 5

(d) Any instrument. **[or]** interest rate agreement or option contract contemplated in paragraph (a) which as a result of an election made in terms of such paragraph is to be dealt with on a market value basis as contemplated in the foregoing provisions of this subsection shall (subject to the provisions of paragraphs (e) and (f)) be so dealt with until the date of redemption or transfer of such instrument. **[or]** interest rate agreement or option contract.; and 10

(h) by the substitution in subsection (9) for the words preceding the proviso to subparagraph (ii) of paragraph (f) of the following words:

“an appropriate adjustment shall be made to the taxable income of such company during such year of assessment in relation to all instruments. **[or]** interest rate agreements or option contracts contemplated in paragraph (a) of the company held and not disposed of or not redeemed by it, as the case may be. as at the end of such year of assessment, having regard to all interest or amounts which would have been deemed to have been incurred by or accrued to such company had the provisions of this subsection not been applicable during all years of assessment before such year of assessment and all amounts which have been included in or deducted from the income of such company during such years of assessment.”. 15 20

(2) Subsection (1) shall come into operation on the date of promulgation of this Act. 25

Insertion of section 24L in Act 58 of 1962

28. (1) The following section is hereby inserted in the Income Tax Act, 1962. after section 24K:

“Incurral and accrual of amounts in respect of option contracts

24L. (1) For the purposes of this section— 30

‘intrinsic value’, in relation to an option contract, means an amount equal to the difference between the market price or value of an asset, index, currency, rate of interest or any other factor, as provided for in the option contract, on the date of acquisition of the option contract and the pre-arranged price or value provided for in the option contract; and 35

‘option contract’ means an agreement the effect of which is that any person acquires the option (excluding a foreign currency option contract as defined in section 24I(1))—

(a) to buy from or to sell to another person a certain quantity of corporeal or incorporeal things before or on a future date at a pre-arranged price; or 40

(b) that an amount of money will be paid to or received from another person before or on a future date depending on whether the value or price of an asset, index, currency, rate of interest or any other factor is higher or lower before or on that future date than a pre-arranged value or price. 45

(2) The amount of—

(a) any premium or like consideration paid or payable by a person in terms of an option contract: or 50

(b) any consideration paid or payable by a person in respect of the acquisition of an option contract by such person.

shall for the purposes of this Act be deemed to have been incurred by such person on a day to day basis during the term of such option contract: Provided that—

(i) where such option contract is exercised, terminated or is disposed of, the portion of the amount attributable to the period from the date of exercise, termination or disposal until the end of the original term of 55

the option contract shall be deemed to have been incurred by such person on the date of exercise, termination or disposal of the option contract;

(ii) the provisions of this section shall not be applied to an option contract held by a person as trading stock;

(iii) where such amount includes an amount representing the intrinsic value in relation to the option contract, so much of such amount so representing the intrinsic value shall for the purposes of this Act be deemed to have been incurred by such person on the date of exercise, termination or disposal of the option contract.

(3) The amount of any premium or like consideration received or receivable by a person in terms of an option contract shall for the purposes of this Act be deemed to have accrued to such person on a day to day basis during the term of such option contract: Provided that where such option contract is exercised, terminated or disposed of, the portion of the amount attributable to the period from the date of exercise, termination or disposal of such option contract until the end of the original term of the option contract shall be deemed to have accrued to such person on the date of exercise, termination or disposal of the option contract.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any option contract entered into on or after that date.

Amendment of section 29 of Act 58 of 1962, as inserted by section 25 of Act 113 of 1993 and amended by section 22 of Act 21 of 1995 and section 16 of Act 36 of 1996

29. Section 29 of the Income Tax Act, 1962, is hereby amended—

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

“(2) The taxable income derived by any insurer in respect of any year of assessment commencing before 1 January 2000, shall be determined in accordance with the provisions of this Act, but subject to the provisions of this section.”; and

(b) by the addition to paragraph (d) of subsection (14) of the following proviso:

“Provided that any transfer relating to the redetermination of the prescribed value in terms of subsection (6) in respect of the last year of assessment commencing before 1 January 2000, shall be deemed to have been made on the last day of such year of assessment and shall be included in or deducted from the income of the relevant fund in determining the taxable income of such fund for such year of assessment:”.

Insertion of section 29A in Act 58 of 1962

30. The following section is hereby inserted in the Income Tax Act, 1962, after section 29:

“Taxation of long-term insurers

29A. (1) For the purposes of this section—

‘business, means any long-term insurance business as defined in section 1 of the Long-term Insurance Act;

insurer, means any long-term insurer as defined in section 1 of the Long-term Insurance Act;

‘Long-term Insurance Act’ means the Long-term Insurance Act, 1998 (Act No. 52 of 1998);

‘market value’, in relation to any asset, means the sum which a person having the right freely to dispose of such asset might reasonably expect to obtain from a sale of such asset in the open market;

‘owner., in relation to a policy, means the person who is entitled to enforce any benefit provided for in the policy: Provided that where a policy has been—

(a) ceded or pledged solely for the purpose of providing security for the performance of any obligation, the owner shall be the person who retains the beneficial interest in such policy: or

(b) reinsured by one insurer with another insurer, the reinsurance policy shall be deemed to be owned by the owner of the insurance policy so insured:

'policy' means a long-term policy as defined in section 1 of the Long-term Insurance Act;

'policyholder fund' means any fund contemplated in subsection (4)(a), (b), or (c):

'value of liabilities' means an amount equal to the value of the liabilities of the insurer in respect of the business conducted by it in the fund concerned calculated on the basis as shall be determined by the Chief Actuary of the Financial Services Board in consultation with the Commissioner.

(2) The taxable income derived by any insurer in respect of any year of assessment commencing on or after 1 January 2000, shall be determined in accordance with the provisions of this Act, but subject to the provisions of this section.

(3) Every insurer shall establish four separate funds as contemplated in subsection (4), and shall thereafter maintain such funds in accordance with the provisions of this section: Provided that where any insurer which carries on long-term insurance business has prior to the commencement of this section established four separate funds in terms of the provisions of section 29(3), such funds shall for the purposes of this section continue to be maintained in terms of this section.

(4) The funds referred to in subsection (3) shall be—

(u) a fund, to be known as the untaxed policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to—

(i) business carried on by the insurer with, and any policy of which the owner is, any pension fund, provident fund, retirement annuity fund or benefit fund;

(ii) any policy of which the owner is a person or body the entire receipts and accruals of whom or of which are exempt from tax under any provision of section 10: Provided that an insurer shall not deal with a policy in terms of the provisions of this subparagraph unless it has satisfied itself beyond all reasonable doubt that the owner of such policy is such a person or body;

(iii) any annuity contracts entered into by it in respect of which annuities are being paid;

(b) a fund, to be known as the individual policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy (other than a policy contemplated in paragraph (a)) of which the owner is any person other than a company;

(c) a fund, to be known as the company policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy (other than a policy contemplated in paragraph (a)) of which the owner is a company; and

(d) a fund, to be known as the corporate fund, in which shall be placed all the assets (if any) held by the insurer, and all liabilities owed by it, other than those contemplated in paragraphs (a), (b) and (c).

(5) For the purposes of subsection (4), where the owner of a policy is the trustee of any trust or where two or more owners jointly own a policy—

(a) if all the beneficiaries in such trust or all such joint owners are funds, persons or bodies contemplated in subsection (4)(a), the owner of such

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policy shall be deemed to be such a fund, person or body, as the case may be: or

(b) where paragraph (a) is not applicable and all the beneficiaries in such trust or all such joint owners are persons other than a company, the owner of such policy shall be deemed to be a person other than a company: or 5

(c) where paragraphs (a) and (b) are not applicable, the owner of such policy shall be deemed to be a company.”

(6) An insurer who becomes aware that, in consequence of—
(a) a change of ownership of any policy issued by it; or 10
(b) any change affecting the status of the owner of any policy, the assets held by it in relation to such policy should in terms of the provisions of subsection (4) be held in a policyholder fund other than the policyholder fund in which such assets are actually held, shall forthwith transfer from such lastmentioned fund to such firstmentioned fund assets 15
having a market value equal to the value of liabilities determined on the date of such transfer in relation to the said policy.

(7) Every insurer shall within a period of four months after the end of every year of assessment redetermine the value of liabilities in relation to each of its policyholder funds as at the last day of such year, and— 20

(a) where the market value of the assets actually held by it in any such fund exceeds the value of liabilities in relation to such fund on such last day, it shall within the said period transfer from such fund to its corporate fund assets having a market value equal to such excess; or 25

(b) where the market value of the assets actually held by it in any such fund is less than the value of liabilities in relation to such fund on such last day, it shall within the said period transfer from its corporate fund to such fund assets having a market value equal to the shortfall, and such transfer shall for the purposes of this section be deemed to have been made on such last day. 30

(8) Any transfer of an asset effected by an insurer between one fund and another fund otherwise than in terms of the provisions of subsection (6), (7) or (15) shall be effected by way of a sale of such asset at the market value thereof and shall for the purposes of this Act be treated as a purchase or sale of such asset, as the case may be, in each such fund. 35

(9) Subject to the provisions of subsection (11)(d), there shall be exempt from tax any income received by or accrued to an insurer from assets held by it in, and business conducted by it in relation to, its untaxed policyholder fund.

(10) The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund shall be determined separately in accordance with the provisions of this Act as if each such fund had been a separate taxpayer. 40

(11) In the determination of the taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund in respect of any year of assessment— 45

(a) the amount of any expenses, allowances and transfers to be allowed as a deduction in the policyholder funds in terms of this Act shall be limited to the total of—

(i) the amount of expenses and allowances directly attributable to the income of such fund: 50

(ii) such percentage of the amount of—

(aa) all expenses allocated to such fund which are directly incurred during such year of assessment in respect of the selling and administration of policies: and 55

(bb) all expenses and allowances allocated to such fund which are not included in subparagraph (i), but excluding any expenses directly attributable to any amounts received or accrued which do not constitute income as defined in section 1, which percentage shall be determined in accordance with the formula

$$Y = \frac{(I + R)}{(I + 3R + 6D)} \times \frac{100}{1}$$

in which formula-

(A) 'Y' represents the percentage to be applied to such amount:

(B) 'I' represents the gross amount of any interest as defined in section 24J of this Act, received by or accrued to such fund:

(C) 'R' represents the rental income of such fund after deduction of expenses directly attributable to such income; and

(D) 'D' represents the dividend income of such fund; and

(iii) such percentage, determined in accordance with the formula contemplated in subparagraph (ii), of 50 per cent of the amount transferred from the policyholder fund in terms of subsection (7)(a), to the extent that the amount of such transfer is required to be included in the income of the corporate fund during such year of assessment in terms of paragraph (d)(i) of this subsection: Provided that the amount of the deduction in terms of this subparagraph shall not exceed the balance of the amount of the income of the policyholder fund remaining after taking into account any other amounts allowed to be deducted from the income of such fund in terms of this section;

(b) any amount received or accrued from a source outside the Republic in respect of business conducted by the insurer in the Republic, shall be deemed to have been received or accrued from a source within the Republic;

(c) there shall be exempt from tax income derived by the insurer from assets held by it in the Republic in respect of business conducted by it in Namibia;

(d) any amount required to be transferred—

(i) to the corporate fund in terms of the provisions of subsection (7)(a) shall be included in the income of the corporate fund; and

(ii) from the corporate fund in terms of the provisions of subsection (7)(b) shall not be deducted from the income of the corporate fund.

for the purposes of determining the taxable income of such fund for the year of assessment in respect of which the value of liabilities in relation to its policyholder funds was redetermined in terms of that subsection: Provided that where any amount is transferred from the corporate fund to any policyholder fund as contemplated in subparagraph (ii), any subsequent transfers from the policyholder fund to the corporate fund of any amounts which in the aggregate do not exceed the total amount of such transfer, shall not be included in the income of the corporate fund in terms of the provisions of subparagraph (i) of this paragraph;

(e) subject to the provisions of paragraph (a)(iii), no amount transferred to or from the corporate fund in terms of the provisions of subsection (7), shall be deducted from or included in the income of the policyholder fund from or to which such amount was transferred, as the case may be:

- (f) the amount of any transfer contemplated in subsection (6) or (8) shall not be deducted from the income of the fund from which it is transferred and shall not be included in the income of the fund to which it is transferred: and
 - (g) premiums and reinsurance claims received and claims and reinsurance premiums paid shall be disregarded. 5
- (12) In the allocation of any asset, expenditure or liability to any fund contemplated in subsection (4), an insurer shall, when establishing such fund and at all times thereafter—
- (a) to the extent to which such asset, expenditure or liability relates exclusively to business conducted by it in any one fund, allocate such asset, expenditure or liability to that fund: and 10
 - (b) to the extent to which such asset, expenditure or liability does not relate exclusively to business conducted by it in any one fund, allocate such asset, expenditure or liability in a manner which is consistent with and appropriate to the manner in which its business is conducted. 15
- (13) An insurer who as at the commencement of its first year of assessment commencing on or after 1 January 2000 has not established the separate funds contemplated in subsection (4) shall as at the commencement of that year determine the value of liabilities required in respect of each of its policyholder funds, and shall be deemed for the purposes of applying this section in that year and in any succeeding year of assessment in which it has not yet established such funds, to have established and maintained such funds in accordance with the provisions of this section. 20
- (14) For the purposes of subsection (13)— 25
- (a) an appropriate portion of all the assets and liabilities of an insurer shall be deemed to have been placed by it in each of its funds in accordance with the provisions of this section;
 - (b) an appropriate portion of any income received by or accrued to an insurer and any expenditure incurred by it shall be deemed to have been received by or to have accrued to, or to have been incurred by, as the case may be, each of its funds in accordance with the provisions of this section: and 30
 - (c) any amount which would have been required to be transferred in terms of the provisions of subsection (7)(a) or (b) had such separate funds been so established and maintained, shall be deemed to have been so transferred. 35
- (15) Every insurer shall, within 6 months after the commencement of the first year of assessment commencing on or after 1 January 2000, determine the value of liabilities in relation to each of its policyholder funds as at the first day of such year of assessment and where the market value of the assets held in such policyholder fund, after taking into account any transfers required to be made in terms of section 29 in respect of the last year of assessment commencing before 1 January 2000— 40
- (a) exceeds the value of the liabilities so determined in relation to such policyholder fund, the insurer shall, within such period, transfer from such policyholder fund to its corporate fund assets having a market value equal to such excess: or 45
 - (b) is less than the value of liabilities so determined in relation to such policyholder fund, the insurer shall, within such period, transfer from the corporate fund to such policyholder fund assets having a market value equal to such shortfall. 50
- and such transfer shall for the purposes of this section be deemed to have been made on such first day of such first year.
- (16) Any amount transferred from— 55
- (a) the policyholder fund to the corporate fund in terms of subsection (15)(a), shall be included in the income of the corporate fund in respect of its first year of assessment commencing on or after 1 January 2000, and—
 - (i) such amount shall in the first instance be reduced by the balance of any assessed loss incurred by the corporate fund in any 60

- previous year which has been carried forward from the year preceding such year of assessment and the balance of the assessed loss shall be reduced accordingly: and
- (i) where such amount so transferred exceeds the balance of the assessed loss contemplated in subparagraph (i), there shall be allowed to be deducted in the corporate fund from the amount of the remainder of such transfer, an amount equal to—
- (aa) the balance of any special transfer contemplated in section 29(10)(b) and (11), which has not been utilised as at the last day of the last year of assessment commencing before 1 January 2000; and
- (bb) such percentage, determined in accordance with the formula contemplated in subsection (11)(a)(ii), in respect of its first year of assessment commencing on or after 1 January 2000, of the amount of any selling expenses contemplated in section 29(14)(a) incurred during the last year of assessment commencing before 1 January 2000 and the four preceding years of assessment which were not allowed as a deduction in terms of that section during such years of assessment:
- Provided that—
- (A) the amount to be deducted in terms of items (aa) and (bb) shall be limited to such remainder of the transfer: and
- (B) so much of the special transfers contemplated in item (aa) and the selling expenses contemplated in item (bb) as is not deducted from the amount of the transfer included in the income of the corporate fund in terms of subsection (15) shall be forfeited and not be allowed as a special transfer or deduction in any future year of assessment; and
- (b) the corporate fund to the policyholder fund in terms of subsection (15)(b) shall be dealt with as if such transfer was made in terms of subsection (7)(b).”.

Amendment of section 31 of Act 58 of 1962, as substituted by section 23 of Act 21 of 1995 and amended by section 37 of Act 30 of 1998

31. (1) Section 31 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for the word “and” at the end of paragraph (b) of the definition of “international agreement” or the word “or”;

and

- (b) by the addition in subsection (1) to the definition of “international agreement” of the following paragraph:

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

- (ii) any other person who, in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person is managed or controlled in the Republic.

for the supply of goods or services to or by a permanent establishment as contemplated in section 9C(1) of either of such persons outside the Republic; and”.

