

REPUBLIC OF SOUTH AFRICA

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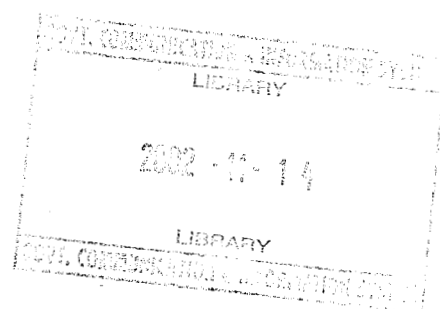
# REVENUE LAWS AMENDMENT BILL

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

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(MINISTER OF FINANCE)



[B 67—2002]

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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 take into account the consequential amendments as a result of the amendment to the corporate restructuring rules; to amend the Transfer Duty Act, 1949, so as to amend certain definitions to ensure that the acquisition of a contingent right in a trust and the acquisition of shares in certain companies are subject to transfer duty; to provide that the person disposing of the contingent right or shares in the company and the trustee and public officer of the company shall be jointly and severably liable for the duty; and to provide for consequential amendments as a result of the amendments to the corporate restructuring rules in the Income Tax Act, 1962; to amend the Estate Duty Act, 1955, so as to delete certain words in section 4 that have unintended consequences; to amend the Income Tax Act, 1962, so as to insert certain definitions; to amend certain definitions; to effect certain amendments in consequence of the introduction of the Collective Investment Schemes Control Act, 2002; to ensure that certain discretionary powers of the Commissioner are subject to objection and appeal; to further regulate the provisions relating to secrecy; to further regulate the provisions relating to a credit against normal tax of taxes paid to the government of a foreign country; to further regulate the provisions relating to allowances and advances paid to an employee by his or her employer and to provide specific guidance on the deemed daily expenses in respect of meals and incidental costs; to further regulate the provisions that deem certain income to be from a source in the Republic; to move the provisions relating to funds that may as a result of the currency or other restrictions of a foreign country not be remitted to the Republic into a separate section; to further regulate the provisions relating to controlled foreign companies; to further regulate the taxation of foreign dividends; to further regulate the taxation for foreign equity instruments; to delete an exemption which is already provided for elsewhere; to further regulate the exemption of remuneration earned offshore where a person is outside the Republic for a specific period; to withdraw an exemption granted in respect of an entity which has ceased its operations; to repeal provisions relating to marketing expenditure for exporters which is no longer in use; to further regulate the strategic investment incentive provisions; to address an anomaly in section 22(8) which resulted in capital assets now becoming trading stock and to avoid potential double taxation; to insert certain definitions in the provisions relating to the taxation of film owners; to further regulate the taxation of gains and losses on foreign exchange transactions; to further regulate the determination of taxable income in foreign currency; to provide that the final withholding tax shall not apply

in respect of royalties paid to any controlled foreign company; to effect certain consequential amendments resulting from the changes to the residence basis of taxation; to further regulate the provisions relating to company formations, share-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions and liquidation distributions; to further regulate the provisions relating to secondary tax on companies and the provisions deeming certain distributions to be dividends; to provide for certain consequential amendments that arose after the amendment to the tax period for farmers, fishers and diamond diggers; to effect certain changes to the provisions relating to the submission of annual income tax returns; to further regulate the provisions relating to record keeping to ensure that the Commissioner may prescribe the electronic form in which such records may be retained; to extend the record keeping provisions to apply to all persons who are required to render a return and to extend the period to five years to align the record keeping provisions; to extend the period of imprisonment for certain offences committed in terms of the Income Tax Act, 1962; to clarify the provisions relating to estimated assessments where foreign funds are held or assets are held offshore which have not been declared or accounted for; to insert a new section to make provision for the withdrawal of assessments; to clarify the provisions relating to the jurisdiction of the courts; to amend a definition to ensure that certain allowances will not form part of Standard Income Tax on Employees; to exclude from tax allowances, benefits and privileges of a person stationed outside the Republic and employed by the national or provincial public entity substantially funded by Parliament where the benefits and privileges are attributable to the official's services rendered outside the Republic; to provide for certain amendments to the capital gains tax provisions contained in the Eighth Schedule and certain consequential amendments as a result of these amendments; to amend the Customs and Excise Act, 1964, so as to amend provisions relating to the entry and removal of goods in bond; to insert provisions relating to the manufacture, storage, disposal and use of biofuel; to include the convention on the Harmonised Commodity Description and Coding System as one of the instruments to which the interpretation of Part 1 of Schedule 1 shall be subject, to extend the scope of section 50 by including other non-customs and excise related conventions and agreements in respect of which the Commissioner may disclose information which may be in international, regional or national public interest, to provide for the establishment of joint land border posts and the mutual administration thereof by the Commissioner and the customs authority of the adjoining state, to provide for the circumstances where various licensees obtain goods from manufacturing warehouses in addition to the existing procedure for such a procedure in respect of storage warehouses, to provide for the licensing of certain distributors of fuel who are not also licensed manufacturers, to provide for the circumstance where an applicant for a refund of duty is unable to prove payment of duty; to restate and amend in respect of agents provisions relating to the liability and termination of liability; to link the fixing of the rate at which interest may be charged to the determination of the rate by the Minister of Finance; to amend the provisions relating to a lien in respect of a debt due to the State; provide for a lien on the right, title and interest of a customs debtor in anything subject to a lien which is the subject of a Credit Agreement and matters with regard to the filing of any statement with the clerk or registrar of a competent court for the recovery of such debt; to amend the Stamp Duties Act, 1968, so as to provide for certain consequential amendments as a result of the amendments to the corporate restructuring rules in the Income Tax Act, 1962; to amend the Value-Added Tax Act, 1991, so as to introduce provisions relating to the electronic signature on documents, to provide that section 105 applies in addition to the jurisdiction provisions contained in other legislation, to re-introduce an exemption from VAT in respect of goods at which a flat rate of customs duty is levied in lieu of VAT and specific customs duties; to amend the Uncertificated Securities Tax Act, 1998, so as to provide for certain consequential amendments as a result of the amendment to the corporate reorganisation rules in the Income Tax Act, 1962; to amend the Skills Development Levies Act, 1999, so as to provide that interest must

only be calculated from the day following the last day for payment; and to clarify the provisions relating to jurisdiction of the courts; to amend the Revenue Laws Amendment Act, 2000, so as to clarify the date of commencement of section 4 of that Act; to amend the Taxation Laws Amendment Act, 2001, so as to provide for the date of commencement of section 3 to be retroactive; to amend the Revenue Laws Amendment Act, 2001, so as to provide correct an error in the Afrikaans text; to amend the Second Revenue Laws Amendment Act, 2001, so as to provide for the alignment of section 134 with section 71(1) of the Taxation Laws Amendment Act, 2001; to provide for the short title and commencement of the Act; to effect certain textual and consequential changes; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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 of 1993, section 3 of Act 37 of 1996, section 2 of Act 27 of 1997, section 1 of Act 30 of 1998, section 1 of Act 32 of 1999, section 2 of Act 53 of 1999, section 1 of Act 30 of 2000 and section 1 of Act 60 of 2001

1. (1) Section 3 of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution for paragraph (f) of the following paragraph:

“(f) in respect of the purchase of marketable securities by a [company] person that are acquired—

- (i) in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);
- (ii) in terms of a share-for-share transaction contemplated in section 43 of that Act;
- (iii) in terms of an amalgamation transaction contemplated in section 44 of that Act;
- [(iii)] (iv) in terms of an intra-group transaction contemplated in section [44] 45 of that Act;
- [(iv)] (v) in pursuance of a distribution in specie in the course of an unbundling transaction contemplated in section [45] 46 of that Act; [or]
- [(v)] (vi) in terms of any liquidation distribution contemplated in section [46] 47 of that Act; or
- (vii) in terms of any transaction contemplated in subparagraph (v) or which would have constituted a transaction or distribution contemplated—
  - (aa) in subparagraph (i), (iv) or (vi) had an election been made for the provisions of that section to apply; and
  - (bb) in subparagraph (i), (ii) or (iii) had the market value of the asset transferred in exchange for those market securities exceeded the base cost or the amount taken into account in respect thereof, as contemplated in section 42(1)(a), 43(1)(a) or 44(6) of that Act,

where the public officer of [that company]—

- (aa) the company which acquired those marketable securities otherwise than in terms of an unbundling transaction; or
- (bb) in the case where the shares were acquired in terms of an unbundling transaction, the unbundling company contemplated in section 46 of that Act,

has made a sworn affidavit or solemn declaration that such [company formation transaction, share-for-share transaction, intra-group transaction, unbundling transaction or liquidation distribution complies with the provisions contained in section 42, 43, 44, 45, or 46, as the case may be, of that Act] purchase of marketable securities complies with the provisions of this paragraph;”.

(2) Subsection (1) shall—

- (a) to the extent that it substitutes the word “company” with the word “person” be deemed to have come into operation on 1 October 2001, and applies in respect of any purchase of a marketable security on or after that date; and
- (b) to the extent that it amends the rest of section 3, come into operation on 6 November 2002 and shall apply in respect of any purchase of marketable securities on or after that date.

