

REPUBLIC OF SOUTH AFRICA

REVENUE LAWS AMENDMENT BILL

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

(MINISTER OF FINANCE)

[B 71—2003]

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

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

To amend the Transfer Duty Act, 1949, so as to further regulate the provisions relating to duty on conversion of share blocks to sectional titles and duty payable on cancellation of transactions; to provide for an exemption for conversion or renewal of certain mineral and mining rights and permits and further regulate other exemptions; to provide for additional powers to the Commissioner; to further regulate duty on sale of property to agents; to provide for additional duty for failure to perform any duties; and to provide that payment of duty is not suspended pending appeal; to amend the Estate Duty Act, 1955, so as to effect certain consequential amendments; to amend the Income Tax Act, 1962, so as to amend, insert and delete certain definitions; to further regulate the powers of the Commissioner; to further regulate the secrecy provisions; to further regulate the provisions relating to foreign tax credits; to provide relief where assets disposed of are replaced; to further regulate the provisions relating to income from foreign sources and foreign dividends; to further regulate the provisions relating to controlled foreign companies; to further regulate the exemption provisions; to amend the provisions relating to certain deductions and allowances; to provide for the ring-fencing of losses from certain trades; to further regulate the provisions relating to trading stock; to further regulate the provisions relating to the limitation of deductions; to further regulate the provisions relating to exchange items; to amend the provisions relating to insolvent estates; to further regulate the provisions relating to public benefit organisations and deductibility of donations to these organisations and government; to make provision for disposals of assets by non-resident persons; to further regulate provisions relating to payment of withholding tax on royalties; to further regulate the provisions relating to corporate restructuring; to grant a further exemption from donations tax; to further regulate the provisions relating to secondary tax on companies; to further regulate the provisions relating to submission of returns and assessment; to specifically provide for the registration of taxpayers; to provide for reporting of certain reportable arrangements; to further regulate the provisions relating to objections, appeals and dispute resolution; to provide that the Commissioner may prescribe a time on a date for payment of tax, penalties and interest; to further regulate the deduction of capital expenditure for farming; to provide that pensionable service of non-statutory force members purchased after 1 March 1998 in respect of periods of service accounted for before that date be dealt with as is the case with other public servants; to further regulate the penalties on failure to pay employees' tax and personal liability in relation thereto; to further regulate the deduction of employees' tax from directors' remuneration; to further regulate the provisions relating to capital gains tax; to delete certain obsolete provisions and to effect certain consequential amendments; to amend the Customs and Excise Act,

1964, so as to insert certain definitions; to further regulate the powers of the Commissioner; to further regulate the provisions relating to secrecy; to insert provisions relating to degrouping; to make provision for the imposition of environmental levies; to make rules to enable the Commissioner to curtail the smuggling of cigarettes; to further regulate the provisions relating to internal appeals and alternative dispute resolution; to make provision for certain consequential changes arising from the introduction of the duty at source system; to make provision in the Act for customs controlled areas within Industrial Development Zones; to effect certain consequential amendments; to amend the Stamp Duties Act, 1968, so as to further regulate the period for record keeping; to further regulate the powers of the Commissioner; to further regulate the exemptions from duty; to effect certain consequential amendments and to delete references to obsolete provisions; to amend the Value-Added Tax Act, 1991, so as to amend and insert certain definitions; to provide for certain exemptions and zero-rating; to further regulate the circumstances where an input tax may be claimed; to prescribe further requirements for VAT invoices; to further regulate the provisions relating to assessments; to further regulate the provisions relating to objections and appeal and dispute resolution; to provide for the amendment of the Schedules in line with the Customs and Excise Act, 1964, to effect certain consequential amendments; to amend the Uncertificated Securities Tax Act, 1998, so as to amend and insert certain definitions; to further regulate the exemptions from tax; to effect consequential changes to the repeal of the Marketable Securities Tax Act, 1948; to further regulate the powers of the Commissioner; to effect certain consequential amendments; to make provision for the retention of records; to amend the Skills Development Levies Act, 1999, so as to further regulate the provisions relating to public benefit organisations; to provide for penalties for failure to pay levies; to amend the Taxation Laws Amendment Act, 2000, so as to further regulate certain exemptions of public benefit organisations and other entities; to amend the Second Revenue Laws Amendment Act, 2001, so as to insert provisions relating to Industrial Development Zones; to effect certain consequential amendments; to amend the Unemployment Insurance Contributions Act, 2002, so as to align it with the Unemployment Insurance Act, 2001; to amend the Taxation Laws Amendment Act, 2002, so as to repeal certain obsolete provisions; to amend the Revenue Laws Amendment Act, 2002, so as to insert a commencement date; and to delete obsolete provisions; to amend the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, so as to amend certain definitions; to make provision for application by beneficiaries; to further regulate the tax relief in terms of the amnesty; and to extend the date for application; to repeal the Marketable Securities Tax Act, 1948, and certain regulations; to provide for transitional provisions relating to gold bullion and shares of companies acquired from funds transferred to the Republic; to provide for a short title and commencement date; and to provide for matters relating thereto.

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

Amendment of section 1 of Act 40 of 1949

1. (1) Section 1 of the Transfer Duty Act, 1949, is hereby amended by the substitution in the definition of “fair value” for the words following item (iii) of paragraph (b) of the following words: 5

“(without taking into account any lease agreement [or], any liability in respect of any loan or any right to or an interest in the use of immovable property conferred on the owner of a share in a share block company as contemplated in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), 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”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any acquisition of any share on or after that date. 15

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

2. (1) Section 5 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) If a transaction whereby property has been acquired, is, before registration of the acquisition in a deeds registry, cancelled, or dissolved by the operation of a resolutive condition, duty shall be payable only on that part of the consideration which has been or is paid to and retained by the seller and on any consideration payable by **[either party to the transaction]** the buyer for or in respect of the cancellation thereof, provided that on cancellation or dissolution of that transaction, such property completely reverts to the seller and the original buyer has relinquished all rights and has not received nor will receive any consideration arising from such cancellation or dissolution.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of the cancellation or dissolution of any transaction 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, section 3 of Act 30 of 2002 and section 4 of Act 74 of 2002

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

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

“(l) any company in terms of—

(i) **[any]** an amalgamation transaction contemplated in section 44 of the Income Tax Act, 1962 (Act No. 58 of 1962);

(ii) **[any]** an intra-group transaction contemplated in section 45 of that Act;

(iii) **[any]** a liquidation distribution contemplated in section 47 of that Act; or

(vi) a transaction which would have constituted a transaction or distribution contemplated in subparagraphs (i) to (iii) regardless of—

(aa) whether or not any election has been made that the provisions of the relevant section apply; or

(bb) whether that person acquired that property as a capital asset or as trading stock,

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 47, as the case may be, of that Act] acquisition of property complies with the provisions of this paragraph.”; and

(b) by the addition of the following subsections:

“(18) No duty shall be payable where—

(a) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), wholly or partially continues in force or is wholly or partially converted into a new right pursuant to that Schedule; or

(b) any prospecting right, mining right, exploration right, production right, mining permit or retention permit, as defined in section 1 of

the Mineral and Petroleum Resources Development Act, 2002, is wholly or partially renewed in terms of that Act.

(19) No duty shall be payable by a natural person on the conversion in terms of Item 8 of Schedule 1 to the Share Blocks Control Act, 1980 (Act No. 59 of 1980), of any right to or interest in the use of immovable property conferred by reason of the ownership of a share held by that person in a share block company as contemplated in section 1 of that Act, to ownership in the unit in respect of which that person had the right of use, if the acquisition of that share was subject to duty in terms of this Act.”.

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any property acquired in terms of an amalgamation transaction, intra-group transaction, liquidation distribution or other transaction which takes effect on or after that date.

(b) Subsection (1)(b) shall—

- (i) in so far as it inserts subsection (18), come into operation on the date of promulgation of the Mineral and Petroleum Resources Development Act, 2002, (Act No. 28 of 2002), and shall apply in respect of any continuation in force, conversion or renewal on or after that date; and
- (ii) in so far as it inserts subsection (19) come into operation on 13 December 2002 and shall apply in respect of any property acquired on or after that date.

Amendment of section 11A of Act 40 of 1949, as inserted by section 5 of Act 46 of 1996 and amended by section 9 of Act 30 of 1998 and section 9 of Act 60 of 2001

4. Section 11A of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for the definitions of “documents” and “information” of the following definitions:

“ ‘documents’ include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any [**‘computer print-out’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)] printout of information generated, sent, received, stored, displayed or processed by electronic means;**
 ‘information’ includes any [**data stored by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983] electronic representations of information in any form;”.**

Insertion of sections 13A, 13B and 13C in Act 40 of 1949

5. The following sections are hereby inserted in the Transfer Duty Act, 1949, after section 13:

“Recovery of duty

13A. (1) Any amount of duty, additional duty or penalty incurred under this Act and which is payable in terms of this Act shall, when it becomes due or is payable, be a debt due to the State by the person concerned and shall be recoverable by the Commissioner in the manner hereinafter provided.

(2) If any person fails to pay any amount of duty, additional duty or penalty incurred under this Act when it becomes due or is payable by such person, the Commissioner may file with the clerk or registrar of any competent court a statement certified by the Commissioner as correct and setting forth the amount thereof so due or payable by that person, and that statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were a civil judgement lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement.

(3) The Commissioner may by notice in writing addressed to the clerk or registrar, withdraw the statement referred to in subsection (2), and that statement shall thereupon cease to have any effect: Provided that the Commissioner may institute proceedings afresh under that subsection in

respect of any duty, additional duty or penalty referred to in the withdrawn statement.

(4) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a statement for any amount whatsoever may be filed in terms of subsection (2) with the clerk of the magistrates' court having jurisdiction in respect of the person by whom the amount is payable in accordance with the provisions of this Act.

(5) Pending the conclusion of any proceedings, whether internally or in any court, regarding a dispute as to the amount of any duty, additional duty or penalty payable, the statement filed in terms of subsection (2) shall, for purposes of recovery proceedings contemplated in subsection (2), be deemed to be correct.

Power to appoint agent

13B. The Commissioner may, if he or she deems it necessary, declare any person to be the agent of any other person, and the person so declared an agent—

(a) shall for the purposes of this Act be the agent of that other person in respect of the payment of any amount of duty, additional duty or penalty payable by that other person under this Act; and

(b) may be required to make payment of that amount from any moneys which may be held by that agent for or be due by that agent to the person whose agent he or she has been declared to be;

Provided that a person so declared an agent who is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of Commissioner against agent or trustee

13C. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property of any person liable to pay any duty and in such a full and an ample manner."

Amendment of section 16 of Act 40 of 1949

6. (1) Section 16 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) Where property is sold to a person who is acting as an agent for some other person, the person so acting as agent shall disclose to the seller or his or her agent the name and address of the principal for whom he or she acts, and furnish the seller or his or her agent with a copy of the documents appointing him or her as agent—

(i) if the sale is by **[action, immediately upon]** auction, on the day of acceptance by the auctioneer of his or her offer; or

(ii) if the sale is otherwise than by auction, **[immediately upon]** on the day of conclusion of the agreement of sale.

(2) Any person who **[fails to comply with the provisions of]** has been appointed as an agent and has in his or her possession the documents referred to in subsection (1), but fails to furnish these documents and the name of the person on whose behalf he or she is acting to the seller or his or her agent on the date specified in subsection (1) shall, for the purpose of the payment of the duty payable in respect of the acquisition of the property in question, be presumed, unless the contrary is proved, to have acquired the property for himself or herself."

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

Insertion of section 17A in Act 40 of 1949

7. (1) The following section is hereby inserted in the Transfer Duty Act, 1949, after section 17:

“Additional duty in case of evasion

17A. (1) Where any person or any person under the control or acting on behalf of that person fails to perform any duty imposed upon him or her by this Act or does or omits to do anything with intent—
 (a) to evade the payment of any amount of duty payable by him or her; or
 (b) to cause a refund to him or her by the Commissioner of any amount of duty which is in excess of the amount properly refundable to him or her (hereafter referred to as ‘the excess’),
 that person shall be chargeable with additional duty not exceeding an amount equal to double the amount of duty referred to in paragraph (a) or the excess referred to in paragraph (b), as the case may be.
 (2) The amount of the additional duty shall be assessed by the Commissioner and shall be paid by the person within such period as the Commissioner may allow.
 (3) The power conferred upon the Commissioner by this section shall be in addition to any right conferred upon him or her by this Act to institute or take other proceedings under this Act.”.

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

Amendment of section 18 of Act 40 of 1949, as amended by section 3 of Act 27 of 1997 and substituted by section 10 of Act 60 of 2001

8. (1) Section 18 of the Transfer Duty Act, 1949, is hereby amended—

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

“(b) settlement of disputes, as provided for in [section 107B] Part IIIA of Chapter III of that Act.”.

(b) by the addition of the following subsections:

“(4) The obligation to pay and the right to receive and recover any duty or penalty chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law.

(5) If any assessment relating to an appeal contemplated in subsection (4) is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the tax board or the tax court or such court of law, a due adjustment shall be made, amounts paid in excess being refunded with interest at a rate contemplated in paragraph (b) of the definition of ‘prescribed rate’, in section 1 of the Income Tax Act, 1962, and calculated from the date proved to the satisfaction of the Commissioner to be the date on which any excess was received and amounts short-paid being recoverable with penalty calculated as provided in section 4.

(6) The payment by the Commissioner of any interest under the provisions of subsection (5) shall be deemed to be a drawback from revenue charged to the National Revenue Fund.”.

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

Insertion of section 20B in Act 40 of 1949

9. (1) The following section is hereby inserted in the Transfer Duty Act, 1949, after section 20A:

“Transactions, operations, schemes or understanding for obtaining undue tax benefits

20B. (1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any transaction, operation, scheme or understanding (whether enforceable or not), including all steps by which it is carried into effect—

- (a) has been entered into or carried out which has the effect of granting a tax benefit to any person; and
- (b) having regard to the substance of the transaction, operation, scheme or understanding—
 - (i) was entered into or carried out in a manner which would not normally be employed for *bona fide* business purposes, other than the obtaining of a tax benefit; or
 - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and
- (c) was entered into or carried out solely or mainly for the purposes of obtaining a tax benefit,

the Commissioner shall determine the liability for any duty imposed by this Act, and the amount thereof, as if the transaction, operation, scheme or understanding had not been entered into or carried out, or in such manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of such tax benefit.

(2) For the purpose of this section—
‘tax benefit’ means—

- (a) any reduction in the liability of any person to pay duty;
- (b) any increase in the entitlement of any person to the refund of duty; or
- (c) any other avoidance or postponement of liability for the payment of any duty imposed by this Act or any tax, duty or levy imposed by any other Act administered by the Commissioner.

(3) Any decision of the Commissioner under subsection (1) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it shall be presumed, until the contrary is proved, that such transaction, operation, scheme or understanding was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any acquisition in terms of a transaction, operation, scheme or understanding entered into on or after that date.

Amendment of section 8A of Act 45 of 1955, as substituted by section 7 of Act 46 of 1996 and amended by section 15 of Act 30 of 1998 and section 13 of Act 60 of 2001

10. Section 8A of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (1) for the definitions of “documents” and “information” of the following definitions:

“ ‘documents’ include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any [**‘computer print-out’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)**] printout of information generated, sent, received, stored, displayed or processed by electronic means;

‘information’ includes any [**data stored by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983**] electronic representations of information in any form;”.

Amendment of section 24 of Act 45 of 1955, as amended by section 68 of Act 30 of 2002

11. Section 24 of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) settlement of disputes, as provided for in [section 107B] Part IIIA of Chapter III of that Act,”. 5

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, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002 and section 33 of Act 12 of 2003 25

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

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

“ ‘assessment’ means the determination by the Commissioner, by way of a notice of assessment (including a notice of assessment in electronic form) served in a manner contemplated in section 106(2)—”; 30

(b) by the insertion after the definition of “date of assessment” of the following definitions:

“ ‘date of sequestration’ means—

(a) the date of voluntary surrender of an estate, if accepted by the Court; 35
or

(b) the date of provisional sequestration of an estate, if a final order of sequestration is granted by the Court;

‘depreciable asset’ means an asset as defined in paragraph 1 of the Eighth Schedule (other than trading stock), in respect of which a capital deduction or allowance determined with reference to the cost or value of that asset is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;”; 40

(c) by the deletion of the definition of “designated country”;

(d) by the substitution in the definition of “dividend” for the words following item (bb) of subparagraph (v) of the first proviso of the following words: 45

“[Provided further that for the purposes of this definition an asset shall be deemed to have been given to a shareholder of a company if any asset or any interest, benefit or advantage measurable in terms of money is given or transferred to such shareholder or if the shareholder is relieved of any obligation measurable in terms of money:] Provided further that a reserve of any company which consists of or includes any amount transferred from the share premium account of the company shall, except to the extent to which such reserve consists of any other amount, be deemed for the purposes of this definition to be a share premium account of, or share premium received by, such company;”; 50 55

- (e) by the insertion after the definition of “financial year” of the following definition:
 “ ‘foreign dividend’ means any dividend received by or which accrued to any person from a foreign company as defined in section 9D;”;
- (f) by the substitution for paragraph (k) of the definition of “gross income” of the following paragraph: 5
 “(k) any amount received or accrued by way of **[dividends including any amount which is deemed to be a dividend declared as contemplated in the definition of ‘foreign dividend’ in section 9E]** a dividend: Provided that where any foreign dividend declared by a foreign company— 10
 (i) is received by or accrues to a portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of ‘company’; and
 (ii) is distributed by that portfolio by way of a dividend, or a portion of a dividend, to any person who is entitled to that dividend by virtue of being a holder of any participatory interest in that portfolio, 15
 that foreign dividend shall, to the extent that it is declared to that person as contemplated in subparagraph (ii), be deemed to have been declared by that foreign company directly to that person and to be a foreign dividend which is received by or accrued to that person;”;
- (g) by the deletion of the definition of “international headquarter company”;
- (h) by the deletion of the definition of “qualifying statutory rate”; 25
- (i) by the substitution in paragraph (a) of the definition of “resident” for the words in subparagraph (ii) preceding item (aa) of the following words:
 “not at any time during the relevant year of assessment ordinarily resident in the Republic, if **[such]** that person was physically present in the Republic—”; 30
- (j) by the insertion in the definition of “resident” in subparagraph (ii) of paragraph (a) of the following words after item (bb) but preceding the proviso:
 “in which case that person will be a resident with effect from the first day of that relevant year of assessment;”; 35
- (k) by the substitution in the definition of “resident” for item (A) of the proviso to subparagraph (ii) of paragraph (a) of the following item:
 “(A) 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]** contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 2002), or at any other place in the case of a person authorised by the Minister of Home Affairs in terms of section 31(2)(c) of that Act; and”; 40
- (l) by the substitution in the definition of “resident” for paragraph (b) of the following paragraph: 45
 “(b) person (other than a natural person) which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic **[(but excluding any international headquarter company)]**;”; and 50
- (m) by the deletion of the definition of “scientific research”;
- (n) by the insertion before the definition of “shareholder” of the following definition:
 “ ‘securities lending arrangement’ means a ‘lending arrangement’ as defined in the Uncertificated Securities Tax Act, 1998 (Act No. 31 of 1998);”; 55
- (o) by the substitution in the definition of “shareholder” of paragraphs (a) and (b) of the following paragraphs:
 “(a) in relation to any company referred to in paragraph (a), (b), (c) or (d) of the definition of ‘company’ in this section, means the registered shareholder in respect of any share, except that where some person other than the registered shareholder is entitled, whether by virtue of any provision in the memorandum or articles of 60

association of the company 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 or capital** attaching to the share so registered, **[such] that** other person shall, to the extent that **[he] such other person** is entitled to such benefit, also be deemed to be a shareholder; or

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

(2) (a) Subsection (1)(c), (e), (f), (g), (h) and (l) shall come into operation on 1 June 2004 and shall apply in respect of years of assessment commencing on or after that date.