- (2) Subsection (1) shall come into operation on the date of promulgation of this Act, and shall apply in respect of any transaction, operation or scheme entered into 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 and section 24 of Act 121 of 1984

32. Section 38 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in the Afrikaans text for the words preceding subparagraph (i) of paragraph (a) of subsection (2) of the following words:
 “ ’n maatskappy waarvan alle kategorieë van ekwiteitsaandele op die bepaalde datum openbaar deur ’n [effektebeurs] aandeelbeurs in die onder sy magtiging uitgereikte lys genoteer word, mits die Kommissaris oortuig is—”;
- (b) by the substitution in the Afrikaans text for subparagraphs (i) and (ii) of paragraph (a) of subsection (2) of the following subparagraphs:
 “(i) dat die [effektebeurs] aandeelbeurs ‘ n erkende e n bona fide [effektebeurs] aandeelbeurs onder behoorlike beheer is; 5
 (ii) dat die reëls en regulasies van die [effektebeurs] aandeelbeurs met betrekking tot die toestaan en voortdoring van . n notering vir die koop en verkoop van aandele voile beskerming verleen aan die belange van die publiek met betrekking tot transaksies in die aandele van die maatskappy:”;
- (c) by the substitution for paragraph (e) of subsection (2) of the following paragraph:
 “(e) any insurance society or company subject to assessment in terms of section [twenty-eight] 28, 29 or 29 A.”;

Amendment of section 62 of Act 58 of 1962, as amended by section 8 of Act 114 of 1977, section 36 of Act 101 of 1990 and section 23 of Act 28 of 1997 20

33. Section 62 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in the Afrikaans text for subsection (1A) of the following subsection:
 “(1 A) Waar . n maatskappy wat nie op enige [effektebeurs] aandeelbeurs genoteer word nie onroerende goed besit waarop bona fide-boerdery in die Republiek voortgesit word, word die waarde van bedoelde onroerende goed, vir sever dit toepaslik is vir die doeleindes van die bepaling van die waarde van enige aandele in bedoelde maatskappy, volgens voorskrif van die omskrywing van ‘billike markwaarde’ in artikel 55 (1) bepaal.”;
- (b) by the substitution for paragraph (a) of the proviso to subsection (2) of the following paragraph:
 “where [it is established to the satisfaction of] the Commissioner ^{is} satisfied that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to 12 per cent on such value of the property, the Commissioner may fix such sum as representing the annual yield as may seem to him to be reasonable, and the sum so fixed shall for the purposes of paragraphs (a) and (c) of subsection (1) be deemed to be the annual value of the enjoyment of such property.”;

Substitution of section 63 of Act 58 of 1962

34. Section 63 of the Income Tax Act, 1962, is hereby substituted by the following section:

.’Objection and appeal 45

63. The decision of the Commissioner in the exercise of his discretion under [subsection (3) of section fifty-seven, sub-paragraph (iii) of paragraph (c) of subsection (1) of section sixty-two or the proviso to paragraph (d) of the said subsection (1), or subsection (4) of section sixty-two] section 57(3), section 62(1)(c)(iii), the proviso to section 62(1)(d) or section 62(2)(u) or 62(4), and any determination by the Commissioner under [paragraph (g) of subsection (2) of section fifty-five] section 55(2)(g) of the value of the mineral rights attaching to any property, shall be subject to objection and appeal.’.. 50

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996 and section 25 of Act 28 of 1997 55

35. Section 64B of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in the Afrikaans text for paragraph (a) of subsection (10) of the following paragraph:
 “(a) in die geval van ‘n maatskappy wat op ‘n erkende [effektebeurs] aandeelbeurs genoteer is of ‘n filiaal (soos omskryf in artikel 1 van die Maatskappywet, 1973 (Wet No. 61 van 1973)), van so ‘n maatskappy, hy nie voor daardie datum die dividend aan die betrokke aandeelhouers betaal het of die verklaring daarvan in die openbaar aangekondig het nie; of”;
- (b) by the substitution for paragraph (a) of subsection (13) of the following paragraph:
 “(a) where the company has established or deemed to have established separate funds as contemplated in section 29 or 29A, to dividends accrued on shares constituting an asset in its corporate fund: or’; and
- (c) by the substitution for subsection (14) of the following subsection:
 “(14) For the purposes of subsection (13), the free reserves of an insurer shall—
 (a) subject to the provisions of paragraph (b), be the amount by which the market value of the total assets held by the insurer exceeds the prescribed value determinable in terms of section 29 in relation to business and policies contemplated in subsection (4)(a), (b) and (c) of that section; or
 (b) in respect of any dividend cycle commencing on or after the commencement of the first year of assessment of the company in respect of which section 29A applies, be the amount by which the market value of the total assets held by the insurer exceeds the value of liabilities determinable in terms of section 29A in relation to business and policies contemplated in subsection (4)(a), (b) and (c) of that section.”.

Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, 30 section 30 of Act 21 of 1995, section 22 of Act 36 of 1996 and section 40 of Act 30 of 1998

36. (1) Section 64C of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso to paragraph (c) of subsection (4) of the following words:

“to so much of any such amount distributed (other than an amount contemplated in subsection (3)(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:”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount deemed to have been distributed on or after that date.

Amendment of section 70 of Act 58 of 1962, as amended by section 11 of Act 6 of 1963, section 20 of Act 90 of 1964, section 43 of Act 85 of 1974, section 24 of Act 69 of 1975 and section 26 of Act 28 of 1997

37. Section 70 of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (3) and (3A) of the following subsections:

“(3) Every company which has after 31 December 1973 transferred from its reserves (excluding any share premium account) or unappropriated profits to its share capital or share premium account any amount which is in whole or part deemed by the [second] first proviso to the definition of ‘dividend’ in section 1 to be a profit available for distribution to shareholders of the company, shall, when rendering the annual return of the company’s income, furnish the Commissioner with a statement (which may be included in the accounts or statements accompanying such return) showing the profits of a capital nature and those not of a capital nature so deemed to be available for distribution on the last day of the year of assessment in question.

(3A) Where any cash or any asset (including any asset, interest, benefit or advantage referred to in the [third] second proviso to the definition of ‘dividend in section 1’) is given to any shareholder of a company in consequence of the winding-up, liquidation or reconstruction of the company. **[or]** the partial reduction or redemption of its share capital (including any share premium) or the acquisition of any share of such shareholder in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973), and the amount of such cash or the value of such asset or a portion of such amount or value constitutes a dividend in terms of the said definition the company shall, before payment to the shareholders is effected or within such period as the Commissioner may approve, calculate the amount of such dividend and furnish the Commissioner with a written statement setting forth the facts necessary for a determination by the Commissioner of the amount of such dividend and giving details of the company’s calculation of that amount..’.

Amendment of section 74D of Act 58 of 1962, as inserted by section 14 of Act 46 of 1996 and amended by section 29 of Act 28 of 1997

38. Section 74D of the Income Tax Act, 1962, is hereby amended by the substitution for the words “Supreme Court” in paragraph (a) of subsection (9) of the words “High court”

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993, section 27 of Act 21 of 1994 and section 15 of Act 46 of 1996

39. Section 75 of the Income Tax Act, 1962, is hereby amended—

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

“(f) not being a person whose gross income consists solely of salary, wages or similar compensation for personal service, without just cause shown by him fails to retain—

(i) all records, namely ledgers, cash books, journals, cheque books, bank statements, deposit slips, paid cheques, invoices, stock lists and all other books of account; and

(ii) any data created by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983), including data in the electronic form in which it was originally created or in which it is stored for the purposes of backing up such data,

relating to any trade carried on by him and recording the details from which his returns for the assessment of taxes under this Act were prepared, for a period of four years from the date upon which the return relevant to the last entry in any such record was received by the Commissioner; or”;

(b) by the addition of the word “or” at the end of paragraph (g) of subsection (1):

and
(c) by the insertion in subsection (1) of the following paragraph after paragraph (g):

“(h) holds himself out as an officer engaged in carrying out the provisions of this Act.”.

Amendment of section 75A of Act 58 of 1962, as inserted by section 42 of Act 30 of 1998

40. Section 75A of the Income Tax Act, 1962, is hereby amended—

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

“Notwithstanding the provisions of section 4, the Commissioner may from time to time publish [by notice in the Gazette a list of persons who have] for general information such particulars as specified in subsection (2), relating to any offence committed by any person, where such person has been convicted of [any] such offence in terms of—”; and

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

“Every such [list] publication may specify—...

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 5

41. (1) Paragraph 11 of the First Schedule to the Income Tax Act, 1962. is hereby amended by the substitution for item (iii) of subparagraph (c) 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), [or] 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” 10

(2) Subsection (1) shall be deemed to have come into operation on 30 June 1999.

Insertion of paragraph 2B in Second Schedule to Act 58 of 1962 15

42. (1) The following paragraph is hereby inserted after paragraph 2A of the Second Schedule to the Income Tax Act, 1962:

“**2B.** For the purposes of paragraph 2, where any endorsement has been made in the records of the fund of which such person is or was a member, which provides that any part of the pension interest shall be paid to the former spouse of such member, as provided for in section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), the amount of such part shall be deemed to be an amount that accrues to such person on the date on which the pension interest, of which such amount forms part, accrues to such person: Provided that so much of any tax payable as is due to the inclusion in the income of such person of any amount in accordance with the provisions of this paragraph, may be recovered by such person from the former spouse to whom or in whose favour the part in question is paid or becomes payable.” 20 25

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any lump sum benefit accrued on or after that date. 30

Insertion of paragraph 12 in Fourth Schedule to Act 58 of 1962

43. The following paragraph is hereby inserted after paragraph 11 B of the Fourth Schedule to the Income Tax Act, 1962:

“Estimated assessment

12. (1) Where any employer who is required to deduct or withhold 35
employees’ tax in terms of the provisions of paragraph 2, has failed to so deduct or withhold such tax, or has failed to pay over any amount of employees’ tax deducted or withheld, and such employer has not been absolved from his liabilities in terms of the provisions of this Schedule, the Commissioner may make a reasonable estimate of the amount of employees’ tax which is required to be deducted or withheld and issue to the employer a notice of assessment of the unpaid amount. 40

(2) An employer shall be liable to the Commissioner for the payment of the amount of employees. tax so estimated as if such amount was deducted or withheld as contemplated in paragraph 2. 45

(3) Any estimate of the amount of employees’ tax payable by an employer in terms of the provisions of subparagraph (1), shall be subject to objection and appeal.’..

Amendment of paragraph 30 of Fourth Schedule to Act 58 of 1962, as amended by section 45 of Act 21 of 1995

44. Paragraph 30 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words following on item (m) of subparagraph (1) of the following words:

“shall be guilty of an offence and liable on conviction to a fine [not exceeding four hundred rand] or to imprisonment for a period not exceeding [six] 12 months [or to both such fine and such imprisonment].”

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 and section 50 of Act 28 of 1997

45. Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in the Afrikaans text for paragraph (a) of the proviso to subparagraph (1) of the following paragraph:

“(a) waar die reg aan ‘n werknemer verleen is om bedoelde motorvoertuig te gebruik soos in subparagraaf (2) beoog en bedoelde voertuig, of die reg van gebruik daarvan, nie minder nie as 12 maande voor die datum waarop bedoelde reg aan die werknemer verleen is, deur die werkgewer verkry is, daar van die bedrag wat ingevolge die voorafgaande bepalinge van hierdie subparagraaf bepaal is, ‘n waardevermindering stoelae afgetrek word bereken volgens die verminderdesaldometode teen die koers van 15 persent vir elke voile tydperk van 12 maande vanaf die datum waarop die werkgewer vir die eerste maal bedoelde voertuig of die reg van gebruik daarvan verkry het tot die datum waarop die reg van gebruik daarvan vir die eerste maal aan genoemde werknemer verleen is; en”.

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 30 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994 and section 57 of Act 30 of 1998

46. Section 1 of the Customs and Excise Act, 1964, is hereby amended—

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

“ ‘this Act’ includes any proclamation, government notice, regulation or rule issued or made or agreement concluded or deemed to have been concluded thereunder or any taxation proposal contemplated in section 58 which is tabled in the [House of] National Assembly; ”; and

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

“In this section, except in the definition of ‘package’. and in sections 6, 7, 18, 38, [and] 64A and 87(2), ‘container’ means transport equipment—...

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, section 34 of Act 34 of 1997 and section 58 of Act 30 of 1998

47. Section 4 of the Customs and Excise Act, 1964, is hereby amended by the insertion after subsection (12) of the following subsection:

“(12A) (a) Where, on the exportation of any goods from the Republic, any certificate, declaration or other proof has been furnished regarding the origin of such goods to comply with the provisions of any agreement contemplated in section 46, 49 or 51 or any other requirement or any practice, an officer may, for the purposes of verifying or investigating such certificate, declaration or other proof, require—

(i) the exporter; or
 (ii) any other person appearing to the officer to have been concerned in any way with—

(au) the production or manufacture or exportation of such goods;

(bb) any goods from which directly or indirectly such goods have been produced or manufactured; or

(cc) the furnishing of such certificate, declaration or other proof, to furnish such information in such a manner and within such time as the officer may determine, and to produce on demand for inspection and to allow the making of copies or extracts from such invoices, bills of lading, bills of entry, books of account or other documents in whatever form, as the officer may specify.

(b) No person may, without good cause shown, refuse to comply with any such requirement of an officer.”.

Amendment of section 18 of Act 91 of 1964, as amended by section 2 of Act 95 of 1965, section 6 of Act 105 of 1969, section 4 of Act 71 of 1975, section 3 of Act 105 of 1976, section 3 of Act 112 of 1977, section 4 of Act 84 of 1987, section 13 of Act 59 of 1990, and section 11 of Act 45 of 1995

48. Section 18 of the Customs and Excise Act, 1964, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1 A) For the purposes of subsection (1)(a) imported goods landed in the Republic includes goods in transit through the Republic which are destined for removal to a consignee in any country outside the Republic.”.

Amendment of section 36 of Act 91 of 1964, as substituted by section 25 of Act 45 of 1995, and amended by section 2 of Act 44 of 1996

49. Section 36 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for subsections (1), (2), (3) and (4) of the following subsections:

“(1) For the purposes of this section, ‘beer’ means beer made from malt classified under and specified in tariff item 104.10 of Part 2 of Schedule No. 1.

(2) (a) Every manufacturer shall, in respect of [such] beer manufactured by the manufacturer in the Republic, register with the Commissioner the brand names whereunder such beer will be sold or disposed of for home consumption, together with the alcoholic strength by volume [and the tariff item of Part 2 of Schedule No. 1 which will apply in respect] and the quantity which will be indicated on each container size of the beer so sold or disposed of under any such name, and no beer shall be so sold or disposed of unless so registered.

(b)(i) The provisions of paragraph (a) shall apply *mutatis mutandis* if any of such registered particulars should change.

(ii) Any such change shall be registered within the time prescribed by rule,

(c) Where beer is subject to further fermentation after being packaged, the alcoholic strength by volume to be registered and indicated on the container shall be the strength which the beer is reasonably expected to have when consumed.

(d) No brew of beer shall be packaged for home consumption if the alcoholic strength by volume thereof exceeds such registered strength after deduction of any tolerance prescribed by rule.

(e) If beer in bulk is removed in bond from a customs and excise manufacturing warehouse the alcoholic strength by volume shall be

tested before removal and recorded on all documents of removal and reflected in the records required to be kept in terms of the rules.

(3) No [such] beer shall be sold or disposed of by any manufacturer for home consumption except in a container which indicates the brand name. [and] the alcoholic strength by volume and quantity of such beer, and any invoice or other document relating to such sale or disposal of such beer shall indicate the registered brand name thereof.

(4) Any description on any container of beer bearing an indication of a brand name, [and] alcoholic strength by volume and quantity registered with the Commissioner shall be deemed to be a declaration for the purpose of assessment of duty.”;

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

“(a) If the actual alcoholic strength by volume of any beer in any container not intended for export as contemplated in subsection (9), bearing an indication of a name and alcoholic strength by volume registered with the Commissioner under this section is ascertained, after deduction of any tolerance prescribed by rule, to be higher than the alcoholic strength by volume [specified in the tariff item] registered in relation to beer of such name, the manufacturer shall be liable for the duty on the full quantity of the brew or blend of brews of beer from which such container was filled [at the rate of duty applicable to beer of] according to the actual strength as ascertained in respect of the contents of such container.”; and

(c) by the addition of the following subsections:

“(7) (a) Every manufacturer shall—

- (i) test the alcoholic strength by volume of each brew using a method approved by the Commissioner and record the results of each test as prescribed by rule;
- (ii) keep a record of the actual quantity of beer in each container size packaged for sale or disposal for home consumption.

(b) (i) Where the average of the test results for any registered brand name over any two successive periods of three months show that the average alcoholic strength by volume, although within any tolerance prescribed by rule, exceeds the registered strength after deduction of any average allowance as may be prescribed by rule, duty shall, if the Commissioner so determines, be payable in respect of such excess strength on all the beer accounted for during such periods.