**Amendment of section 1 of Act 40 of 1949, as amended by section 1 of Act 5 of 2001**

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

- (a) by the substitution for the definition of “fair value” of the following definition:

“ ‘fair value’—

- (a) in relation to property as defined in paragraphs (a), (b) and (c) of the definition of ‘property’, means the fair market value of that property as at the date of acquisition thereof;
- (b) in relation to a share or member’s interest in a company as contemplated in paragraph (d) or (e) of the definition of ‘property’, means so much of the fair market value as at the date of acquisition of that share or member’s interest, of any property held by that company which constitutes—
  - (i) residential property;
  - (ii) a share or member’s interest in any company as contemplated in paragraph (d) or (e) of the definition of ‘property’; or
  - (iii) a contingent right in property of a trust as contemplated in paragraph (f) of the definition of ‘property’,
 (without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property or any residential property of any company or trust contemplated in subparagraph (ii) or (iii)), as is attributable to that share or member’s interest; or
- (c) in relation to any contingent right to any property, which constitutes—
  - (i) residential property;
  - (ii) a share or member’s interest contemplated in paragraph (d) or (e) of the definition of ‘property’; or
  - (iii) a contingent right in property of a trust as contemplated in paragraph (f) of the definition of ‘property’,
 held by a discretionary trust, means the fair market value of that property (without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property or any residential property of any company or trust contemplated in subparagraph (ii) or (iii)), as at the date of acquisition of that contingent right:

Provided that—

- (a) the fair market value of any property of a company or a trust which constitutes a contingent right in property of a trust, as contemplated in paragraphs (b)(iii) and (c)(iii), shall be equal to the fair value of that contingent right as determined in terms of paragraph (c) of this definition; and
- (b) where property, has been acquired by the exercise of an option to purchase or a right of pre-emption, the fair value in relation to that property shall be the fair market value thereof as at the date upon which the option or right of pre-emption was acquired by the person who exercised the option or right of pre-emption;”;
- (b) by the addition to the definition of “property” of the following paragraphs:
  - “(d) a share or member’s interest in a residential property company; or
  - (e) a share or member’s interest in a company which is a holding company (as defined in the Companies Act, 1973 (Act No. 61 of 1973) or as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be), if that company and all of its subsidiary companies (as defined in the Companies Act, 1973, or Close Corporations Act, 1984), would be a residential property company if all such companies were regarded as a single entity;
  - (f) a contingent right to any residential property or share or member’s interest, contemplated in paragraph (d) or (e), held by a discretionary

trust (other than a special trust as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962)), the acquisition of which is—

- (i) a consequence of or attendant upon the conclusion of any agreement for consideration with regard to property held by that trust;
  - (ii) accompanied by the substitution or variation of that trust's loan creditors, or by the substitution or addition of any mortgage bond or mortgage bond creditor; or
  - (iii) accompanied by the change of any trustee of that trust;”;
- (c) by the insertion after the definition of “Republic” of the following definition: 10  
 “ ‘residential property’ means any dwelling-house, holiday home, apartment or similar abode, improved or unimproved land zoned for residential use in the Republic (including any real right thereto), other than—
- (a) an apartment complex, hotel, guesthouse or similar structure consisting of five or more units held by a person which has been used for renting to five or more persons, who are not connected persons, as defined in the Income Tax Act, 1962 (Act No. 58 of 1962), in relation to that person; or 15
  - (b) any ‘fixed property’ of a ‘vendor’ forming part of an ‘enterprise’ all as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991);
- ‘residential property company’ means any company that holds property that constitutes— 20
- (a) residential property; or
  - (b) a contingent right contemplated in paragraph (f) of the definition of ‘property’,
- and where the fair value of that property or contingent right comprises more than 50 per cent of the aggregate fair market value of all the assets, as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, (other than financial instruments as defined in section 1 of that Act or any coin made mainly from gold or platinum), held by that company on the date of acquisition of an interest in that company;”;
- (d) by the substitution in subsection (1) for the definition of “transaction” of the following definition: 25  
 “ ‘transaction’ means—
- (a) in relation to paragraphs (a), (b) and (c) of the definition of ‘property’, an agreement whereby one party thereto agrees to sell, grant, waive, donate, cede, exchange, lease or otherwise dispose of property to another person or any act whereby any person renounces any [interest] right in or restriction in his or her favour upon the use or disposal of property; or 30
  - (b) in relation to any shares or member’s interest contemplated in paragraph (d) or (e) of the definition of ‘property’, an agreement whereby one party thereto agrees to sell, grant, waive, donate, cede, exchange, issue, buy-back, convert, vary, cancel or otherwise dispose of any such shares or member’s interest to another person or any act whereby any person renounces any right in or restriction in his or her favour upon the use or disposal of any such shares or member’s interest; or 35
  - (c) in relation to a discretionary trust, the substitution or addition of one or more beneficiaries with a contingent right to any property of that trust, which constitutes residential property or shares or member’s interest contemplated in paragraph (d) or (e) of the definition of ‘property’ or a contingent right contemplated in paragraph (f) of that definition;” 40

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of the acquisition of any property on or after that date. 45

**Amendment of section 3 of Act 40 of 1949, as substituted by section 4 of Act 88 of 1974 and amended by section 1 of Act 99 of 1981 and substituted by section 4 of Act 97 of 1993 and section 10 of Act 37 of 1996 and amended by section 6 of Act 60 of 2001** 55

3. (1) Section 3 of the Transfer Duty Act, 1949, is hereby amended by the addition of the following subsections:

- “(1A) Where a person who acquires any property contemplated in paragraph (d) or (e) of the definition of ‘property’ fails to pay the duty within the period contemplated in subsection (1), the public officer as defined in section 101 of the 60

Income Tax 1962 (Act No. 58 of 1962), of that company and the person from whom the shares or member's interest are acquired shall be jointly and severally liable for such duty: Provided that the public officer or person from whom the shares or member's interest was acquired, may recover any amount of duty paid by him or her in terms of this subsection from—

- (a) the person who so acquired that property; or
- (b) in the case of a public officer, from that company.

(1B) Where a person who acquires any property contemplated in paragraph (f) of the definition of 'property' fails to pay the duty within the period contemplated in subsection (1), the trust and the trustees of that trust shall be jointly and severally liable for such duty: Provided that the trust or trustee may recover any amount of duty paid in terms of this subsection by the trust or trustee, as the case may be, from—

- (a) the person who so acquired that property; or
- (b) in the case of the trustee, from that trust.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any duty which becomes payable in respect of the acquisition of any property on or after that date.

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

4. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for paragraph (l) of the following paragraph:

“(l) any company in terms of any [intra-group] amalgamation transaction contemplated in section 44 of the Income Tax Act, 1962 (Act No. 58 of 1962), [or] any intra-group transaction contemplated in section 45 or any liquidation distribution contemplated in section [46] 47 of that Act, where the public officer of that company has made a sworn affidavit or solemn declaration that such amalgamation transaction, intra-group transaction or liquidation distribution complies with the relevant provisions contained in section 44, 45 or [46] 47, as the case may be, of that Act.”.

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any property acquired on or after that date.

**Amendment of section 4 of Act 45 of 1955, as amended by section 2 of Act 59 of 1957, section 3 of Act 65 of 1960, section 9 of Act 71 of 1961, section 9 of Act 77 of 1964, section 3 of Act 81 of 1965, section 2 of Act 94 of 1967, section 5 of Act 92 of 1971, section 2 of Act 70 of 1975, section 1 of Act 104 of 1976, section 4 of Act 102 of 1979, section 11 of Act 106 of 1980, section 3 of Act 99 of 1981, section 5 of Act 81 of 1985, section 6 of Act 86 of 1987, section 10 of Act 87 of 1988, section 8 of Act 97 of 1993, section 3 of Act 20 of 1994, section 7 of Act 27 of 1997, section 14 of Act 30 of 1998, section 8 of Act 30 of 2000 and section 4 of Act 30 of 2002**

5. (1) Section 4 of the Estate Duty Act, 1955, is hereby amended by the substitution in paragraph (h) for the words preceding subparagraph (i) of the following words:

“the value of any property included in the estate which has not been allowed as a deduction under any other provision of this section which accrues or accrued [by way of bequest] to—”.

(2) Subsection (1) shall be deemed to have come into operation on 5 August 2002.

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, section 19 of Act 30 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001 and section 9 of Act 30 of 2002

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

(a) by the insertion after the definition of “assessment” of the following definition:

“ ‘average exchange rate’ in relation to a year of assessment means—

(a) the average determined by using the closing spot rates at the end of daily, weekly or monthly intervals during that year of assessment; or

(b) the weighted average determined by using the closing spot rates at the end of daily, weekly or monthly intervals during that year of assessment during which income is received or accrued or expenditure is incurred, which average must be based on—

(i) the net amount of receipts and accruals (excluding those of a capital nature) and deductible expenditure during each such period; and

(ii) the net amount of capital gains or capital losses determined in respect of any disposal of assets during that period,

which must be consistently applied within that year of assessment;”;

(b) by the substitution in the definition of “company” for paragraph (e) of the following paragraph:

“(e) any—

(i) **[unit] portfolio** comprised in any **[unit trust] collective investment scheme in securities [other than property shares] contemplated in Part IV of the Collective Investment Schemes Control Act, 2002,** managed or carried on by any company registered as a **[management company] manager under [section 4 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981)] section 42 of that Act for purposes of that Part [, if—**

(aa) **such portfolio was created on or after the date of commencement of the Unit Trusts Control Amendment Act, 1962 (Act No. 11 of 1962);**

(bb) **such portfolio was created before that date and the relevant trust deed has after that date been amended in order to create further units in that portfolio]; or**

(ii) arrangement or scheme carried on outside the Republic in pursuance of which members of the public are **[or will be]** invited or permitted to invest in a portfolio of a collective investment scheme, where two or more investors contribute to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; or”;

(c) by the substitution in the definition of “connected person” for paragraph (bA) of the following paragraph:

“(bA) in relation to a connected person in relation to a trust (other than a **[unit trust] collective investment scheme in property shares [as authorised under the Unit Trust Control Act, 1981 (Act No. 54 of 1981)] managed or carried on by any company registered as a manager under section 42 of the Collective Investment Schemes Control Act,**