(b) Subsection 1(n) shall come into operation on the date of promulgation of this Act and shall apply in respect of any securities lending arrangement entered into on or after that date.

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, section 18 of Act 60 of 2001 and section 7 of Act 74 of 2002

13. Section 3 of the Income Tax Act, 1962, is hereby amended—

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

“(1) The powers conferred and the duties imposed upon the Commissioner by or under the provisions of this Act **[or any amendment thereof]** may be exercised or performed by the Commissioner personally, or by any officer or person engaged in carrying out the said provisions under the control, direction or supervision of the Commissioner.”;

- (b) by the substitution in subsection (2) for the words preceding the proviso of the following words:

“Any decision made and any notice or communication issued or signed by any such officer or person may be withdrawn or amended by the Commissioner or by the officer or person concerned, and shall for the purposes of the said provisions, until it has been so withdrawn, be deemed to have been made, issued or signed by the Commissioner.”; and

- (c) 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, section 76A, 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, section 19 of Act 60 of 2001, section 8 of Act 74 of 2002 and section 34 of Act 12 of 2003 5

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

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

“(1) Every person employed or engaged by the Commissioner in carrying out the provisions of this Act shall preserve and aid in preserving secrecy with regard to all matters that may come to his or her knowledge in the performance of his or her duties in connection with those provisions, and shall not communicate any such matter to any person whatsoever other than the taxpayer concerned or his or her lawful representative nor suffer or permit any such person to have access to any records in the possession or custody of the Commissioner except in the performance of his or her duties under this Act or by order of a competent court.”; 10 15

- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 20

“(a) Every person [so] employed or engaged as contemplated in subsection (1) shall, before acting under this Act, take and subscribe before a magistrate or justice of the peace or a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed.”; and 25

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

“(4) Any person employed or engaged as contemplated in subsection (1) who [acts in the execution of his office] carries out any provisions of the Act as contemplated in subsection (1) before he or she has taken the prescribed oath or solemn declaration shall be guilty of an offence and liable on conviction to a fine not exceeding [R50] R500.”. 30

Amendment of section 5 of Act 58 of 1962, as amended by section 2 of Act 6 of 1963, section 5 of Act 90 of 1964, section 6 of Act 88 of 1965, section 7 of Act 55 of 1966, section 6 of Act 95 of 1967, section 6 of Act 76 of 1968, section 7 of Act 89 of 1969, section 7 of Act 52 of 1970, section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 5 of Act 113 of 1977, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 3 of Act 65 of 1986, section 3 of Act 90 of 1988, section 3 of Act 129 of 1991, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 5 of Act 19 of 2001 and section 10 of Act 30 of 2002 35 40

15. Section 5 of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (b); and
(b) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 45

“(c) any person (other than [a person in respect of whom paragraph (b) applies or] a company) during the year of assessment ended the last day of February each year; and”.

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, section 20 of Act 60 of 2001 and section 9 of Act 74 of 2002 50

16. (1) Section 6quat of the Income Tax Act, 1962, is hereby amended— 55

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

“(d) any foreign dividend [contemplated in section 9E]; or”;

- (b) by the substitution in subsection (1A) for the word "and" at the end of subparagraph (iii) of paragraph (a) of the word "or";
- (c) by the substitution in subsection (1A) for paragraph (b) of the following paragraph:
- “(b) any controlled foreign company, in respect of such proportional amount contemplated in subsection (1)(b), subject to section 72A(3);”;
- (d) by the deletion in subsection (1A) of paragraphs (c) and (d);
- (e) by the substitution in subsection (1A) for paragraph (e) of the following paragraph:
- “(e) any 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)] the proviso to paragraph (k) of the definition of ‘gross income’ and included in the taxable income of that resident; or”;
- (f) by the substitution in subsection (1B) for the words in paragraph (a) preceding the proviso of the following words:
- “(a) 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 tax payable the same ratio as the total taxable income attributable to the income, proportional amount, foreign dividend, taxable capital gain or amount, as the case may be, which is included as contemplated in subsection (1), bears to the total taxable income;”;
- (g) by the insertion in subsection (1B) after paragraph (i) of the proviso to paragraph (a) of the following paragraph:
- “(iA) the taxes contemplated in subsection (1A)(b) that are attributable to any proportional amount which—
- (aa) is taken into account in the determination of the taxable income of the resident by virtue of an election made by that resident in terms of section 9D(12) or 9D(13); or
- (bb) relates to any amount contemplated in section 9D(9)(b)(ii) or (iii) which are not excluded from the application of section 9D(2) in terms of those subparagraphs,
- shall in aggregate be limited to the amount of the normal tax which is attributable to those proportional amounts;”;
- (h) by the substitution in subsection (1B) for the words in paragraph (ii) of the proviso to paragraph (a) preceding subparagraph (aa) of the following words:
- “(ii) where the sum of any such taxes proved to be payable [to the government of any such other country or countries] (excluding any taxes contemplated in paragraph (iA) of this proviso) exceeds the rebate as so determined (hereinafter referred to as the excess amount), that excess amount may—”;
- (i) by the deletion of paragraphs (c) and (d) of subsection (1B);
- (j) by the substitution in subsection (1B) for paragraph (e) of the following paragraph:
- “(e) no rebate shall be allowed in respect of any tax payable on any amount contemplated in subsection (1)(d), if the resident has **[made an election]** elected to deduct the amount of withholding tax as contemplated in section [9E(6)] 11(r).”;
- (k) by the deletion of the definition of “qualifying interest” in subsection (3).
- (2) Subsection (1) shall come into operation on 1 June 2004 and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 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, section 5 of Act 59 of 2000 and section 10 of Act 74 of 2002

17. Section 7 is hereby amended by the deletion of the proviso to subsection (8).

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

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

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

“(e) Notwithstanding paragraph (a), but subject to paragraph (eB), (eC), (eD) and (eE), there shall not be included in the income of a person any amount recovered or recouped as a result of the disposal of any asset, where that person has elected that paragraph 65 or 66 of the Eighth Schedule applies in respect of the disposal of that asset.”; and

(b) by the insertion in subsection (4) after paragraph (e) of the following paragraphs:

“(eA) Where a person acquires more than one asset (hereinafter referred to as “the replacement asset or assets”) contemplated in paragraph (e), that person must, in applying paragraphs (eB), (eC) and (eD), apportion the amount recovered or recouped to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each replacement asset bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

(eB) Where a replacement asset in relation to an asset of a person as contemplated in paragraph (e) constitutes a depreciable asset, that person shall be deemed to have recovered or recouped in a year of assessment so much of the amount contemplated in paragraph (e) apportioned to that asset as contemplated in paragraph (eA) as bears to the total amount of the recovery or recoupment contemplated in paragraph (e) the same ratio as the amount of any capital deduction or allowance allowed in that year of assessment in respect of that replacement asset bears to the total amount of the capital deduction or allowance (determined with reference to the cost or value of that asset at the time of acquisition thereof) allowable for all years of assessment in respect of that replacement asset.

(eC) Where a person during any year of assessment disposes of a replacement asset in relation to an asset contemplated in paragraph (e) and any portion of the recovery or recoupment which is apportioned to that replacement asset has not been included in the income of that person in terms of paragraph (eB) or (eD), that portion must be deemed to be an amount recovered or recouped by that person in respect of that replacement asset in that year of assessment.

(eD) Where during any year of assessment a person ceases to use a replacement asset in relation to an asset contemplated in paragraph (e), in respect of which paragraph 66 of the Eighth Schedule applies, for the purposes of that person’s trade and any portion of the amount which is apportioned to that replacement asset has not been included in the income of that person in terms of paragraph (eB) or (eC), that portion must be deemed to be an amount recovered or recouped in that year of assessment.

(eE) Where a person contemplated in paragraph (e) fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in paragraphs 65 or 66 of the Eighth Schedule, as the case may be, paragraph (e) shall not apply and that person must—

- (i) deem the amount contemplated in paragraph (e) to be an amount recovered or recouped for purposes of paragraph (a) on the date on which the relevant period ends;
- (ii) determine interest at the prescribed rate on the amount recovered or recouped from the date of the disposal contemplated in paragraph (e) to the date contemplated in subparagraph (i); and
- (iii) deem that interest to be an amount recovered or recouped for purposes of paragraph (a) on the date contemplated in subparagraph (i)."

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

Amendment of section 8E of Act 58 of 1962, as inserted by section 6 of Act 70 of 1989

19. (1) Section 8E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the definition of "affected instrument" of the following subparagraph:

- "(ii) such share does not rank *pari passu* as regards its participation in dividends with all other ordinary shares in the capital of the relevant company or, where the ordinary shares in such company are divided into two or more classes, with the shares of at least one of such classes, or any dividend payable on such share is to be calculated directly or indirectly with reference to—
- (aa) any specified rate of interest [**or is otherwise to be calculated having regard to—**];
 - (bb) the amount of capital subscribed for such share; or
 - (cc) the amount of any loan or advance made directly or indirectly by the shareholder or by any connected person in relation to the shareholder;"

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any loan or advance made 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, section 7 of Act 59 of 2000 and section 12 of Act 74 of 2002

20. Section 9 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (aa) of the proviso of the following paragraph:

- "(aa) 80 per cent or more of the value of the net [asset] assets 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"

Amendment of section 9B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1990 and amended by section 11 of Act 129 of 1991, section 9 of Act 141 of 1992, section 6 of Act 113 of 1993, section 7 of Act 36 of 1996, section 26 of Act 30 of 1998 and section 16 of Act 53 of 1999

21. (1) Section 9B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (i) of paragraph (e) of the proviso of the following subparagraph:

- "(i) any share has been lent by a lender to a borrower [**as contemplated in the definition of] in terms of a securities lending arrangement [in section 23 (1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968)]**, such share shall for the purposes of the lender be deemed not to have been disposed of by the lender; and"

(2) Subsection (1) shall come into operation on the date of promulgation and shall apply in respect of any securities lending arrangement entered into on or after that date.

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001 and section 22 of Act 60 of 2001 and substituted by section 14 of Act 74 of 2002

22. (1) Section 9D of the Income Tax Act, 1962, is hereby amended— 5
- (a) by the substitution in subsection (1) for the definition of “foreign company” of the following definition: 5
- “ ‘foreign company’ means any 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 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 treated as not being a resident**];”;
- (b) by the substitution in subsection (1) for the definition of “foreign financial instrument holding company” of the following definition: 15
- “ ‘foreign financial instrument holding company means a foreign financial instrument holding company as defined in section 41: Provided that in determining whether more than half of the market value or two-thirds of actual cost of the assets of the company and all controlled group companies consist of financial instruments, the following assets must be wholly disregarded— 20
- (a) any share in any other company in the same group of companies; and
- (b) any financial instrument which constitutes a loan, advance or debt entered into between companies which form part of the same group of companies;”;
- (c) by the substitution in subsection (2) for item (bb) of subparagraph (ii) of paragraph (a) of the following item: 25
- “(bb) the proportional amount determined in the manner contemplated in subparagraph (i) (as if the day that foreign [entity] company commenced to be a controlled foreign [entity] company 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”;
- (d) by the substitution in subsection (2A) for the words preceding the proviso of the following words: 30
- “For the purposes of this section, the ‘net income’ of a controlled foreign company in respect of a foreign tax year is an amount equal to the taxable income of that company determined in accordance with the provisions of this Act as if that controlled foreign company had been 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:”;
- (e) by the substitution in subsection (2A) for paragraph (c) of the proviso of the following paragraph: 35
- “(c) no deduction shall be allowed in respect of any interest, royalties, rental or income of a similar nature paid or payable or deemed to be paid or payable by that company to any other controlled foreign 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), unless that resident has elected in terms of subsection (12) that the provisions of subsection (9) shall not apply in respect of the net income of that other controlled foreign company for the relevant foreign tax year;”;

- (f) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words:
 “The provisions of **[this section]** subsection (2) shall not apply to the extent that the net income of the controlled foreign company—”;
- (g) by the deletion in subsection (9) of paragraph (a);
- (h) by the substitution in subsection (9) for the words in the proviso to paragraph (b) preceding subparagraph (i) of the following words:
 “Provided that the provisions of this paragraph shall not apply to any net income that is attributable to **[any amounts]**—”;
- (i) by the substitution in subsection (9) for paragraph (i) of the proviso to paragraph (b) of the following paragraph:
 “(i) any amounts derived from any transaction relating to the supply of goods or services by or to that controlled foreign company with any connected person (in relation to that controlled foreign company), who is a resident, unless the consideration in respect of that transaction reflects an arm’s length price that is consistent with the provisions of section 31; or”;
- (j) by the substitution in subsection (9) for the words in paragraph (ii) of the proviso to paragraph (b) of the following words:
 “(ii) any amounts derived from—”;
- (k) by the addition in subsection (9) to item (aa) of subparagraph (ii) of paragraph (b) of the following subitem:
 “(D) that controlled foreign company purchases the same or similar goods mainly within the country of residence of that controlled foreign company from persons who are not connected persons in relation to that controlled foreign company;”;
- (l) by the addition in subsection (9) to item (bb) of subparagraph (ii) of paragraph (b) of the following subitem:
 “(D) products of the same or similar nature are sold by that controlled foreign company mainly to persons who are not connected persons in relation to that controlled foreign company for delivery within the country of residence of that controlled foreign company;”;
- (m) by the substitution in subsection (9) for subparagraph (iii) of paragraph (b) of the following subparagraph:
 “(iii) any amounts 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]** amounts are 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 those amounts]**—
- (aa) to the extent that any income and capital gains attributable to those amounts (other than income or capital gains in respect of which any of the provisions contained in paragraphs (e) to (fB) apply) do not in total exceed **[five]** ~~ten~~ per cent of the **[sum of the amounts (other than those of a capital nature) and the amount of all capital gains and foreign currency gains of that controlled foreign company]** income and capital gains of the controlled foreign company attributable to that business establishment other than income or capital gains—
- (A) attributable to those amounts; or
- (B) in respect of which any of the provisions contained in paragraphs (e) to (fB) apply; or
- (bb) where those amounts arise from the principal trading activities of any banking or financial services, insurance or rental business, excluding any such amounts derived—
- (A) by a company which is a foreign financial instrument holding company at the time that the amounts are so derived;
- (B) from any connected person (in relation to that controlled foreign company) who is a resident or any resident who directly or indirectly holds at least five per cent of the participation rights in—

- (i) that controlled foreign company; or
- (ii) any other company in the same group of companies which holds shares in that controlled foreign company; or

(C) **[from any resident]** to the extent that **[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]** those amounts form part of any transaction, operation or scheme in terms of which any amount received by or accrued to any person is exempt from tax while any corresponding expenditure (other than expenditure for the delivery of any goods including electricity) is deductible by that person or by any connected person in relation to that person in determining the liability for tax of that person or connected person, as the case may be, in terms of this Act;”;

(n) by the substitution in subsection (9) for paragraph (f) of the following paragraph:

“(f) is attributable to any foreign dividend **[contemplated in section 9E]** declared to **[or deemed to have been declared to]** that controlled foreign company, by any other controlled foreign company [from an amount which relates to an amount of income] in relation to the resident, to the extent that the foreign dividend does not exceed the aggregate of all amounts which **[has]** have been or will be included in the income of the resident in terms of this section in any year of assessment, which relate to the net income of—

- (i) the company declaring the dividend; or
- (ii) any other company which has been included in the income of that resident by virtue of that resident’s participation rights in that other company held indirectly through the company declaring the dividend,

reduced by—

- (aa) the amount of any foreign tax payable, in respect of the amounts so included in that resident’s income; and
- (bb) so much of all foreign dividends received by or accrued to that controlled foreign company as was—
 - (A) excluded from the application of this section in terms of this paragraph or section 10(1)(k)(ii)(dd);
 - (B) was previously not included in the income of that resident by virtue of any prior inclusion in terms of section 9D.”;

(o) by the deletion in subsection (9) of paragraph (h);

(p) by the deletion of subsection (11); and

(q) by the addition of the following subsections:

“(12) A resident who, together with any connected person in relation to that resident, holds at least 10 per cent but not more than 25 per cent of the participation rights of a controlled foreign company may elect that all the provisions of subsection (9) shall not apply in respect of the net income determined for a relevant foreign tax year of any controlled foreign company in which that resident holds any participation rights.

(13) Any resident who, together with any connected person in relation to that resident, holds at least 10 per cent but not more than 25 per cent of the participation rights of a controlled foreign company may elect that the foreign company be deemed to be a controlled foreign company in relation to that resident in respect of any foreign tax year of that foreign company.”.

(2) Subsection (1) shall come into operation on 1 June 2004 and shall apply in respect of the foreign tax year of a controlled foreign company which ends during any year of assessment commencing on or after that date.

Repeal of section 9E of Act 58 of 1962, as inserted by section 20 of Act 30 of 2000 and amended by section 11 of Act 59 of 2000, section 10 of Act 5 of 2001, section 8 of Act 19 of 2001 and section 23 of Act 60 of 2001 and substituted by section 15 of Act 74 of 2002

23. (1) Section 9E of the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) shall come into operation on 1 June 2004 and shall apply in respect of any foreign dividend received or accrued during any year of assessment commencing on or after that date.