(ii) Payment of such duty shall be shown separately on, and included with, the first account presented to the Controller after the end of such period.

(iii) Where the average alcoholic strength by volume so exceeds the registered strength, the manufacturer shall change the registration within the time prescribed by rule.

(c) (i) Where the actual total quantity of beer of each container size sold or disposed of for home consumption during any period of three months exceeds the calculated total quantity, according to the registration for such container size, and after deduction of any average allowance as may be prescribed by rule, duty shall be payable on the excess quantity,

(ii) Such excess quantity shall be shown separately on, and payment of duty thereon included with, the first account presented to the Controller after the end of such period.

(d) A manufacturer shall not be entitled to any refund of duty if the alcoholic strength referred to in paragraph (b) or the quantity referred to in paragraph (c) is less than the registered strength or quantity, as the case may be.

(8)(a) An officer may take samples of any beer at any time and send such samples for analysis to a person designated under paragraph (b).

(b) The Commissioner may designate any person to analyse such samples.

(9) Any beer intended for export shall only be exported in containers with a distinguishing mark approved by the Commissioner.

(1 O) The Commissioner may by rule prescribe the following in relation to beer:

(a) The manner in which alcoholic strength by volume and quantity are determined for the purposes of registration;

(b) the tolerance allowable on registered alcoholic strength by volume;

(c) the average allowances for the purposes of subsection (7)(b)(i) and (c)(i):

(d) records to be kept and reports to be furnished of ingredients used, production, test results of the alcoholic strength by volume of brews, quantities manufactured and put in containers, losses and beer returned;

(e) the procedure or method for the taking of samples by an officer; the method of analysis of such sample; the form for reporting on the analysis of such sample by a designated person; the results of such analysis; and any other particulars as may be required on such form:

(f) the time and circumstances within which any change of the alcoholic strength by volume or quantity is required to be registered;

(g) any other reasonable measure for controlling the manufacturing processes or the removal of beer for home consumption or export.”.

Substitution of section 37A of Act 91 of 1964

50. (1) Section 37A of the Customs and Excise Act, 1964, is hereby substituted by the following section:

“Special provisions in respect of marked goods and certain goods that 30 are free of duty

37A. (1) (a) Notwithstanding anything to the contrary in this Act contained, where—

(i) any goods are classified under and specified in any heading or subheading of Chapter 27 of Part 1 of Schedule No. 1;

(ii) such goods are also classified under and specified in any item of Part 2 and Part 5 of Schedule No. 1;

(iii) such heading or subheading has been expressly quoted in any such item; and

(iv) a free rate of duty is prescribed in respect of each such heading or subheading and such item,

such goods shall, as may be prescribed by rule, on importation into or manufacture in the Republic or on being marked, be accounted for in any customs and excise warehouse licensed in terms of this Act.

(b) For the purposes of this section the Commissioner may, on such conditions as he may impose in each case in order to ensure the proper control over the storage, marking and removal of the goods contemplated in paragraph (a), approve any such warehouse and any licensee or class of licensee of such warehouse;

(c) Unless so approved by the Commissioner, no person shall deal with any such goods in any manner contemplated in paragraph (b).

(2)(a) If any goods are described in any heading or subheading or item referred to in subsection (1)(a) as marked, the unmarked goods concerned shall be marked by the approved licensee in the approved warehouse by the addition of such marker, in such proportion which is equal to or exceeds, and in accordance with such procedure and control measures, as may in each case be prescribed by rule.

(b) Any goods contemplated in subsection (1) shall each be stored separately from all other goods and shall be subject *mutatis mutandis* to the provisions of this Act relating to dutiable goods stored in and removed from a customs and excise warehouse, as may be prescribed by rule.

(c) (i) Subject to the provisions of subparagraph (iii), any reference to 'marked goods' or marker, in this or any other section or any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 or Part 5 of Schedule No. 1 or in any note to such Chapter or Part or in any rule, shall be deemed to be a reference to unmarked goods referred to in subparagraph (ii) which have been marked and the marker which is required to be added as contemplated in paragraph (a);

(ii) Any reference to 'unmarked goods' in this or any other section or in any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 or Part 5 of Schedule No. 1 or in any note to such Chapter or Part or in any rule, shall be deemed to be a reference to goods which, except for the reference to marked, are of the same description as marked goods and are specified as unmarked goods of such description in any such heading or subheading or item;

(iii) Whenever it is necessary for the purpose of establishing any contravention of any provision of this section, any goods shall be deemed to contain marked goods when such goods contain a proportion of the marker equal to or exceeding that as may be prescribed by rule.

(d) Such addition of a marker shall be deemed not to constitute mixing or blending for the purposes of—

(i) section 37; or

(ii) the classification of any goods under any heading, subheading or item of Schedule No. 1, except as provided in this section,

(e) The application of the free rate of duty specified in any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 and Part 5 of Schedule No. 1 in respect of any goods described as marked goods, shall be subject to the provisions of this section.

(3) (a) Any person who sells or disposes of in any manner, whether or not for any consideration, any marked goods at any one time in excess of the quantity prescribed by rule, shall issue an invoice to the purchaser, or to any other person to whom the goods are so disposed of, containing such particulars as may be prescribed by rule.

(b) Any person who so sells or disposes of marked goods shall keep a copy of such invoice and any person to whom such invoice is issued shall keep such invoice for such period as may be prescribed by rule.

(c) Any person referred to in paragraph (a) and any other person who is at any time in possession of or has under his control any marked goods in excess of the quantity prescribed by rule, shall complete and keep such books, accounts and other documents in such form, reflecting such particulars and for such period and shall comply with any such other requirements, as may be prescribed by rule.

(d) The provisions of paragraph (a) shall not apply to stock loan transactions between approved licensees of customs and excise warehouses.

(4) (a) No person shall—

(i) mix any marked goods in any proportion with distillate fuel or petrol;

(ii) mix any marked goods in any proportion with any lubricity agent for use as fuel in any engine;

(iii) mix any marked goods in any proportion with any lubricity agent, or be in possession of any marked goods mixed in any proportion with any lubricity agent, or be in possession of marked goods for mixing with any lubricity agent in any circumstances or for any purpose, otherwise than in accordance with this section and the rules:

- (i) use any marked goods, whether or not mixed with any other goods in any proportion, as fuel in any engine;
- (v) sell or dispose of in any manner whether or not for any consideration or acquire any marked goods or any marked goods mixed with any lubricity agent, for use as fuel in any engine; 5
- (vi) be in possession of any marked goods mixed in any proportion with distillate fuel or petrol;
- (vii) be in possession of any marked goods or marked goods mixed in any proportion with any lubricity agent for use as fuel in any engine;
- (viii) remove or neutralise or attempt to remove or neutralise any marker in any marked goods; 10
- (ix) add any substance to any marked goods which can prevent or impede the detection of the marker;
- (x) be in possession of any marked goods or sell or dispose of in any manner whether or not for any consideration or acquire any marked goods in which is present any substance which or the colour of which can prevent or impede the detection of the marker; 15
- (xi) mix any unmarked goods with any marked goods; or
- (xii) unless approved by, and subject to such conditions as may be imposed by, the Commissioner, import any goods containing the marker. 20
- (b) Any person who so mixes or uses or sells or disposes or acquires or possesses any marked goods or so adds any substance to any marked goods or so removes or neutralises or attempts to remove or to neutralise any marker or any person to whom any invoice referred to in subsection (3)(a) has been issued in respect of the marked goods concerned, shall, in addition to any other liability incurred in terms of this Act, be liable, as the Commissioner may determine, for the payment of an amount not exceeding the duty that may be leviable on any distillate fuel, petrol, lubricity agent or unmarked goods in accordance with the provisions of Schedule No. 1, whichever yields the greatest amount of duty, in respect of all marked goods which - 25
- (i) are in the possession or under the control of such person or on any premises in the possession or under the control of such person; and
- (ii) were previously sold or disposed of or purchased or were in the possession or under the control of such person or on any premises in the possession or under the control of such person at any time, unless it is shown within 30 days from the date of any demand for payment of any amount in terms of this section that the goods concerned have not been dealt with contrary to the provisions of paragraph (a). 30
- (c) (i) If different rates of duty on such distillate fuel, petrol, lubricity agents or unmarked goods were in force during any period in respect of which the duties are calculated for the purposes of the payment referred to in paragraph (b), the highest rate in force at the relevant time shall be applied for the purposes of calculating the duty payable as provided in paragraph (b). 35
- (ii) For the purposes of calculating the duty payable on any marked goods mixed with distillate fuel, petrol, unmarked goods or lubricity agent in any tank, including the fuel tank of any engine, such duty shall be calculated, on the total quantity of such mixed goods, in accordance with the provisions of paragraph (b). 40
- (d) Notwithstanding anything to the contrary in this Act contained, any person who, contrary to subsection (3) and the rules, fails to—
- (i) keep any invoice issued or a copy thereof;
- (ii) issue any invoice;
- (iii) complete and keep the books, accounts and documents; or 45
- (iv) forthwith furnish any officer at such officer's request with such invoice or copy thereof and with the books, accounts and documents, required to be completed and kept. 50

shall, in addition to any other liability incurred in terms of this Act, in respect of the goods to which such failure relates, be liable, as the Commissioner may determine, for the payment of an amount not exceeding the duty that may be leviable on any distillate fuel, petrol, lubricity agents or unmarked goods in accordance with the provisions of Schedule No. 1, whichever yields the greatest amount of duty, unless it is shown within 30 days of the date of any demand for payment of such amount in terms of this section that the goods concerned have not been dealt with contrary to the provisions of this section.

(e) Any amount for which any person is liable in terms of this section shall be payable upon demand by the Commissioner.

(f) payment of any amount in respect of the marked goods referred to in paragraph (b)(i) shall not absolve the person concerned from compliance with the provisions of paragraph (a).

(5) (a) For the purposes of this section an officer may—

- (i) take samples of any goods in any tank or other container or in any fuel tank of any engine;
- (ii) analyse such samples or send them for analysis to any person designated under paragraph (c)(ii);
- (iii) stop and detain any vehicle or mobile apparatus with or without the assistance of any traffic officer or member of the South African Police Service or the South African National Defence Force;
- (iv) detain any ship with or without the assistance of any member of the South African Police Service or the South African National Defence Force.

(b) The provisions of section 106(2) shall *mutatis mutandis* apply to any sample taken under this subsection.

(c) The Commissioner may—

- (i) by rule prescribe the form for reporting on any vehicle or mobile apparatus stopped or premises visited, or any person concerned with such vehicle, mobile apparatus or premises; or on any procedure or method for the taking or analysis of any sample by an officer; or on the results of such analysis and any other particulars as maybe required on such form;
- (ii) designate any person to analyse any such sample;
- (iii) by rule prescribe the form for reporting on the analysis of such sample by such designated person, the results of such analysis and any other particulars as may be required on such form;
- (iv) by rule prescribe the method for sealing any tank or container.

(d) Any person who is in any way concerned with any marked goods or any vehicle or mobile apparatus or any premises where any tank or other container is situated, shall furnish an officer on demand with any particulars which he is able to provide for the purposes of the completion of the report referred to in paragraph (c).

(6) (a) Whenever an officer has detained any ship, vehicle, mobile apparatus, engine, tank or other container or goods in terms of this Act for the purposes of investigating any matter to which this section relates, he shall not, if any goods are tested for the presence of a marker, take any action to enforce any other provision of this Act, unless he is in possession of a report by the person designated under subsection (5)(c)(ii) or by any person in the employ of and authorised by such designated person, on the prescribed form, which contains particulars indicating that the goods concerned have been dealt with contrary to the provisions of this section.

(b) Any person who is in any way concerned with such goods as contemplated in subsection (4)(b) shall be liable in respect thereof for payment of an amount calculated on the same basis as provided in that subsection.

(c) Any goods otherwise found by an officer to have been dealt with contrary to the provisions of this section and any goods which have been used in so dealing with those goods shall be liable to forfeiture in accordance with this Act.

(d) The owner or whoever has possession or control of any goods, ship, vehicle, mobile apparatus, engine, tank or other container, shall be liable for any reasonable costs and expenses, including the costs of analysing any sample, incurred by, and charges due to, the Commissioner in the handling of and dealing with any such goods, ship, vehicle, mobile apparatus, engine, tank or other container for the purposes of this section.

(7) (a) Notwithstanding the provisions of subsection (4) and anything to the contrary in any other provision of this Act, whenever any marked goods have become mixed with or contaminated by unmarked goods or any other goods, by an act or omission which by the exercise of reasonable care could not have been avoided, such mixing or contamination shall, in the event that the proportion of the marker present in such mixed or contaminated goods is less than the proportion prescribed by rule in terms of subsection 2(a), but is equal to or exceeds the proportion prescribed by rule in terms of subsection (2)(c)(iii), be reported immediately to the Commissioner, unless such mixing or contamination occurs within a licensed customs and excise warehouse, and the licensee complies with the provisions of subparagraphs (i) and (ii) of paragraph (b), and a report of each such event is prepared and kept available for inspection by an officer.

(b) Such goods shall, subject to the approval of the Commissioner and to such conditions as the Commissioner may in each case impose—

- (i) be mixed or blended with other goods by the licensee of a customs and excise warehouse until the proportion of the marker is less than the proportion prescribed by rule in terms of subsection (2)(c)(iii), in which case the total quantity of such mixed or blended goods shall be liable to the duty applicable to such goods in terms of Schedule No. 1 on removal from such warehouse; or
- (ii) be delivered to any person who is registered as required by the rules, for mixing or blending with other goods where such mixed or blended goods are not capable of use as fuel in any engine.

(c) If the Commissioner for any reason finds that such mixed or contaminated marked goods cannot be dealt with as contemplated in paragraph (b) within any reasonable period determined by the Commissioner, such goods shall on expiry of such period be regarded as having been abandoned to the Commissioner and may thereafter be disposed of in such manner as the Commissioner considers reasonable in the circumstances.

(d) The licensee of the customs and excise warehouse, the purchaser or any other person to whom the marked goods were disposed of or whoever had control thereof when such mixing or contamination occurred shall be liable for any reasonable costs and expenses incurred by and charges due to the Commissioner in respect of any handling of and dealing with such goods in accordance with the provisions of paragraph (b) or (c).

(e) Any person who deals with such mixed or contaminated goods contrary to the provisions of paragraph (b), shall, in addition to any other liability incurred in terms of this Act, be liable in respect of the total quantity of such goods for payment of an amount calculated on the same basis as provided in subsection (4)(b).

(8) (a) Where any goods may be disposed of in terms of section 90, the Commissioner may, notwithstanding the provisions of that section, but subject to such conditions as the Commissioner may in each case impose, which may include conditions requiring payment of any amount determined by the Commissioner—

- (i) dispose of such goods for mixing or blending with other goods as contemplated in subsection (7)(b);

(ii) dispose of such goods in any other manner which the Commissioner considers reasonable in the circumstances: or

(iii) order the destruction of such goods.

(b) The person from whom the goods were seized shall be liable for any reasonable costs and expenses incurred by and charges due to the Commissioner in respect of the handling of and dealing with such goods as contemplated in paragraph (a).

(9) (a) No person may acquire or sell or dispose of in any manner, whether or not for any consideration, or be in possession of or have under his control or use—

(i) any goods, other than marked goods, for which provision is made free of duty in Schedule No. 1 as contemplated in subsection (1)(a); or

(ii) any marked goods mixed with any lubricity agent, except in accordance with the provisions of this section and the rules.

(b) In addition to the provisions of this subsection and any rule made thereunder, except as otherwise provided in any rule, any marked goods mixed or intended to be mixed with any lubricity agent shall be subject to the provisions of this section and the rules relating to marked goods.

(c) Where any person is required by any rule made under paragraph (d) to register with the Commissioner, the Commissioner may—

(i) require before registration that such person furnishes security in such form, nature or amount as the Commissioner may determine;

(ii) at any time require that such security be altered or renewed in such manner as the Commissioner may determine;

(iii) determine the particulars to be furnished on application for registration and the requirements to be complied with before such application is considered;

(iv) register such person subject to such conditions as the Commissioner may in each case impose;

(v) refuse to register any person or class of persons and cancel the registration of any person who has dealt with any goods contrary to the provisions of this section or the rules or any other provision of this Act and refuse re-registration of such person.

(d) The Commissioner may for the purposes of this section, by rule, prescribe the following:

(i) The persons who are required to register and the goods and activities in respect of which they are required to register:

(ii) the quantities which shall be subject to any such rule:

(iii) the conditions on which and the purposes for which any marked goods may be mixed with any lubricity agent;

(iv) the conditions on which and the purposes for which any person may sell or dispose of in any manner, whether or not for any consideration, or be in possession of or use, any goods contemplated in this section:

(v) any invoice to be issued, the particulars on such invoice, the person who shall keep such invoice or copy thereof, the persons who are required to complete and keep books, accounts and other documents, the form in which they shall be kept, the particulars to be reflected therein and the period for which they are required to be kept;

(vi) restrictions in respect of the removal and export of any goods to which this section applies:

(vii) all matters which are required or permitted in terms of this section to be prescribed by rule;

(viii) any other matter which the Commissioner may consider necessary and useful to regulate the lawful and prevent the unlawful distribution and consumption of any goods to which this section applies.