- 2002, for purposes of Part V of that Act), includes any other person who is a connected person in relation to such trust;”;
- (d) by the insertion after the definition of “connected person” of the following definitions:
- “ ‘controlled group company’ means a controlled group company contemplated in the definition of ‘group of companies’;
- ‘controlling group company’ means a controlling group company contemplated in the definition of ‘group of companies’;
- ‘controlled foreign company’ means a controlled foreign company as defined in section 9D, and includes any reference in this Act, prior to the amendment thereof by the Revenue Laws Amendment Act, 2002, to a controlled foreign entity;”;
- (e) by the insertion after the definition of “date of assessment” of the following definition:
- “ ‘designated country’ means a designated country contemplated in section 9E(8);”;
- (f) by the substitution in the definition of “dividend” for the words preceding paragraph (a) of the following words:
- “ ‘dividend’ means any amount distributed by a company (not being an institution to which section 10(1)(d) applies) to its shareholders or any amount distributed out of the assets pertaining to any [unit] portfolio referred to in paragraph (e) of the definition of ‘company’ in this section to shareholders in relation to such [unit] portfolio (including, in the case of any co-operative society or company referred to in section 27, any amount distributed on or after 1 April 1977 to its members, whether divided among the members in accordance with their rights as shareholders or according to the value of business transactions between individual members and such society or company or on some other basis), and in this definition the expression ‘amount distributed’ includes—”;
- (g) by the substitution for paragraph (a) of the definition of “dividend” of the following paragraph:
- “(a) in relation to a company that is being wound up or liquidated, or the corporate existence of which is finally terminated, any profits distributed, whether in cash or otherwise, other than those of a capital nature earned before or during the winding-up or liquidation from the disposal of any asset before 1 October 2001 (any such profits distributed by the liquidator of the company being deemed for the purposes of this definition to have been distributed by the company): Provided that the amount of any capital profits so distributed which are attributable to the disposal of any asset on or after 1 October 2001, but which was acquired by that company before that date shall, for the purposes of this definition be limited to the amount of profit determined as if that asset had been acquired on 1 October 2001 for a cost equal to the market value of that asset as contemplated in paragraph 29 of the Eighth Schedule;”;
- (h) by the insertion after the definition of “executor” of the following definition:
- “ ‘financial instrument’ includes—
- (a) a loan, advance, debt, stock, bond, debenture, bill, share, promissory note, banker’s acceptance, negotiable certificate of deposit, deposit with a financial institution, a participatory interest in a portfolio of a collective investment scheme, or a similar instrument;
- (b) any repurchase or resale agreement, forward purchase arrangement, forward sale arrangement, futures contract, option contract or swap contract;
- (c) any other contractual right or obligation which derives its value from the value of a debt security, equity, commodity, rate index or a specified index;
- (d) any interest-bearing arrangement; and
- (e) any financial arrangement based on or determined with reference to the time value of money or cash flow or the exchange or transfer of an asset;”;
- (i) by the substitution for paragraphs (a) and (b) of the definition of “foreign equity instrument” of the following paragraph:

- “(a) a share or depository receipt in respect of a share listed on any—
- (i) [recognised] stock exchange [outside the Republic] contemplated in paragraph (b) of the definition of ‘listed company’;
  - (ii) any national, regional or local exchange outside the Republic which is comparable to a stock exchange contemplated in subparagraph (i); or
  - (iii) any interdealer quotation system outside the Republic that regularly publishes or releases firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise;”;
- (b) a [unit] participatory interest in an arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’ in section 1;”;
- (j) by the substitution in the definition of “foreign equity instrument” for the words following paragraph (d) of the following words:  
 “and any option, future or contract relating to such share, [unit] participatory interest, investment or contractual right or obligation or coin;”;
- (k) by the insertion after the definition of “gross income” of the following definition:  
 “‘group of companies’ means two or more companies in which one company (hereinafter referred to as the ‘controlling group company’) directly or indirectly holds shares in at least one other company (hereinafter referred to as the ‘controlled group company’), to the extent that—
- (a) at least 75 per cent of the equity shares of each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and
  - (b) the controlling group company directly holds 75 per cent or more of the equity shares in at least one controlled group company;”;
- (l) by the insertion after the definition of “international headquarter company” of the following definition:  
 “‘listed company’ means a company where its shares or depository receipts in respect of its shares are listed on—
- (a) a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
  - (b) a stock exchange in a country other than the Republic which has been recognised by the Minister as contemplated in paragraph (c) of the definition of ‘recognised exchange’ in paragraph 1 of the Eighth Schedule;
- (m) by the substitution for subparagraph (iii) of paragraph (a) of the definition of “pension fund” of the following subparagraph:  
 “(iii) any fund contemplated in subparagraph (ii) [established on or before 14 November 2000], which includes as members employees of any municipal entity created in accordance with the provisions of the Municipal Systems Act, 2000 (Act No. 32 of 2000), over which one or more local authorities exercise ownership control as contemplated by that Act, [if] where such fund was established—
- (aa) on or before 14 November 2000, and such employees were employees of a local authority immediately prior to becoming employees of such municipal entity; or
  - (bb) after 14 November 2000, and such fund has been approved by the Commissioner subject to such limitations, conditions and requirements as contemplated in paragraph (c);”;
- (n) by the substitution for the definition of “prescribed rate” of the following definition:  
 “‘prescribed rate’ in relation to any interest payable in terms of this Act, means [such rate as the Minister may from time to time fix by notice in the Gazette] for the purposes of—
- (a) interest payable to any taxpayer under the provisions of section 89quat(4), a rate determined at four percentage points below the rate contemplated in paragraph (b); or
  - (b) any other provision of this Act, such rate as the Minister may from time to time fix by notice in the Gazette in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;

- (o) by the insertion after the definition of “provident fund” of the following definition:  
 “‘qualifying statutory rate’ means a qualifying statutory rate as defined in section 9E;”;
- (p) by the substitution in the definition of “resident” for item (A) of the proviso to subparagraph (ii) of paragraph (a) of the following paragraph: 5  
 “(A) **[for the purposes of items (aa) and (bb)]** a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a ‘port of entry’ as defined in the Immigration Act, 2002 (Act No. 13 of 2002); and”;
- (q) by the substitution in the definition of “retirement-funding employment” for subparagraph (i) of paragraph (a) of the following subparagraph: 10  
 “(i) in the case of such employee, derives in respect of his employment any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule (but leaving out of account the provisions of paragraph (c) **[and paragraph (vii)]** of that definition and including the amount of any allowance or advance in respect of transport expenses contemplated in section 8(1)(b), but not an allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under the said section 8(1)(b)(iii)) and is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived; or”;
- (r) by the substitution for paragraph (b) of the definition of “shareholder” of the following paragraph: 25  
 “(b) in relation to any company referred to in paragraph (e) of the said definition, the registered holder of any **[unit certificate issued in respect of a unit]** participatory interest included in the relevant **[unit]** portfolio, except that where some person other than the **[registered]** holder of any **[unit]** participatory interest is entitled, whether by virtue of any provision in the **[trust]** deed entered into for the purposes of the relevant **[unit trust]** collective investment scheme or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profits or income attaching to the **[unit certificate]** participatory interest, such other person shall, to the extent that he is entitled to such benefit, also be deemed to be a shareholder; or”;
- (s) by the substitution for the definition of “taxpayer” of the following definition: 40  
 “‘taxpayer’ means any person chargeable with any tax leviable under this Act and**[, for the purposes of any provision relating to any return,]** includes every person required by this Act to furnish **[such]** any return; **[and for the purposes of Part IV of Chapter III includes any person chargeable with any tax leviable under any previous Income Tax Act;]**”;
- (t) by the substitution in the definition of “trading stock” for subparagraph (ii) of paragraph (a) of the following subparagraph: 45  
 “(ii) the proceeds from the disposal of which forms or will form part of his gross income, otherwise than in terms of paragraph (j) or (m) of the definition of ‘gross income’, or as a recovery or recoupment contemplated in section 8(4) which is included in gross income in terms of paragraph (n) of that definition; or”;
- (2) (a) Subsection (1)(a) 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. 55  
 (b) Subsection (1)(b), (c), (f), (j) and (r) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.  
 (c) Subsection (1)(d) shall in so far as it inserts—  
 (i) the definitions of “controlled group company” and “controlling group company”, be deemed to have come into operation on 6 November 2002; 60  
 (ii) the definition of “controlled foreign company” come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment ending on or after that date.

(d) Subsection (1)(e), (h), (l) (o) and (s) shall come into operation on the date of promulgation of this Act.

(e) Subsection (1)(g) shall come into operation on 1 January 2003 and shall apply in respect of any dividend declared on or after that date.

(f) Subsection (1)(i) shall in so far as it amends—

(i) paragraph (a) of the definition of “foreign equity instrument”, be deemed to have come into operation on 1 October 2001; and

(ii) paragraph (b) of the definition of “foreign equity instrument”, come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

(g) Subsection (1)(k) shall come into operation on 6 November 2002.

(h) Subsection (1)(m) shall be deemed to have come into operation on 14 November 2000.

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

(j) Subsection (1)(p) shall be deemed to have come into operation on 1 March 2001.

(k) Subsection (1)(t) shall be deemed to have come into operation on 19 July 2000.

**Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001 and section 18 of Act 60 of 2001**

7. Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any decision of the Commissioner under the definitions of ‘benefit fund’, ‘pension fund’, ‘provident fund’, ‘retirement annuity fund’ and ‘spouse’ in section 1, section 6, section 8(4)(b), (c), (d) and (e), section 9D, section 9E, section 9F, section 10(1)(cH), (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 12E, section 12G, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 30, section 31, section 35(2), section 38(4), section 41(4), section 57, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph (b) of the definition of ‘formula A’ in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 22, 24 and 27 of the Fourth Schedule, paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule and paragraphs 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(c) of the Eighth Schedule, shall be subject to objection and appeal.”