Repeal of section 9F of Act 58 of 1962, as inserted by section 12 of Act 59 of 2000 and amended by section 24 of Act 60 of 2001 and section 16 of Act 74 of 2002

24. (1) Section 9F of the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) shall come into operation on 1 June 2004 and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of section 9G of Act 58 of 1962, as inserted by section 25 of Act 60 of 2001 and amended by section 17 of Act 74 of 2002

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

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

“(1) For the purposes of this section ‘foreign currency’ means any currency **[which is not legal tender in]** other than currency of the Republic.

(2) **[Notwithstanding the provisions of section 25D,]** The amount to be included in the gross income of a person in respect of the disposal by that person of any foreign equity instrument which constitutes trading stock, shall be **[determined by translating]** the amount received or accrued in any currency other than currency of the Republic in respect of that disposal translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign equity instrument is disposed of.”; and

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

“(3) Any—

(a) expenditure incurred by a person in any foreign currency **[other than currency of the Republic]** in respect of any foreign equity instrument which is allowable as a deduction in terms of the provisions of this Act; or

(b) amount in any foreign currency **[other than currency of the Republic]** which is taken into account in the determination of the taxable income of any person in respect of any foreign equity instrument,

shall, for **[purposes of determining the taxable income of that person for]** the year of assessment in which that foreign equity instrument is disposed of, be translated into the currency of the Republic—

(i) in the case of a foreign equity instrument acquired before 1 October 2001, at the ruling exchange rate on 1 October 2001; or

(ii) in any other case, at the average exchange rate for the year of assessment during which—

(aa) in the case of paragraph (a), that expenditure was actually incurred by that person; or

(bb) in the case of paragraph (b), the expenditure which relates to the amount so taken into account was actually incurred by that person.”.

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

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, section 9 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002 and section 36 of Act 12 of 2003

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

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

“(a) the **[revenues]** receipts and accruals of the Government, any provincial administration or of any other state;

(b) the **[revenues]** receipts and accruals of local authorities;”;

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

“(cH) the receipts and accruals of any company, society or other association of persons or any trust, whether or not registered under any law (other than a co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981)), if—

(i) the sole object of **[such]** that company, society, association or trust in terms of—

(aa) the constitution of the company, society or association; or

(bb) the instrument establishing the trust,

which has been approved by the Commissioner, is to receive, hold and apply **[moneys]** amounts contributed by any taxpayer contemplated in section 11(hA) to **[such]** that company, society, association or trust in accordance with that section **[11(hA)]** in order to discharge, at the time of or after discontinuation of operations on a mine or part of a mine, any of the following or like obligations imposed upon any person in terms of any law which regulates mining operations (other than costs which are required in terms of any law to be incurred on an ongoing basis during the life of a mine or part of a mine), namely—

[(aa)](A) the rehabilitation of disturbances of the surface of land and the prevention and combating of pollution of the air, land, sea or other water where such disturbances and pollution are due to mining, prospecting, quarrying or similar operations;

[(bb)](B) the protection of the surface of land and water sources and the making safe of undermined ground and of dangerous excavations, tailings, waste dumps and structures, of whatsoever nature, made in the course of mining, prospecting, quarrying or similar operations; and

[(cc)](C) the demolition or removal of any building, structure or other thing erected or constructed in connection with mining, prospecting, quarrying or similar operations, the removal of any debris or other

objects and the restoration, as far as is practicable, of the surface to its natural state;

- (iA) a person designated by the Minister of Minerals and Energy certifies that any distribution by that company, society, association or trust is or was made solely for its object as contemplated in subparagraph (i); 5
- (ii) [such] that company, society or association is under its constitution, or [such] that trust is under the instrument establishing [such trust] it not permitted to distribute any of its profits or gains to any person and is required to utilise its funds solely for the object for which it has been established: Provided that such company, society, association or trust shall be permitted to invest its funds, [in institutions approved by the Commissioner] until such time as those funds are required— 10
- (aa) with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990); 15
- (bb) in any financial instrument— 20
- (i) of a company contemplated in paragraph (a) of the definition of 'listed company' in section 1 (other than shares in the taxpayer contemplated in subparagraph (i) or any connected person in relation to that taxpayer); or
- (ii) issued by any sphere of government in the Republic; 25
- or
- (cc) in any other investments which were made by that company, society, association or trust before 18 November 2003
- [until such time as such funds are required];**
- (iii) in terms of the constitution of such company, society or association or the instrument establishing such trust it will upon its winding-up or liquidation be obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other company, society, association or trust **[with a similar object to that of the said company, society, association or trust]** approved by the Commissioner in terms of this paragraph; and 30
- (iv) the Commissioner has approved such company, society, association or trust on such conditions as **[he]** the Commissioner may deem necessary to ensure that the activities of such company, society, association or trust are wholly directed to the furtherance of its sole object: 40

Provided that—

- (a) where the Commissioner is— 45
- (i) satisfied that such company, society, association or trust has during any year of assessment in any material respect; or
- (ii) during any year of assessment satisfied that such company, society, association or trust has on a continuous or repetitive basis, 50
- failed to comply with the provisions of this section, or the constitution or instrument under which it is established to the extent that it relates to the provisions of this section, the Commissioner shall after due notice withdraw approval of that company, society, association or trust with effect from the commencement of that year of assessment, unless corrective steps are taken by that company, society, association or trust within a period stated by the Commissioner in that notice; 55
- (b) where the Commissioner has withdrawn approval of a company, society, association or trust as contemplated in paragraph (a), that company, society, association or trust must, within three months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any other company, society, association or trust which is— 60

- (i) approved in terms of this section; and
- (ii) not a connected person in relation to such company, society, association or trust;
- (c) where a company, society, association or trust during any year of assessment fails to transfer, or to take reasonable steps to transfer, any assets as contemplated in subparagraph (iii) or paragraph (b) of this proviso, the accumulated profits or reserves shall for the purposes of this Act be deemed to be an amount of taxable income which accrued to that company, society, association or trust during that year of assessment.”; 5 10
- (c) by the substitution in subsection (1) for the words in item (aa) of subparagraph (xv) of paragraph (i) preceding the proviso of the following words:
 - “so much of the aggregate of any foreign dividends [**contemplated in section 9E**] and interest received by or accrued to him or her from a source outside the Republic, which are not otherwise exempt from tax, as does not during the year of assessment exceed R1 000:”; 15
- (d) by the substitution in subsection (1) for the words in item (bb) of subparagraph (xv) of paragraph (i) preceding subitem (A) of the following words:
 - “(bb) so much of the aggregate of any interest received by or accrued to him or her from a source in the Republic and any dividends (other than foreign dividends [**contemplated in section 9E**]), which are not otherwise exempt from tax, as does not during the year of assessment exceed—”; 20
- (e) by the substitution in subsection (1) for words in subparagraph (i) of paragraph (k) preceding the proviso of the following words: 25
 - “dividends (other than foreign dividends) received by or accrued to or in favour of any person:”
- (f) by the deletion in subsection (1) of the word “or” at the end of item (cc) of the proviso to subparagraph (i) of paragraph (k);
- (g) by the deletion in subsection (1) of item (dd) of the proviso to subparagraph (i) of paragraph (k); and 30
- (h) by the addition in subsection (1) to paragraph (k) of the following subparagraph:
 - “(ii) any foreign dividend received by or accrued to a person—
 - (aa) to the extent that the profits from which the foreign dividend is distributed— 35
 - (A) relate to any amount which has been or will be subject to tax in the Republic in terms of this Act, unless those profits have been or will be exempt or taxed at a reduced rate in the Republic as a result of the application of any agreement for the avoidance of double taxation; or 40
 - (B) arose directly or indirectly from any dividends declared by any company which is a resident;
 - (bb) to the extent that the foreign dividend relates to any amount which was declared by a listed company which complies with paragraphs (a) and (b) of the definition of ‘listed company’ in section 1 and more than 10 per cent of the equity share capital in that listed company is at the time of the declaration of that foreign dividend held collectively by residents; 45
 - (cc) who is a resident to the extent that the foreign dividend does not exceed the aggregate of all amounts which have been or will be included in the income of that resident in terms of section 9D in any year of assessment, which relate to the net income of— 50
 - (A) the company declaring the dividend; or 55
 - (B) any other company which has been included in the income of that resident in terms of section 9D by virtue of that resident’s participation rights in that other company held indirectly through the company declaring the dividend, reduced by— 60
 - (AA) the amount of any foreign tax payable in respect of the amounts so included in that resident’s income; and

- (BB) so much of all foreign dividends received by or accrued to that resident at any time from any company contemplated in subitems (A) or (B), as was—
 (AAA) exempt from tax in terms of this item or item (dd); or
 (BBB) was previously not included in the income of that resident by virtue of any prior inclusion in terms of section 9D;”;
- (dd) where that person (in the case of a company, together with any other company in the same group of companies as that person) holds more than 25 per cent of the total equity share capital in the company declaring the dividend: Provided that—
- (A) in determining the total equity share capital of a company, there shall not be taken into account any share which would have constituted an affected instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; and
- (B) this exemption does not apply in respect of any foreign dividend which forms part of any transaction, operation or scheme in terms of which any amount received by or accrued to any person is exempt from tax while any corresponding expenditure (other than expenditure for the delivery of any goods, including electricity) is deductible by that person or by any connected person in relation to that person in determining the liability for tax of that person or connected person, as the case may be, in terms of this Act;
- (i) by the deletion of paragraph (kA) of subsection (1);
- (j) by the substitution in subsection (1) for paragraph (A) of the proviso to subparagraph (ii) of paragraph (o) of the following paragraph:
- “(A) for purposes of this subparagraph, a person who is in transit through the Republic between two places outside the Republic and who does not formally enter the Republic through a port of entry as **[defined]** contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 2002), or at any other place in the case of a person authorised by the Minister in terms of section 31(2)(c) of that Act, shall be deemed to be outside the Republic; and”;
- (k) by the deletion in subsection (1) of paragraph (s);
- (l) by the insertion in subsection (1) of the following subparagraph in paragraph (t) after subparagraph (ii):
- “(iii) of the South African National Roads Agency Limited incorporated in terms of section 3 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);”;
- (m) by the substitution in subsection (1) for the words in paragraph (x) preceding the proviso of the following words:
- “so much of any amount (being a lump sum) referred to in paragraph (d) of the definition of ‘gross income’ in section 1 or in section 7A(4A) **[or (5)]** as does not exceed R30 000 less the sum of any other amounts which have been excluded from the taxpayer’s income by virtue of the exemption conferred by this paragraph, whether in the current or any previous year of assessment.”;
- (n) by the addition to subsection (1) of the following paragraph:
- “(zI) any amount received by or accrued to or in favour of any person from the Government, where—
- (i) that amount is granted for the performance by that person of its obligations pursuant to a Public Private Partnership as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), where that person performs an institutional function as defined in that Regulation;
- (ii) that person is required in terms of that Public Private Partnership to expend an amount at least equal to that amount

- for the development of any physical infrastructure of the Republic; and
 (iii) the ownership of that physical infrastructure will vest in the Government by no later than the termination of that Public Private Partnership.”;

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

“(3) The exemptions from tax provided by any paragraph of subsection (1) shall not extend to—

- (a) any payments out of the [revenues] receipts, accruals, amounts or profits mentioned in such paragraph; or
 (b) any tax leviable under this Act in respect of any taxable capital gain determined in accordance with the Eighth Schedule.”.

(2) (a) Subsection (1)(b) shall come into operation on 1 January 2004 and shall apply in respect of any year of assessment commencing on or after that date.

(b) Subsection (1)(c), (d), (e), (f), (g), (h) and (i) shall come into operation on 1 June 2004 and shall apply in respect of any foreign dividend received or accrued during any year of assessment commencing on or after that date.

(c) Subsection (1)(k) shall come into operation on 1 January 2004 and shall apply in respect of years of assessment commencing after that date.

(d) Subsection (1)(l) shall come into operation on the date of incorporation of the company contemplated in section 3 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998).

(e) Subsection (1)(n) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount received or accrued on or after that date.

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

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

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

“(bC) an amount of any interest actually incurred by a taxpayer in the production of the income of that taxpayer for the year of assessment in the form of foreign dividends: Provided that—

(i) this deduction shall be limited to the amount of those foreign dividends which are included in the income of that taxpayer during that year of assessment; and

(ii) any amount whereby that interest exceeds the amount of those foreign dividends as contemplated in subparagraph (i), must be reduced by the amount of any foreign dividends received by or accrued to that taxpayer during that year which are exempt from tax, and the balance shall be carried forward to the immediately succeeding year of assessment and be deemed to be an amount of interest actually incurred by that taxpayer during that succeeding year of assessment in the production of income in the form of foreign dividends.”;

(b) by the addition in paragraph (gA) to the proviso of the following paragraph:

“(ff) no deduction shall be allowed under this paragraph in respect of any expenditure incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004.”;

- (c) by the addition to paragraph (gB) of the following proviso:
“Provided that no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;”;
- (d) by the insertion after paragraph (gB) of the following paragraph: 5
“(gC) an allowance in respect of any cost actually incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004 to acquire (otherwise than by way of devising, developing or creating) any—
 (i) invention or patent as defined in the Patents Act, 1978 (Act No. 57 of 1978); 10
 (ii) design as defined in the Designs Act, 1993 (Act No. 195 of 1993);
 (iii) copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978); 15
 (iv) other property which is of a similar nature (other than Trade Marks as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993); or
 (v) knowledge connected with the use of such patent, design, copyright or other property or the right to have such knowledge imparted, 20
 which shall be allowed during the year of assessment in which that invention, patent, design, copyright, other property or knowledge is brought into use for the first time by the taxpayer for the purposes of the taxpayer’s trade: Provided that— 25
 (aa) where that cost actually incurred by the taxpayer exceeds R5 000, that allowance shall not exceed in any year of assessment—
 (A) five per cent of the amount of the cost in respect of any invention, patent, copyright or other property of a similar nature or any knowledge connected with the use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or 30
 (B) 10 per cent of the amount of that cost of any design or other property of a similar nature or any knowledge connected with the use of such design or other property or the right to have such knowledge imparted; 35
 (bb) where any such invention, patent, design, copyright or other property or knowledge was acquired from any person who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the cost to that connected person or the market value of that invention, patent, design, copyright or other property or knowledge as determined on the date upon which it was acquired by the taxpayer;”; 40 45
- (e) by the substitution for paragraph (hA) of the following paragraph:
“(hA) so much of any amount [paid] (other than an amount in respect of which any deduction or allowance has been or will be granted under any other provision of this Act) paid in cash during any year of assessment by a taxpayer engaged in mining, prospecting, quarrying or similar operations to a company, society, association of persons or trust referred to in section 10(1)(cH) to be used [by such company, society, association or trust] for the purposes contemplated in [such] that section[: Provided that such amount shall be] as does not exceed an amount determined [and such payment shall be made] in accordance with [— 50 55
 (i) the constitution of such company, society or association of persons; or
 (ii) the instrument establishing such trust,
 as has been approved by the Commissioner in terms of section 10(1)(cH)] the formula: 60

$$\frac{A - B + C}{D},$$

in which formula in respect of each mine—

- 'A' represents the amount determined by a person designated by the Minister of Minerals and Energy of the estimated costs to be incurred at the time that or after operations on the mine or part of the mine are discontinued in order to discharge the obligations imposed in terms of any law which regulates mining operations (other than costs which were required in terms of any law to be incurred on an ongoing basis during the life of that mine or part of that mine; 5
- 'B' means the market value of the assets held by the company, society, association or trust in respect of that mine on the date of the determination of the estimated costs in symbol 'A'; 10
- 'C' means the amount paid in cash by that taxpayer to such company, such association company, society or trust at any time before the date contemplated in symbol 'B' which has not been allowed as a deduction in terms of this paragraph in any year of assessment; and 15
- 'D' represents the estimated remaining life of that mine in number of years as determined by a person contemplated in symbol 'A': 20
- Provided that so much of the amount so paid in cash by that taxpayer as exceeds the deduction allowable in terms of this paragraph shall, for the purposes of this paragraph, be deemed to be an amount paid by the taxpayer in cash to that company, society, association or trust in the immediately succeeding year of assessment to be used for the purpose contemplated in section 10(1)(cH);"; 25

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

- "(o) at the election of the taxpayer, an amount by which the cost to that taxpayer of any depreciable asset— 30
- (i) which qualified for a capital allowance or deduction in terms of section 11(e), 12B, 12C, 12E, 14 or 14bis; and
- (ii) the expected useful life of which for tax purposes did not exceed ten years as determined on the date of original acquisition, 35
- exceeds the sum of the amount received or accrued from the alienation, loss or destruction, of that asset and the amount of any such capital allowance or deduction allowed in respect of that asset in that year or any previous year of assessment: Provided that for the purposes of this paragraph— 40
- (aa) the cost of any machinery, implements, utensils or articles shall be deemed to be the actual cost plus the amount by which the value of such machinery, implements, utensils or articles has been increased in terms of paragraph (v) of the proviso to paragraph (e) less the amount by which such value has been reduced in terms of paragraph (iv) of that proviso; 45
- (bb) the actual cost of any machinery, implement, utensil or article acquired by the taxpayer on or after 15 March 1984 shall be deemed to be the cost of that machinery, implement, utensil or article as determined under paragraph (vii) of the proviso to paragraph (e); 50
- (cc) the cost of any aircraft in respect of which any allowance has been made to the taxpayer under section 14bis shall be deemed to be the actual cost less any amount (not being an amount which has been included in the income of the taxpayer for any year of assessment in terms of section 8(4)(i)) by which the cost or estimated cost price of such aircraft has in the calculation of such allowance been reduced in terms of section 14bis(2)(a); 55
- (dd) the cost of any ship in respect of which any allowance has been made to the taxpayer under the provisions of section 14 shall be deemed to be the actual cost less any amount (not being an amount which has been included in the income of the taxpayer for any year of assessment in terms of section 8(4)(d)) by 60

which the cost or estimated cost price of such ship has in the calculation of such allowance been reduced in terms of the definition of 'adjustable cost' or 'adjustable cost price' in section 14 (2);";

- (g) the addition to paragraph (p) of the following proviso: 5
"Provided that no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;";
- (h) by the addition in paragraph (q) of the following paragraph to the proviso: 10
"(iii) no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;"; and
- (i) by the insertion after paragraph (q) of the following paragraph: 15
"(r) notwithstanding section 23(g), at the election of that person, the amount of withholding tax on dividends proved to be payable in respect of any foreign dividend which is included in the gross income of that person: Provided that an election made by a person in terms of this paragraph applies in respect of all foreign dividends received by or accrued to that person during the year of assessment in respect of which the election was made." 20

(2) (a) Subsection (1)(a) shall come into operation on 1 June 2004 and shall apply in respect of any interest incurred during or balance of interest carried forward in terms of section 9E(5A) of the Income Tax Act, 1962, to any year of assessment commencing on or after that date.