(e) (i) No goods referred to in paragraph (a)(i) shall be used for any other purpose than that for which they are removed from a customs and excise warehouse and in accordance with the conditions imposed by the

Commissioner and those prescribed in the rules, except with the prior permission of the Commissioner and on payment of the duties leviable in terms of Schedule No. 1 in respect of unmarked goods: Provided that if the Commissioner so permits, the goods may be mixed or blended with other goods in which case the provisions of subsection (7) shall *mutatis mutandis* apply to such goods. 5

(ii) If any goods referred to in paragraph (a)(i) are dealt with contrary to the provisions of this section and the rules, any person who had possession or control of such goods at the time they were so dealt with, shall, in addition to any other liability incurred in terms of this Act, be liable in respect of such goods for payment of an amount calculated on the same basis as provided in subsection (4)(b). 10

(10) No person shall be entitled to any compensation for any loss or damage arising out of any *bona fide* action of an officer or any person who assists him under the provisions of this section. 15

(11) The provisions of section 44A shall *mutatis mutandis* apply in respect of the liability incurred by any person in terms of this section.

(12) For the purposes of this section—
 ‘engine’ referred to in subsections (4)(a) and (c)(ii), (5)(a)(i) and (6)(a) includes any engine of any machine, machinery, plant, equipment, apparatus, vehicle or ship, classifiable under any heading or subheading of Chapters 84 to 87 and 89 of Part 1 of Schedule No. 1; 20
 ‘invoice’ means a document, whether in its original form or in a form approved by the Commissioner, and which contains such particulars as may be prescribed by rule; 25
 ‘ship’ includes any ship classifiable under any heading or subheading of Chapter 89 of Part 1 of Schedule No. 1;
 ‘vehicle’ includes any vehicle classifiable under any heading or subheading of Chapters 86 and 87 of Part 1 of Schedule No. 1.”

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993 and section 33 of Act 45 of 1995 30

51. Section 44 of the Customs and Excise Act 1964, is hereby amended by the addition of the following subsections: 35

“(11)(a) Notwithstanding anything to the contrary in this Act contained, but subject to the provisions of sections 47(10) and (11), 65(7) and (7A) and 69(6) and (7) and subsection (12) of this section, there shall be no liability for any underpayment of duty on any goods where such underpayment is due to the acceptance of a bill of entry bearing any incorrect information, after a period of two years from the date of entry of such goods: Provided that such liability shall not cease— 40

(i) if a false declaration has been made for the purposes of this Act; or
 (ii) in respect of any such underpayment discovered during any inspection from a date two years prior to the date on which such inspection commenced. 45

(b) Where any period is prescribed in this Act for books, accounts or other documents in whatever form to be kept available for production to or inspection by an officer, any such period shall, subject to the provisions of paragraph (c), be calculated from a date prior to the date on which production is demanded or the inspection commences. 50

(c) Except where the Commissioner may otherwise determine in the circumstances of each case, where any false declaration has been made for the purposes of this Act, there shall be no limitation on the period of liability for any underpayment of duty or the period for which any books, accounts or any other documents, in whatever form available, are required to be produced to or may be inspected by an officer. 55

(12) Any person who makes a false statement concerning the origin of goods or who makes use of any declaration or document containing any such statement as a result of which such person obtains entry of imported goods at a preferential rate of duty as specified in Part 1 of Schedule No. I in accordance with the provisions of any agreement contemplated in section 49 or 51 shall, for a period of three years prior to the date on which such false statement was made or made use of, in addition to any other liability incurred in terms of this Act, be liable for the payment of duties at the general rate specified in Part 1 of Schedule No. 1 in respect of the goods at the time of entry: Provided that the Commissioner may on good cause shown reduce such period. .

Amendment of section 46 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993 and section 33 of Act 45 of 1995

52. Section 46 of the Customs and Excise Act, 1964, is hereby amended—

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

“For the purposes of this Act, except where any agreement contemplated in section 49 or 51 otherwise provides, goods shall not be regarded as having been produced or manufactured in any particular territory unless—”:

(b) by the addition to subsection (4) of the following paragraph:

“(d) for the purposes of any tariff preferences allowed by any country in respect of goods exported from the Republic other than tariff preferences provided in terms of agreements contemplated in section 49 or 51, prescribe by rule certificates of origin, the authority to print such certificates or other forms, the documents to be produced upon entry for exportation, particulars to be stated on such entry and any other requirements which may be necessary for the administration of such exports.”;

(c) by the addition of the following subsection:

“(5) (a) Any person entering any imported goods for which a general rate of duty is prescribed in any column of Part 1 of Schedule No. 1 and which are liable to any provisional payment as contemplated in section 57A or to anti-dumping duty imposed under section 56 or countervailing duty imposed under section 56A or safeguard duty imposed under section 57, shall produce to the Controller at the time of presenting the bill of entry a declaration of origin in respect of such goods in the form prescribed by the Commissioner by rule.

(b) Such declaration shall be issued by a person approved by the Commissioner.”.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, sections 9 and 15 of Act 98 of 1980, section 8 of Act 86 of 1982, section 6 of Act 52 of 1986, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 6 of Act 68 of 1989, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 4 of Act 44 of 1996 and section 63 of Act 30 of 1998

53. Section 47 of the Customs and Excise Act, 1964, is hereby amended—

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

“(2) (a) Notwithstanding anything to the contrary in this Act contained, if any person is unable to calculate the correct amount of duty payable in terms of this Act due to the fact that the computer system used to provide any information required for the calculation of such duty is not Year 2000 compliant, the Commissioner may estimate the amount of duty payable on such basis as he considers reasonable in the circumstances.

(b) The provisions of this subsection shall not be construed as absolving any person from otherwise complying with the provisions of t h i s Act.”;

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

“(3)(a) Any rate of duty other than the general rate specified in respect of any heading or subheading in any column of Part I of Schedule No. 1 shall apply to imported goods to which such heading or subheading relates if such goods qualify for the benefit of such rate in accordance with—

(i) any provision of origin contained in any part of the schedule to the General Notes of Schedule No. 1 and any other provision referred to in section 48(1A) applicable to such column, any provision relating to tariff quotas, any applicable provision in the said Part I and any Note to such Part or schedule; and

(ii) any rule made in terms of section 49 to give effect to any provision of origin of any agreement contemplated in the said section or in connection with any tariff quotas or any other condition or procedure that may be applicable to any goods specified in the said column:

(b) The expression ‘any provision of origin’ includes provisions relating to ‘originating products’, ‘originating status’, ‘rules of origin’ or like expressions, and ‘goods obtained, produced or manufactured’ in any part of the said schedule to the General Notes of Schedule No. 1 and, unless the context otherwise indicates, any provision in this Act in respect of the origin of goods.

(c) Any reference in any agreement contemplated in section 49 or 51 to the ‘most-favoured-nation-rate of duty’ or the ‘MFN tariff’ or the ‘MFN rate of duty’ or like expressions shall, unless otherwise specified in Part I of Schedule No. 1, for the purposes of this Act, be deemed to be a reference to the rates of duty specified in respect of any heading or subheading in the column for general rates of duty in the said Part I of Schedule No. 1.”; and

(c) by the substitution for the words “Supreme Court” in paragraph (e) of subsection (9) of the words “High Court”.

Amendment of section 4S of Act 91 of 1964, as amended by section 6 of Act 57 of 1966, section 1S of Act 105 of 1969, section 3 of Act 9S of 1970, section 1 of Act 6S of 1973, section S of Act 105 of 1976, section 11 of Act 112 of 1977, sections 10 and 15 of Act 9S of 1980, section 9 of Act S6 of 1982, section 1S of Act S4 of 1987, section 7 of Act 6S of 1989, section 23 of Act 59 of 1990, section 4 of Act 61 of 1992, section 3 of Act 19 of 1994, section 39 of Act 45 of 1995 and section 64 of Act 30 of 199S

54. Section 48 of the Customs and Excise Act, 1964, is hereby amended—

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

“The Minister may from time to time by notice in the *Gazette* amend the General Notes to Schedule No. 1 and Part 1 of the said Schedule **[and] or substitute the said Part] and amend Part 2 of the said Schedule in so far as it relates to imported goods—**

(a) in order to give effect to any agreement amending any agreement approved by section 2 of the Geneva General Agreement on Tariffs and Trade Act, 1948 (Act No. 29 of 1948), or to any agreement **[concluded under] or amendment of any agreement contemplated in section 49 and for the purposes of subsection (1)(a) or (b) of the said section 49:**” and

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

“(1 A) (a) The Minister may, ‘for the purposes of subsection (1)(a) and section 49(1)(a) or (b), by like notice amend the General Notes to Schedule No. 1 to incorporate as part of such Notes a schedule thereto entitled ‘Origin provisions of trade agreements’, containing the following in respect of any agreement contemplated in section 49:

- (i) In separate parts of such schedule, any such agreement or any protocol or other part or provision of such agreement, including any annex or appendix thereto, concerning the origin of goods;
- (ii) any instrument contemplated in section 49(1)(b);
- (iii) notes to any such agreement, protocol or other part or provision which may specify—
 - (au) the agreement, protocol or other part or provision or instrument which governs goods entered according to the provisions of a particular column of Part 1 of Schedule No. 1;
 - (bb) definitions;
 - (cc) interpretation of words or phrases or substitutes for words or phrases;
 - (dd) any condition or procedure or provision of this Act to be complied with to give effect to such provisions of origin;
 - (ee) powers, duties or functions of the Commissioner or an officer;
- (iv) any amendment, with or without retrospective effect, to such schedule or notes for any reason as may be specified in such amendment.
 - (b) No goods imported or exported shall qualify for the benefit of preferential tariff treatment in terms of such agreement unless they comply with such provisions of origin or any other provision of such agreement or of this Act governing the acquisition of origin, tariff quotas or any other condition which is to be fulfilled for the purposes of giving effect to such agreement.’..

Substitution of section 49 of Act 91 of 1964, as substituted by section 65 of Act 30 of 1998

55. Section 49 of the Customs and Excise Act, 1964, is hereby substituted by the following section:

“Agreements in respect of rates of duty lower than general rates of duty

- 49. (1) (a)** Whenever Parliament has approved as contemplated in section 231 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), any agreement with the government of any country or countries or group of countries—
- (i) which includes the granting of preferential tariff treatment of goods and provisions of origin governing such treatment;
 - (ii) concerning customs co-operation, including for the exchange of information and the rendering of mutual and technical assistance in respect of customs co-operation between the Republic and such other country or countries or group of countries;
 - (iii) regulating transit trade and transit facilities; or
 - (iv) which provides for any other matter which either expressly or by implication requires to be administered by customs legislation.
- such agreement or any protocol or other part or provision thereof is enacted into law as part of this Act when published by notice in the *Gazette* in accordance with the provisions of subsections (1) and (1A) of section 48 or subsection (5) of this section.
- (b)(i) Any amendment of such agreement or any protocol or other part or provision thereof, any regulations for facilitating implementation, any agreed list of processing relating to originating status of goods, any other matter agreed upon between governments or by any committee of, or a body established by, the parties to such agreement or any decision or condition imposed by such committee or body, is likewise enacted into law as part of [his Act when published in accordance with the provisions of subsections (1) and (1A) of section 48 or subsection (5) of this section by notice in the *Gazette* as an amendment of such agreement or protocol or part

or provision. as the case may be. with effect from any date that may be specified in such notice.

(ii) In this section and in section 48 'instrument' includes, according to the context. any agreement or any amendment of such agreement or any protocol or other part or provision thereof or any document containing any regulation. list. decision or any matter agreed upon as contemplated in subparagraph (i).

(c) In this section and in sections 47 and 48 'agreement' includes, unless the context otherwise indicates, any treaty or convention.

(2) (a) The Commissioner shall obtain and keep two copies of such agreement. effect any amendments referred to in section 1 (b) thereto, record the date the agreement or any such amendment entered into force and the date of any publication referred to in subsection (1).

(b) Whenever in any legal proceedings any question arises as to the contents of such agreement or as to the date on which such agreement or amendment entered into force or the date of such publication, a copy of such agreement as so amended and the record of such dates, shall be accepted as sufficient proof of the contents thereof and the date of publication or the date on which such agreement or amendment entered into force.

(c) If the context so requires, the interpretation and application of any provision of any protocol or other part of such agreement referred to in this section or section 48(1 A) shall be subject to other applicable provisions of such agreement.

(3) Notwithstanding anything to the contrary in this Act contained—

(a) the application of any provision of this Act relating to any importer, exporter, remover in bond, manufacturer, licensee or other principal or any agent or the importation or exportation of goods, the preferential tariff treatment of goods. goods obtained, produced or manufactured. goods in transit or removed in bond, due entry or security in respect of goods imported. exported, removed in bond or in transit, or any other provision or customs procedure or any power, duty or function in connection therewith, shall, for the purposes of giving effect to any agreement contemplated in section 49 or any protocol or other part or provision thereof, be subject to compliance with the provisions of such agreement or such protocol or other part or provision thereof, as the case may be:

(b) any reference in this Act to any protocol or other part or provision of such agreement shall be deemed to include a reference to any instrument referred to in section 49(1)(b) applicable thereto and any provision of such agreement governing such protocol or other part or provision or instrument. as the case may be.

(4) (a) If any reference is made in such agreement to any convention, treaty or other agreement which is to be observed in ascertaining the originating status of goods obtained. produced or manufactured and imported or exported in specified instances. the Commissioner shall obtain and keep two copies of such convention, treaty or agreement, effect any amendment thereto and record the date the convention, treaty or agreement entered into force as advised by the Director-General: Trade and Industry.

(b) The provisions of subsection (2)(b) shall apply *mutatis mutandis* to the copies of such convention, treaty or other agreement,

(c) To the extent that any provision of such convention. treaty or other agreement requires to be so observed, it shall be deemed to be incorporated in the agreement concerned.

(5) Where any such agreement or protocol or other part or provision

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thereof does not relate to the origin of goods as envisaged in section 48(1A), but otherwise by reference to customs or competent authorities or customs or domestic or national legislation or like expressions or in any other way expressly or by implication requires that it should be administered in terms of this Act, the Minister may by notice in the *Gazette* in Schedule No. 10 to this Act under the title 'Agreements or protocols or other parts or provisions thereof contemplated in section 49(5)' publish—

- (a) in separate parts of such Schedule, any such agreement or any protocol or other part or provision of such agreement, including any annex or appendix thereto for the purposes of subsection (1)(a), in so far as it determines or affects or concerns or is required to be observed in connection with—
- (i) mutual administrative and technical assistance in respect of co-operation in customs matters;
 - (ii) simplification and harmonization of trade documentation and procedures;
 - (iii) transit trade and transit facilities; and
 - (iv) any other matter whatever which so requires to be administered in terms of this Act in order to give effect to such agreement;
- (b) any instrument contemplated in, and for the purposes of, subsection (1)(b);
- (c) notes to such Schedule No. 10 wherein may be specified—
- (i) definitions;
 - (ii) interpretations of words and phrases or substitutes for words and phrases;
 - (iii) any condition or procedure or provision of this Act to be complied with in order to give effect to such agreement or protocol or part or provision of such agreement;
 - (iv) powers, duties or functions of the Commissioner or an officer;
- (d) any amendment of Schedule No. 10 and any note thereto with or without retrospective effect for any reason as may be specified in such amendment.

(5A) The provisions of section 48(6) shall apply *mutatis mutandis* in respect of any amendment made under the provisions of subsection (5)(d).