**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, section 21 of Act 30 of 1998, section 11 of Act 53 of 1999, section 14 of Act 30 of 2000 and section 19 of Act 60 of 2001**

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

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

“(1E) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (1B) to any other person or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his [of] or her duties—

(a) for purposes of any investigation of, or prosecution for, an offence contemplated in subsection (1B); or

(b) to combat any public safety or environmental risk contemplated in subsection (1B).”;

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

“(3) Any person who contravenes the provisions of subsection (1), (1A), (1D), (1E) or (2A), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”.

Amendment of section 6quat 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, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000 and substituted by section 4 of Act 59 of 2000, and amended by section 8 of Act 5 of 2001 and section 20 of Act 60 of 2001

9. (1) Section 6quat of the Income Tax Act, 1962, is hereby amended— 5
- (a) by the deletion in subsection (1) of subparagraph (ii) of paragraph (a);
  - (b) by the substitution in subsection (1) for paragraphs (e) and (f) of the following paragraphs:
    - “(e) any taxable capital gain contemplated in section 26A, **[to the extent that it is attributable to any capital gain in respect of an asset situated]** 10  
     from a source outside the Republic which is not deemed to be from a  
     source in the Republic; or
    - (f) any amount—
      - (i) contemplated in paragraphs (a), (b) or (d) which is received by or 15  
 accrued to any other person and which is deemed to have been  
 received by or accrued to such resident in terms of section 7;
      - (ii) of capital gain of any other person from a source outside the  
Republic which is not deemed to be from a source in the Republic  
and which is attributed to that resident in terms of paragraph 68, 69,  
70, 71, 72 or 80 of the Eighth Schedule; or 20
      - (iii) contemplated in paragraphs (a), (b), (d) or (e) which represents  
capital of a trust, [as contemplated in] and which is included in the  
income of that resident in terms of section 25B(2A) or taken into  
account in determining the aggregate capital gain or aggregate  
capital loss of that resident in terms of paragraph 80(3) of the Eighth 25  
Schedule, [in respect of which that resident acquires a vested  
right].”;
  - (c) by the substitution in subsection (1A) for the words preceding paragraph (a) 30  
 of the following words:
 

“(1A) For the purposes of subsection (1), the rebate shall be an  
 amount equal to the sum of any taxes on income proved to be payable to  
 [the] any sphere of government of any country other than the Republic,  
 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 35  
 assessment), by—”;
  - (d) by the substitution in subsection (1A) for paragraph (b) of the following 40  
 paragraph:
 

“(b) any controlled foreign **[entity, as contemplated in section 9D]**  
company, in respect of such proportional amount contemplated in  
 subsection (1)(b); or”;
  - (e) by the substitution in subsection (1A) for paragraph (d) of the following 45  
 paragraph:
 

“(d) any company in respect of the proportional amount of any profits from  
 which any dividend is declared or deemed to have been declared to a 45  
 controlled foreign **[entity as defined in section 9D] company**, and which  
 dividend relates to any proportional amount equal to the amount which  
was included in the income of [such] that resident as contemplated in  
subsection (1)(b); or”;
  - (f) by the substitution in subsection (1A) for paragraph (e) of the following 50  
 paragraph:
 

“(e) any **[unit] portfolio of a collective investment scheme** in respect of the  
 amount of any foreign dividend which is deemed to have been declared  
 to such resident in terms of section 9E(5) and included in the taxable  
 income of that resident; or”;
  - (g) by the substitution in subsection (1B) for paragraph (a) of the following 55  
 paragraph:
 

“the rebate or rebates of any tax proved to be payable to the government  
 of any other country or countries as contemplated in subsection (1A),  
 shall not in aggregate exceed an amount which bears to the total normal 60  
 tax payable the same ratio as the total taxable income attributable to the  
 income, proportional amount **[contemplated in subsection (1)(b)],**

foreign dividend, [or] taxable capital gain or amount, as the case may be, [derived from such country or countries] which is included as contemplated in subsection (1), bears to the total taxable income: Provided that—

- (i) in determining the amount of the taxable income that is attributable to that income, proportional amount, foreign dividend, taxable capital gain or amount, any allowable deductions contemplated in sections 11(n), 18 and 18A must be deemed to have been incurred proportionately in respect of income derived from sources within and outside the Republic;
- [(ii)] (ii) where the sum of any such taxes payable to the government of any such other country or countries exceeds the rebate as so determined (hereinafter referred to as the excess amount), [such] that excess amount may—
  - (aa) be carried forward to the immediately succeeding year of assessment and shall be deemed to be a tax on income paid to the government of any other country in [such] that year; and
  - (bb) be set off against the amount of any normal tax payable by [such] that resident during [such] that year of assessment in respect of any amount derived from any other country which is included in the taxable income of [such] that resident during [such] that year, as contemplated in [paragraph (a), (b), (d), or (e) of] subsection (1), after any tax payable to the government of any other country in respect of any amount so included during such year of assessment which may be deducted in terms of subsection (1) and (1A), has been deducted from the amount of such normal tax payable in respect of such amount so included; and
- [(ii)] (iii) the excess amount shall not be allowed to be carried forward for more than seven years reckoned from the year of assessment when such excess amount was for the first time carried forward;”;
- (h) by the substitution in subsection (1B) for the words in paragraph (c) following subparagraph (ii) of the following words:

“may be deducted from any normal tax which becomes payable by [such] that resident during any year of assessment that any income is derived by way of dividends declared to [such] that resident by any controlled foreign [entity] company from profits relating to any amount so previously included;”;
- (i) by the substitution in subsection (1B) of subparagraph (i) of paragraph (d) of the following subparagraph:

“(i) any company distributing any dividend to such resident, if such resident ([in the case of a company,] together with any [other company in a group of companies of which such company forms part] connected person in relation to that resident) holds for [his or its] their own benefit less than 10 per cent of the equity share capital in such company; or”;
- (j) by the deletion in subsection (3) of the definitions of “controlled company”, “controlling company” and “group of companies”;
- (k) by the addition in subsection (3) after the definition of “qualifying interest” of the following definition:

“ ‘taxes on income’ does not include any compulsory payment to the government of any other country which constitutes a consideration for the right to extract any mineral or natural oil;”;
- (l) by the substitution for subsection (4) of the following subsection:

“(4) For the purposes of this section the amount of any foreign tax proved to be payable as contemplated in subsection (1A) in respect of any amount which is included in the taxable income of any resident during any year of assessment, shall be converted to the currency of the Republic on the last day of that year of assessment by applying—
  - (a) the ruling exchange rate on the day on which such foreign tax is actually paid; or

- (b) if such foreign tax has not been paid by the last day of such year of assessment the ruling exchange rate on the last day of such year of assessment:

Provided that where such foreign tax is payable in respect of the amount of any foreign dividend which is included in the taxable income of such resident as contemplated in subsection (1)(d), such foreign tax shall be converted to the currency of the Republic by applying the exchange rate at which the amount of such foreign dividend is converted as contemplated in section 9E] the average exchange rate for that year of assessment.";

- (m) by the substitution in subsection (5) for the words preceding the proviso of the following words:

"(5) Where [any amount of tax, which was proved to be payable to the government of any other country, was allowed as] a rebate was allowed in terms of this section against the normal tax payable by any resident in any previous year of assessment in respect of any amount of tax which was proved to be payable to the government of any other country, and—

- (a) it is proved by [such] that resident that the amount of [such] the tax actually payable to such government exceeds the amount of tax in respect of which the rebate was so allowed [as a rebate]; or

- (b) the Commissioner is satisfied that the amount of [such] the tax actually payable to such government is less than the amount of tax in respect of which the rebate was so allowed [as a rebate],

the Commissioner may, notwithstanding the provisions of section 79 or section 81(5), but subject to subsection (1B)(a) issue a reduced or additional assessment, as the case may be, reflecting the amount of the rebate in respect of that amount of tax actually payable in that other currency translated to the currency of the Republic at the average exchange rate applicable for that previous year of assessment, which shall be allowed against normal tax:".

- (2) (a) Subsection (1)(a), (b), (c), (d), (e), (g), (h), (i), (j), (k) and (n) shall come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment ending on or after that date.

- (b) Subsection (1)(f) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

- (c) Subsection (1)(l) and (m) comes 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.

**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, section 23 of Act 30 of 1998, section 13 of Act 53 of 1999 and section 5 of Act 59 of 2000**

- 10.** (1) Section 7 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (8) of the following subsection:

"(8) Where by reason of or in consequence of any donation, settlement or other disposition (other than a donation, settlement or other disposition to [a foreign] an entity [as defined in section 9D, of a public character] which is not a resident and which is similar to a public benefit organisation contemplated in section 30) made by any resident, income is received by or accrued to any person who is not a resident (other than a controlled foreign [entity as defined in section 9D] company in relation to such resident), there shall be included in the income of [such] that resident so much of the amount of any income as is attributable to [such] that donation, settlement or other disposition: Provided that any amount of income received by or accrued to [such] that person by way of foreign dividends, shall for the purposes of this section be determined in accordance with the provisions of section 9E, as if [such] that person had been a shareholder who is a resident."

- (2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment ending on or after that date.