(b) Subsection (1)(e) shall come into operation on 1 January 2004 and shall apply in respect of an amount paid by a taxpayer during any year of assessment commencing on or after that date. 25

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

(d) Subsection (1)(i) shall come into operation on 1 June 2004 and shall apply in respect of any dividend received or accrued during any year of assessment commencing on or after that date. 30

Insertion of section 11A in Act 58 of 1962

28. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 11: 35

"Deductions in respect of expenditure and losses incurred prior to commencement of trade

11A. (1) For purposes of determining the taxable income derived during any year of assessment by a person from carrying on any trade, there shall be allowed as a deduction from the income so derived, any expenditure and losses— 40

- (a) actually incurred by that person prior to the commencement of and in preparation for carrying on that trade;
- (b) which would have been allowed as a deduction in terms of section 11 (other than section 11(x)) or section 11B, had the expenditure or losses been incurred after that person commenced carrying on that trade; and 45
- (c) which were not allowed as a deduction in that year or any previous year of assessment.

(2) So much of the expenditure and losses contemplated in subsection (1) as exceeds the income derived during the year of assessment from carrying on that trade after deduction of any amounts allowable in that year of assessment in terms of any other provision of this Act, shall not be set off against any income of that person which is derived otherwise than from carrying on that trade, notwithstanding section 20(1)(b). 50

(2) Subsection (1) shall come into operation on 1 January 2004 and shall apply in respect of any year of assessment ending on or after that date. 55

Insertion of section 11B in Act 58 of 1962

29. The following section is hereby inserted in the Income Tax Act, 1962, after section 11A:

“Deductions in respect of research and development

- 11B.** (1) For purposes of this section— 5
- ‘cost’ in relation to any building, machinery, plant, implement, utensil or article means the lesser of—
- (a) the actual cost to the taxpayer of the erection, addition, improvement to or acquisition of any building or actual cost of that machinery, plant, implement, utensil or article; or 10
 - (b) the cost which a taxpayer would have incurred in respect of the direct cost of acquisition of that building, machinery, plant, implement, utensil or article (including the direct cost of the installation or erection thereof), if that taxpayer had acquired that building, machinery, plant, implement, utensil or article under a cash transaction concluded at arm’s length on the date on which the transaction for the acquisition was in fact concluded; 15
- ‘copyright’ means copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978);
- ‘design’ means a design as defined in the Designs Act, 1993 (Act No. 195 of 1993); 20
- ‘invention’ means an invention as defined in the Patents Act, 1978 (Act No. 57 of 1978);
- ‘patent’ means a patent as defined in the Patents Act, 1978;
- ‘research and development’ means research and development conducted in the Republic that will result or potentially may result in an identifiable intangible asset as contemplated under generally accepted accounting practice, but does not include research and development relating to— 25
- (a) the social sciences, arts, humanities or management; or
 - (b) market research, sales or marketing promotion; 30
- ‘trade mark’ means trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993).
- (2) There shall be allowed as a deduction during any year of assessment commencing on or after 1 January 2004—
- (a) any expenditure actually incurred by a taxpayer in that year of assessment (other than costs contemplated in subsection (3))— 35
 - (i) in respect of research and development undertaken directly by that taxpayer; or
 - (ii) by way of payment to any other person for research and development undertaken by that other person on behalf of that taxpayer, 40

for purposes of devising, developing or creating any invention, patent, design, copyright or other property which is of a similar nature (other than any trade mark);
 - (b) any expenditure actually incurred by a taxpayer in that year of assessment (other than costs contemplated in subsection (3)), for purposes of— 45
 - (i) registration of any invention, patent, design, copyright or other property; and
 - (ii) obtaining the extension of the period of legal protection, the extension of the registration period, or the renewal of the registration of any such invention, patent, design, copyright or other property. 50
- (3) There shall be allowed as a deduction by a taxpayer in respect of any building, machinery, plant, implements, utensils and articles of a capital nature used by that taxpayer for purposes of research and development, an allowance equal to 40 per cent of the cost of that building, machinery, plant, implements, utensils and articles in the year of assessment that it is brought into use for the first time by that taxpayer and 20 per cent in each of the three immediately succeeding years of assessment: Provided that where 60

any building was used partly for research and development and partly for other purposes in the same year of assessment, the allowance for that year of assessment shall be limited to an amount which bears to the full amount of the allowance for that year, the same ratio as the use of that building for research and development bears to the total use of that building in that year of assessment. 5

(4) No deduction shall be allowed under subsection (2)(a)(ii) in respect of any expenditure, unless—

- (a) that expenditure relates to the devising, developing or creating of any such invention, patent, design, copyright or other property; 10
- (b) the payments are for discovery of new information; and
- (c) full ownership and control by the taxpayer exists over the results of such research and development including any such invention, patent, design, copyright or other property.

(5) No allowance shall be allowed in terms of this section in respect of any machinery, plant, implement, utensil and article of a person which was used during the year of assessment for purposes other than research and development. 15

(6) The allowance contemplated in this section shall apply in lieu of any other deduction or allowance granted under any other provision of this Act, unless the taxpayer elects in the year of assessment that the building, machinery, plant, implement, utensil or article is brought into use for the first time by that taxpayer that the deduction or allowance granted under that other provision shall apply, in which case subsection (3) shall not apply in respect of that building, machinery, plant, implement, utensil or article, as the case may be.”. 20 25

Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990 and amended by section 11 of Act 113 of 1993, section 7 of Act 140 of 1993, section 11 of Act 21 of 1994, section 13 of Act 21 of 1995, section 18 of Act 59 of 2000, section 11 of Act 19 of 2001 and section 15 of Act 30 of 2002 30

30. Section 12C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph (c) of the proviso of the following subparagraphs:

- “(i) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement [**during the period commencing**] on or after 1 35 March 2002 [**and ending on 28 February 2005**]; and
- (ii) brought into use by the taxpayer [**during that period**] on or after that date in a process of manufacture or process which in the opinion of the Commissioner is of a similar nature, carried on by that taxpayer in the course of its business (other than banking, financial services, insurance or rental business).” 40

Amendment of section 12E of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 17 of Act 30 of 2002, section 21 of Act 74 of 2002 and section 37 of Act 12 of 2003

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

- (a) by the substitution for the heading of the following heading: 45

“Deductions in respect of [certain plant and machinery of] small business corporations.”;

- (b) by the substitution in subsection (4) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) none of the shareholders or members at any time during the year of assessment of the company or close corporation holds any shares or has any interest in the equity of any other company as defined in section 1, other than—

(aa) a company contemplated in paragraph (a) of the definition of ‘listed company’; [**or**] 55

(bb) any portfolio in a collective investment scheme contemplated in paragraph (e) of the definition of ‘company’;); or

(cc) a company contemplated in section 10(1)(e)(i), (ii) or (iii); and

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

“(iii) not more than 20 per cent of the [gross income] total of all receipts and accruals (other than those of a capital nature) and all the capital gains of the company or close corporation consists collectively of investment income and income from the rendering of a personal service; and 5

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

“(3A) Any expenditure and losses actually incurred by a small business corporation in the year of assessment during which that small business corporation commences trading shall be increased by an amount equal to such expenditure and losses, but limited to R20 000.” 10

- (2) (a) Subsection (1)(a), (b) and (d) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending on or after that date. 15

- (b) Subsection (1)(c) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of section 12H of Act 58 of 1962, as inserted by section 18 of Act 30 of 2002

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

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 20

“Notwithstanding section 23B, but subject to subsection (3), there shall be allowed to be deducted from the income derived by any employer during any year of assessment, an allowance determined in accordance with subsection (2), where—”; and 25

- (b) by the addition in subsection (2) of the word “and” at the end of subparagraph (ii) of paragraph (a).

- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2001 and shall apply in respect of any registered learnership entered into or completed on or after that date. 30

Insertion of section 13quat in Act 58 of 1962

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

“Deductions in respect of erection or improvement of buildings in urban development zones 35

13quat. (1) For the purposes of this section—

‘certificate of occupancy’ means a certificate contemplated in section 14(1) of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);

‘cost’ means the costs (other than borrowing or finance costs) actually incurred in erecting or extending, adding to or improving a building and includes any costs incurred— 40

- (a) in demolishing any existing building or part thereof;
- (b) in excavating the land for purposes of that erection, extension, addition or improvement; and 45

- (c) in respect of structures or works directly adjoining the building so erected, extended, added to or improved, for purposes of providing—

- (i) water, power or parking with respect to that building;
- (ii) drainage or security for that building;
- (iii) means of waste disposal for that building; or 50
- (iv) access to that building, including the frontage thereof;

‘urban development zone’ means an area demarcated by a municipality in terms of subsection (6), the particulars of which were published in the *Gazette* in terms of subsection (8);

- (2) There shall be allowed to be deducted from the income of the taxpayer an allowance determined in terms of subsection (3), in respect of the cost of the erection, extension, addition or improvement of any 55

commercial or residential building within an urban development zone to be used solely for purposes of that taxpayer's trade—

- (a) which was commenced by the taxpayer on or after the date of publication of the notice contemplated in subsection (8) in respect of that urban development zone, in terms of a contract formally and finally signed by all parties thereto on or after that date; and 5
- (b) in respect of which a certificate of occupancy has been granted.
- (3) The amount of the allowance contemplated in subsection (2)—
- (a) in the case of the erection of any new building or the extension or addition to any building (other than a building in respect of which paragraph (b) applies), is equal to— 10
 - (i) 20 per cent of the cost to the taxpayer of the erection or extension of or addition to that building, which is deductible in the year of assessment during which that building is brought into use by that taxpayer solely for the purposes of that taxpayer's trade; and 15
 - (ii) five per cent of that cost in each of the 16 succeeding years of assessment; or
- (b) in the case of the improvement of any existing building or part of a building (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved, is equal to— 20
 - (i) 20 percent of the cost to the taxpayer of the improvement, extension or addition which is deductible in the year of assessment during which the part of the building so improved, extended or added is brought into use by the taxpayer solely for the purposes of that taxpayer's trade; and 25
 - (ii) 20 per cent of that cost in each of the four succeeding years of assessment.
- (4) No deduction shall be allowed under this section, unless the taxpayer has together with the tax return for the year of assessment in which the deduction is claimed under subsection (3)(a)(i) or (b)(i), provided to the Commissioner— 30
 - (a) a certificate from the municipality confirming that the building is located within an urban development zone within that municipality; 35
 - (b) the total amount of the costs to the taxpayer of the erection, extension, addition or improvement and the extent that those costs relate to any portion of the building in respect of which a certificate of occupancy has been granted; and
 - (c) particulars as to whether the costs were incurred in respect of the erection of a building as contemplated in subsection (3)(a) or the extension, addition or improvement of a building as contemplated in subsection (3)(b). 40
- (5) No deduction shall be allowed under this section in respect of any building— 45
 - (a) where that taxpayer ceased to use that building solely for purposes of that taxpayer's trade during any previous year of assessment; or
 - (b) which has been disposed of by the taxpayer during any previous year of assessment.
- (6) For the purposes of this section, one area may be demarcated by a municipality where— 50
 - (a) that area is a developed urban location with the municipality of Buffalo City, Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekweni, Johannesburg, Mafikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje or Tshwane; 55

- (b) that area is demarcated through formal resolution by the relevant municipal council no later than 30 June 2004 or such later date as the Minister may approve on good cause shown;
 - (c) that area is prioritised in that municipality's integrated development plan adopted and undertaken in terms of Chapter 5 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) as a priority area for further investments to promote business and industrial activity as well as dense residential settlements to support such activity; 5
 - (d) that area proportionately contributes or previously contributed a significant portion of the total revenue collections for all areas located within the current boundaries of that municipality, as measured—
 - (i) in the form of property rates; or
 - (ii) assessed property values used to determine those rates, and where the contribution from that area is undergoing a sustained decline; 10
 - (e) significant fiscal measures have been implemented by that municipality to support the regeneration of that area, including—
 - (i) the appropriation of significant funds for developing the area in the annual budget of the municipality; 20
 - (ii) special tariffs for categories of residential, commercial or industrial users; or
 - (iii) partnership arrangements with the business community for the promotion of urban development within that area; and
 - (f) that municipality commits to be objective in processing all planning approval applications for that area within 90 days of submission and to report those applications that are processed in a longer period, together with reasons for the delay, to the National Treasury on a quarterly basis within 30 days of the end of each quarter. 25
- (7) (a) Subject to paragraph (d), the area demarcated in terms of subsection (6) may not exceed— 30
- (i) where that municipality has a population of not more than 500 000 persons, a total area of 150 hectares; or
 - (ii) where that municipality has a population of more than 500 000 persons, 150 hectares plus 20 hectares for each additional 100 000 persons included in that population. 35
- (b) Where that municipality has a population of 2 million persons or more, the municipal council may demarcate two areas in lieu of the one area demarcated in terms of subsection (6) provided that—
- (i) the two areas do not in total exceed the one area contemplated in paragraph (a)(ii); and 40
 - (ii) each area otherwise satisfies the requirements of subsection (6).
- (c) For purposes of this subsection, the population of a municipality shall be the population figures as determined by Statistics South Africa in the Census for 2001 and the total population of that municipality must be rounded to the nearest multiple of 100 000. 45
- (d) The area demarcated in terms of subsection (6) may exceed the limits contemplated in paragraph (a) where—
- (i) the municipality proves to the Minister that the excess area is integrally related to the area within the limitation contemplated in paragraph (a); 50
 - (ii) the municipality can prove to the Minister that sound economic reasons exist for demarcating a larger area;
 - (iii) the municipality has not demarcated two areas as contemplated in subparagraph (b); and 55
 - (iv) the Minister is satisfied that the demarcation of the excess area would fall within Government's affordability constraints.

(8) The Minister must publish by notice in the *Gazette* particulars of an area demarcated by a municipality after that municipality has proved to the Minister that the area so demarcated complies with the provisions of subsection (6).

(9) Every municipality must provide an annual report to the Commissioner and the Minister for each urban development zone located within that municipality within such time as is prescribed by the Minister, listing—

(a) each taxpayer to which a certificate contemplated in subsection 4(a) has been issued;

(b) the location of each building for which that certificate was issued;

(c) the costs incurred by the taxpayer in respect of each building;

(d) the total jobs created as a result of this section;

(e) the additional property rates collected as a result of this section; and

(f) the total applications for a certificate contemplated in subsection 4(a).

(10) Where—

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

(b) corrective steps are not taken by that municipality within a period specified by the Minister,

the Minister may withdraw the notice contemplated in subsection (8) for that municipality in respect of contracts formally and finally signed by all parties thereto on or after the date of withdrawal.

(11) The Commissioner must on an annual basis submit a report to the Minister containing information relating to—

(a) the number of taxpayers which have during the relevant year claimed an allowance in terms of this section;

(b) the total amount of the deductions by taxpayers allowed in that year in terms of this section; and

(c) the total amount of the costs to those taxpayers which are or will be allowable as a deduction in terms of this section.

Amendment of section 18A of Act 58 of 1962, as inserted by section 15 of Act 52 of 1970 and substituted by section 16 of Act 96 of 1981 and amended by section 14 of Act 91 of 1982, section 16 of Act 94 of 1983, section 16 of Act 121 of 1984, section 15 of Act 90 of 1988, section 17 of Act 101 of 1990, section 20 of Act 129 of 1991, section 11 of Act 36 of 1996 and substituted by section 24 of Act 30 of 2000 and amended by section 20 of Act 30 of 2002

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

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

“Notwithstanding the provisions of section 23, there shall be allowed to be deducted from the taxable income of any taxpayer so much of the sum of any *bona fide* donations by that taxpayer in cash or of property made in kind [made by such taxpayer and], which was actually paid or transferred during the year of assessment to—”;

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

“(c) the Government, any provincial administration or local authority as contemplated in section 10(1)(a) or (b) to be used for purposes of any activity contemplated in Part II of the Ninth Schedule;”;

- (c) by the substitution in subsection (1) for subitem (bb) of paragraph (a) of the following subitem:
 “(bb) complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A);” and 5
- (d) by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the following subparagraph:
 “(i) provides funds or assets [solely] to any public benefit organisation, institution, board or body contemplated in paragraph (a); and”;
- (e) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) and the words following subparagraph (ii) of the following subparagraph and words: 10
 “(ii) during the year of assessment preceding the year of assessment of such public benefit organisation during which the donation is received, distributed or incurred the obligation to so distribute at 15
 least 75 per cent of the funds received by such organisation by way of donations which qualified for a deduction in terms of this section: Provided that the Commissioner may, upon good cause shown and subject to such conditions as he or she may determine, either 20
 generally or in a particular instance, waive, defer or reduce the obligation to distribute any funds, having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds,
 as does not exceed [the greater of—
 (aa)] five per cent of the taxable income of the taxpayer as calculated 25
 before allowing any deduction under this section or section 18 [or
 (bb) R1 000:
**Provided that the Commissioner may, upon good cause shown and subject to such conditions as he or she may determine, either 30
 generally or in a particular instance, waive, defer or reduce the obligation to distribute any funds as contemplated in paragraph (b)(ii), having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds].**”;
- (f) by the substitution for subsection (1A) of the following subsection: 35
 “(1A) The Minister may, by regulation, prescribe additional requirements with which a public benefit organisation, institution, board or body or the government, provincial administration or local authority carrying on any specific public benefit activity identified by the Minister in the regulations, must comply before any donation made to that public benefit organisation, institution, board or body or the government, provincial 40
 administration or local authority shall be allowed as a deduction under subsection (1).”;
- (g) by the insertion after subsection (1B) of the following subsection: 45
 “(1C) The constitution or founding document of a public benefit organisation carrying on the activity contemplated in paragraph 4 of Part II of the Ninth Schedule, must expressly provide that the organisation—
 (a) may not issue any receipt contemplated in subsection (2) in respect of any donation made by a person to that public benefit organisation, unless—
 (i) that donation is made by that person on or after 1 August 2002, 50
 but before 1 August 2005; and
 (ii) that person (in the case of a company, together with any other company in the same group of companies as that company) has during the relevant year of assessment of that person donated an amount of at least R1 million to that organisation; 55
 (b) must ensure that every donation contemplated in paragraph (a), in respect of which such a receipt has been issued, will be matched by a donation to that organisation of the same amount made by a person who is not a resident and which is made from funds generated and held outside the Republic; and 60
 (c) must utilise the amount of—