(6) In administering the provisions of any agreement, including any protocol or other part or provision thereof or any other instrument contemplated in this section, and the application of any procedure to give effect thereto, the Commissioner may, notwithstanding anything to the contrary in this Act contained,—

- (a) decide on or determine any matter or perform any duty or function or impose any condition in connection with the provisions so administered, including any decision on or determination or the performance of any duty or function or the imposing of any condition in respect of—
- (i) any heading in Part 1 or any item of any other Part of Schedule No. 1 applicable to any goods imported or exported, obtained, produced or manufactured or used in the production or manufacture of any goods, or the customs value of any such imported goods;
 - (ii) the first ascertainable price of goods where the customs value is not known or cannot be ascertained;
 - (iii) any provision which governs or specifies any procedure concerning—
 - (aa) the origin or proof of origin of goods imported or exported;

- (*bb*) the importation or exportation or production or manufacture of goods and the ex-factory price of goods;
- (*cc*) tariff quotas;
- (*old*) rendering mutual and technical assistance in respect of customs co-operation: 5
- (*ee*) transit carriage of goods, transit trade and transit facilities;
- (*ff*) requirements in connection with agency where any person is represented in the importation or exportation of any goods involving proof of origin or in any matter relating to the transit carriage of goods, transit trade or transit facilities; 10
- (*gg*) the approval of exporters to issue invoice declarations or withdrawal or refusal of such approval;
- (iv) any other power, duty or function or procedure provided in any such agreement or protocol or other part or provision thereof which requires either expressly or by implication customs administrative action to give effect thereto; 15
- (v) the convention, treaty or agreement referred to in subsection (4);
- (vi) a binding origin determination and any procedure in connection therewith;
- (b) make rules— 20
- (i) concerning any matter referred to in paragraph (a), including such convention, treaty or agreement;
- (ii) where reference is made to customs or competent authorities, to domestic, national or customs law or any like reference or any other matter which requires either expressly or by implication application of customs legislation; 25
- (iii) in connection with the entry of goods imported or exported and documents to be produced in support thereof;
- (iv) to regulate the application, determination, entry of goods and other procedures in connection with binding origin determinations; 30
- (v) prescribing forms or procedures or specifying any condition or provision of this Act to be complied with to give effect to such agreement, protocol or other part or provision thereof;
- (vi) to delegate, subject to section 3(2), any power, duty or function to any officer or other person; 35
- (vii) regarding any other matter which may be necessary or useful for the purposes of administering such provisions;
- (c) subject to such conditions as the Commissioner may in each case impose, enter into any agreement with any person, with the concurrence of any exporter, producer or manufacturer, as the case may be, to perform any function or provide any service for the purposes of establishing and reporting on the origin of goods or issuance of any proof of origin to give effect to such agreement. 40
- (7) (a) Notwithstanding the provisions of section 47(9), 65(4) or 66(9), any determination of any heading or item or the customs value of goods imported shall, if such determination concerns goods used in the production or manufacture of any goods, or goods produced or manufactured therefrom, or any other goods, of which the origin is being determined, be made in terms of this section. 45
- (b) For the purposes of any appeal against a decision or determination of the Commissioner in administering any of the provisions referred to in this section— 50
- (i) any decision or determination shall, subject to appeal to court, be deemed to be correct for the purposes of this Act, and where any amount is payable in consequence thereof, such amount shall remain payable as long as such decision or determination remains in force: Provided that if it involves disputes with foreign customs authorities, the processes for dispute settlement provided in the agreement shall be followed; 55
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- (ii) subject to the provisions of subsection (8), any decision or determination may be amended or withdrawn and a new decision or determination made from the date the decision or determination was given, but such a decision or determination shall *mutatis mutandis* be subject to the provisions of section 76B if any refund of duty is involved; 5
- (iii) an appeal against any such decision or determination shall be to the division of the High Court having jurisdiction to hear appeals in the area wherein the decision or determination was made or the goods in question were entered for home consumption or exported.
- (c) Such appeal shall, subject to section 96(1), be prosecuted within period of one year from the date of the decision or determination. 10
- (8) (a) For the purposes of any binding origin determination, unless the context otherwise indicates—
- ‘applicant’ means a person who has applied to the Commissioner for a binding origin determination and has valid reasons to do so; 15
- ‘binding origin determination’ means an origin determination binding on the Commissioner when it is issued to the applicant after compliance with the provisions of this subsection and the rules;
- ‘holder’ means the person in whose name the binding origin determination is issued. 20
- (b) A binding origin determination may be issued by the Commissioner on the written request of an applicant in respect of goods—
- (i) imported from a country or countries or group of countries with which agreements have been concluded as contemplated in this section providing for preferential rates of duty on such goods; and 25
- (ii) for which certificates of origin have been issued by, or invoice declarations made by an exporter approved by, the customs authorities of the country or countries or group of countries concerned.
- (c) A binding origin determination favorable to the holder shall be annulled by the Commissioner if after due enquiry he finds that it was issued on the basis of incorrect or incomplete information. 30
- (d) Such annulment shall take effect from the date the determination was made and the holder shall be notified of the annulment.
- (e) A binding origin determination shall be binding on the Commissioner as against the holder only in respect of— 35
- (i) the determination of the origin of goods for the purposes of the agreement concerned; and
- (ii) goods which are entered as required in terms of section 38(1) after the date on which such determination was supplied by the Commissioner.
- (f) A binding origin determination shall be valid for a period of three years from the date of issue, but shall cease to be valid where— 40
- (i) the binding determination no longer conforms to the provisions of the agreement or this Act on which it is based as a result of any amendment of such provisions;
- (ii) subject to the right of appeal in terms of subsection (7), the Commissioner withdraws it as provided in paragraph (b)(ii) of the said subsection; 45
- (iii) it is no longer compatible with—
- (aa) any interpretation of the provisions of such agreement in respect of the goods in question in the originating country; 50
- (bb) any final judgment of the High Court or a judgment of the Supreme Court of Appeal;
- (iv) provided the holder is informed in advance, it is revoked or amended in the following circumstances:
- (aa) Except in the case referred to in paragraph (c), the Commissioner shall revoke or amend any determination favourable to the holder if any one or more of the conditions imposed for its issue were not or are no longer fulfilled; 55
- (bb) the Commissioner may revoke any determination favorable to

- the holder if such holder fails to fulfil any obligation imposed under such determination;
- (cc) the Commissioner may revoke or amend any determination—
- (i) if it was issued in error; or
 - (ii) if it is unfavorable to the holder and for any reason the goods are subsequently proved to qualify for a favourable determination.
- (g) The date on which a binding determination ceases to be valid shall be—
- (i) in the case of paragraph (f)(i), the date any amendment to such agreement is enacted in this Act or in the case of any other provision of this Act, such provision is so amended; or
 - (ii) in the case of paragraph (f)(ii)(bb), the date of the judgment and in the case of paragraph (f)(iii)(aa) the date of publication of such interpretation.
- (h) (i) Notwithstanding the provisions of paragraphs (f) and (g), if the Commissioner so permits, the holder of a binding origin determination may still use such determination for a period of six months from the date specified therein, or until the period of three years expires, whichever is the earlier date, provided—
- (aa) such holder concluded binding contracts for the purchase or sale of the goods in question on the basis of such determination before any such date; and
 - (bb) such determination is used solely for determining import duties.
- (ii) Any holder who wishes to make use of the possibility of invoking such determination as provided in subparagraph (i), shall notify the Commissioner and provide the necessary supporting documents to enable a check to be made whether the conditions specified in the said subparagraph (i) have been satisfied.
- (9) Notwithstanding anything to the contrary in this Act contained—
- (a) where any importer who imports any goods which are claimed to have the originating status to qualify for any preferential rate of duty specified in Part 1 of Schedule No. 1 is for any reason unable to produce at the time of entry as contemplated in section 39 any certificate of origin or invoice declaration or other document confirming the originating status of such goods as provided in any agreement contemplated in this section, such goods shall, irrespective of whether a binding origin determination has been issued in respect thereof—
 - (i) be entered for storage in a licensed customs and excise storage warehouse; or
 - (ii) with the prior approval of the Controller and on such conditions as the Controller may impose, be entered for customs duty purposes as if such preferential rate applies, subject to the furnishing of a provisional payment or other security approved by the Controller for the amount of the general rate of duty specified in the said Part 1 payable thereon, pending production of such certificate of origin or invoice declaration or other document confirming the originating status of such goods;
 - (b) if such certificate of origin or invoice declaration or other document confirming originating status is not furnished within the time specified by the Controller, duty shall be payable at the general rates of duty specified in Part 1 of Schedule No. 1 in respect of the goods concerned.

Insertion of section 54A in Act 91 of 1964

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56. (1) The following section is hereby inserted after section 54 of the Customs and Excise Act, 1964:

“Special provisions regarding the importation of beer

54A. (1) (a) No imported beer made from malt shall be sold or disposed of for home consumption except in a container which indicates the brand name, the alcoholic strength by volume and the quantity of such beer.

(b) Every invoice of such beer shall reflect the brand name, the alcoholic strength by volume, the type of container, the quantity of beer in each container and the total quantity **of beer to** which such invoice relates.

(2) If the alcoholic strength by volume or the quantity of any imported beer in any container bearing an indication of a brand name, alcoholic strength by volume and quantity is found, when tested and reported on as provided in the rules prescribed under section 36(10), to exceed the alcoholic strength by volume, after deduction of the tolerance so prescribed, or the quantity indicated on such container or invoice, the importer or owner shall be liable for the duty on (the full quantity of beer imported in the consignment, from which the container was taken for testing, according to the alcoholic strength by volume or quantity ascertained in respect of such container.

(3) Notwithstanding anything to the contrary in this Act contained, the provisions of this section shall *mutatis mutandis* apply to any beer manufactured in any other territory of the common customs area brought into the Republic....

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 60 of Act 91 of 1964, as substituted by section 20 of Act 105 of 1969, and amended by section 11 of Act 86 of 1982, section 25 of Act 59 of 1990, 25 section 9 of Act 19 of 1994 and section 44 of Act 45 of 1995

57. Section 60 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Commissioner may, subject to review by the High Court—

(a) refuse any application for a new licence or refuse any application for a renewal of a licence if the applicant has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for a licence; or

(b) refuse any application for a new licence or refuse any application for a renewal of any licence or cancel or suspend for a specified period any licence if the applicant or the holder of such licence **or any employee** of such applicant or holder, as the case may be—

(i) has contravened or failed to comply with the provisions of this Act; or

(ii) has been convicted of an offence under this Act; or

(iii) has been convicted of an offence involving dishonesty; or

(iv) has failed to comply with any condition or obligation imposed by the Commissioner in respect of such licence:

Provided that subparagraphs (i) to (iii) shall not apply in respect of an employee if the applicant or holder, as the case may be, proves that he was not a party to or could not prevent any such act or omission by such employee..’.

Amendment of section 64B of Act 91 of 1964, as inserted by section 19 of Act 112 of 1977 and amended by section 46 of Act 45 of 1995

58. Section 64B of the Customs and Excise Act, 1964, is hereby amended—

(u) by the substitution for subsections (1) and (2) of the following subsections:

“(1) No person shall, for the **purposes of [section 38] this Act**, for reward make entry or **deliver a bill of entry relating to, any goods on behalf of any [importer or exporter of goods as the case may be]**

principal contemplated in section 99(2), unless licensed as a clearing agent in terms of subsection (2),

(2)(a) Application for such licence shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and with any additional requirements that may be prescribed in any other rule and as may be determined by the Commissioner in each case. 5

(b) The Commissioner may, subject to such conditions as he may prescribe by rule and such obligations as he may in each case impose, license any person applying therefor **[and approved by him]** as a clearing agent **[for making entry of or delivery a bill of entry relating to, goods on behalf of an importer or exporter of goods, as the case may be].**”; and 10

(b) by the addition of the following subsections:

“(5) A licensed clearing agent shall be liable in respect of any entry made or bill of entry delivered as contemplated in section 99(2), 15

(6) A licensed clearing agent shall disclose the name and category of the principal referred to in section 99(2) on such bill of entry and if such agent does not so disclose or makes or delivers a bill of entry where the name of another such agent or his own name is stated as the importer, exporter, remover in bond or other principal, as the case may be, he shall be liable for the fulfillment of the obligations imposed on such principal in terms of this Act. 20

(7) No security provided by a licensed clearing agent shall be utilised or accepted as security for the fulfilment of any obligations in terms of this Act of any other such agent.”. 25

Amendment of section 65 of Act 91 of 1964, as substituted by section 13 of Act 86 of 1982 and amended by section 8 of Act 101 of 1985, section 8 of Act 52 of 1986, section 48 of Act 45 of 1995 and section 5 of Act 44 of 1996

59. Section 65 of the Customs and Excise Act, 1964, is hereby amended- 30

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

“(a) **[If the transaction value of any imported goods cannot ascertained in terms of section 66 or has been incorrectly ascertained by the importer]** The Commissioner may determine [a value which] the transaction value of any imported goods, which is required to be ascertained or may be determined as provided in section 66, and such determined value shall, subject to a right of appeal to the court, be deemed to be the value for customs duty purposes of the goods.”; and 35

(b) by the substitution for the words “Supreme Court” in paragraph (a) of subsection (6) of the words “High Court”. 40

Amendment of section 66 of Act 91 of 1964, as substituted by section 26 of Act 59 of 1990 and amended by section 49 of Act 45 of 1995

60. Section 66 of the Customs and Excise Act, 1964, is hereby amended by the substitution for the words preceding paragraph (a) of subsection (9) of the following words: 45

“Where the transaction value of any imported goods cannot be ascertained in terms of the provisions of subsection (8), the Commissioner may determine such value under section 65(4)(a) on the basis of a previous determination or, where there is no previous determination, by such application as he may deem reasonable of any manner of ascertaining the transaction value in terms of subsection (1), (4), (5), (7) or (8). but no such determination shall be based on—”. 50

Amendment of section 69 of Act 91 of 1964, as substituted by section 12 of Act 68 of 1989 and amended by section 1 of Act 111 of 1991, section 3 of Act 105 of 1992, section 6 of Act 98 of 1993 and section 6 of Act 44 of 1996 55

61. Section 69 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for the words "Supreme Court" in paragraph (a) of subsection (5) of the words "High Court"; and
 (b) by addition of the following subsections:

“(6) Save where—

- (a) **a determination has been made under subsection (3) or (4): or**
 (b) any false declaration is made for the purposes of subsection (3) or (4).

there shall be no liability for any underpayment in duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect value for excise duty purposes, after a period of two years from the date of entry of such goods,

(7) Notwithstanding the provisions of subsection (6), any determination made under subsection (3) following upon an inspection of the books or documents of any manufacturer, wholesaler or purchaser or any seller or buyer contemplated in subsection (1) or (2), as the case may be, shall be deemed to have come into operation, in respect of the goods in question entered for excise purposes, two years prior to the date on which the inspection commenced.”.

Amendment of section 73 of Act 91 of 1964, as substituted by section 51 of Act 45 of 1995

62. Section 73 of the Customs and Excise Act, 1964, is hereby amended by the addition of the following subsection:

“(3) The Commissioner may, for the purposes of any agreement contemplated in section 49 or 51, by rule—

- (a) publish arrangements in connection with amounts to be used in currencies in respect of goods imported or exported between the Republic and the country or countries or group of countries concerned;
 (b) prescribe any measures applicable to the implementation of such arrangements.”.

Amendment of section 80 of Act 91 of 1964, as amended by section 10 of Act 85 of 1968, section 27 of Act 105 of 1969, section 28 of Act 112 of 1977, section 22 of Act 86 of 1982, section 7 of Act 89 of 1984, section 12 of Act 52 of 1986, section 27 of Act 84 of 1987, section 32 of Act 59 of 1990, section 8 of Act 105 of 1992, section 8 of Act 98 of 1993 and section 68 of Act 30 of 1998

63. Section 80 of the Customs and Excise Act, 1964, is hereby amended—

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

“(o) contravenes the provisions of section 4(1 2A)(b), 18(1 3), 18A(9), 20(4)bis, 35A(4), 37(9), 37A(1)(c), 37A(4)(u), 48(1A)(b), 60(1), 63(1), 75(7 A), 75(19), 88(1)(bA), 99A, 113(2), 113(8)(c) [or] 114(2A) or 114(2B);[or]”; and

- (b) **by the addition to subsection (1) of the following paragraph:**

“(q) contravenes or fails to comply with any agreement contemplated in section 49 or 51;”.

Substitution of section 85 of Act 91 of 1964, as substituted by section 7 of Act 44 of 1996

64. The following section is hereby substituted for section 85 of the Customs and Excise Act, 1964:

“Beer of higher alcoholic strength than registered

85. Any manufacturer of beer [in whose customs and excise warehouse or on whose delivery vehicle beer packed for sale in the common customs area] of whom or which any container of beer not marked for export as contemplated in section 36(9) is found to contain beer of an alcoholic strength by volume higher than [such] the strength [specified in the tariff item of Part 2 of Schedule No. 1 and] registered in terms of

section 36(2), after deduction of any tolerance provided in the rules relating to that section, shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture..’.

Amendment of section 86A of Act 91 of 1964, as inserted by section 69 of Act 30 of 1998

65. Section 86A of the Customs and Excise Act, 1964, is hereby amended— 10

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

“Notwithstanding the provisions of section 4, the Commissioner may from time to time publish [by notice in the *Gazette* a list of persons who have] for general information such particulars as specified in subsection (2), relating to any offence committed by any person, where such person has been convicted of [any] such offence in terms of—”; and

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

“Every such [list] publication may specify—”. 20

Amendment of section 87 of Act 91 of 1964

66. Section 87 of the Customs and Excise Act, 1964, is hereby amended—

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

“Provided that forfeiture shall not affect liability to any other penalty or punishment which has been incurred under this Act or any other law, or [entitle any person to a refund of] liability for any unpaid duty or charge [paid] in respect of such goods.”; and 25

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

“(2) Any—

(a) ship, vehicle, container or other transport equipment used in the removal or carriage of any goods liable to forfeiture under this Act or constructed, adapted, altered or fitted in any manner for the purpose of concealing goods; 30

(b) goods conveyed, mixed, packed or found with any goods liable to forfeiture under this Act on or in any such ship, vehicle, container or other transport equipment; and 35

(c) ship, vehicle, machine, machinery, plant, equipment or apparatus classifiable under any heading or subheading of Chapters 84 to 87 and 89 of Part 1 of Schedule No. 1 in which goods liable to forfeiture under this Act are used as fuel or in any other manner. 40
shall be liable to forfeiture wheresoever and in possession of whomsoever found,...