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

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

(a) by the addition in subsection (1) to paragraph (a) of the following subparagraph:

“(iv) The provisions of this paragraph shall not apply in respect of any allowance or advance received by or accrued to a person contemplated in section 9(1)(e) stationed outside the Republic which is attributable to that person’s services rendered outside the Republic.”;

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

“(ii) for each day or part of a day in the period during which that recipient is absent from his or her usual place of residence, an amount in respect of meals and other incidental costs, or incidental costs only, determined by the Minister for the relevant year of assessment by way of notice in the *Gazette*, but limited to the amount of the allowance paid or granted to meet those expenses: Provided that this subparagraph does not apply to the extent that—  
 (aa) the employer has borne the expenses (otherwise than by way of granting the allowance or advance) in respect of which the allowance was paid or granted for that day or part of that day;  
 or  
 (bb) the recipient has proved to the Commissioner any amount of actual expenditure in respect of meals or incidental costs for that day or part of that day, as contemplated in subparagraph (i).”;

(c) by the substitution for subparagraph (ii) of paragraph (k) of subsection (4) of the following subparagraph:

“(ii) [distributed any asset by way of a dividend] transferred in whatever manner or form any asset to any shareholder of that company; or”; and

(d) by the substitution in subsection (4) for the words following subparagraph (iii) of paragraph (k) of the following words:

“in respect of which a deduction or an allowance has been granted to such person in terms of any of the provisions referred to in that paragraph, such person shall be deemed to have recovered or recouped an amount equal to the market value of such asset as at the date of such donation, [distribution] transfer or disposal.”.

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 March 2001.

(b) Subsection (1)(b) shall be deemed to have come into operation on 1 March 2002.

(c) Subsection (1)(c) and (d) shall be deemed to have come into operation on 12 December 2001, and shall apply in respect of any asset disposed of on or after that date.

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

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



- (a) by the insertion in subsection (1) before paragraph (cA) of the following paragraphs:

“(b) the use or right of use in the Republic of, or the grant of permission to use in the Republic—

(i) any patent, design, trade mark, copyright, model, pattern, plan, formula or process or any other property or right of a similar nature; or

(ii) motion picture film, or any film or video tape or disc, any sound recording or advertising matter, contemplated in section 35;

(bA) the imparting of or undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in the Republic or rendering or undertaking to render any assistance or service in connection with the application or utilization of such knowledge or information, as contemplated in section 35;

- (b) by the deletion in subsection (1) of the proviso to paragraph (e); and

- (c) by the insertion after subsection (1A) of the following subsection:

“(2) The capital gain or capital loss from the disposal of an asset of a person shall be deemed to be from a source in the Republic, where—

(a) in the case of immovable property held by that person or any interest or right of whatever nature of that person to or in immovable property, that property is situated in the Republic;

(b) in the case of any asset other than immovable property or any interest or right to or in immovable property—

(i) that person is a resident and that asset is not attributable to a permanent establishment of that person which is situated outside the Republic; or

(ii) that person is not a resident, but that asset is attributable to a permanent establishment of that person which is situated in the Republic:

Provided that for the purpose of this subsection, an interest in immovable property held by a person includes any equity shares in a company or other entity, where—

(aa) 80 per cent or more of the value of the net asset of that company or other entity, determined on the market value basis, is attributable directly or indirectly to immovable property, (other than immovable property held by that company or entity as trading stock); and

(bb) that person (whether alone or together with any connected person in relation to that person) holds at least 20 per cent in the equity share capital of that company or other entity.”.

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

#### Insertion of section 9A of Act 58 of 1962

13. The following section is hereby inserted in the Income Tax Act, 1962, after section 9:

#### “Blocked foreign funds

9A. Where any amount, or any portion of any amount—

(a) received by or accrued to any person which is required to be included in the gross income or taxable income of that person; or

(b) of the net income of a controlled foreign company which is taken into account in determining an amount which is required to be included in the income of any resident in terms of the provisions of section 9D,

during any year of assessment, may not be remitted to the Republic during that year of assessment as a result of currency or other restrictions or limitations imposed in terms of the laws of the country where the amount arose, that amount or any portion thereof shall be deemed not to have been received or accrued to that person, or shall not be included in the income of that resident, as the case may be, during that year and that amount or portion thereof shall be included in the gross income or taxable income of that

person or the income of that resident during the year of assessment during which that amount or portion thereof may be so remitted to the Republic.”.

#### Substitution of section 9D of Act 58 of 1962

14. (1) Section 9D of the Income Tax Act, 1962, is hereby substituted by the following section:

**“[Investment] Net income of controlled foreign [entities and investment income arising from donations, settlements or other dispositions] companies**

- 9D.** (1) For the purposes of this section—
- ‘business establishment’, in relation to a controlled foreign [entity] company, means **[a place of business with]**—
- (a) a place of business with an office, shop, factory, warehouse [farm] or other structure which is used or will continue to be used by the controlled foreign [entity] company for a period of not less than one year, whereby the business of such company is carried on, and where—
    - (i) that place of business is suitably equipped with on-site operational management, employees, equipment and other facilities for the purposes of conducting the primary operations of that business; and
    - (ii) that place of business is utilised outside the Republic for a *bona fide* business purpose (other than the avoidance, postponement or reduction of any liability for payment of any tax, duty or levy imposed by this Act or by any other Act administered by the Commissioner);
  - (b) a mine, oil or gas well, a quarry or any other place of extraction of natural resources, where that controlled foreign company has a right to directly explore or extract those natural resources, or any area where that controlled foreign company has the right to carry on prospecting operations preliminary to the establishment of a mine, oil or gas well, quarry or other place of extraction, and where that controlled foreign company carries on those exploration, extraction or prospecting operations; [or]
  - (c) a site for the construction or installation of buildings, bridges, roads, pipelines, heavy machinery or other projects of comparable magnitude which lasts for a period of not less than six months, where that controlled foreign company carries on those construction or installation activities;
  - (d) agricultural land used for *bona fide* farming activities directly carried on by that controlled foreign company; or
  - (e) a vessel or an aircraft solely engaged in transportation within a single country, or a fishing vessel or a vessel used for prospecting, exploration or extraction, where that vessels or aircraft is operated directly by that controlled foreign company,
- [whereby the business of such entity is carried on, and where—**
- (i) **such place of business is suitably equipped with on-site operational management, employees, equipment and other facilities for the purposes of conducting the primary operations of such business; and**
  - (ii) **such place of business is utilised outside the Republic for a *bona fide* business purpose (other than the avoidance, postponement or reduction of any liability for payment of any tax, duty or levy imposed by this Act or by any other law administered by the Commissioner)];**
- ‘controlled foreign company’ means any foreign company where more than 50 per cent of the total participation rights in that foreign company are held by one or more residents whether directly or indirectly: Provided that a person who holds less than five per cent of the participation rights of a foreign company which is either a listed company or a scheme or**

arrangement contemplated in paragraph (e)(ii) of the definition of 'company' in section 1, shall be deemed not to be a resident in determining whether residents directly or indirectly hold more than 50 per cent of the participation rights in—

- (a) that foreign company; or
- (b) any other foreign company in which that person indirectly holds any participation rights as a result of the interest in that listed company or scheme or arrangement,

unless more than 50 per cent of the participation rights of that foreign company or other foreign company are held by persons who are connected persons in relation to each other;

**['controlled foreign entity' means any foreign entity in which any resident or residents of the Republic, whether individually or jointly, and whether directly or indirectly, hold more than 50 per cent of the participation rights, or are entitled to exercise more than 50 per cent of the votes or control of such entity: Provided that in determining whether residents jointly hold more than 50 per cent of the participation rights of any foreign entity which is listed on a recognised exchange or which is a scheme or arrangement contemplated in paragraph (e)(ii) of the definition of 'company' in section 1, except where connected persons hold more than 50 per cent of the participation rights of that foreign entity, scheme or arrangement, any person who holds less than five per cent of the participation rights of that foreign entity shall be deemed not to be a resident;**

**'designated country' means any designated country as defined in section 9E;]**

**'foreign [entity] company' means any [person (other than a natural person or a trust)] association, corporation, company, arrangement or scheme contemplated in paragraph (a), (b) or (e) of the definition of 'company' in section (1), which is not a resident, or which is a resident but where [such entity] that association, corporation, company, arrangement or scheme is as a result of the application of the provisions of any agreement entered into by the Republic for the avoidance of double taxation [is] treated as not being a resident;**

**'foreign financial instrument holding company' means any foreign company where more than 50 per cent of the market value or actual cost of all the assets of that company, together with any controlled group company in relation to that foreign company, consists of financial instruments, other than—**

- (a) any financial instrument that constitutes a debt due to that foreign company, or a controlled group company in relation to that foreign company, in respect of goods sold or services rendered by that foreign company or controlled group company, as the case may be, where—
  - (i) the amount of that debt is or was included in the income of that foreign company or controlled group company, as the case may be; and
  - (ii) that debt is an integral part of a business conducted by that foreign company or controlled group company, as the case may be, as a continuing independent operation;
- (b) any financial instrument arising from the principal trading activities of any company that is a bank, insurer, dealer or broker with a licence or registration that allows that foreign company to operate in the same manner as a company that mainly conducts business with clients who are residents in the same country of residence as the foreign company and that foreign company either—
  - (i) regularly accepts deposits, premiums or effects transactions for the account of clients from the general public; or
  - (ii) derives more than 50 per cent of its income or gains arising from principal trading activities with respect to persons who are not connected persons in relation to that foreign company:

Provided that in determining whether 50 per cent of the market value or actual cost of the assets of the company and controlled group company

consist of financial instruments, the following assets must be wholly disregarded—

- (i) any share in any other company in the same group of companies; and
- (ii) any financial instrument which constitutes a loan, advance or debt if both the debtor and creditor companies form part of the same group of companies;

'foreign tax year' in relation to a controlled foreign company means the year or period of reporting for foreign income tax purposes or, if that company is not subject to foreign income tax, the annual period of financial reporting by that company;

'participation rights' in relation to a foreign company means the right to participate directly or indirectly in the share capital **[or profits of, dividends declared by, or any other distribution or allocation made by any entity]**, share premium, current or accumulated profits or reserves of that foreign company, whether or not of a capital nature.