- (i) all donations contemplated in paragraph (a), in respect of which such a receipt has been issued, and all income derived therefrom, in the Republic in carrying on that activity; and
 - (ii) all donations contemplated in paragraph (b), either in the Republic in carrying on that activity, or in respect of a transfrontier conservation area of which the Republic forms part.”; 5
- (h) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - “(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by a receipt issued by the public benefit organisation, institution, board or body or the government, provincial administration or local authority concerned, on which the following details are given, namely—”;
- (i) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 15
 - “(c) the name of the public benefit organisation, institution, board or body or the government, provincial administration or local authority which received the donation, together with an address to which enquiries may be directed in connection therewith;”;
- (j) by the substitution in subsection (2) for paragraph (f) of the following paragraph: 20
 - “(f) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board or body concerned or, in the case of the government, provincial administration or local authority in carrying on the relevant public benefit activity.”;
- (k) by the insertion after subsection (2) of the following subsections: 30
 - “(2A) A public benefit organisation, institution, board, body, government, provincial administration or local authority may only issue a receipt contemplated in subsection (2) in respect of any donation to the extent that—
 - (a) in the case of a public benefit organisation, institution, board or body contemplated in subsection (1)(a) which carries on activities contemplated in Part I of the Ninth Schedule, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule; 35
 - (b) in the case of a public benefit organisation contemplated in subsection (1)(b) which provides funds to public benefit organisations, institutions, boards or bodies that carry on public benefit activities contemplated in Part II of the Ninth Schedule and to other entities, that donation will be utilised solely to provide funds to a public benefit organisation, institution, board or body contemplated in subsection (1)(a), which will utilise those funds solely in carrying on activities contemplated in Part II of the Ninth Schedule; or 45
 - (c) in the case of the government, provincial administration or local authority, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule. 50
 - (2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must together with its annual return for a year of assessment submit to the Commissioner an audit certificate confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A). 55
 - (2C) The Accounting Authority contemplated in the Public Finance Management Act, 1997 (Act No. 1 of 1999) for the government, provincial administration or local authority which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).” 60

- (l) by the substitution in subsection (3) for paragraphs (a), (b), (c) and (d) of the following paragraphs:

“(a) where such property constitutes—

(i) a financial instrument which is trading stock of the taxpayer, the lower of fair market value of that financial instrument on the date of that donation or the amount which has been taken into account for the purposes of section 22(8); or 5

(ii) any other trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22(8) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property; or 10

(b) where such property (other than trading stock) constitutes an asset used by the taxpayer for the purposes of his trade, the lower of— 15

(i) the fair market value of that property on the date of that donation; or

(ii) the cost to the taxpayer of such property less any allowance (other than any investment allowance) allowed to be deducted from the income of the taxpayer under the provisions of this Act in respect of that asset; or 20

(c) where such property does not constitute trading stock of the taxpayer or an asset used by him for the purposes of his trade, the lower of—

(i) the fair market value of that property on the date of that donation; or 25

(ii) the cost to the taxpayer of such asset, less, in the case of a movable asset which has deteriorated in condition by reason of use or other causes, a depreciation allowance calculated in the manner contemplated in section 8(5)(bB)(i); or 30

(d) where such property is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer in order to form the subject of the said donation, the lower of—

(i) the fair market value of that property on the date of that donation; or 35

(ii) the cost to the taxpayer of such property.”; and

- (m) by the insertion after subsection (3) of the following subsection:

“(3A) No deduction shall be allowed under this section in respect of the donation of any property in kind which constitutes, or is subject to any fiduciary right, usufruct or other similar right, or which constitutes an intangible asset or financial instrument, unless that financial instrument is— 40

(a) a share in a listed company; or

(b) issued by a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990). 45

(2) Subsection (1)(a), (b), (c), (d), (f), (h), (i), (j), (k), (l) and (m) shall come into operation on the date of promulgation of this Act and shall apply in respect of any donation which takes effect on or after that date.

Amendment of section 20 of Act 58 of 1962, as amended by section 13 of Act 90 of 1964, section 18 of Act 88 of 1965, section 13 of Act 76 of 1968, section 18 of Act 89 of 1969, section 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 19 of Act 191 of 1990, section 16 of Act 113 of 1993, section 17 of Act 21 of 1995, section 15 of Act 28 of 1997, section 20 of Act 30 of 2000, section 27 of Act 59 of 2000 and section 23 of Act 74 of 2002 50

35. (1) Section 20 of the Income Tax Act, 1962, is hereby amended— 55

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

“For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall, subject to section 20A, be set off against the income so derived by such person—”; and 60

- (b) by the substitution in subsection (1) for paragraph (b) of the proviso and the words following paragraph (b) of the following paragraph:

“(b) derived by any person from the carrying on within the Republic of any trade, any—

- (i) assessed loss incurred by such person during such year; or 5
- (ii) any balance of assessed loss incurred in any previous year of assessment,

in carrying on any trade outside the Republic.”.

(2) (a) Subsection (1)(a) shall come into operation on 1 March 2004 and shall apply in respect of any year of assessment commencing on or after that date. 10

(b) Subsection (1)(b) shall be deemed to have come into operation on 6 December 2000.

Insertion of section 20A in Act 58 of 1962

36. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 20: 15

“Ring-fencing of assessed losses of certain trades

20A. (1) Subject to subsection (3), where the circumstances in subsection

(2) apply during any year of assessment in respect of any trade carried on by a natural person, any assessed loss incurred during that year in carrying on that trade may not be set off against any income of that person derived during that year otherwise than from carrying on that trade, notwithstanding section 20(1)(b). 20

(2) Subsection (1) applies where the taxable income of a person for a year of assessment (before taking into account the set-off of any assessed losses incurred in carrying on any trade during that year and the balance of assessed loss carried forward from the preceding year) equals or exceeds the amount at which the maximum marginal rate of tax chargeable in respect of the taxable income of individuals becomes applicable, and where— 25

(a) that person has, during the five year period ending on the last day of that year of assessment, incurred an assessed loss in at least three years of assessment in carrying on the trade contemplated in subsection (1) (before taking into account any balance of assessed loss carried forward); or 30

(b) the trade contemplated in subsection (1), in respect of which the assessed loss was incurred constitutes— 35

- (i) any sport practised by that person or any relative;
- (ii) any dealing in collectibles by that person or any relative;
- (iii) the rental of residential accommodation, unless at least 80 per cent of the residential accommodation is used by persons who are not relatives of that person for at least half of the year of assessment; 40
- (iv) the rental of vehicles, aircraft or boats as defined in the Eighth Schedule, unless at least 80 per cent of the vehicles, aircraft or boats are used by persons who are not relatives of that person for at least half of the year of assessment; 45
- (v) animal showing by that person or any relative;
- (vi) farming or animal breeding, unless that person carries on farming, animal breeding or activities of a similar nature on a full-time basis; 50
- (vii) any form of performing or creative arts practised by that person or any relative; or
- (viii) any form of gambling or betting practised by that person or any relative.

(3) The provisions of subsection (1) do not apply in respect of an assessed loss incurred by a person during any year of assessment from carrying on any trade contemplated in subsection (2)(a) or (b), where that trade constitutes a business in respect of which there is a reasonable 55

prospect of deriving taxable income (other than taxable capital gain) within a reasonable period having special regard to—

- (a) the proportion of the gross income derived from that trade in that year of assessment in relation to the amount of the allowable deductions incurred in carrying on that trade during that year; 5
- (b) the level of activities carried on by that person or the amount of expenses incurred by that person in respect of advertising, promoting or selling in carrying on that trade;
- (c) whether that trade is carried on in a commercial manner, taking into account— 10
 - (i) the number of full-time employees appointed for purposes of that trade (other than persons partly or wholly employed to provide services of a domestic or private nature);
 - (ii) the commercial setting of the premises where the trade is carried on; 15
 - (iii) the extent of the equipment used exclusively for purposes of carrying on that trade; and
 - (iv) the time that the person spends at the premises conducting that business;
- (d) the number of years of assessment during which assessed losses were incurred in carrying on that trade in relation to the period from the date when that person commenced carrying on that trade and taking into account— 20
 - (i) any unexpected events giving rise to any of those assessed losses; and 25
 - (ii) the nature of the business involved;
- (e) the business plans of that person and any changes thereto to ensure that taxable income is derived in future from carrying on that trade; and
- (f) the extent to which any asset attributable to that trade is used, or is available for use, by that person or any relative of that person for recreational purposes or personal consumption. 30

(4) Subsection (3) does not apply in respect of a trade contemplated in subsection (2)(b) (other than farming) carried on by a person during any year of assessment where that person has, during the ten year period ending on the last day of that year of the assessment, incurred an assessed loss in at least six years of assessment in carrying on that trade (before taking into account any balance of assessed loss carried forward). 35

(5) Notwithstanding section 20(1)(a), any balance of assessed loss carried forward from the preceding year of assessment, which is attributable to an assessed loss in respect of which subsection (1) applied in that preceding year or any prior year of assessment, may not be set off against any income derived by that person otherwise than from carrying on the trade contemplated in subsection (1). 40

(6) For the purposes of this section and section 20, the income derived from any trade referred to in subsections (1) or (5), includes any amount— 45

- (a) which is included in the income of that person in terms of section 8(4) in respect of an amount deducted in any year of assessment in carrying on that trade; or
- (b) derived from the disposal after cessation of that trade of any assets used in carrying on that trade. 50

(7) Notwithstanding anything to the contrary contained in this Act, all farming activities carried on by a person shall be deemed to constitute a single trade carried on by that person for the purposes of this section.

(8) Where the provisions of subsection (2) apply during any year of assessment in respect of any trade carried on by a person, that person must indicate the nature of the business in his or her return contemplated in section 66 for that year of assessment. 55

(9) For the purposes of subsections (2)(a) and (4), any assessed loss incurred in any year of assessment ending on or before 29 February 2004 shall not be taken into account. 60

(10) For the purposes of this section—

- (a) 'assessed loss' means 'assessed loss' as defined in section 20(2); and
- (b) 'relative' in relation to a person means a spouse, parent, child, stepchild, brother, sister, grandchild or grandparent of that person."

(2) Subsection (1) shall come into operation on 1 March 2004 and shall apply in respect of any year of assessment commencing on or after that date. 5

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990 section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000, section 12 of Act 5 of 2001 and section 24 of Act 74 of 2002 10

37. (1) Section 22 of the Income Tax Act, 1962, is hereby amended— 15

- (a) by the substitution in subsection (4A) for paragraphs (a) and (b) of the following paragraphs:

“(a) any [marketable] security has been lent by a lender to a borrower in terms of a securities lending arrangement [as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968)], such [marketable] security shall be deemed not have been acquired by such borrower; or 20

(b) another [marketable] security of the same kind and of the same or equivalent quantity or quality has been returned by such borrower to such lender, such other [marketable] security shall be deemed not to have been acquired by such lender.” 25

- (b) by the substitution in subsection (8) for item (B) of paragraph (b) of the following item:

“(B) where such trading stock has been applied, disposed of or distributed in a manner contemplated in paragraph (b) (otherwise than in the manner contemplated in item (C)) or ceases to be held as trading stock, an amount equal to the market value of such trading stock.”; 30

- (c) by the addition in subsection (8) after item (B) of paragraph (b) of the following item: 35

“(C) where such trading stock has been applied for the purpose of making a donation in respect of which the provisions of section 18A apply, an amount equal to the amount which was taken into account for that year of assessment in respect of the value of that trading stock.”; and 40

- (d) the substitution for subsection (9) of the following section:

“(9) Where—

- (a) (i) the trading stock of any person during any year of assessment includes any [marketable] security;
- (ii) such person has, during such year of assessment, lent such [marketable] security to a borrower in terms of a securities lending arrangement [as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968)]; and 45
- (iii) a [marketable] security of the same kind and of the same or equivalent quantity and quality has not been returned by the borrower to such person at the end of such year of assessment, such [marketable] security shall, for the purposes of this section, be deemed to be trading stock held and not disposed of by such person at the end of such year of assessment; or 50
- (b) (i) the trading stock of any other person during any year of assessment includes any [marketable] security;
- (ii) such other person has during such year of assessment, borrowed such [marketable] security from a lender in terms of a securities lending arrangement [as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968)]; and 55 60

- (iii) a [marketable] security of the same kind and of the same or equivalent quantity and quality has not been returned by such other person to such lender at the end of such year of assessment,

such [marketable] security shall, for the purposes of this section, be deemed not to be trading stock held and not disposed of, by such other person at the end of such year of assessment.”. 5

(2) (a) Subsection (1)(a) and (d) shall come into operation on the date of promulgation of this Act. 10

(b) Subsection (1)(b) and (c) shall come into operation on the date of promulgation of this Act and shall apply in respect of any trading stock applied on or after that date.

Amendment of section 23 of Act 58 of 1962, as amended by section 18 of Act 65 of 1973, section 20 of Act 121 of 1984, section 23 of Act 129 of 1991, section 20 of Act 141 of 1992, section 18 of Act 113 of 1993, section 15 of Act 21 of 1994, section 28 of Act 30 of 2000 and section 21 of Act 30 of 2002 15

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

- (a) by the substitution in paragraph (m) for item (aa) of subparagraph (iii) of the following item:

“(aa) [which] to the extent that it covers that person [solely] against the loss of income as a result of illness, injury, disability or unemployment; and”;

- (b) by the addition of the following paragraph:

“(n) any deduction or allowance in respect of any asset to the extent that an amount is granted to the taxpayer by the Government, which— (i) is exempt from tax; and (ii) is granted for purposes of the acquisition of that asset;”.

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

Amendment of section 23B of Act 58 of 1962, as inserted by section 25 of Act 129 of 1991, amended by section 16 of Act 21 of 1994 and section 29 of Act 30 of 2000 30

39. Section 23B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) No deduction shall be allowed under section 11(a) [or (b)] in respect of any expenditure or loss of a type for which a deduction or allowance may be granted under any other provision of this Act, notwithstanding that such other provision may impose any limitation on the amount of such deduction or allowance.”.

Amendment of section 23F of Act 58 of 1962, as inserted by section 17 of Act 21 of 1994 and substituted by section 30 of Act 30 of 2000 and amended by section 28 of Act 59 of 2000 40

40. Section 23F of the Income Tax Act, 1962, is hereby amended—

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

“Where any taxpayer has during any year of assessment incurred expenditure for the acquisition of trading stock which was neither disposed of by him during such year nor held by him at the end of such year, any deduction which may be allowed to him under the provisions of section 11(a) [or (b)] in respect of such expenditure shall not be allowed in such year, but such expenditure shall for the purposes of such provisions be deemed to have been incurred by him in the first subsequent year of assessment in which—”;

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

“(2) Where any taxpayer has during any year of assessment disposed of any trading stock in the ordinary course of his trade for any consideration the full amount of which will not accrue to him during such year of assessment and any expenditure incurred in respect of the

acquisition of such trading stock was allowed as a deduction under the provisions of section 11(a) [or (b)] during such year or any previous year of assessment, the amount of such expenditure so allowed as a deduction shall be deemed to have been recovered or recouped by such taxpayer and be included in the income of the taxpayer for the year of assessment during which such trading stock was so disposed of, and there shall be allowed to be deducted in—”; and

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

“(b) any expenditure incurred in respect of the acquisition of such asset was allowed as a deduction under the provisions of section 11(a) [or (b)] or was otherwise taken into account during such year or any previous year of assessment.”.

Amendment of section 24G of Act 58 of 1962, as inserted by section 20 of Act 90 of 1988

41. Section 24G of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

- “(c) any interest (other than interest which is deductible under section 11(a) [or (b)]) incurred by the taxpayer during the year of assessment in respect of any loan utilized for the purpose of financing any expenditure contemplated in paragraph (a) or (b); and”.

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993 and amended by section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998, section 26 of Act 53 of 1999, section 31 of Act 59 of 2000, section 36 of Act 60 of 2001 and section 27 of Act 74 of 2002

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

- (a) by the substitution in subsection (1) for paragraphs (b) and (c) of the definition of “local currency” of the following paragraphs:

“(b) any resident in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, [any] the currency [which is legal tender in] of the Republic; or

(c) any person that is not a resident in respect of any exchange item which is attributable to a permanent establishment in the Republic, [any] the currency [which is legal tender in] of the Republic;”;

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

“(9) For the purposes of this section, any exchange item of or in relation to—

(a) a person contemplated in subsection (2), held or owed by that person on 1 October 2001, other than in the course of trade of such person, shall be deemed to have been received, incurred, acquired or entered into, as the case may be, by that person on that date at the ruling exchange rate on that date; and

(b) a foreign company which becomes a controlled foreign company shall be deemed to have been received, incurred, acquired or entered into, as the case may be, by that controlled foreign company on the later of—

(i) the first day of the year of assessment commencing on or after 1 January 2000; or

(ii) the date that the foreign company becomes a controlled foreign company.”;

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

“(b) any controlled foreign company in relation to any exchange item contemplated in paragraph (a):”;

- (d) by the substitution in subsection (11) for subparagraph (iii) of paragraph (a) of the following subparagraph:

“(iii) in respect of which the provisions of section 9G or paragraph 43(4) of the Eighth Schedule [applies] would apply had that

asset been disposed of, regardless of whether or not that asset constitutes trading stock; and”.

(2) (a) Subsection (1)(a), (b) and (c), shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending on or after that date.

(b) Subsection (1)(d) shall come into operation on 13 December 2002 and shall apply in respect of years of assessment commencing on or after that date.

Substitution of section 25C of Act 58 of 1962, as inserted by section 21 of Act 28 of 1997 and substituted by section 13 of Act 5 of 2001

43. The following section hereby substitutes section 25C of the Income Tax Act, 1962:

“Income of insolvent estates

25C. For the purposes of this Act, and subject to any such adjustments as may be necessary[—

(a)] the estate of a person prior to sequestration and that person’s insolvent estate[; and

(b) **where the order of sequestration has been set aside, that person’s insolvent estate and that person’s estate after that order has been set aside,**]

shall be deemed to be one and the same person for purposes of determining—

(a) the amount of any allowance, deduction or set off to which that insolvent estate may be entitled;

(b) any amount which is recovered or recouped by or otherwise required to be included in the income of that insolvent estate; and

(c) any taxable capital gain or assessed capital loss of that insolvent estate.”.

Substitution of section 25D of Act 58 of 1962, as inserted by section 33 of Act 59 of 2000 and substituted by section 37 of Act 60 of 2001 and section 28 of Act 74 of 2002

44. (1) The following section hereby substitutes section 25D of the Income Tax Act, 1962:

“Determination of taxable income in foreign currency

25D. (1) Unless expressly otherwise provided in this Act, [the] any amount [of any taxable income] derived by a person during any year of assessment from amounts received by or accrued to, or in respect of expenditure incurred by, that person [which are denominated] in any currency other than the currency of the Republic, shall be determined—

[(a) in that currency; or]

[(b)](a) where [that income is] the amounts so received, accrued or incurred are attributable to a permanent establishment of that person outside the Republic, in the currency used by that permanent establishment for purposes of financial reporting (other than the currency of any country in the common monetary area); or [and the amount so determined shall be translated to the currency of the Republic by applying the average exchange rate for that year of assessment;]

(b) in any other case, in the currency in which the amounts so received or accrued or the expenditure so incurred is denominated.”;

(2) Unless expressly otherwise provided in this Act, the amount determined in terms of this Act in any currency other than the currency of the Republic, must be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.”.