Substitution of section 93 of Act 91 of 1964, as substituted by section 15 of Act 85 of 1968 and amended by section 31 of Act 112 of 1977

67. The following section is hereby substituted for section 93 of the Customs and Excise Act, 1964: 45

“Remission or mitigation of penalties and forfeiture

93. The Commissioner may, on good cause shown, direct that any ship,

vehicle. container or other transport equipment. plant, material or goods detained or seized or forfeited under this Act be delivered to the owner thereof. subject to payment of any duty which may be payable in respect thereof and any charges which may have been incurred in connection with the detention or seizure or forfeiture, and to such conditions (including 5 conditions providing for the payment of an amount **[equal to] not exceeding** the value for duty purposes of such ship, vehicle, container or other transport equipment. plant, material or goods plus any unpaid duty thereon) as he deems fit. or may mitigate or remit any penalty incurred under this Act. on such conditions as he deems fit [**: Provided that if the 10 owner accepts such conditions, he shall not thereafter be entitled to institute or maintain any action for damages on account of the detention, seizure or forfeiture].**.’.

Amendment of section 99 of Act 91 of 1964, as amended by section 15 of Act 95 of 1965, section 17 of Act 85 of 1968, section 7 of Act 98 of 1970, section 34 of Act 112 15 of 1977, section 12 of Act 110 of 1979, section 24 of Act 86 of 1982, section 62 of Act 45 f 1995 and section 71 of Act 30 of 1998

68. Section 99 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (i) of the proviso to paragraph (a) of the following words: 20

“Provided that, except if such principal has not been disclosed or the name of another agent or his own name is stated on the bill of entry as contemplated in section 64B(6) or the principal is a person outside the Republic, such agent or person shall cease to be so liable if he proves that—”: and 25

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

“(c) For the purposes of the proviso to paragraph (a) a principal outside the Republic shall be deemed to include the consignee in a country outside the Republic shown on a bill of entry for removal in bond of imported goods.”. 30

Insertion of section 99A in Act 91 of 1964

69. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 99:

“Consultant and agent not being clearing agent required to register

99A. (1) No person, except— 35

(u) a licensed clearing agent referred to in section 64B: or
(b) a person specified by rule.

shall, from a date specified by the Commissioner by notice in the *Gazette*, represent any principal referred to in section 99(2) as a consultant or agent for the purpose of transacting any business on behalf of such principal in relation to customs and excise matters unless such a person is registered with the Commissioner. 40

(2) An application for such registration shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and any additional requirements that may be prescribed in any other rule and as may be determined by the Commissioner in each case.’.. 45

Amendment of section 101 of Act 91 of 1964, as substituted by section 18 of Act 85 of 1968 and amended by section 12 of Act 98 of 1980 and section 63 of Act 45 of 1995

70. Section 101 of, the Customs and Excise Act, 1964, is hereby amended by the 50 insertion after subsection (2A) of the following subsection:

“(2B) Any person referred to in subsection (1) shall keep and produce on

demand any data created by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983), including data in the electronic form in which it was originally created or in which it is stored for the purposes of backing up such data.

Amendment of section 114 of Act 91 of 1964, as amended by section 33 of Act 105 5 of 1969, section 12 of Act 71 of 1975, section 36 of Act 112 of 1977, section 13 of Act 101 of 1985, section 32 of Act 84 of 1987, section 37 of Act 59 of 1990 and section 34 of Act 34 of 1997

71. Section 114 of the Customs and Excise Act, 1964, is hereby amended—

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

“Provided that, notwithstanding anything to the contrary in any other law contained, the Commissioner may, on good cause shown, direct at any time on such conditions as the Commissioner may in each case impose, that such thing, of which the person by whom the debt is due is not the owner, be delivered with the concurrence of such person, to the owner thereof on payment of the debt due to the State secured by the value of such thing at the time of such delivery and any reasonable costs and expenses incurred by and charges due to the Commissioner in respect of any detention in terms of subsection (2)”;

(b) by the substitution for subsection (2) of the following subsection— 20

“(2) (a) The Commissioner or an officer may detain anything referred to in subsection (1)(a) by sealing, marking, locking, fastening or otherwise securing or impounding it on the premises where it is found or by removing it to a place of security determined by the Commissioner: Provided that the Commissioner may allow any such thing to be used under such conditions as he may impose in each case which conditions shall include that the person who is allowed to use such thing shall not enter into any agreement whereby—

- (i) ownership or possession of such thing is transferred or relinquished in any manner whatsoever to any other person;
- (ii) such thing is pledged or otherwise hypothecated in favour of any other person.

(b) (i) Any agreement entered into contrary to those conditions shall be null and void.

(ii) If such person so enters into any such agreement or otherwise deals with such thing contrary to any conditions imposed by the Commissioner, an officer may detain such thing wheresoever and in possession of whomsoever found and remove it to a place of security, whereafter the Commissioner may dispose thereof at any time as contemplated in subsection (1)(b) if the debt has not been paid.

(iii) The person by whom the debt is due shall be liable for all reasonable costs and expenses incurred by and charges due to the Commissioner in respect of such detention or removal of the thing concerned.”; and

(c) by the substitution in subsection (2A) for the words preceding paragraph (a) 45 of the following words:

“Except with the permission of the Commissioner, no person shall remove-.”,

Substitution of section 118 of Act 91 of 1964

72. The following section is hereby substituted for section 118 of the Customs and 50 Excise Act, 1964:

“Delegation of powers and assignment of duties

118. The Minister may, subject to such conditions as he may in each case impose—

- (a) delegate any of the powers which may be exercised or assign any of the duties which shall be performed by him in accordance with the provisions of sections 48.49.51.52.53.56. 56A. 57. 60(3), 75(15), 99(4), 105 and 113(4) to the Deputy Minister of Finance:
- (b) and for such period as he may specify in each case, delegate any of his powers under this Act (except any power relating to the amendment of any Schedule or the making of any regulation) to the Commissioner

Continuation of certain amendments of Schedules Nos. 1 to 6 to Act 91 of 1964

73. Every amendment or withdrawal of or insertion in Schedules Nos. 1 to 6, inclusive, to the Customs and Excise Act, 1964, made under section 48.56 or 75(15) of that Act during the calendar year ending on 31 December 1998 shall not lapse by virtue of the provisions of section 48(6), 56(3) or 75(16) of that Act.

Amendment of section 1 of Act 77 of 1968, as amended by section 16 of Act 103 of 1969, section 5 of Act 66 of 1973, section 7 of Act 88 of 1974, section 19 of Act 106 of 1980, section 3 of Act 118 of 1984, section 17 of Act 87 of 1988, section 36 of Act 9 of 1989, section 3 of Act 69 of 1989, section 5 of Act 136 of 1991, section 4 of Act 20 of 1994 and section 77 of Act 30 of 1998

74. Section 1 of the Stamp Duties Act, 1968, is hereby amended by the substitution for the definition of "banker" of the following definition:
 " 'banker' means a banking institution which is registered under the Banks Act. [1965 (Act No. 23 of 1975)] 1990 (Act No. 94 of 1990), and includes the South African Reserve Bank;".

Amendment of section 19 of Act 77 of 1968, as substituted by section 6 of Act 69 of 1989

75. Section 19 of the Stamp Duties Act, 1968, is hereby amended by the substitution for the words preceding the proviso of the following words:

"The duty payable in terms of Item 6 of Schedule 1 in respect of any debit entry in an account shall not be denoted by means of stamps but shall be paid by the banker or person carrying on the credit card scheme concerned or by the **[mutual building society or building society concerned or the Post Office Savings Bank] institution or Postbank**, as the case may be, within a period of 21 days after the end of the month in which that entry is made or, where he satisfies the Commissioner that by reason of the accounting procedures adopted by him the duty cannot conveniently be paid within that period, within such further period as the Commissioner may allow, and if he fails to do so he shall, in addition to the amount of that duty, pay a penalty equal to 10 per cent of that amount for every month or part thereof reckoned from the end of the period within which that amount was payable as provided in this section to the date of payment of that amount."

Amendment of section 23 of Act 77 of 1968, as amended by section 20 of Act 103 of 1969, section 13 of Act 92 of 1971, section 11 of Act 89 of 1972, section 10 of Act 66 of 1973, section 10 of Act 88 of 1974, section 20 of Act 106 of 1980, section 6 of Act 87 of 1982, section 5 of Act 92 of 1983, section 25 of Act 87 of 1988, section 8 of Act 69 of 1989, section 7 of Act 136 of 1991 and section 80 of Act 30 of 1998

76. (1) Section 23 of the Stamp Duties Act, 1968, is hereby amended—
 (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
 "(a) any alteration of share capital or shares in terms of section 75, or **[a reduction of share capital]** any acquisition of shares in terms of section [83 or 84] 85, of the Companies Act, 1973 (Act No. 61 of 1973);"; and

(b) by the substitution for paragraph (b) of subsection (12A) of the following paragraph:

“(b) ‘cancelled’ means cancelled in whole or in part and includes the cancellation of shares acquired in terms of section 85 of the Companies Act, 1973, and ‘cancellation shall be construed accordingly;”.

(2) Subsection (1) shall be deemed to have come into operation on 30 June 1999.

Amendment of section 30 of Act 77 of 1968, as amended by section 15 of Act 97 of 1993 and section 20 of Act 27 of 1997

77. Section 30 of the Stamp Duties Act, 1968, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) Any duty or payable under this Act shall be a debt due to the State.

(2) The provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), relating to—

(a) the recovery of tax as contained in section 91; and

(b) the power to appoint an agent as contained in section 99.

of that Act, shall apply *mutatis mutandis* to the duty and penalties imposed by this Act.”.

Amendment of Item 6 of Schedule 1 to Act 77 of 1968, as inserted by section 10 of Act 118 of 1984 and amended by section 4 of Act 71 of 1986, section 32 of Act 87 of 1988, section 7 of Act 136 of 1992 and section 15 of Act 37 of 1996

78. Item 6 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution for paragraph (c) of the definition of “debit entry” of the following paragraph:

“(c) any other account at—

(i) an institution which carries on ‘the business of a bank’ as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990); or

(ii) the Postbank operated in terms of the provisions of Chapter VI of the Postal Services Act, 1998 (Act No. 124 of 1998),

into which the depositor may deposit money and from which the institution or the Postbank where the account is held, may make a payment to any other person or electronically transfer an amount to the account of any other person.”.

Amendment of Item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 of 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 35 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994 and section 86 of Act 30 of 1998

79. (1) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion of paragraph (xvi); and

(b) by the substitution in the Afrikaans text for items (aa) and (bb) of subparagraph (ii) of paragraph (e) under the heading “*Vrystellings vandie seëlreg ingevolge paragraaf (3)*” of the following items:

“(au) dat daardie takregister gehou word in ‘n land waarin daar ‘n erkende [effektebeurs] aandeelbeurs is;

(bb) dat handelseffekte wat deur dié maatskappy of regs persoon uitgereik is en wat van dieselfde aard is as die handelseffekte waarvan die registrasie van oordrag geskied, gereeld op daardie [effektebeurs] aandeelbeurs gekoop en verkoop word; en”.

(2) Subsection (1)(a) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 98 of Act 61 of 1973, as amended by section 4 of Act 64 of 1977, section 15 of Act 69 of 1989, section 6 of Act 35 of 1998 and section 15 of Act 37 of 1999

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80. (1) Section 98 of the Companies Act, 1973, is hereby amended by the deletion of the proviso to subsection (2).

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of the issue of any share on or after that date.

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 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996 and section 23 of Act 27 of 1997

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

- (a) by the substitution in paragraph (b) of the definition of “commercial rental establishment” for the amount “R24 000” of the amount “R48 000”;
- (b) by the substitution in subparagraph (ii) of paragraph (bA) of the definition of “commercial rental establishment.” for the amount “R24 000” of the amount “R48 000”;
- (c) by the insertion of the word “or” at the end of paragraph (c) of the definition of “commercial rental establishment.”;
- (d) by the addition of the following paragraph to the definition of “commercial rental establishment”.:
“(d) any place of detention managed, in terms of an agreement with a public authority, by any other person.”;
- (e) by the substitution for paragraph (vi) of the proviso to the definition of “enterprise.” of the following paragraph:
“(vi) the activity of underwriting insurance business by Underwriting Members of Lloyd’s of London, to the extent that contracts of insurance are concluded in the Republic, shall be deemed [not] to be the carrying on of an enterprise; ...”
- (f) by the substitution for the definition of “supply” of the following definition:
“ ‘supply’ includes performance in terms of a sale, rental agreement, installment credit agreement and all other forms of supply, whether voluntary, compulsory or by operation of law, irrespective of where the supply is effected, and any derivative of ‘supply’ shall be construed accordingly;”;
- (g) by the substitution for the definition of “welfare organization.” of the following definition:
“ ‘welfare organization. means any association not for gain which is registered under the [Fund-raising Act, 1978 (Act No. 107 of 1978)] Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), if it carries on or intends to carry on activities consisting of the provision of food, meals, board, lodging, clothing or other necessities, comforts or amenities to aged or indigent persons, children or physically or mentally handicapped persons”

(2) Subsection (1)(e) shall come into operation on 1 January 2001.

Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, paragraph 2 of Government Notice 2695 of 8 November 1991, section 13 of Act 136 of 1992, section 10 of Act 20 of 1994, section 19 of Act 37 of 1996, section 24 of Act 27 of 1997 and section S7 of Act 30 of 1998

82. Section 2 of the Value-Added Tax Act, 1991, is hereby amended— 5

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

“(k) The buying or selling of futures contracts and option contracts as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), or any similar contract: Provided that where a supply of the underlying goods or services takes place, that supply shall be deemed to be a separate supply of goods or services at the open market value thereof Provided further that the open market value of those goods or services shall not be deemed to be consideration for a financial service as contemplated in this paragraph;”: and 10 15

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

“(v) ‘long-term insurance policy’ means any policy of insurance issued in the ordinary course of carrying on long-term insurance business as defined in section 1 (1) of the [Insurance Act, 1943 (Act No. 27 of 1943)] Long-term Insurance Act, 1998 (Act No. 52 of 1998);”. 20 25

Amendment of section S of Act S9 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 and section 25 of Act 27 of 1997 25

S3. Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the first and second provisos to subsection (2) of the following proviso:

“Provided that—

(i) where such right is so deemed to be supplied that supply shall be deemed to be a supply of a service; 30

(ii) [Provided further that] this subsection shall not apply to any such goods or right [in respect of the acquisition of which-by- such vendor] to the extent that a deduction in terms of section 16(3) has not been allowed or will not be allowed, in respect of the acquisition or use by such vendor, where such vendor on or before 30 June 2000— 35

(i) was registered pursuant to an application for registration under section 23 due to a bona fide error on the part of any person; and (ii) has on or before 30 June 1992 requested the Commissioner in writing to cancel his registration and such request is granted by the Commissioner] 40

(aa) ceases to be a vendor for the sole reason that the total value of taxable supplies made by that vendor in the preceding period of 12 months has not exceeded R20 000; or 45

(bb) ceases to be a vendor in respect of a commercial rental establishment or a residential rental establishment for the sole reason that the total receipts and accruals derived from that commercial rental establishment or residential rental establishment in the preceding period of 12 months have not exceeded R48 000; 50

(iii) this subsection shall not apply to fixed property to the extent that a deduction in terms of section 16(3) has not been allowed or will not be allowed in respect of that fixed property or any improvements thereto, where such vendor, on or before 30 June 2000, requests the Commissioner in writing, in the circumstances contemplated in section 24(2), to cancel his registration.”: 55

- (17) by the insertion of the following subsection after subsection (2):
- “(2A) Where a supply is deemed to have been made by a vendor in terms of subsection (2) and [that vendor ceases to be a vendor solely as a consequence of the circumstances contemplated in paragraph (ii) of the proviso to subsection (2), the tax payable to the Commissioner in respect of that deemed supply shall, if the amount thereof is in excess of R3 000, be paid to the Commissioner in so many equal monthly instalments as the Commissioner may allow, the last of which shall not be paid later than 28 February 2001 .;” and
- (c) by the substitution for paragraph (a) of subsection (4) of the following paragraph:
- “(a) For the purposes of this Act, any lay-by agreement (as defined in Government Notice No. RI 234 of 13 June 1980, as amended by Government Notice No. R1814 of 29 August 1980, issued in terms of section 9 of the [Price Control Act, 1964 (Act No. 25 of 1964)] Sale and Service Matters Act, 1964 (Act No. 25 of 1964)), whereby goods are sold for a consideration not exceeding R 10 000 and are reserved by deposit for delivery when the purchase price or a determined portion thereof is paid shall not be deemed to be a supply of goods or services unless and until the goods are delivered to the purchaser.”.