(2) There shall be included in the income for the year of assessment of any resident **[contemplated in the definition of 'controlled foreign entity' in subsection (1)]** who holds any participation rights in a controlled foreign company—

(a) on the last day of the foreign tax year of that controlled foreign company which ends during that year of assessment, an amount equal to—

- (i) where that foreign company was a controlled foreign company for the entire foreign tax year, the proportional amount of the net income of [such entity] that controlled foreign company determined for that foreign tax year [of such entity which ends during such year of assessment of such resident], which bears to the total net income of [such entity] that company during [such] that foreign tax year, the same ratio as the percentage of the participation rights of [such] that resident in relation to [such entity] that company bears to the total participation rights in relation to [such entity] that company on that last day; or

- (ii) where that foreign company became a controlled foreign company at any stage during that foreign tax year, an amount which shall be equal to, at the option of the resident, either—

(aa) an amount which bears to the proportional amount determined in accordance with subparagraph (i), the same ratio as the number of days during that foreign tax year that the foreign company was a controlled foreign company bears to the total number of days in that foreign tax year; or

(bb) the proportional amount determined in the manner contemplated in subparagraph (i) (as if the day that foreign entity commenced to be a controlled foreign entity was the first day of its foreign tax year), of the net income of that company for the period commencing on the day that the foreign company commenced to be a controlled foreign company and ending on the last day of that foreign tax year; or

- (b) immediately before that foreign company ceased to be a controlled foreign company at any stage during that year of assessment before the last day of the foreign tax year of that controlled foreign company, an amount which shall be equal to, at the option of the resident, either—

- (i) an amount determined in accordance with paragraph (a)(ii)(aa); or

- (ii) the proportional amount determined in the manner contemplated in paragraph (a)(i) (as if the day that foreign entity ceased to be a controlled foreign entity was the last day of its foreign tax year), of the net income of that company determined for the period commencing on the first day of that foreign tax year and ending on the date that the company so ceased to be a controlled foreign company;

Provided that [the provisions of] this subsection shall not apply—

(A) where [such] that resident (together with any connected person in relation to [such] that resident) [in aggregate at all times during the foreign tax year]—

- (i) at the end of the last day of the foreign tax year of the controlled foreign company; or
- (ii) in the case where that foreign company ceased to be a controlled foreign company during the relevant foreign tax year, immediately before that foreign company so ceased to be a controlled foreign company.

in aggregate holds less than 10 per cent of the participation rights [and is entitled to exercise less than 10 per cent of the voting rights] in [such] that controlled foreign [entity] company; or

(B) to the extent that the participation rights are held by that resident indirectly through any company which is a resident.

(2A) For the purposes of this section, the 'net income' of a controlled foreign [entity shall be] company in respect of a foreign tax year is an amount equal to the taxable income of [such entity] that company determined in accordance with the provisions of this Act as if [such] that controlled foreign [entity] company had been [a resident] a taxpayer, and as if that company had been a resident for purposes of the definition of 'gross income', sections 7(8), 9E, 10(1)(h), 10(1)(hA), 25B and paragraphs 2(1)(a), 12, 24, 70, 71, 72 and 80 of the Eighth Schedule: Provided that—

- (a) any deductions or allowances which may be allowed, or any amounts which may be set off against, the income of [such entity] that foreign company in terms of this Act shall be limited to the amount of [such] that income;
- (b) any amount whereby such deductions or allowances or amounts exceed the amount of such income, shall be carried forward to the immediately succeeding foreign tax year [of assessment] and be deemed to be a balance of assessed loss which may be set off against the income of such [entity] company in such succeeding year for the purposes of section 20;
- (c) no deduction shall be allowed in respect of any interest, royalties, [or] rental or income of a similar nature paid or payable or deemed to be paid or payable by [such entity] that company to any other controlled foreign [entity] company in relation to the resident (including any similar amount adjusted in terms of section 31) or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign company and other foreign company are parties, as contemplated in subsection (9)(fA);"
- [(d) any capital gain or capital loss of such entity shall, when applying paragraph 43(4) of the Eighth Schedule, be determined in the currency of the Republic and such capital gain or capital loss shall be translated on the last day of the foreign tax year of the controlled foreign entity to the local currency as defined in section 24I, of that controlled foreign entity; and]
- (e) where a foreign [entity] company becomes a controlled foreign [entity] company after 1 October 2001, the valuation date for purposes of the determination of any taxable capital gain or assessed capital loss in terms of the Eighth Schedule, shall be the date that such [entity] company becomes a controlled foreign [entity] company;
- (f) where the resident contemplated in subsection (2) is a natural person, special trust or an insurer in respect of its individual policyholder fund, the taxable capital gain of the controlled foreign [entity] company shall, for the purposes of paragraph 10 of the Eighth Schedule, be 25 per cent of that [entity's] company's net capital gain for the relevant foreign tax year [of assessment; and]
- [(g) any amount to be taken into account in the determination of such net income of that entity in respect of the disposal of any foreign equity instrument, shall be determined in the currency of the Republic and such amount shall then be translated on the last day of the foreign tax year of the controlled foreign entity to the local

currency, as defined in section 24I, of that controlled foreign entity;]

- (h) for the purposes of section 24I, 'local currency' in relation to an exchange item of a controlled foreign company which is not attributable to a permanent establishment of that company, means any currency used by that company for purposes of financial reporting; 5
- (i) for the purposes of section 31—
  - (aa) any transaction, operation or scheme between that controlled foreign company and any connected person in relation to that controlled foreign company shall be deemed to be an international agreement as defined in that section; and 10
  - (bb) that controlled foreign company must for purposes of section 31(3)(a)(i) and (ii) be deemed to be a resident;
- (j) for the purposes of determining any capital gain or capital loss of that controlled foreign company from the disposal of any interest in any other foreign company (which is a controlled foreign company in relation to the resident contemplated in subsection (2)), the base cost of that interest shall be increased in terms of paragraph 20(1)(h)(iii) of the Eighth Schedule, by any amount derived by that other foreign company (or any other company in which that foreign company holds a direct or indirect interest which is also a controlled foreign company in relation to that resident), which was taken into account in determining the amount to be included in the income of that resident in terms of this section by virtue of that resident's shareholding in the controlled foreign company, reduced by the amount of any dividend distributed to that controlled foreign company by any such other foreign company from such income so taken into account; and 20
- (k) for the purposes of paragraph 43 of the Eighth Schedule, 'local currency' of a controlled foreign company otherwise than in relation to a permanent establishment of that controlled foreign company, means the currency used by that company for purposes of financial reporting. 25
- (6) The net income of a controlled foreign company, shall be determined in the currency used by that controlled foreign company for purposes of financial reporting and shall, for purposes of determining the amount to be included in the income of any resident during any year of assessment under the provisions of this section, [shall] be [converted] translated to the currency of the Republic [on the last day of the foreign tax year of the controlled foreign entity and the ruling] by applying the average exchange rate [at that date or any other exchange rate or rates as the Commissioner may approve, determined with reference to the ruling exchange rates during such year shall be applied to determine the value of the amount to be included in the income of such resident] for that year of assessment, as contemplated in section 25D: Provided that— 30
- (a) any capital gain or capital loss of that controlled foreign company shall, when applying paragraph 43(4) of the Eighth Schedule, be determined in the currency of the Republic and that capital gain or capital loss shall be translated to the currency used by that controlled foreign company for purposes of financial reporting by applying that average exchange rate; and 35
- (b) any amount to be taken into account in determining the net income of that controlled foreign company in respect of the disposal of any foreign equity instrument shall, when applying section 9G, be determined in the currency of the Republic and that amount shall be translated to the currency so used by that controlled foreign company by applying that average exchange rate." 40
- (9) The provisions of this section shall not apply to the extent that the net income of the controlled foreign company— 45
- (a) [in respect of receipts and accruals] is attributable to amounts [(other than receipts and accruals of a capital nature) or capital gains of any controlled foreign entity which is a company, where— 50
- (i) such receipts and accruals] that have been or will be subject to tax on income in a designated country at a qualifying statutory rate [of at least 27 per cent; or 55

- (ii) those capital gains of that company, have been or will be subject to tax in a designated country at a statutory rate of at least 13,5 per cent,

(after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment), notwithstanding the fact that such entity may, as a result of any foreign assessed tax loss incurred by such entity during such year or any previous year of assessment, not be liable for the payment of any tax: Provided that where such designated country imposes tax on that company on a progressive scale of statutory rates of tax, the statutory rate shall for the purposes of this paragraph be deemed to be the highest rate on such scale;

- (b) [where the net income of any controlled foreign entity which is a company] is attributable to any business establishment of [such] that controlled foreign [entity] company in any country other than the Republic: Provided that the provisions of this paragraph shall not apply to any [receipts and accruals] net income that is attributable to any amounts—

- (i) derived from any transaction relating to the supply of goods or services by or to [such] that controlled foreign [entity] company with any connected person (in relation to [such] that controlled foreign [entity] company), who is a resident, unless the consideration in respect of [such] that transaction reflects an arm's length price that is consistent with the provisions of section 31; or

- (ii) derived from—

- (aa) any sale of goods by [such] that controlled foreign [entity] company to any connected person (in relation to [such] that controlled foreign [entity] company) who is a resident, unless—

- (A) [such] that controlled foreign [entity] company purchased [such] those goods within the country of residence of [such] that controlled foreign [entity] company from any person who is not a connected person in relation to [such] that controlled foreign [entity] company;

- (B) the creation, extraction, production, assembly, repair or improvement of goods undertaken by [such] that controlled foreign [entity] company amount to more than minor assembly or adjustment, packaging, repackaging and labeling; or