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

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by section 16 of Act 19 of 2001, section 22 of Act 30 of 2002 and section 31 of Act 74 of 2002

45. (1) Section 30 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (iii) of paragraph (b) of the definition of “public benefit organisation” of the following subparagraph: 5

“(iii) at least 85 per cent of such activities, measured as either the cost related to the activities or the time expended in respect thereof, are carried out for the benefit of persons in the Republic, unless the Minister, having regard to the circumstances of the case, directs otherwise: Provided that cost incurred for the benefit of persons outside the Republic shall be disregarded to the extent of donations received by that organisation from persons who are not resident and receipts and accruals derived directly or indirectly therefrom which donations, receipts and accruals have not previously been taken into account for purposes of this proviso; and”. 10 15

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

Amendment of section 31 of Act 58 of 1962, as substituted by section 23 of Act 21 of 1995 and amended by section 37 of Act 30 of 1998, section 31 of Act 53 of 1999, section 37 of Act 59 of 2000 and section 16 of Act 5 of 2001 20

46. Section 31 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of paragraph (d) of the definition of “international agreement”.

Insertion of section 31A in Act 58 of 1962

47. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 31: 25

“Disposals of assets by non-resident persons

31A. (1) For purposes of this section—

“**asset**” means an asset as defined in paragraph 1 of the Eighth Schedule other than an asset contemplated in paragraph 2(1)(b) of that Schedule; and “**disposal**” means a disposal as defined in paragraph 1 of the Eighth Schedule. 30

(2) Where a person who is not a resident (other than a controlled foreign company as defined in section 9D) disposes of any asset to a person who is a resident, that asset shall be deemed to have been disposed of by that person and to have been acquired by that resident for an amount equal to— 35
(a) the consideration in respect of that disposal; or
(b) where that person and that resident are connected persons in relation to each other, the market value of that asset on the date of that disposal.

(3) The amount contemplated in subsection (2) must, where that asset is acquired by that resident— 40

(a) as a capital asset, be treated as an expenditure actually incurred and paid by that resident in respect of that asset for purposes of paragraph 20 of the Eighth Schedule; and
(b) as trading stock, be treated as the amount to be taken into account by that resident in respect of that asset for purposes of section 11(a) or 22(1) or (2). 45

(4) The provisions of this section shall apply notwithstanding any provision to the contrary contained in this Act, other than section 103.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of all disposals effected on or after that date. 50

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

48. Section 35 of the Income Tax Act, 1962, is hereby amended— 55

(a) by the deletion in subsection (2) of paragraph (c); and

(b) by the addition of the following subsection:

“(3) The general provisions contained in Parts I to VI of Chapter III of this Act shall *mutatis mutandis* apply in respect of any withholding tax on royalties payable in terms of this section.”.

5

Amendment of section 41 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002

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

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

10

“ ‘allowance asset’ means a capital asset **[qualifying for]** in respect of which a deduction or allowance **[under the provisions of the]** is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss.”;

(b) by the substitution in subsection (1) for the words in the definition of “domestic financial instrument holding company” preceding subparagraph (i) of paragraph (b) of the following words:

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“ ‘domestic financial instrument holding company’ means any company which is a resident, where more than **[50 per cent]** half of the market value or two-thirds of the actual cost of all the assets of that company, together with the assets of all controlled group companies in relation to that company, consist of financial instruments, other than—

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(a) any financial instrument that constitutes a debt due to that company [(or to any controlled group company in relation to that company)] in respect of goods sold or services rendered by that company or controlled group company, as the case may be, where—

25

(i) the amount of that debt is or was included in the income of that company [(or [of any] controlled group company, as the case may be; **[in relation to that company]**)] and

(ii) that debt is an integral part of a business conducted as a going concern by that company **[as a going concern]** or controlled group company, as the case may be; **[or]**

30

(b) any financial instrument **[of any]** held by that company or by any controlled group company in relation to that company, where that company or controlled group company, as the case may be, is regulated in terms of—”;

35

(c) by the insertion at the end of paragraph (b) of the definition of “domestic financial instrument holding company” of the word “or”;

(d) by the addition of the following paragraph after paragraph (b) of the definition of “domestic financial instrument holding company”:

40

“(c) any financial instrument held by any controlled group company in relation to that company if that controlled group company is a foreign company as contemplated in paragraph (b) of the definition of “foreign financial instrument holding company.””;

(e) by the substitution in subsection (1) for the proviso to “domestic financial instrument holding company” of the following proviso:

45

“Provided that in determining **[the]** whether **[50 per cent ratio]** more than half of the market value or two-thirds of the actual cost of the assets of the company and controlled group companies **[consists]** consist of financial instruments, the following **[will]** assets must be wholly disregarded—

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(i) any share of a controlled group company in relation to that company; and

(ii) any financial instrument which constitutes a loan, advance or debt **[if both the debtor and creditor companies are members within the same group of companies]** entered into between—

55

(aa) that company and any controlled group company in relation to that company; or

(bb) controlled group companies in relation to that company;”;

(f) by the substitution in subsection (1) for the definition of “foreign financial instrument holding company” of the following definition:

60

“ ‘foreign financial instrument holding company’ means [a **foreign financial instrument holding company as defined in section 9D**] any foreign company as defined in section 9D, where more than half of the market value or two-thirds of the actual cost of all the assets of that company, together with the assets of all controlled group companies in relation to that foreign company, consist of financial instruments, other than—

- (a) any financial instrument that constitutes a debt due to that foreign company, or to any 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 as a going concern by that foreign company or controlled group company, as the case may be;
- (b) any financial instrument arising from the principal trading activities of that foreign company or of any controlled group company in relation to that foreign company which is a bank, insurer, dealer or broker with a licence or registration that allows that foreign company or controlled group 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 that company and that foreign company or controlled group company in relation to that foreign company either—
 - (i) regularly accepts deposits or 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 from principal trading activities with respect to persons who are not connected persons in relation to that foreign company; or
- (c) any financial instrument held by any controlled group company in relation to that foreign company if that controlled group company is a controlled group company as contemplated in paragraph (b) of the definition of ‘domestic financial instrument holding company’:

Provided that in determining whether more than half of the market value or two-thirds of the actual cost of the assets of the company and all controlled group companies consist of financial instruments, the following assets must be wholly disregarded—

- (i) any share in any other company in the same group of companies;
- (ii) any financial instrument which constitutes a loan, advance or debt entered into between—
 - (aa) that company and any controlled group company in relation to that company; or
 - (bb) controlled group companies in relation to that company;”;

(g) by the substitution for the definition of “shareholder” of the following definition:

“ ‘shareholder’ in relation to an equity share, means the registered shareholder of that equity share, unless a person other than that registered shareholder is entitled to all or part of the benefit of the rights of participation in the profits, ~~or~~ income or capital attaching to that equity share, in which case that person must, to the extent of that entitlement to that benefit, be deemed to be the shareholder; and”;

(h) by the insertion of the following definition after the definition of “shareholder”:

- “ ‘trading stock’—
- (a) for purposes of sections 42, 44, 45 and 47, includes any livestock or produce contemplated in the First Schedule and any reference in section 11(a) or 22(1) or (2) to an amount taken into account in respect of an asset shall, in the case of such livestock or produce, be construed as a reference to the amount taken into account in respect thereof in terms of paragraph 5(1) or 9 of the First Schedule, as the case may be”; and

- (b) for purposes of sections 42(7)(b)(i), 43(6)(b), 44(5)(b)(i), 45(5)(b)(i) and 47(4)(b)(i), means trading stock that is neither of the same kind nor of the same or equivalent quality as trading stock regularly and continuously disposed of by that person”;
- (i) by the substitution for subsection (2) of the following subsection: 5
 “(2) The provisions of this Part must, subject to subsection (5), apply in respect of a company formation transaction, a share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections 31A and 103”; and 10
- (j) by the substitution in subsection (4) for subparagraph (ii) of paragraph (a) of the following subparagraph: 15
 “(ii) that company has disposed of all assets and has settled all liabilities (other than assets required to satisfy any reasonably anticipated liabilities [to the Commissioner] to any sphere of government of any country and costs of administration relating to the liquidation or winding-up), unless the Commissioner otherwise allows for a period which the Commissioner deems reasonable to enable that company to take adequate steps to wind down the business of the company; and” 20
- (2) (a) Subsection (1)(a), (h) and (j) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any company formation transaction, share-for-share transaction, amalgamation transaction, intra-group transaction, unbundling transaction or liquidation distribution which takes effect on or after that date. 25
- (b) Subsection (1)(b), (c), (d), (e) (f) and (i) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal effected on or after that date.

Amendment of section 42 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 30

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

- (a) by the substitution in subsection (1) for the words in paragraph (a) preceding subparagraph (i) of the following words: 35
 “(a) in terms of which a person (other than a trust which is not a special trust) disposes of an asset, the market value of which is equal to or exceeds—”;
- (b) by the substitution in subsection (2) for subparagraph (ii) of paragraph (a) of the following subparagraph: 40
 “(ii) acquired the equity shares in that company on the date that such person acquired that asset and for a cost equal to—
 (aa) where that asset is so disposed of as a capital asset, any expenditure in respect of that asset incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule and to have incurred such cost at the date of incurral by that person of such expenditure; or 45
 (bb) where that asset is so disposed of as trading stock, the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2),
 which [amount] cost must, where those equity shares are acquired as— 50
 (A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and
 (B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11(a) or 22(1) or (2); [and]”; 55
- (c) by the insertion in subsection (2) of the word “and” at the end of paragraph (b);
- (d) by the addition in subsection (2) of the following paragraph after paragraph (b): 60

“(c) any valuation of that asset effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule must be deemed to have been effected in respect of the equity shares in that company acquired in terms of that company formation transaction.”;

- (e) by the substitution in subsection (4) for the words preceding paragraph (a) and paragraphs (a) and (b) of the following words and paragraphs: 5

“(4) **[Subject to subsection (8),]** Where—

(a) a person disposes of an asset to a company in terms of a company formation transaction; and

(b) that person becomes entitled, in exchange for that asset, **[becomes entitled]** to any consideration in addition to any equity shares issued by the company to that person, other than any debt assumed by that company as contemplated in subsection (8).”; 10

- (f) by the deletion in subsection (4) of the word “or” after subparagraph (i);

- (g) by the substitution for the words in subsection (4) following subparagraph (iii) 15
of the following words:

“that must be attributed to the part of the asset deemed to have been disposed of other than in terms of a company formation transaction, must bear the same ratio to the **[total]** respective amounts referred to in subparagraphs (i) to (iii) as the market value of the consideration not consisting of equity shares issued by that company bears to the market value of the total consideration in respect of that asset.”; 20

- (h) by the substitution in subsection (6) for paragraphs (a) and (b) and the proviso of the following paragraphs and proviso:

“(a) disposed of all the equity shares acquired in terms of that company formation transaction **[which were not disposed of]** that are still held immediately [before] after that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and 25

(b) immediately reacquired all the equity shares **[not disposed of immediately after that person ceased to hold a qualifying interest]** contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph [(a)]: 30

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in that company in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument, or as the result of the death of that person.”; 35 40

- (i) by the substitution in subsection (8) for the words following paragraph (b) of the following words:

“that person must, upon the disposal of any equity share acquired in terms of that company formation transaction and notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraph (a) or (b), treat so much of the face value of that debt as relates to that equity share, as a capital distribution of cash in respect of that equity share, for the purposes of paragraph 76 of the Eighth Schedule, where that equity share is held as a capital asset or, where that equity share is held as trading stock, as income to be included in that person’s income [when that person disposes of that equity share].”; and 45 50

- (j) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words: 55

“(9) No election may be made in terms of paragraph (c) of the definition of ‘company formation transaction’ in subsection (1) in respect of the disposal of any asset by a person, where that asset constitutes a financial instrument **[as defined in paragraph 1 of the Eighth Schedule]**, unless—”. 60

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any company formation transaction which takes effect on or after that date.

Amendment of section 43 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002

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

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

“(a) in terms of which a person (other than a trust which is not a special trust) disposes of an equity share, the market value of which is equal to or exceeds—”;

(b) by the insertion in subsection (1) of the following proviso at the end of the definition of “share-for-share transaction”:

“Provided that this section will not apply to a disposal by a person of target shares to an acquiring company where that person and that target company form part of the same group of companies immediately before and after that disposal, if that person and that acquiring company jointly so elect.”;

(c) by the insertion in subsection (2) of the word “and” at the end of paragraph (c);

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

“(d) any valuation of that target share effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule must be deemed to have been effected in respect of those equity shares in the acquiring company.”;

(e) by the substitution in subsection (3) for the words following subparagraph (ii) of the following words:

“that must be attributed to the part of the share deemed to have been disposed of other than in terms of a share-for-share transaction, must bear the same ratio to the **[total amount]** respective amounts contemplated in subparagraph (i) or (ii) as the market value of the consideration not consisting of equity shares issued by the acquiring company bears to the market value of the total consideration in respect of that share.”;

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

“(4) Where a person disposed of a target share in terms of a share-for-share transaction and that person ceases to hold a qualifying interest in the acquiring company within a period of 18 months after the date of the disposal of that share (whether or not by way of the disposal of any shares in the acquiring company), that person must for purposes of section 22 or the Eighth Schedule be deemed to have—

(a) disposed of all the **[target]** shares acquired in terms of that share-for-share transaction **[which were not disposed of]** that are still held immediately [before] after that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and

(b) immediately reacquired all the **[target]** shares **[not disposed of immediately after that person ceased to hold a qualifying interest]** contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph [(a)];

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in the acquiring company in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument, or as the result of the death of that person.”;

(g) by the substitution for subsection (5) of the following subsection:

“(5) Where an acquiring company acquired any target share in terms of a share-for-share transaction and that acquiring company ceases to hold an interest in the target company, as contemplated in paragraph (c) of the definition of ‘share-for-share transaction’ in subsection (1), within a period of 18 months after so acquiring that share (whether or not by way of the disposal of any target shares **[in that target company]**), that

acquiring company must for purposes of section 22 or the Eighth Schedule be deemed to have—

- (a) disposed of all the **[equity] target shares [in the target company]** acquired in terms of that share-for-share transaction **[which were not disposed of]** that are still held immediately [before] after that 5
acquiring company ceased to hold such an interest, for an amount equal to the market value of those **[equity] target shares** as at the beginning of that period of 18 months; and
- (b) immediately reacquired all the **[equity] target shares [not disposed of immediately after that person ceased to hold a qualifying interest]** contemplated in paragraph (a) at a cost equal to the 10
amount contemplated in that paragraph [(a)]:

Provided that the provisions of this subsection do not apply where that acquiring company ceases to hold such an interest in the target company, in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, a liquidation distribution contemplated in section 47 or an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that 15
paragraph had that asset not been a financial instrument." 20

(2) Subsection (1)(a), (c), (d), (e), (f) and (g) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any share-for-share transaction which takes effect on or after that date.

Amendment of section 44 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 25

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

- (a) by the substitution in subsection (1) for paragraph (a) of the definition of "amalgamation transaction" of the following paragraph:
 "(a) in terms of which any company (hereinafter referred to as the "amalgamated company") disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to another company (hereinafter referred to as the "resultant company") which is a resident, by means of an amalgamation, conversion or merger; and"; 30
- (b) by the insertion in subsection (1) of the following proviso to the definition of "amalgamation transaction":
 "Provided that the provisions of this section will not apply to a disposal of an asset by an amalgamated company to a resultant company where that resultant company and the person contemplated in subsection (6) form part of the same group of companies immediately before and after that disposal, if that amalgamated company, resultant company and person jointly so elect."; 40
- (c) by the substitution for subsection (4) of the following subsection:
 "(4) The provisions of subsections (2) and (3) will apply to a disposal of an asset by an amalgamated company to a resultant company as part of an amalgamation transaction only to the extent that such asset is so disposed of in exchange for—
 (a) an equity share or shares in that resultant company; or
 (b) the assumption by that resultant company of a debt of that amalgamated company."; 50
- (d) by the substitution for subsection (6) of the following subsection:
 "(6) Subject to subsection (7), where a person (other than a trust which is not a special trust) disposes of any equity share in an amalgamated company, the market value of which share exceeds—
 (a) in the case of a share held as a capital asset, the base cost of that share on the date of that disposal; or
 (b) in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of section 11(a) or 22(1) or (2),
 in return for an equity share or equity shares in the resultant company and that person— 55
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- (i) acquires that share or those shares in the resultant company as part of an amalgamation transaction that was subject to subsection (2) or (3)—
 - (aa) where that share in the amalgamated company is disposed of as a capital asset, as a capital asset or as trading stock; or 5
 - (bb) where that share in the amalgamated company is disposed of as trading stock, as trading stock; and
- (ii) at the end of the day during which that disposal is effected, holds a qualifying interest in that resultant company,
 - that person must be deemed to have— 10
 - (aa) disposed of the equity share in that amalgamated company for an amount equal to the amount contemplated in subparagraphs (a) or (b), as the case may be; **[and]**
 - (bb) acquired the equity share or shares in that resultant company on the date that such person acquired that equity share in the amalgamated company and for a cost equal to any expenditure in respect of that equity share in the amalgamated company incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule or taken into account in terms of section 11(a) or 22(1) or (2), as the case may be, and to have incurred such cost at the date of incurral by that person of such expenditure, which cost must, where those equity shares are acquired as— 20
 - (A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and 25
 - (B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11(a) or 22(1) or (2); and
 - (cc) effected any valuation of that equity share in the amalgamated company that was done within the period contemplated in paragraph 29(4) of the Eighth Schedule, in respect of the equity share or shares in that resultant company.; 30
- (e) by the substitution for the words in subsection (7) following paragraph (ii) of the following words: 35

“that must be attributed to the part of the share deemed to have been disposed of in terms of the non-qualifying transaction, must bear the same ratio to the **[total amount]** respective amounts contemplated in subparagraphs (i) or (ii) as the market value of the total consideration not consisting of equity shares in that resultant company bears to the amount of the full consideration in respect of that share.”; 40
- (f) by the substitution for paragraph (b) of subsection (9) of the following paragraph:

“(b) any shares acquired by a company in terms of that disposal must be deemed[— 45