Amendment of Section 10 of Act S9 of 1991, as amended by section 26 of Act 136 of 1991, paragraph 5 of Government Notice 2695 of 5 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 and section 27 of Act 27 of 1997

- S4. Section 10 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (i) of the proviso to subsection (2) of the following paragraph:**
- “(i) there shall be excluded from such consideration the value of any postage stamp as defined in section 1 of the Post Office Act, 1958 (Act No. 44 of 1958), when used in the payment of consideration for any service supplied by the [Department of Posts and Telecommunications] postal company as defined in section 1 of the Post Office Act, 1958:”.

Amendment of section 11 of Act S9 of 1991, as amended by section 27 of Act 136 of 1991, paragraph 6 of Government Notice 2695 of 5 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 2S of Act 27 of 1997 and section S9 of Act 30 of 199S

- 85. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—**
- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) the supplier has supplied the goods (being movable goods) in terms of a sale or installment credit agreement and [has exported the goods]—
- (i) the supplier has exported the goods in the circumstances contemplated in paragraph (a), (b) or (c) of the definition of ‘exported’ in section (1): or
- (ii) the goods have been exported by the recipient and the supplier has elected to supply the goods at the zero rate as contemplated in Part 2 of an export incentive scheme referred to in paragraph (d) of the definition of ‘exported’ in section 1: Provided that—
- (aa) where a supplier has supplied the goods to the recipient in the Republic otherwise than in terms of this subparagraph, such supply shall not be charged with tax at the rate of zero per cent; and
- (bb) where the goods have been removed from the Republic by the recipient in accordance with the provisions of an export incentive scheme referred to in paragraph (d) of the definition

of 'exported' in section 1, such tax shall be refunded to the recipient in accordance with the provisions of section 44(9); or":

- (b) by the insertion in subsection (1) of the word "and" at the end of subparagraph (bh) of paragraph (i) of the proviso to paragraph (e); 5
- (c) by the insertion in subsection (1) of the following subparagraph after subparagraph (bb) of paragraph (i) of the proviso to paragraph (e):
"(cc) in respect of supplies on or after 1 January 2000, such supplier and such recipient have at the time of the conclusion of the agreement for the disposal of such enterprise or part, as the case may be, agreed in writing that the consideration agreed upon for that supply is inclusive of tax at the rate of zero per cent.": 10
- (d) by the substitution for paragraph (hB) of subsection (1) of the following paragraph:
 "(hB) the goods consist of anti-knock preparations referred to in [Heading No 38.11.11.20 of PART A] subparagraph 1.4.4 of paragraph 1.4 of Schedule 1; or": 15
- (e) by the substitution for subparagraph (ii) of paragraph (g) of subsection (2) of the following subparagraph:
 "(ii) goods temporarily admitted into the Republic from an export country which are exempt from tax on importation under [Item 470.01, 470.02, 470.03 or 480.00] paragraph 1.12 of Schedule 1; or": 20
- (f) by the substitution in subsection (2) for the words preceding item (aa) of subparagraph (ii) of paragraph (l) of the following words:
 "in connection with movable property (excluding debt securities, equity securities or participatory securities) situated inside the Republic at the time the services are rendered, except movable property which—"; 25
- (g) by the substitution for subparagraph (iii) of paragraph (l) of subsection (2) of the following subparagraph:
 "(iii) to the said person or any other person, other than in circumstances contemplated in subparagraph (ii)(bb), if the said person or such other person is in the Republic at the time the services are [supplied] rendered."; 30
- (h) by the addition in subsection (2) of the word "or" at the end of paragraph (p); and 35
- (i) by the addition to subsection (2) of the following paragraph:
"(q) the services are in terms of section 8(5) deemed to be supplied to a public authority or local authority to the extent that the payment contemplated in that section is made from donor funds granted under any international agreement to which the Government of the Republic is a party...." 40

(2) Subsection (1)(d) and (e) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 29 of Act 97 of 1993, section 15 of Act 20 of 1994 and section 30 of Act 27 of 1997 45

86. (1) Section 13 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for paragraph (iii) of the proviso to subsection (1) of the following paragraph:
"(iii) goods imported from or via Botswana, Lesotho, Swaziland or [and] Namibia shall be declared and tax paid [to an officer designated by the Commissioner for Customs and Excise] on entry into the Republic [in accordance with such procedures and at such place as the said Commissioner may prescribe by rule] as prescribed by the Commissioner in Chapter XIIA of the Rules under the Customs and Excise Act."; 50
- (b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
"(b) where such goods [are not required to be so entered, the amount of] have their origin in Botswana, Lesotho, Swaziland or Namibia and are 55

imported from such a country, the amount of the value [which would have been used for customs duty purposes had they been subject to customs duty] as contemplated in paragraph (a), except that such value shall not be increased by the factor of 10 per cent.”:

(c) by the substitution for subsections (3) and (4) of the following subsections: 5

“(3) The importation of the goods set forth in Schedule 1 to this Act shall be exempt from the tax imposed in terms of section 7(1)(b): Provided that the exemption in respect of the importation of goods contemplated in paragraphs 1.11 and 1.15 of Schedule 1 shall apply only to the extent of the value of the goods sent from the Republic on the day they left the Republic. 10

(4) Where tax is payable in respect of the importation of goods into the Republic but has not been paid when the goods were imported, the importer shall within 7 days after the importation of the goods—

(a) furnish the Commissioner with a declaration (in such form as the Commissioner may prescribe) containing such information as may be required: and 15

(b) calculate the tax payable on the relevant value at the rate of tax in force on the date of importation of the goods and pay such tax to the Commissioner.”: and 20

(d) by the substitution for the words and paragraph preceding paragraph (b) of subsection (5) of the following words and paragraph:

“**[Except as contemplated in subsection (4)]** The Commissioner and the **[Postmaster-General] postal company** may make such arrangements as they may deem necessary— 25

(a) for the collection (in such manner as they may determine) by the **[Postmaster-General] postal company** on behalf of the Commissioner of the value-added tax payable in terms of this Act in respect of the importation of any goods into the Republic: and”. 30

(2) Subsection (1)(c) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997 and section 91 of Act 30 of 1998

87. Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(d) a bill of entry or other document prescribed in terms of the Customs and Excise Act together with the receipt for the payment of the tax in relation to the said importation **[has]** have been delivered in accordance with that Act and **[is]** are held by the vendor making that deduction or by his agent as contemplated in section 54(3), at the time that any return in respect of that importation is furnished.”: 40 45

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

“(dA) an amount equal to the tax fraction of any amount paid by the supplier of the services as contemplated in section 8(13) to the National Lottery Distribution Trust Fund, established by section 21 of the Lotteries Act, 1997 (Act No. 57 of 1997);” and 50

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

“(i) to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price has been received by the vendor during that tax period for any supply of goods or services in respect of which the provisions of section 9(1), (3)(a), (b) or (d) or (4) or 21 (2)(a) or (6) apply (other than a supply in respect of which the provisions of section 10(4) apply).”. 55 60

Amendment of section 17 of Act 89 of 1991, as amended by section 31 of Act 136 of 1991, paragraph 9 of Government Notice 2695 of 8 November 1991, section 22 of Act 136 of 1992, section 31 of Act 97 of 1993, section 17 of Act 20 of 1994, section 33 of Act 27 of 1997 and section 92 of Act 30 of 1998

88. Section 17 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph (i) of the proviso to subsection (1) for the expression “90 per cent” of the expression “95 per cent.”, 5

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, paragraph 10 of Government Notice 2695 of 8 November 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 37 of Act 27 of 1997 and section 93 of Act 30 of 1998 10

89. Section 18 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (4) in the proviso to the definition of symbol “C” for the expression “90 per cent” of the expression “95 per cent”.

Amendment of section 18A of Act 89 of 1991, as inserted by section 24 of Act 136 of 1992 and amended by section 19 of Act 20 of 1994 and section 24 of Act 37 of 1996 15

90. Section 18A of the Value-Added Tax Act, 1991, is hereby amended by the substitution in the proviso to subsection (1) for the expression “90 per cent” of the expression “95 per cent”.

Amendment of section 20 of Act 89 of 1991, as amended by paragraph 11 of Government Notice 2695 of 8 November 1991, section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997 and section 94 of Act 30 of 1998 20

91. Section 20 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding the proviso of the following words: 25

‘. Except as otherwise provided in this section, a supplier, being a registered vendor, making a taxable supply (other than a supply contemplated in section 8(10)) to a recipient, **[being a registered vendor]** shall, at the request of the recipient, provide that recipient, within 21 days after receiving that request, with a tax invoice containing such particulars as are specified in this section.’; 30

(b) by the insertion of the word “or” at the end of paragraph (b) of subsection (7) and by the addition of the following paragraph: 35

“(c) that the particulars specified in subsection (4) or (5) be furnished in any other manner.”; and

(c) by the substitution in subsection (8) for paragraph (A) of the proviso to subparagraph (i) of paragraph (a) of the following paragraph: 40

“(A) shall verify such name and identity number of any such natural person with reference to his identity document, as contemplated in section 1 of the Identification Act. [1986 (Act No. 72 of 1986)] 1997 (Act No. 68 of 1997). and, where the value of the supply is R1 000 or more, retain a photocopy of such name and identity number appearing in such identity document; or”.

Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994 and section 37 of Act 27 of 1997

92. Section 23 of the Value-Added Tax Act, 1991. is hereby amended—

- (a) by the substitution in paragraph (a) of subsection (1) for the expression “R] so 5
000” of the expression “R300 000”;
- (b) by the substitution in subsection (1) in the words preceding paragraph (i) of the proviso for the expression “R150 000” of the expression “R300 000”; and
- (c) by the substitution for subsection (3) of the following subsection: 10
“(3) Notwithstanding the provisions of subsections (1) and (2), every person who satisfies the Commissioner that, on or after the commencement date—
 (a) that person is carrying on any enterprise as contemplated in paragraph (b)(ii) or (iii) or (c) of the definition of ‘enterprise’ in section 1; or 15
 (b) that person is carrying on any enterprise other than as contemplated in paragraph (b)(ii) or (iii) or (c) of the definition of ‘enterprise’ in section 1 and the total value of taxable supplies made by that person in the course of carrying on all enterprises in the preceding period of 12 months has exceeded R20 000; or
 [(b)](c) that person intends to carry on any enterprise from a specified date, 20
 where that enterprise will be supplied to him as a going concern and the total value of taxable supplies made by the supplier of the going concern from carrying on that enterprise or part of the enterprise which will be supplied has exceeded R20 000 in the preceding period of 12 months; or
 (d) that person is continuously and regularly carrying on an activity which, 25
 in consequence of the nature of that activity, can reasonably be expected to result in taxable supplies being made for a consideration only after a period of time and where the total value of taxable supplies to be made can reasonably be expected to exceed R20 000 in a period of 12 months,
 may apply to the Commissioner in the approved form for registration under this Act and provide the Commissioner with such further particulars as the 30
 Commissioner may require for the purpose of registering that person.”.

Amendment of section 24 of Act 89 of 1991, as amended by section 21 of Act 20 of 1994

93. Section 24 of the Value-Added Tax Act, 1991. is hereby amended— 35
 (a) by the deletion of the proviso to subsection (3); and
 (b) by the substitution for subsection (5) of the following subsection:
 “(5) Where the Commissioner is satisfied that a vendor [is **not carrying on any enterprise] no longer complies with the requirements for registration as contemplated in section 23(3) the Commissioner may 40
 cancel such vendor’s registration with effect from the last day of the tax period during which the Commissioner is so satisfied, or from such other date as may be determined by the Commissioner.,’**

Amendment of section 25 of Act 89 of 1991, as amended by section 96 of Act 30 of 1998 45

94. Section 25 of the Value-Added Tax Act, 1991. is hereby amended by the insertion after paragraph (e) of the following paragraph:
 “(f) the appointment or resignation of a representative vendor as contemplated in section 48(1):”.

Amendment of section 32 of Act 89 of 1991, as amended by section 38 of Act 27 of 1997 and section 97 of Act 30 of 1998

95. Section 32 of the Value-Added Tax Act, 1991, is hereby amended by the addition to paragraph (a) of subsection (1) of the following subparagraph:

“(v) in terms of section 43(5) and (6) notifying a member, shareholder or trustee of a vendor that he is required to provide surety in respect of the vendors liability for tax from time to time: or”.

Amendment of Section 33A of Act 89 of 1991, as inserted by section 36 of Act 136 of 1991

96. Section 33A of the Value-Added Tax Act, 1991, is hereby amended by the 10 substitution in paragraph (a) of subsection (1) for the expression “R20 000” of the expression “R30 000”.

Amendment of section 43 of Act 89 of 1991, as amended by section 99 of Act 30 of 1998

97. Section 43 of the Value-Added Tax Act, 1991, is hereby amended by the addition 15 of the following subsections:

“(5) Notwithstanding the provisions of subsection (1), the Commissioner may, having regard to the circumstances of any vendor which is not a natural person, require of any or all of the members, shareholders or trustees involved in the management of such vendor to enter into a contract of suretyship in respect of the vendor’s liability for tax which may arise from time to time.

(6) Such suretyship shall be for such amount and for such period as the Commissioner may direct and for the duration thereof, the said members, shareholders or trustees may jointly and severally with the vendor be held liable for paying the tax imposed on the vendor.”.

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996, section 42 of Act 27 of 1997 and section 100 of Act 30 of 1998

98. Section 44 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in paragraph (ii) of the proviso to subsection (1) for the 30 expression “R10” of the expression “R25”;

(b) by the substitution in paragraph (b) of subsection (3) for the expression “R10” of the expression “R25”; and

(c) by the substitution in subsection (4) for the expression “R10” of the 35 expression “R25”.

Amendment of section 48 of Act 89 of 1991

99. Section 48 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsection:

“(8) Every representative vendor contemplated in section 48(1) shall remain responsible for performing the duties imposed on him by this Act until such time as he notifies the Commissioner in writing that he no longer acts as representative vendor, or until the Commissioner has been notified of the name and address of another person who shall act as representative vendor.”.

Amendment of section 54 of Act 89 of 1991, as amended by section 40 of Act 136 of 1991, section 34 of Act 136 of 1992, section 25 of Act 20 of 1994 and section 46 of Act 27 of 1997

100. Section 54 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the **substitution for the words following upon paragraph (b)** in subsection (3) of the following words: 5

“the agent shall maintain sufficient records to enable the name and address and registration number of the principal to be ascertained and in respect of all supplies made on or after 1 January 2000 by or to the agent on behalf of the principal, the agent shall notify the principal in writing within 21 days of the end of the calendar month during which the supply was made or received, of the particulars contemplated in paragraphs (e), (f) and (g) of section 20(4) in relation to such supplies...: 10

(b) by the substitution for subsection (4) of the following subsection: 15

“(4) For the purposes of subsection (5), the expression ‘auctioneer means a vendor carrying on an enterprise which comprises or includes the supply by him by auction [or by sale on a national fresh produce market as defined in section 1 of the Commission for Fresh Produce Markets Act, 1970 (Act No. 82 of 1970)]. of goods as an auctioneer or agent for or on behalf of another person (hereinafter in this section referred to as a principal) and includes an agent, fresh produce agent and livestock agent as defined in section 1 of the Agricultural Produce Agents Act, 1992 (Act No. 12 of 1992).’: and 20

(c) by the addition of the following proviso to subsection (5): 25

“**Provided that the auctioneer or agent shall maintain the records contemplated in section 20(8) as if the principal made a supply of second-hand goods to him, not being a taxable supply.**” 30

Amendment of section 57D of Act 89 of 1991, as amended by section 49 of Act 27 of 1997

101. Section 57D of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (a) of subsection (9) of the following paragraph: 30

“(a) Any person may apply to the relevant **division of the [Supreme Court] High Court** for the return of any information, documents or things seized under this section.” 35

Amendment of section 58 of Act 89 of 1991, as amended by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993 and section 25 of Act 46 of 1996 35

102. Section 5S of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the insertion after paragraph (l) of the following paragraph: 40

“(m) being an agent or an auctioneer as contemplated in section 54, fails to comply with any of the requirements of section 54(3) or the proviso to section 54(5).”: and 40

(?) by the substitution for the words following on paragraph (m) of the following words: 45

“shall be guilty of an offence and liable on conviction to a fine [not exceeding R4 000] or to imprisonment for a period not exceeding [12 months or to both such fine and such imprisonment] 24 months.”, 45

Amendment of section 59 of Act 89 of 1991, as amended by section 40 of Act 97 of 1993

103. Section 59 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the words following on paragraph (i) of subsection (1) of the following words:

“shall be guilty of an offence and liable on conviction to a fine [**not exceeding R10 000**] or to imprisonment for a period not exceeding [**24 months or to both such fine and such imprisonment**] 60 months.”