- (C) [such] that controlled foreign [entity] company sells a significant quantity of goods of the same or a similar nature to persons who are not connected persons in relation to [such] that controlled foreign [entity] company, at comparable prices (after accounting for the level of the market, volume discounts and costs of delivery); or

- (bb) any sale of goods by [such] that controlled foreign [entity] company to a person, other than a connected person (in relation to [such] that controlled foreign [entity] company) who is a resident, where [such] that controlled foreign [entity] company initially purchased [such] those goods or any tangible intermediary inputs thereof from one or more connected persons (in relation to [such] that controlled foreign [entity] company) who are residents, unless—

- (A) [such] those goods or tangible intermediary inputs thereof purchased from connected persons (in relation to such controlled foreign [entity] company) who are

residents amount to an insignificant portion of the total tangible intermediary inputs of **[such] those** goods;

(B) the creation, extraction, production, assembly, repair or improvement of goods undertaken by **[such] that** controlled foreign **[entity] company** amount to more than minor assembly or adjustment, packaging, repackaging and labeling; or 5

(C) the products are sold by **[such] that** controlled foreign **[entity] company** to persons who are not connected persons in relation to **[such] that** controlled foreign **[entity] company**, for delivery within the country of residence of **[such] that** controlled foreign **[entity] company**; or 10

(cc) any service performed by **[such] that** controlled foreign **[entity] company** to a connected person (in relation to such controlled foreign **[entity] company**) who is a resident, unless **[such] the** service is performed outside the Republic and— 15

(A) such service relates directly to the creation, extraction, production, assembly, repair or improvement of goods utilised within one or more countries outside the Republic; or 20

(B) such services relate directly to the sale or marketing of goods of a connected person (in relation to **[such] that** controlled foreign **[entity] company**) who is a resident and **[such] those** goods are sold to persons who are not connected persons in relation to **[such] that** controlled foreign **[entity] company** for delivery within the country of residence of **[such] that** controlled foreign **[entity] company**; 25 30

(iii) in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, or any capital gain determined in respect of the disposal of any asset from which any such income is or could be earned, or any foreign currency gain determined in respect of any foreign equity instrument or any foreign currency gain determined in terms of section 24I, except where **[such receipts and accruals, capital gains and foreign currency gains]** those amounts— 35

(aa) do not in total exceed five per cent of the sum of the **[receipts and accruals]** amounts (other than **[receipts and accruals]** those of a capital nature) and the amount of all capital gains and foreign currency gains of **[such] that** controlled foreign **[entity] company**; or 40

(bb) arise from the principal trading activities of any banking or financial services, insurance or rental business, excluding any such **[receipts and accruals from any]** amounts derived— 45

(A) by a company which is a foreign financial instrument holding company at the time that the amounts are so derived; 50

**[(A)](B)** from any connected person (in relation to **[such] that** controlled foreign **[entity] company**) who is a resident or any resident who holds at least five per cent of the participation rights in that controlled foreign **[entity] company**; or 55

**[(B)](C)** from any resident to the extent that **[such receipts and accruals]** those amounts are produced as part of a scheme for the purpose of avoiding the liability for any tax, duty or levy imposed in terms of this Act or any other law administered by the Commissioner; 60

**[Provided that the receipts and accruals of such banking or financial services, insurance or rental business are derived**



mainly from persons who are not connected persons in relation to that controlled foreign entity;]

- (e) [to the net income of any controlled foreign entity to the extent that such net income] is included in the taxable income of the [entity] company and has not been or will not be exempt or taxed at a reduced rate in the Republic, as a result of the application of any agreement for the avoidance of double taxation; 5
- (f) [in relation to the proportional amount of an amount equal to the net income attributable to any resident, to the extent that it relates] is attributable to any foreign dividend contemplated in section 9E declared to or deemed to have been declared to [a] that controlled foreign [entity which is a] company, by any other company [which is a controlled foreign entity in relation to such resident] from an amount which relates to an amount of income which has been or will be included in the income of the resident in terms of this section; [or] 10 15
- (fA) [in relation to the net income of a controlled foreign entity, to the extent that it relates] is attributable to any interest, royalties, rental or income of a similar nature, which is paid or payable or deemed to be paid or payable to [such entity] that company by any other foreign [entity] company (including any similar amount adjusted in terms of section 31), or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign [entity] company and that other foreign [entity] company are parties, where that controlled foreign [entity] company and that other foreign [entity] company form part of the same group of companies[, as defined in section 41]; 20 25
- (fB) [in relation to the net income of a controlled foreign entity to the extent that it relates] is attributable to any capital gain of [such entity] that company, which is determined in respect of the disposal of any asset, as defined in the Eighth Schedule, ([excluding] other than any financial instrument or intangible asset as defined in paragraph 16 of the Eighth Schedule), where that asset was attributable to any business establishment of that controlled foreign [entity] company or any other foreign [entity] company [which forms], where that controlled foreign company and that other foreign company form part of the same group of companies [, as defined in section 41, as that controlled foreign entity]; or 30 35
- (h) [in respect of] is attributable to any amount received by or accrued to [such] that controlled foreign [entity] company—
- (i) from the disposal of any interest in the equity share capital of any other foreign [entity which is a] company; or 40
- (ii) by way of a dividend declared to that controlled foreign [entity] company by any other foreign [entity which is a] company, if that controlled foreign [entity on the date of] company immediately before that disposal or at the time of the declaration of dividend— 45
- (aa) [holds] held more than 25 per cent of the equity share capital in that other foreign [entity] company; and
- (bb) in the case of any disposal contemplated in subparagraph (i), held such interest contemplated in item (aa) for a period of at least 18 months prior to that disposal, unless that interest was acquired by the controlled foreign [entity] company from any other foreign [entity] company, where that controlled foreign [entity] company and that other foreign [entity] company form part of the same group of companies[, as defined in section 41] and that controlled foreign [entity] company and that other foreign [entity] company in aggregate held that interest for more than 18 months: 50 55

Provided that the provisions of [this paragraph] subparagraph (i) shall not apply where [more than 50 per cent of either the market value or the actual costs of all the assets of that other foreign entity and any foreign entity, which is a controlled company, as defined in section 41, in relation to that other foreign entity on the date of that disposal or distribution, consists of financial instruments, as

defined in paragraph 1 of the Eighth Schedule, other than any shares held in any foreign entity which is a controlled company in relation to that other foreign entity] that other foreign company is a foreign financial instrument holding company immediately before that disposal.

(10) For the purposes of subsection (9)(b)(ii) the Minister may—

(a) by notice in the *Gazette* determine that one or more foreign countries be treated as one if such foreign countries comprise a single economic market and such treatment will not lead to an unacceptable erosion of the tax base; or

(b) in consultation with the Commissioner grant exemption to any person from the application of subsection (9)(b)(ii), to the extent that its application will unreasonably prejudice national economic policies or South African international trade and such exemption will not lead to an unacceptable erosion of the tax base.

(11) The provisions of subsection (9)(b) [(f) and (fA)] to (h), inclusive shall not apply in respect of any resident, where [such] that resident fails to comply with the provisions of section 72A.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall, to the extent it—

(a) amends subsection (6), apply in respect of years of assessment commencing on or after that date; and

(b) amends the rest of section 9D, apply in respect of years of assessment ending on or after that date.

#### Substitution of section 9E of Act 58 of 1962

15. (1) The following section is hereby substituted for section 9E of the Income Tax Act, 1962:

#### “Taxation of foreign dividends

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

‘controlled company’ means a company in relation to which another company is the controlling company;

‘controlling company’, in relation to any other company, means a company which is a resident and which holds for its own benefit, whether directly or indirectly, through one or more companies in a group of companies of which all the companies in question form part, shares in such other company which constitute not less than 75 per cent of the equity share capital of the said other company;

‘designated country’ means a country designated by the Minister under subsection (8);

‘effective date’ means 23 February 2000;

‘fixed capital’ includes share capital, share premium and accumulated profits, whether of a capital nature or not;

‘foreign dividend’ means—

(a) any dividend received by or which accrued to any person from any company which is either a foreign [entity] company as defined in section 9D, or a resident to the extent that the dividend is declared from profits derived by such company before such company became a resident [and includes the following amounts which shall be deemed to be a dividend declared by such company to such person—]; and

[(a)](b) any amount deemed to have been distributed to that person or any resident who is a connected person in relation to that person, by any foreign company which is a controlled foreign company in relation to that person, as contemplated in section 64C(3)(a), (b), (c) or (d) [by any company which is a controlled foreign entity to such person or any resident who is a connected person in relation to such person], and where the provisions contained in section 64C(4)(a), (b), (c), (d), (e), (f), (i) or (j) do not apply, to the extent that [such] the foreign company could have distributed a dividend to [such] that person from

profits which have not been subject to tax in the Republic, [and none of the provisions contained in section 64C(4) (other than section 64C(4)(g) and (h)) apply] which amount must be deemed to be a dividend declared by that company to that person: [Provided that the provisions of this paragraph shall not apply in respect of any amount distributed by any company, which is being wound up or liquidated or whose corporate existence is finally terminated, out of profits of a capital nature (other than profits of a capital nature derived from the disposal by such company, on or after the effective date, of any interest in any other company with retained profits which were available for distribution by such other company to such company which would not have been excluded from the provisions of paragraph (b) had that paragraph applied); or];

'foreign tax year' means a foreign tax year as defined in section 9D;

['group of companies' means a controlling company and one or more other companies which are controlled companies in relation to the controlling company;]

'proportionate amount of the profit', in relation to a shareholder, means an amount which bears to the total profit, the same ratio as such shareholder's shareholding bears to the total shareholding, and for that purpose, if there are different classes of shares—

- (a) the expression 'total shareholding' refers only to the total of the class of shares of which such shareholding is part; and
- (b) the expression 'total profits' means the total profits attributable to such class of shares;

'qualifying interest' of any person means—

- (a) any direct interest of at least 10 per cent held by such person in the equity share capital of any company; and
- (b) any direct interest of at least 10 per cent held by any company contemplated in paragraph (a) in the equity share capital of any other company, which other company shall for the purposes of this definition be deemed to be a company contemplated in paragraph (a) in which such person holds a direct interest of at least 10 per cent;

'qualifying statutory rate' means a statutory rate of tax on companies in the relevant country of at least—

- (a) 27 per cent in the case of amounts other than capital gains; and
  - (b) 13,5 per cent in the case of capital gains,
- after taking into account the application of any agreement for the avoidance of double taxation, if applicable, and in respect of which there is no right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment): Provided that where that country imposes a tax on companies at a progressive scale of statutory rates, the statutory rate shall for the purposes of this definition be deemed to be the highest rate on that scale.

(3) Subject to subsection (7), where during any year of assessment any foreign dividend is received by or accrues to any resident, the amount to be included in the gross income of [such] that resident for [such] that year of assessment in terms of paragraph (k) of the definition of 'gross income' in section 1, shall—

- (a) [if such] where that resident (together with any connected person in relation to that resident) holds for its own benefit—
  - [(i) holds for his own benefit; or
  - (ii) in the case of a company, together with any other company in a group of companies of which such company forms part, hold for their own benefit,]

at least 10 per cent of the equity share capital in the company declaring the dividend, be the proportionate amount of the profit from which the dividend is distributed, before taking into account any foreign tax on income imposed in respect of [such] that profit and any withholding tax paid in respect of [such] that dividend: Provided that—

- [(aa)](i) [unless such resident proves otherwise in such manner and such form as the Commissioner may prescribe] the foreign dividend shall be deemed to have been distributed by the foreign company from the profits of that foreign company determined in respect of the most **[recently derived and]** recent foreign tax year on a last in first out basis to the extent they are available for distribution, unless the directors or shareholders by resolution decided to distribute the dividend from profits derived in a different foreign tax year; and
- [(bb)](ii) where [such] that foreign company during the relevant foreign tax year contemplated in subparagraph (i), derived its profits **[by way of dividends received or accrued and by way of other sources of profits]** from different forms of income, the dividend shall be deemed to have been declared on a proportionate basis from **[such dividends and other sources of profits]** the profits derived from such different forms of income; or
- (b) in any other case [if such resident—
- (i) does not hold for his own benefit; or
- (ii) in the case of a company, together with any other company in a group of companies of which such company forms part, do not hold for their own benefit,
- at least 10 per cent of the equity share capital in the company declaring the dividend], be the amount of [such] that dividend declared before taking into account the amount of any withholding tax paid in respect of [such] that dividend.
- (4) In determining the proportionate amount of the profit to be included in the gross income of any resident in terms of subsection (3)(a), there shall be taken into account any profits derived by any other company in which the company distributing the dividend has an interest and which have been distributed to [such] that company in the form of dividends, if the resident has a qualifying interest in [such] that other company: Provided that—
- (a) [unless such resident proves otherwise in such manner and such form as the Commissioner may prescribe] the dividend shall be deemed to have been distributed by [such] that other company to that company from the profits **[most recently derived and]** determined in respect of the most recent foreign tax year on a last in first out basis to the extent they are available for distribution, unless the directors or shareholders by resolution decided to distribute the dividend from profits derived in a different foreign tax year; and
- (b) where [such] that other company during the relevant foreign tax year contemplated in paragraph (a) derived its profits **[by way of dividends received or accrued to such company and by way of other sources of profits]** from different forms of income, the dividend shall be deemed to have been declared **[by such other company]** on a proportionate basis from **[such dividends and other sources of profits]** the profits derived from such different forms of income.
- (5) For the purposes of subsection (3)(b), where—
- (a) any dividend is declared by a company to any [unit] portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of 'company' in section 1; and
- (b) such dividend is distributed by such [unit] portfolio by way of a dividend, or a portion of a dividend, to persons who have become entitled to such dividend by virtue of their being **[registered as]** holders of **[units]** participatory interests in such [unit] portfolio, such dividend contemplated in paragraph (a) shall, to the extent that such dividend is declared to such holders of **[units]** participatory interests as contemplated in paragraph (b), be deemed to have been declared by such company directly to such holders of **[units]** participatory interests.
- (5A) Notwithstanding the provisions of sections 11(a) and 23(g)—
- (a) there shall be allowed to be deducted from any income of a resident which is derived during any year of assessment from taxable foreign

- dividends, an amount of any interest actually incurred by such resident in the production of income in the form of foreign dividends: Provided that such deduction shall be limited to the amount of foreign dividends included in the income of such resident during such year; and
- (b) any amount whereby **[such]** that interest contemplated in paragraph (a) exceeds the amount of any such foreign dividends, shall be reduced by the amount of any foreign dividends received by or accrued to such resident during such year of assessment which are not included in the taxable income of such resident, and the balance shall—
- (i) be carried forward to the immediately succeeding year of assessment; and
  - (ii) be deemed to be an amount of interest actually incurred by such resident during such succeeding year of assessment in the production of income in the form of foreign dividends.
- (6) Any resident who receives a foreign dividend or to whom a foreign dividend accrues may, notwithstanding the provisions of subsection (3), in respect of any year of assessment elect that the amount of **[such]** that foreign dividend to be included in the gross income of **[such]** that resident shall—
- (a) in the case of a resident contemplated in subsection (3)(a), [if such resident—
- (i) **holds for his own benefit; or**
  - (ii) **in the case of a company, together with any other company in a group of companies of which such company forms part, hold for their own benefit,**
- at least 10 per cent of the equity share capital in the company declaring such dividend,]** be the amount of the profits from which such dividend is declared after taking into account any foreign tax on income imposed in respect of **[such]** those profits and any withholding tax paid in respect of **[such]** that dividend; or
- (b) in the case of a resident contemplated in subsection (3)(b), [if such resident—
- (i) **does not hold for his own benefit; or**
  - (ii) **in the case of a company, together with any other company in a group of companies of which such company forms part, do not hold for their own benefit,**
- at least 10 per cent of the equity share capital in the company declaring such dividend]** be the amount of **[such]** that dividend after taking into account any withholding tax paid in respect of **[such]** that dividend,
- and **[such]** that election shall apply in respect of all foreign dividends received by or accrued to **[such]** that resident during the year of assessment in respect of which the election was made.
- (7) There shall be exempt from tax any foreign dividend declared or deemed to have been declared by—
- (c) any listed company, [listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985),] contemplated in paragraph (a) of the definition of 'listed company' in section 1, to a resident who, together with any connected person in relation to **[such]** that resident, **[does not hold at least]** holds less than 10 per cent of the equity share capital of **[such]** that company, if more than 10 per cent of the equity share capital in **[such]** that company is at the time of the declaration of **[such]** that dividend held collectively by residents: Provided that where **[such]** the shares of that company **[was]** were not listed on such a stock exchange on the effective date, the exemption shall apply only upon approval by the Commissioner, which approval the Commissioner may grant on application by **[such]** that company, having regard to—
- (i) the fact whether or not the profits of **[such]** that company were generated in a designated country; and
  - (ii) the tax rate at which the profits from which the dividend was declared was or will be taxed;

- (d) any company, which is distributed directly or indirectly to a resident who holds a qualifying interest in **[such] that** company, to the extent that the profits from which the dividend is declared are or will be subject to tax in a designated country at **[a] a qualifying** statutory rate **[of at least 27 per cent or, in the case of any capital gains of that company, at a statutory rate of at least 13,5 per cent, (after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment): Provided that where such designated country imposes tax on that company at a progressive scale of statutory rates, the statutory rate shall for the purposes of this paragraph be deemed to be the highest rate on such scale];**
- (e) any company to the extent that the profits from which the dividend is distributed—
- (i) relate to any amount of income which has been or will be included in the income of the shareholder of such company in terms of section 9D; **[or]**
  - (ii) have been or will be subject to tax in the Republic in terms of this Act, unless those profits have been or will be exempt or taxed at a reduced rate in the Republic, as a result of the application of any agreement for the avoidance of double taxation; [or]
  - (iii) have otherwise been included in the taxable income of the shareholder in terms of **[paragraph (a) of]** the definition of 'foreign dividend'; or
  - (iv) arose directly or indirectly from any dividends declared by any company which is a resident; **[or]**
- (f) any company out of profits derived by **[such] that** company by way of—
- (i) any foreign dividend which is exempt from tax in terms of the provisions of this subsection; or
  - (ii) any dividend which would have constituted a foreign dividend which is exempt from tax, had **[such] that** dividend been declared on or after **[23 February 2000]** the effective date; or
- (g) any unbundling company of any distributable shares pursuant to any unbundling transaction contemplated in section 46.
- (8) The Minister may, by notice in the *Gazette*—
- (a) designate countries which—
- [(b)](i)** have a tax on income that is determined on a basis which is substantially the same as that of the Republic;
  - [(c)](ii)** have **[a] a qualifying** statutory rate of tax on income of companies **[of at least 27 per cent without any right of recovery of such tax by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment)];** and
  - [(d)](iii)** comply with any other requirement which the Minister may prescribe by regulation:
- (b) exclude specific forms of income which are derived from those countries contemplated in paragraph (a)."
- (8A) The Minister may, by notice in the *Gazette* to such extent as he may deem necessary in the national interest and subject to such conditions as he may prescribe, grant exemption from the application of this section in respect of any dividend received by or accrued to a resident, which is remitted to the Republic, to the extent that such dividend is declared from profits derived from any project approved by the Minister, having regard to—
- (a) the economic benefits of such project for the Republic;
  - (b) the extent to which goods and services will be provided in respect of such project from the Republic;