Amendment of section 60 of Act 89 of 1991, as amended by section 42 of Act 136 of 1991 and section 50 of Act 27 of 1997

104. Section 60 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (b) of subsection 1 of the following paragraph:

“(b) to cause a refund to him by the Commissioner [in terms of section **44(1)**] of any amount of tax (such amount being referred to hereunder as the excess) which is in excess of the amount properly refundable to him [**under the said section, read with section 16(5)**] before applying section 44(6).”

Amendment of section 62 of Act 89 of 1991, as amended by section 103 of Act 30 of 1993

105. Section 62 of the Value-Added Tax Act, 1991, is hereby amended—

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

“Notwithstanding the provisions of section 6, the Commissioner may from time to time publish [**by notice in the Gazette a list of persons who have**] for general information such particulars as specified in subsection (2), relating to any offence committed by any person, where such person has been convicted of [**any**] such offence in terms of—”; and

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

“**Every [list published] publication in terms of this section [shall] may specify—**”.

Substitution of Schedule 1 to Act 89 of 1991, as amended by section 4S of Act 136 of 1991, paragraph 24 of Government Notice 2695 of 8 November 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 31 July 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996 and section 53 of Act 27 of 1997

106. (1) The following Schedule is hereby substituted for Schedule 1 to the Value-Added Tax Act, 1991-1:

"Schedule 1**(Section 13 (3))****Exemption of certain goods imported into Republic**

The goods in respect of which the exemption in terms of section 13(3) shall apply, shall be as hereinafter set forth. 5

*Exemption code
(for VAT purposes on the declaration form)*

1. Goods imported into the Republic that are exempt from the levying of tax to the extent indicated below, regardless of whether or not customs duty is payable or a rebate of customs duty is granted in terms of the Customs and Excise Act: 10
- 1.1 Personal effects and sporting and recreational equipment, new or used, imported either as accompanied or unaccompanied passengers' baggage by non-residents of the Republic for their own use during their stay in the Republic. 15
- 1.2 Personal effects and sporting and recreational equipment, new or used, exported by residents of the Republic for their own use while abroad and subsequently reimported either as accompanied or unaccompanied passengers' baggage by such residents. 20
- 1.3 Goods imported as accompanied passengers, baggage either by non-residents or residents of the Republic and cleared at the place where such persons disembark or enter the Republic to the following extent:
 - (i) Wine not exceeding 2 litres per person;
 - (ii) Spirituous and other alcoholic beverages, a total quantity not exceeding 1 litre per person; 25
 - (iii) Cigarettes not exceeding 400 and cigars not exceeding 50 per person;
 - (iv) Cigarette or pipe tobacco not exceeding 250 g per person;
 - (v) Perfumery not exceeding 50 ml and toilet water not exceeding 250 ml per person; 30
 - (vi) Additional goods, new or used, imported of a total value not exceeding R2 000 per person, excluding goods referred to in paragraph numbers (i), (ii), (iii), (iv) and (v).
- 1.4 The following goods:
 - 1.4.1 Petroleum oil and oils obtained from bituminous minerals, crude. 35
 - 1.4.2 Petrol.
 - 1.4.3 Distillate fuels.
 - 1.4.4 Anti-knock preparations: based on lead compounds.
 - 1.4.5 Traveller's cheques and bills of exchange, denominated in a foreign currency.
 - 1.4.6 Publications and other advertising matter relating to fairs, exhibitions and tourism in foreign countries. 40
- 1.5 The following foodstuffs:
 - 1.5.1 Brown bread as defined in Regulation 1 of the Regulations in terms of Government Notice No. R.577 published in *Government Gazette* No. 13074 of 15 March 1991. 45
 - 1.5.2 Maize meal graded as super maize meal, special maize meal, sifted maize meal or unsifted maize meal.
 - 1.5.3 Samp, not further prepared or processed.
 - 1.5.4 Mealie rice, not further prepared or processed.
 - 1.5.5 Dried silo screened mealies or dried mealies for human consumption not further prepared or processed or packaged as seed, but excluding pop corn (*zea mays everta*). 50
 - 1.5.6 Dried beans, whole, split, crushed or in powder form but not further prepared or processed or where packaged as seed.
 - 1.5.7 Lentils, dried, whole, skinned or split. 55
 - 1.5.8 Pilchards or sardinella supplied in tins or cans consisting mainly of such products regardless of whether flavoured, seasoned or preserved in oil, but excluding such products as are supplied as pet food or sardines supplied in tins or cans.

- 1.5.9 Milk powder: unflavoured, being the powder obtained by the removal of water from milk and which falls under the following classifications determined by the Minister of Agriculture under the Agricultural Product Standards Act 1990 (Act No. 119 of 1990), or any regulation under that Act: 5
 High-fat milk powder:
 Full-fat milk powder:
 Medium-fat milk powder:
 Low-fat milk powder:
 Fat-free milk powder:
 provided the fat or protein content of such milk powder consists solely of milk fat or milk protein. 10
- 1.5.10 Dairy powder blend, being any dairy powder blend which falls under the following classifications determined by the Minister of Agriculture under the Agricultural Product Standards Act. 1990, or any regulation under that Act: 15
 High-fat dairy powder blend;
 Full-fat dairy powder blend;
 Medium-fat dairy powder blend:
 Low-fat dairy powder blend;
 Fat-free dairy powder blend.
- 1.5.11 Rice, whether husked, milled, polished, glazed, parboiled or broken. 20
- 1.5.12 Vegetables, not cooked or treated in any manner except for the purpose of preserving such vegetables in their natural state, but excluding dehydrated, dried, canned or bottled vegetables or such vegetables as are described under separate subparagraphs to this paragraph.
- 1.5.13 Fruit, not cooked or treated in any manner except for the purposes of preserving such fruit in its natural state, but excluding dehydrated, dried, canned or bottled fruit and nuts. 25
- 1.5.14 Vegetable oil, marketed and supplied for use in the process of cooking food, but excluding olive oil.
- 1.5.15 Milk, being the milk of cattle, sheep or goats that has not been concentrated, condensed, evaporated, sweetened, flavoured, cultured or subjected to any other process other than homogenization or preservation by pasteurization, ultra-high temperature treatment, sterilization, chilling or freezing. 30
- 1.5.16 Cultured milk, being cultured milk as classified under the Agricultural Product Standards Act. 1990, with the following class designation: 35
 Cultured high-fat milk:
 Cultured full-fat milk:
 Cultured low-fat milk:
 Cultured fat-free milk.
- 1.5.17 Brown wheaten meal, being pure, sound wheaten meal, but excluding separated wheaten bran, wheaten germ and wheaten semolina, 40
- 1.5.18 Eggs, being raw eggs laid by hens of the species *gallus domesticus*, whether supplied in their shells or in the form of egg pulp being raw pulp consisting of the yolk and white which is obtained from such eggs after the shells have been removed. 45
- 1.5.19 Edible legumes and pulse of leguminous plants, dried, whole, split, crushed, skinned or in powder form, but not further prepared or processed or where packaged as seed or such pulse as are described under separate subparagraphs to this paragraph.
- 1.6 *Bona fide* unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed R400 (excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco (including cigarettes and cigars)) consigned by natural persons abroad to natural persons in the Republic. 50
- 1.7 Household furniture, other household effects and other removable articles (including equipment necessary for the exercise of the calling, trade or profession of the person, other than industrial, commercial or agricultural plant and excluding motor vehicles, alcoholic beverages and tobacco goods) the *bona fide* property of a natural person (including a returning resident of the 55
 50

- Republic after an absence of six months or more) and members of his family, imported for own use on change of his residence to the Republic: Provided that the said goods are not disposed of within a period of six months as from the date of entry.
- 1.8 Used personal or household effects (excluding motor vehicles) bequeathed to persons residing in the Republic. 5
 - 1.9 Used property of a person normally resident in the Republic who dies while temporarily outside the Republic.
 - 1.10 Goods temporarily exported from the Republic which are, at the time of export, registered as such with the Controller of Customs and Excise (in such form as the Commissioner may prescribe), and thereafter returned to the exporter, no change of ownership having taken place, and which can be identified on reimportation. 10
 - 1.11 Goods sent abroad for processing or repair, provided they are exported under customs and excise supervision, retain their essential character, are returned to the exporter, no change of ownership having taken place, and can be identified on reimportation: Provided that this exemption shall apply only to the extent of the value of the goods sent from the Republic on the day such goods left the Republic. 15
 - 1.12 Goods temporarily admitted— 20
 - (i) for processing, provided such goods do not become the property of any person of the Republic;
 - (ii) for repair, cleaning or reconditioning;
 - (iii) as parts for goods temporarily imported for repair, cleaning or reconditioning: 25
 - (iv) which are cleared in terms of a permit issued by the Director-General: Trade and Industry, on the recommendation of the Board of Trade and Industry, for use in the manufacturing, processing, finishing, equipping or packing of goods exclusively for export;
 - (v) subject to exportation in the same state: 30

Provided that the Controller of Customs and Excise ensures that the tax is secured by the lodging of a provisional payment or bond (except where the Commissioner otherwise directs, or in the circumstances contemplated in rule 120A.01 (c) under the Customs and Excise Act).
 - 1.13 Goods which are shipped or conveyed to the Republic for trans-shipment or conveyance to any export country: Provided that the Controller of Customs and Excise ensures that the tax is secured by the lodging of a provisional payment or bond (except where the Commissioner otherwise directs, or in the circumstances contemplated in rule 120A.01 (c) under the Customs and Excise Act). 35
 - 1.14 Packing containers or pallets, which are the property of a vendor, exported from the Republic by the vendor and thereafter returned to the vendor in the Republic, without having been subjected to any process of manufacture or manipulation and no change of ownership having taken place. 40
 - 1.15 Compensating products obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the Director-General: Trade and Industry on the recommendation of the Board of Trade and Industry, provided— 45
 - (i) the specific permit is obtained before the temporary exportation of the goods; 50
 - (ii) if the ownership of the compensating products is transferred prior to entry for customs purposes, such goods are entered in the name of the person who exported the goods; and
 - (iii) any additional conditions which maybe stipulated in the said permit, are complied with: 55

Provided that this exemption shall apply only to the extent of the value of the goods sent from the Republic on the day such goods left the Republic.
 - 1.16 Goods for Heads of State, Diplomatic and other Foreign Representatives.
 - 1.17 Goods imported—

- (a) for the relief of distress of persons in cases of famine or other national disaster:
- (b) under any technical assistance agreement: or
- (c) in terms of an obligation under any multilateral international agreement to which the Republic is a party: 5
- Provided that—
- (i) the importation of any goods under this paragraph shall be subject to a certificate issued by the Director-General: Trade and Industry and to such other conditions as may be agreed upon by the Governments of the Republic and Botswana, Lesotho, Namibia or Swaziland: and 10
- (ii) goods imported under this paragraph shall not be sold or disposed of to any party who is not entitled to any privileges under this paragraph, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the Director-General: Trade and Industry. 15
- 1.1 S Goods imported for any purpose agreed upon between the Governments of the Republic and Botswana, Lesotho, Namibia or Swaziland: Provided that—
- (i) the provisions of this paragraph shall not apply in respect of any consignment or quantity or class of goods unless the prior approval of the Governments of the Republic and Botswana, Lesotho, Namibia or Swaziland has been obtained for the application of such provisions in respect of every such consignment or quantity or class of goods; 20
- (ii) the importation of any goods under this paragraph shall be subject to a certificate issued by the Director-General: Trade and Industry and to such other conditions as may be agreed upon by the Governments of the Republic and Botswana, Lesotho, Namibia or Swaziland; and 25
- (iii) goods imported under this paragraph shall not be sold or disposed of to any party who is not entitled to any privileges under this paragraph, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the Commissioner.
2. Any of the following items imported into the Republic in respect of which the Controller of Customs and Excise has, in terms of the proviso to section 38(1)(a) of the Customs and Excise Act, granted permission that entry need not be made: 30
- (i) Containers temporarily imported;
- (ii) human remains; 35
- (iii) goods which in the opinion of the Commissioner are of no commercial value;
- (iv) goods imported under an international carnet: or
- (v) goods of a value for customs duty purposes not exceeding R200, and on which no such duty is payable in terms of Schedule No. 1 to the said Act. 40
3. Goods, being printed books, newspapers, journals and periodicals, imported into the Republic by post of a value for duty purposes under the Customs and Excise Act not exceeding R 100 per parcel.
4. Goods, being gold coins imported as such and which the Reserve Bank has issued in the Republic in accordance with the provisions of section 14 of the South African Reserve Bank Act, 1959 (Act No. 90 of 1989), or which remain in circulation as contemplated in the proviso to subsection (1) of that section. 45
5. Goods forwarded unsolicited and free of charge by a non-resident to—
- (a) a public authority or a local authority; or
- (b) any association not for gain which satisfies the Commissioner that such goods will be used by that association exclusively— 50
- (i) for educational, religious or welfare purposes; or
- (ii) in the furtherance of that association's objectives directed to the provision of educational, medical or welfare services or medical or scientific research: or 55

(iii) for issue to or treatment of indigent persons, free of charge.’.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 60 of Act 113 of 1993, as amended by section 20 of Act 140 of 1993, section 4 of Act 168 of 1993, section 34 of Act 20 of 1994, section 6 of Act 37 5 of 1995, section 34 of Act 37 of 1996, section 55 of Act 27 of 1997 and section 105 of Act 30 of 1998

107. Section 60 of the Income Tax Act, 1993, is hereby amended—

(a) by the substitution in subsection (1) for the words following on paragraph(b) of the definition of “distributable shares” of the following words: 10

“and such shares are, in pursuance of a distribution *in specie* thereof in the course of an unbundling transaction, to be listed on a [licensed] stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), within six months of such distribution *in specie*, or within such further period as the Commissioner, having regard 15 to the circumstances of the case, may approve;”:

(b) by the substitution in subsection (1) for the definition of “distribution *in specie*” of the following definition:

“ ‘distribution *in specie*’, in relation to an unbundling transaction, means a distribution by an unbundling company or intermediate company of 20 distributable shares in the course of an unbundling transaction whether such distribution occurs by means of a dividend (including a liquidation dividend). a total or partial reduction of capital (including any shine premium). [or] a redemption of redeemable preference shares or an acquisition of shares in terms of section 85 of the Companies Act, 1973 25 (Act No. 61 of 1973);” and

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

“ ‘listed company’ means a company the equity share capital of which is listed on a [licensed] stock exchange as defined in section 1 of the Stock 30 Exchanges Control Act, 1985 (Act No. 1 of 1985):”.

Amendment of section 39 of Act 20 of 1994, as amended by section 7 of Act 37 of 1995, section 35 of Act 37 of 1996 and section 56 of Act 27 of 1997

108. Section 39 of the Taxation Laws Amendment Act, 1994, is hereby amended—

(a) by the substitution in subsection (1) in the definition of “holding company” 35 for the expression “R250 million” of the expression “R75 million.”: and

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

“ ‘listed company’ means a company the equity share capital of which is listed on a [licensed] stock exchange as defined in section 1 of the Stock 40 Exchanges Control Act, 1985 (Act No. 1 of 1985):”.

Insertion of section 1A in Act 31 of 1998

109. The following section is hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 1:

“Administration of Act

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1A. The Commissioner shall administer this Act.”.

Amendment of section 7 of Act 31 of 1998

110. Section 7 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the insertion of the following subsection after subsection (1):

- “(1A) Wherein addition to any amount of tax which is payable by any person in terms of this Act an amount of penalty or interest is payable by that person in terms of section 8 or 10 of this Act, any payment made by that person in respect of such tax, penalty or interest which is less than the total amount due by him in respect of such tax, penalty and interest, shall for the purposes of this Act be deemed to be made—
- (a) in respect of such penalty: 5
- (17) to the extent to which such payment exceeds the amount of such penalty, in respect of such interest; and 10
- (c) to the extent to which such payment exceeds a sum of the amounts of such penalty and interest, in respect of such tax.”.

Amendment of section 3 of Act 9 of 1999

15

111. Section 3 of the Skills Development Levies Act, 1999, is hereby amended by the deletion of subsections (2) and (3).

Amendment of section 4 of Act 9 of 1999

112. Section 4 of the Skills Development Levies Act, 1999, is hereby amended by the addition of the following paragraph: 20

“(e) any municipality in respect of which a certificate of exemption has been granted on such conditions and for such period as the Minister may prescribe by regulation, in consultation with the Minister of Finance and the Minister for Provincial and Local Government.”.

Amendment of section 12 of Act 9 of 1999

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113. Section 12 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Subject to subsection (2), if any levy remains unpaid after the last day for payment thereof as contemplated in section 6 (2) or 7[(3)] (4), a penalty of 10 per cent of that unpaid amount is payable in addition to the interest contemplated in section 11.”.

Repeal of laws

114. Decree No. 3 (Immovable Property Taxation) of 1991 of the Republic of Transkei is hereby repealed,

Short title and commencement

35

115. (1) This Act is called the Revenue Laws Amendment Act, 1999.

(2) Save in so far as is otherwise provided 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 in terms of the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of 40 assessment ending on or after 1 January 2000,