 - (i) not to be a dividend which accrued to that company for the purposes of section 64B(3); **and**
 - (ii) **to be profits which are not of a capital nature for the purposes of section 64B(5)(c).**”; 50
- (g) by the substitution for subsection (10) of the following subsection: 50

“(10) So much of the amount of any other consideration to which a person becomes entitled as contemplated in subsection (7)(b) as does not exceed the amalgamated company’s profits and reserves which are available for distribution as contemplated in section 64C(4)(c) must, for purposes of section 64B, be deemed to be a dividend declared and distributed out of profits of that amalgamated company to that person and to have accrued as a dividend to that person on the date on which that person became entitled thereto.”; 55
- (h) by the substitution in subsection (11) for paragraphs (a) and (b) and the proviso of the following paragraphs and proviso: 60

- “(a) disposed of all the equity shares in the resultant company acquired in terms of that qualifying transaction **[which were not disposed of]** that are still held immediately **[before]** after that person ceased to hold such an interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and 5
- (b) immediately reacquired all the equity shares **[not disposed of immediately after that person ceased to hold a qualifying interest]** contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph **[(a)]**;

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in that resultant company, as contemplated in the definition of ‘qualifying interest’ in subsection (1), in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument, or as the result of the death of that person.”; 10 15

- (i) by the substitution for subsection (12) of the following subsection:
- “(12) The provisions of this section do not apply in respect of the disposal of the assets of an amalgamated company where that amalgamated company immediately prior to that disposal constitutes a domestic financial instrument holding company or a foreign financial instrument holding company.”; and 20
- (j) by the substitution for subsection (13) of the following subsection:
- “(13) The provisions of **[subsections (2) and (3)]** this section do not apply where the amalgamated company— 25
- (a) has not, within a period of six months after the date of the amalgamation transaction, taken the steps contemplated in section 41(4) to liquidate, wind up or deregister; or
- (b) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in paragraph (a), or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered.”. 30

(2) Subsection (1)(a), (c), (d), (e), (f), (g), (h), (i) and (j) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any amalgamation transaction which takes effect on or after that date. 35

Amendment of section 45 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002

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

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 40

“(a) in terms of which any asset is disposed of by one company (hereinafter referred to as the ‘transferor company’) to another company which is a resident (hereinafter referred to as the ‘transferee company’) and both companies form part of the same group of companies **[on the date]** as at the end of the day of that transaction;”;

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

“(4) Where an asset is disposed of by a transferor company to a transferee company in terms of an intra-group transaction and the transferor company and the transferee company at any time before the disposal by the transferee company of that asset, cease to form part of any group of companies in relation to each other, that transferee company must, for purposes other than for determining the amount of any capital deduction or allowance in respect of that asset to which that transferee company may be entitled in terms of section 11(e), 12B, 12C, or 12E, be deemed to have disposed of that asset for an amount equal to the market value of that asset on the date on which the disposal in terms of that intra-group transaction was effected and as having immediately reacquired that asset for a cost equal to that market value.”; 50 55 60

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

“(5) Where a transferee company disposes of an asset, other than in terms of an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument, within a period of 18 months after acquiring that asset in terms of an intra-group transaction and—”; and

- (d) by the substitution in subsection (6) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) the total market value, immediately prior to that disposal, of all financial instruments so transferred (other than financial instruments contemplated in paragraph (i) or (iv)), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern;”; and

- (e) by the addition in subsection (6) to subparagraph (iv) of paragraph (a) of the following proviso:

“Provided that for purposes of determining whether that controlled group company is a domestic financial instrument holding company or a foreign financial instrument holding company, no regard shall be had to any financial instrument the market value of which is equal to its base cost.”

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any intra-group transaction which takes effect on or after that date.

Amendment of section 46 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and amended by section 23 of Act 30 of 2002 and substituted by section 34 of Act 74 of 2002

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

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

“(1) For purposes of this section ‘unbundling transaction’ means any transaction in terms of which all the equity shares of a company which is a resident (hereinafter referred to as the ‘unbundled company’) that are held by a company (hereinafter referred to as the ‘unbundling company’) which, if listed, is a resident, are disposed of by that unbundling company to the shareholder or shareholders of that unbundling company in accordance with the effective interest of that shareholder or those shareholders, as the case may be, in the shares of that unbundling company, but only to the extent to which those shares are so disposed of—

(a) where that unbundling company is a listed company and the shares of the unbundled company are listed within 12 months after that disposal, to the shareholders of that unbundling company;

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

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

Provided that the shares contemplated in paragraph (a) or (b) constitute—

(i) where that unbundled company is a listed company immediately before that disposal—

(aa) more than 25 per cent of the equity shares of that unbundled company in the case where no other shareholder holds an equal or greater amount of equity shares in that unbundled company; or

(bb) in any other case, at least 35 per cent of the equity shares of that unbundled company; or

- (ii) where that unbundled company is an unlisted company immediately before that disposal, more than 50 per cent of the equity shares of that unbundled company.”;
- (b) by the substitution for subsection (2) of the following subsection:
 - “(2) Where an unbundling company disposes of shares to a shareholder in terms of an unbundling transaction, that unbundling company must disregard that disposal for purposes of determining its taxable income or assessed loss.”;
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) and paragraph (a) of the following words and paragraph:
 - “(3) Where a shareholder acquires [distributable] shares in terms of an unbundling transaction—
 - (a) that shareholder must be deemed to have acquired the equity shares held in the unbundling company (hereinafter referred to as the ‘previously held shares’) and those [distributable] shares at a cost equal to—”;
- (d) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
 - “(b) that shareholder must determine the portion of the cost contemplated in paragraph (a) that must be attributed to those [distributable] shares, by determining an amount which bears to that cost the same ratio that the market value of those [distributable] shares, as at the end of the day after the date of that disposal, bears to the sum of the market values, as at the end of that day, of the previously held shares and of those [distributable] shares, which [amount] portion of the cost must, where the shareholder held the previously held shares as—
 - (i) capital assets and acquired those [distributable] shares as capital assets, be treated as an expenditure actually incurred and paid by that shareholder in respect of those [distributable] shares for the purposes of paragraph 20 of the Eighth Schedule; or
 - (ii) trading stock and acquired those [distributable] shares as trading stock, be treated as the amount to be taken into account by that shareholder in respect of those [distributable] shares for the purposes of section 11(a) or 22(1) or (2); and”;
- (e) by the substitution in subsection (3) for paragraph (d) of the following paragraph:
 - “(d) that shareholder’s previously held shares and those [distributable] shares must be deemed to be the same shares in respect of the date of acquisition of those shares and the date of incurral of any expenditure in respect of those previously held shares.”;
- (f) by the substitution in subsection (4) for the words preceding paragraph (a) and paragraph (a) of the following words and paragraph:
 - “(4) Where those [distributable] shares are disposed of by an unbundling company to a shareholder in terms of an unbundling transaction and that shareholder held the previously held shares in that unbundling company as a result of the exercise, by that shareholder, of a right contemplated in section 8A, a portion of any gain made by that shareholder in the exercise of that right to acquire those previously held shares must be included in the income of that shareholder—
 - (a) in the year of assessment during which that shareholder becomes entitled to dispose of those [distributable] shares, which portion shall be an amount which bears to such gain the same ratio as that contemplated in [paragraph] subsection (3)(b); and”;
- (g) by the substitution for subsection (5) of the following subsection:
 - “(5) Where [distributable] shares are disposed of by an unbundling company to a shareholder in terms of an unbundling transaction—
 - (a) the disposal by that unbundling company of the [distributable] shares must be deemed not to be a dividend with respect to that unbundling company for the purposes of section 64B(3); and
 - (b) any [distributable] shares acquired by a company in terms of that disposal must be deemed—

- (i)] not to be a dividend which accrued to that company for the purposes of section 64B(3)[; and
- (ii) **to be profits which are not of a capital nature for the purposes of section 64B(5)(c)].**”;
- (h) by the substitution for subsection (6) of the following subsection: 5
 - “(6) Any **[distributable]** shares disposed of by an unbundling company in terms of an unbundling transaction, must be deemed to have been disposed of first from the share premium account of that unbundling company.”;
- (i) by the substitution in subsection (7) for paragraph (b) of the following paragraph: 10
 - “(b) in respect of any disposal of **[distributable]** shares in terms of an unbundling transaction to a shareholder who is not a resident, where that shareholder acquires more than five per cent of those **[distributable]** shares.”; and 15
- (j) by the addition of the following subsection after subsection (7):
 - “(8) Where an unlisted unbundling company disposes of shares in an unlisted unbundled company in terms of an unbundling transaction to a shareholder and that unbundled company is a controlled group company in relation to that shareholder immediately before and after that disposal, the provisions of this section will not apply to that disposal if that shareholder and that unbundling company jointly so elect.”.
- (2) Subsection (1)(a), (b), (c), (d), (e), (f), (g), (h) and (i) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any unbundling transaction which takes effect on or after that date. 25

Amendment of section 47 of Act 58 of 1962, as repealed by section 25 of Act 21 of 1995 and inserted by section 34 of Act 74 of 2002

- 55.** (1) Section 47 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) For the purposes of this section ‘liquidation distribution’ means 30
 - any transaction—
 - (a) in terms of which any company (hereinafter referred to as the ‘liquidating company’) **[disposes of]** distributes all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or 35
 - in the course of the liquidation, winding up or deregistration of that company, but only to the extent to which those assets are so disposed of to another company (hereinafter referred to as the ‘holding company’) which is a resident and which holds, on the date of that disposal, at least 75 per cent of the equity shares of that liquidating company; and 40
 - (b) in respect of which that liquidating company and that holding company have jointly elected that this section applies in respect of all the assets so disposed of by that liquidating company to that holding company.”; 45
 - (b) by the substitution for subsection (5) of the following subsection:
 - “(5) Where a holding company disposes of any equity share in a liquidating company as a result of the liquidation, winding up or deregistration of that liquidating company, that holding company must **[be treated to have disposed of that share for an amount equal to—** 50
 - (a) **in the case of that share held as a capital asset, the base cost of that share on the date of that disposal; or**
 - (b) **in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of section 11(a) or 22(1) or (2)]** 55
 - disregard that disposal for purposes of determining its taxable income or assessed loss.”;
 - (c) by the addition in subsection (6) to paragraph (b) of the following proviso:

“Provided that for purposes of determining whether that liquidating company is a domestic financial instrument holding company or a foreign financial instrument holding company, no regard shall be had to any financial instrument the market value of which is equal to its base cost.”; and

- (d) by the substitution in subsection (6) for the words in paragraph (c) preceding the proviso of the following words:

“(c) the liquidating company—

- (i) has not, within a period of six months after the date of the liquidation distribution, taken [such] the steps contemplated in section 41(4) to liquidate, wind up or deregister [that company]; or
- (ii) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in paragraph (i), or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered.”.

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

Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 96 of 1981, section 31 of Act 94 of 1983, section 4 of Act 30 of 1984, section 28 of Act 121 of 1984, section 18 of Act 96 of 1985, section 21 of Act 85 of 1987, section 26 of Act 90 of 1988, section 28 of Act 141 of 1992, section 32 of Act 113 of 1993, section 18 of Act 36 of 1996, section 39 of Act 30 of 1998, section 38 of Act 30 of 2000, section 41 of Act 59 of 2000, section 45 of Act

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

“(r) by a company to any other company that is a member of the same group of companies as the company making that donation.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001 and shall apply in respect of any donation that takes effect on or after that date.

Amendment of section 61 of Act 58 of 1962, as amended by section 25 of Act 90 of 1988

57. Section 61 of the Income Tax Act, 1962, is hereby amended by the addition of the following paragraph:

“(h) any reference in section 76 to taxable income of a taxpayer is deemed to include a reference to the value of any property disposed of by that taxpayer under a donation.”.

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001, section 25 of Act 30 of 2002 and section 36 of Act 74 of 2002

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

- (a) by the deletion in subsection (1) of the word “and” at the end of subparagraph (i) of paragraph (a) of the definition of “dividend cycle”;
- (b) by the insertion in subsection (1) after subparagraph (ii) of paragraph (a) of the definition of “dividend cycle” of the following subparagraphs:
 - “(iii) the date on which that company was incorporated, formed or otherwise established; and
 - (iv) the date on which that company becomes a resident.”;
- (c) by the substitution in subsection (1) for the words following subparagraph (ii) of paragraph (a) of the definition of “dividend cycle” of the following words:

- “and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C(2)”;
- (d) by the substitution in subsection (1) for the words following subparagraph (ii) of paragraph (aA) of the definition of “dividend cycle” of the following words: 5
- “and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C(2); and”;
- (e) by the substitution in subsection (1) for paragraph (b) of the definition of “dividend cycle” of the following paragraph: 10
- “(b) in relation to any subsequent dividend declared by that company, the period commencing immediately after the previous dividend cycle of the company and ending on the date on which such dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C(2).”;
- (f) by the substitution for the words in subsection (3) preceding the proviso of the following words: 15
- “The net amount of any dividend referred to in subsection (2) shall be the amount by which such dividend declared by a company exceeds the sum of any dividends (other than—
- (a) any dividends contemplated in subsection (5)(b), (c), (d), and (f);
- [or]
- (b) any foreign dividends **[as defined in section 9E]**; or 25
- (c) any dividend which accrued to a borrower as contemplated in the definition of ‘securities lending arrangement’ in respect of a share which was borrowed in terms of such arrangement,
- but including foreign dividends **[which]** to the extent that those foreign dividends are exempt in terms of [section 9E(7)(c), (d), (e)(ii), (iii) or (iv) or (f)], or section 9E (8A)] section 10(1)(k)(ii)(aa)), which have during the dividend cycle in relation to such firstmentioned dividend accrued to the company.”;
- (g) by the substitution in subsection (4) for the words in paragraph (c) preceding subparagraph (i) of the following words: 30
- “Where any cash or assets is or are **[given]** transferred or distributed—”;
- (h) by the substitution in subsection (5) for paragraph (a) of the following paragraph: 35
- “(a) dividends declared by any company the entire receipts and accruals of which, or so much of the receipts and accruals of which as are derived otherwise than from investments, are exempt from tax under the provisions of section 10: Provided that the provisions of this paragraph shall not apply to a company **[(other than a company referred to in section 10(1)(s))]** which is exempt from tax under the said provisions solely because it derives gross income of a particular nature;”;
- (i) by the substitution in subsection (5) for subparagraph (ii) of paragraph (c) of the following subparagraph: 40
- “(ii) distribution of profits of a capital nature (other than capital profits attributable to the disposal of any asset on or after 1 October 2001 which capital profits must, in the case of an asset acquired before that date, 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 on that date **[as]** determined in the manner contemplated in paragraph 29 of the Eighth Schedule): Provided that where that company became a resident after 1 October 2001, the capital profits in respect of an asset acquired before becoming a resident, must be limited to the amount of profit determined as if that asset had been acquired on the date of so becoming a resident for a cost equal to the market value of that asset on that date; or”;
- (j) by the addition in subsection (5) to paragraph (c) of the following subparagraph: 55
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- “(iii) distribution of profits derived by that company before that company became a resident.”;
- (k) by the substitution in subsection (5) for the words preceding subparagraph (i) of paragraph (f) of the following words:
- “(f) any dividend declared by a company which accrues to a shareholder (as defined in Part III) of that company if—”;
- (l) by the substitution in subsection (5) for subparagraph (ii) of paragraph (f) of the following subparagraph:
- “(ii) to the extent that the dividend is derived out of profits earned by **[the company declaring the dividend]** that company during any period when that company formed part of the same group of companies as the shareholder to whom the dividend **[was declared]** accrued”;
- (m) by the addition to subsection (5) of the word “and” at the end of subparagraph (iii) of paragraph (f);
- (n) by the deletion in subsection (5) of subparagraph (iv) of paragraph (f);
- (o) by the addition in subsection (5) to paragraph (f) of the following proviso:
- “Provided that for purposes of this paragraph, where that shareholder was formed solely by one or more companies within that group of companies, that shareholder must be deemed to have been in existence and to have been the controlling company in relation to that company declaring the dividend from the date on which the controlling company in relation to that shareholder was formed;”;
- (p) by the deletion of subsection (6);
- (q) by the substitution in subsection (7) for the words preceding the proviso of the following words:
- “(7) The secondary tax on companies shall be paid to the Commissioner by the company liable therefore—
- (a) **where such tax is payable in respect of any dividend declared on or before 30 June 1993—**
- (i) **if a year of assessment of the company ended during the period from 1 December 1992 to 31 March 1993, by not later than 31 December 1993; and**
- (ii) **in any other case, by not later than 31 July 1993; and**
- (b) **where such tax is payable in respect of any dividend declared after 30 June 1993,** by not later than the last day of the month following the month in which the dividend cycle relevant to such dividend ends and each payment of such tax shall be accompanied by a return in such form as the Commissioner may require.”; and
- (r) by the deletion of subsection (10).
- (2) (a) Subsection (1)(f) shall—
- (i) to the extent that it inserts the provisions contained in paragraph (c) in subsection (3) come into operation on the date of promulgation of this Act and shall apply in respect of any dividend accrued in terms of any securities lending arrangement on or after that date; and
- (ii) to the extent that it amends the rest of subsection (3), come into operation on 1 June 2004 and shall apply in respect of any dividends accrued during any year of assessment commencing on or after that date.
- (b) Subsection (1)(h) shall come into operation on 1 January 2004 and shall apply in respect of any dividend declared by any company during any year of assessment commencing after that date.
- (c) Subsection (1)(j) shall come into operation on 26 February 2003 and shall apply in respect of any dividend declared on or after that date.
- (d) Subsection (1)(l), (m), (n) and (o) shall come into operation on the date of promulgation of this Act and shall apply in respect of any dividend declared on or after that date.
- (e) Subsection (1)(p) shall come into operation on 1 June 2004 and shall apply in respect of any dividend declared on or after that date.

Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000, section 37 of Act 74 of 2002 and section 38 of Act 12 of 2003

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

- (a) by the deletion in subsection (1) of the definition of “recipient”;
- (b) by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of section 64B, **[any] an amount [which is in terms of subsection (3) deemed to have been distributed by a company]** shall, subject to the provisions of subsection (4), be deemed to be a dividend declared by **[such] a company [out of that company’s profits (determined in respect of the most recent year of assessment and which are available for distribution), to a shareholder, where that shareholder]** to a shareholder, where—

- (a) **[receives a deemed distribution as contemplated in subsection (3); or] any cash or asset is distributed or transferred by that company to or for the benefit of that shareholder or any connected person in relation to that shareholder;**
- (b) **[is a connected person in relation to any person who receives a deemed distribution as contemplated in subsection (3),] the shareholder or any connected person in relation to that shareholder is released or relieved from any obligation measurable in money which is owed to that company by that shareholder or connected person;**
- (c) any debt owed by the shareholder or any connected person in relation to that shareholder to any third party is paid or settled by that company;
- (d) any amount is used or applied by that company in any other manner for the benefit of the shareholder or any connected person in relation to that shareholder;
- (e) that amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder or connected person in relation to such a shareholder, the consideration of which is adjusted in accordance with the provisions of section 31;
- (f) the company ceases to be a resident to the extent profits and reserves of that company are available for distribution immediately before so ceasing to be a resident (including any amount deemed in terms of the definition of ‘dividend’ in section 1 to be a profit available for distribution): Provided that any prohibition or limitation on any distribution contained in the company’s memorandum and articles of association or founding statement or any agreement must be disregarded; or;
- (g) any loan or advance is granted and made available to that shareholder or connected person in relation to that shareholder **[notwithstanding the fact that such amount may have been so distributed by way of a loan or credit to the recipient or that the recipient may in consequence of such distribution have assumed any other form of obligation to make a future payment to the company];”;**

- (c) by the deletion of subsection (3);
- (d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“(4) The provisions of subsection **[(3)] (2)** shall not apply—”;

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

“(a) where the **[distribution of such]** amount constitutes a dividend or would have constituted a dividend but for the provisions of paragraphs (e) to (i), inclusive, of the definition of ‘dividend’ in section 1;

- (b) where **[such]** the amount **[distributed]** constitutes remuneration in the hands of the **[recipient]** shareholder or any connected person in relation to that shareholder or the settlement of any debt owed by the company to the **[recipient]** shareholder or connected person;”;
- (f) by the substitution in subsection (4) for the words in paragraph (c) preceding the proviso of the following words: 5
- “(c) to so much of any **[such]** amount **[distributed]** (other than an amount contemplated in subsection [(3)](2)(e)) as exceeds the company’s profits and reserves which are available for distribution, including any amount deemed in terms of the definition of ‘dividend’ in section 1 to be a profit available for distribution.”; 10
- (g) by the substitution in subsection (4) for paragraphs (d) and (e) of the following paragraphs:
- “(d) to any loan granted in respect of which a rate of interest not less than the ‘official rate of interest’, as defined in paragraph 1 of the Seventh Schedule is payable by the **[recipient]** shareholder or any connected person in relation to the shareholder; 15
- (e) to any loan granted to the **[recipient]** shareholder or any connected person in relation to the shareholder if the **[recipient]** shareholder or connected person is an employee of the company or an associated institution contemplated in paragraph 1 of the Seventh Schedule in relation to the company and such loan is granted under, and in compliance with the normal terms and conditions of, a loan scheme generally available to employees of the company or of the associated institution who are not shareholders;”;
- (h) by the substitution in subsection (4) for the words in paragraph (f) preceding subparagraph (i) of the following words: 25
- “(f) to any loan or credit granted to a **[recipient]** shareholder of the company or any connected person in relation to the shareholder during any year of assessment, if—”;
- (i) by the substitution in subsection (4) for subparagraph (ii) of paragraph (f) of the following subparagraph: 30
- “(ii) the amount thereof is not included in any subsequent loan or credit granted to the **[recipient]** shareholder or any connected person in relation to the shareholder; and”;
- (j) by the deletion in subsection (4) of paragraph (h); 35
- (k) by the deletion in subsection (4) of the word “and” at the end of paragraph (i);
- (l) by the substitution in subsection (4) for paragraph (j) of the following paragraph: 40
- “(j) to any loan granted to any **[recipient]** shareholder or connected person in relation to the shareholder, which is a company by any other company which holds for its own benefit, whether directly or indirectly, any of the equity share capital of such **[recipient company]** shareholder or connected person: Provided that the provisions of this paragraph shall not apply where such **[recipient company]** shareholder or connected person holds any of the equity share capital in such other company; and”;
- (m) by the addition to subsection (4) of the following paragraphs: 45
- “(k) to any amount contemplated in subsection (2)(a), (b), (c), (d), or (g) distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available for the benefit of any shareholder which is a resident or any connected person in relation to the shareholder, which is a resident— 50
- (i) if that shareholder is a company that is a member of the same group of companies as the company which is deemed to have declared that dividend; and 55
- (ii) to the extent that the amount of the profits and reserves available for distribution that was taken into account in terms of section 64C(4)(c) were derived during the period that the shareholder was a member of the same group of companies as the company which is deemed to have declared that dividend.”; 60

- (i) to any amount contemplated in subsection (2)(a), (b), (c), (d) or (g) distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available by a company for the benefit of any controlled group company in relation to that company.”;
- (n) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 5
 “(5) Where any loan granted by a company to a [recipient] shareholder or any connected person in relation to the shareholder—”;
- (o) by the substitution in subsection (5) for paragraph (b) of the following paragraph: 10
 “(b) is thereafter wholly or partly repaid by the [recipient] shareholder or connected person,”; and
- (p) by the addition of the following subsection: 15
 “(6) For purposes of this section and section 64B, the dividend contemplated in subsection (2)(a), (b), (c), (d) and (f) shall respectively be deemed to have been declared by the company on the date that the cash or asset is distributed or transferred, the obligation is released or relieved, the debt is paid or settled, the amount is used or applied or the loan or advance is made available, as the case may be.”.
- (2) Subsection (1) shall come into operation on the date of promulgation of this Act 20
 and shall apply in respect of any cash or asset distributed, any obligation relieved, any debt settled, any amount applied, any adjustment or any loan or advance granted on or after that date.

Substitution of section 65 of Act 58 of 1962

60. The following section hereby substitutes section 65 of the Income Tax Act, 1962: 25

“Returns to be in form and submitted at place prescribed by Commissioner

65. All forms of returns and other forms required for the administration of this Act shall be in such form and be submitted at such place as may be prescribed by the Commissioner from time to time.”. 30

Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act 35

61. Section 66 of the Income Tax Act, 1962, is hereby amended—

- (a) by the addition in subsection (13) to paragraph (a) of the following proviso:

“Provided that where—

- (a) a person dies, a return shall be made for the period commencing on the first day of that year of assessment and ending on the date of death; 40
- (b) the estate of a person is sequestered, separate returns must be made for the periods— 45
- (i) commencing on the first day of that year of assessment and ending on the date preceding the date of sequestration; and
- (ii) commencing on the date of sequestration and ending on the last day of that year of assessment.”; and
- (b) by the substitution in the Afrikaans text for paragraph (b) of subsection (13) of the following paragraph: 50
 “(b) in die geval van ‘n maatskappy, vir die hele tydperk van die betrokke [finansiële jaar] boekjaar van daardie maatskappy wat die jaar van aanslag uitmaak.”.

Insertion of section 67 in Act 58 of 1962

62. The following section is hereby inserted in the Income Tax Act, 1962, after section 66: 55

“Registration as taxpayer

67. (1) Every person who at any time becomes liable for any normal tax or who becomes liable to submit any return contemplated in section 66 must, within 60 days after so becoming a taxpayer, apply to the Commissioner to be registered as a taxpayer.

(2) Subsection (1) does not apply in respect of any person whose income is derived solely from net remuneration, as defined in paragraph 11B of the Fourth Schedule, and the employees’ tax required to be deducted or withheld from that net remuneration under the Fourth Schedule consists solely of Standard Income Tax on Employees.”.

Amendment of section 70 of Act 58 of 1962, as amended by section 11 of Act 6 of 1963, section 20 of Act 90 of 1964, section 43 of Act 85 of 1974, section 24 of Act 69 of 1975, section 26 of Act 28 of 1997, section 37 of Act 53 of 1999, section 42 of Act 30 of 2000, section 44 of Act 59 of 2000 and section 49 of Act 60 of 2001

63. Section 70 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (2) of paragraph (b).

Amendment of section 70B of Act 58 of 1962, as inserted by section 21 of Act 5 of 2001 and amended by section 50 of Act 60 of 2001

64. Section 70B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every person who administers a portfolio of financial instruments, [as defined in the Eighth Schedule], on behalf of any other person and has the mandate of that other person to buy and sell any such financial instruments on such other person’s behalf, shall furnish to the Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe.”.

Substitution of section 72A of Act 58 of 1962, as inserted by section 46 of Act 59 of 2000 and amended by section 42 of Act 74 of 2002

65. (1) The following section hereby substitutes section 72A of the Income Tax Act, 1962:

“Return [as to participation right in] relating to controlled foreign company

72A. (1) Every resident who on the last day of the foreign tax year of a controlled foreign company immediately before a foreign company ceases to be a controlled foreign company directly or indirectly, together with any connected person in relation to that resident, holds at least 10 per cent of the participation rights in any controlled foreign company (otherwise than indirectly through a company which is a resident), must submit to the Commissioner together with the return contemplated in section 66 in respect of that year of assessment a return containing—

- (a) the name, address and country of residence of the controlled foreign company;
- (b) a description of the various classes of participation rights in that controlled foreign company;
- (c) the percentage and class of participation rights held by the resident, whether directly, indirectly or together with connected persons and any such rights held by all connected persons;
- (d) the rights of that person to participate in—
 - (i) any dividends of that controlled foreign company; and
 - (ii) any distribution upon the liquidation of that controlled foreign company,
 and any such rights of all connected persons;
- (e) the determination of the net income of the controlled foreign company and the calculation of the proportional amount relating thereto;

(f) a description of any amount of tax proved to be payable by that controlled foreign company to the government of any other country in respect of any income contemplated in paragraph (e), including particulars relating to the country in which that tax was payable and the underlying profits to which that foreign tax relates.

(2) A resident must together with the return contemplated in subsection (1), submit a copy of the financial statements of the controlled foreign company (prepared in accordance with generally accepted accounting practice) for the relevant foreign tax year, as defined in section 9D, of that controlled foreign company in respect of which there is an inclusion in the income of that resident in terms of section 9D.

(3) Where a person in respect of any year of assessment fails to comply with the provisions of—

(a) subsection (1)(c) in respect of the participation rights held in any controlled foreign company and no reasonable grounds exist for that person to believe that such person was not subject to that requirement—

(i) that person shall be deemed to hold all the participation rights in that controlled foreign company for purposes of section 9D, unless that person proves otherwise;

(ii) the exclusions contemplated in section 9D(9) shall not apply in determining the proportional amount of the net income of that controlled foreign company which must be included in the income of that person in terms of section 9D; and

(iii) the provisions of section 6quat shall not apply in respect of any tax proved to be payable to the government of any other country with respect to the proportional amount of the net income of that controlled foreign company which is included in the income of that person in terms of section 9D; or

(b) subsection (2) and no reasonable grounds exist either for that failure which is outside the control of the person or for that person to believe that such person was not subject to that requirement—

(i) the proportional amount which must be included in the income of that person in terms of section 9D for that year shall be determined with reference only to the receipts and accruals of the controlled foreign company; and

(ii) the provisions of section 6quat shall not apply in respect of any tax proved to be payable to the government of any other country with respect to the proportional amount of the net income of that controlled foreign company which is included in the income of that person in terms of section 9D.”.

(2) Subsection (1) shall come into operation on 1 January 2004 and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 73A of Act 58 of 1962, as inserted by section 22 of Act 5 of 2001 and amended by section 43 of Act 74 of 2002

66. Section 73A of the Income Tax Act, 1962, is hereby amended—

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

“Record keeping by persons [deriving income other than remuneration] who render returns”; and

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

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

Amendment of section 74 of Act 58 of 1962, as substituted by section 14 of Act 46 of 1996 and amended by section 27 of Act 28 of 1997 and section 51 of Act 60 of 2001

67. Section 74 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definitions of “documents” and “information” of the following definitions:

“‘documents’ include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any [**‘computer print-out’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)**] printout of information generated, sent, received, stored, displayed or processed by electronic means;
 ‘information’ includes any [**data stored by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983**] electronic representations of information in any form;”.

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993, section 27 of Act 21 of 1994, section 15 of Act 46 of 1996, section 39 of Act 53 of 1999, section 44 of Act 30 of 2000, section 23 of Act 5 of 2001, section 18 of Act 19 of 2001, section 52 of Act 60 of 2001 and section 45 of Act 74 of 2002

68. (1) Section 75 of the Income Tax Act, 1962, is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph:

(aA) any person who fails to register as a taxpayer as contemplated in section 67;”.

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

Insertion of section 76A in Act 58 of 1962

69. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 76:

“Reportable Arrangements

76A. (1) For purposes of this section—
 ‘arrangement’ means any transaction, operation or scheme;
 ‘reportable arrangement’ means—
 (a) any arrangement in terms of which—
 (i) the calculation of interest as defined in section 24J, finance costs, fees or any other charges is wholly or partly dependent on the tax treatment of that arrangement;
 (ii) provision is made for the variation of that interest, finance costs, fees or any other charges should the actual tax treatment differ from the anticipated tax treatment (otherwise than by reason of any change in the provisions of the Act) or should the anticipated tax treatment be challenged by the Commissioner; and
 (iii) the potential amount of the variation contemplated in subparagraph (ii) exceeds R5 million,
 but does not include any arrangement identified by the Minister by notice in the *Gazette*, which is not likely to lead to any undue tax benefit;
 (b) any arrangement which has certain characteristics identified by the Minister by notice in the *Gazette* which are likely to lead to an undue tax benefit;
 ‘tax benefit’ means any reduction in or postponement of the liability of a person for any tax, duty, levy, charge or other amount in terms of any Act administered by the Commissioner based on the anticipated tax treatment of the arrangement.

(2) Every company or trust which derives or will derive any tax benefit in terms of a reportable arrangement must report that arrangement to the Commissioner at such place as the Commissioner may determine within 60 days after the date that any amount is first received by or accrues to any person or is paid or actually incurred by any person in terms of that arrangement: Provided that the Commissioner may extend the period of 60 days by no more than 60 days where he or she is satisfied that reasonable grounds exist for the delay in reporting that arrangement.

(3) The company or trust must in so reporting provide to the Commissioner—

(a) a description of all the steps and key features of the reportable arrangement;

(b) a list of all the parties to that arrangement;

(c) copies of all the signed documents relating to that arrangement; and

(d) any financial model of that arrangement, including any spreadsheet or computer model of the implementation thereof:

Provided that the company or trust may in so reporting, where another company or trust has reported that arrangement to the Commissioner, provide to the Commissioner only the name and address of that other company or trust and the date on which that arrangement was reported.

(4)(a) Where a company or trust fails to report a reportable arrangement as contemplated in subsections (2) and (3), that company or trust shall be deemed to have entered into that arrangement in a manner or by means as contemplated in section 103(1)(b)(i) or to have created rights or obligations as contemplated in section 103(1)(b)(ii).

(b) Where a company or trust willfully or recklessly fails to report a reportable arrangement as contemplated in subsections (2) and (3), that company or trust shall also be required to pay, in addition to the tax chargeable in respect of its taxable income, an amount equal to the tax benefits in terms of that arrangement to which that company or trust is entitled. Provided that the Commissioner may remit the additional charge or any part thereof where he or she is satisfied that there were extenuating circumstances.

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

(3) Any arrangement identified by the Minister in terms of section 76A of the Income Tax Act, 1962, must be tabled in Parliament within 12 months from the date of publication of the notice for incorporation into that Act.

Amendment of section 79B of Act 58 of 1962, as inserted by section 48 of Act 74 of 2002

70. Section 79B of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The Commissioner must withdraw any assessment issued in respect of—

(a) the estate of a person for the period prior to the date of sequestration; and

(b) the insolvent estate of that person,

where the sequestration order is set aside.”.

Amendment of section 81 of Act 58 of 1962, as amended by section 27 of Act 69 of 1975, section 15 of Act 70 of 1989 and section 53 of Act 60 of 2001

71. (1) Section 81 of the Income Tax Act, 1962, is hereby amended—

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

“Provided that the period for objection may not be so extended—

(a) for a period exceeding 30 days, unless exceptional circumstances exist which gave rise to the delay in lodging the objection;

(b) where more than three years have lapsed from the date of the assessment; or

(c) where the grounds for objection are based wholly or mainly on any change in practice generally prevailing which applied on the date of that assessment.”; and

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

“(6) Where any dispute between the Commissioner and the person aggrieved by an assessment has been **[settled]** resolved in accordance with the alternative dispute resolution procedures prescribed in the **[regulations, as]** rules contemplated in section **[107B]** 107A(2), the Commissioner **[may]** must alter that assessment for purposes of giving effect to that **[settlement]** resolution.”.

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

Amendment of section 83 of Act 58 of 1962, as amended by section 21 of Act 90 of 1964, section 22 of Act 103 of 1976, section 15 of Act 104 of 1979, section 19 of Act 96 of 1985, section 16 of Act 70 of 1989, section 36 of Act 129 of 1991, section 36 of Act 113 of 1993, section 30 of Act 28 of 1997, section 45 of Act 30 of 2000, section 54 of Act 60 of 2001 and section 29 of Act 30 of 2002

72. Section 83 of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after subsection (4B) of the following subsections:

“(4C) If at any stage during the hearing of an appeal, or after hearing of the appeal but before judgment has been handed down—

(a) one of the judges dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal shall be heard *de novo*, unless the court consists of three judges, as contemplated in subsection (4B), and the remaining judges constitute the majority of judges before whom the hearing was commenced, in which case the hearing shall proceed before the remaining judges and members; or

(b) one of the members dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal shall proceed before the President and remaining members.

(4D) The judgement of the remaining judges and members contemplated in subsection (4C), shall be the judgement of the court.”;

(b) by the addition in subsection (13) of the word “and” at the end of paragraph (c);

(c) by the addition to subsection (13) of the following paragraph:

“(d) hear any interlocutory application and decide on procedural matters as provided for in the rules of the tax court contemplated in section 107A.”.

Amendment of section 83A of Act 58 of 1962, as inserted by section 37 of Act 129 of 1991 and amended by section 37 of Act 113 of 1993, Government Notice R.1245 of 26 September 1997, section 47 of Act 59 of 2000, section 28 of Act 5 of 2001 and section 55 of Act 60 of 2001

73. Section 83A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (7) for the words of paragraph (b) preceding subparagraph (i) of the following words:

“within [30 days before the date of the hearing of the appeal] the period prescribed in the rules contemplated in section 107A, furnish the members of the board and the appellant with a written notice of the time and place of the hearing of the appeal and a dossier containing copies of—”.

Insertion of Part IIIA in Chapter III of Act 58 of 1962

74. The following Part is hereby inserted in Chapter III of the Income Tax Act, 1962, after Part III:

“PART IIIA

Settlement of Dispute

Definitions

88A. For the purposes of this Part—

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| <p>‘dispute’ means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law;</p> <p>‘settle’ means to resolve a dispute by compromising any disputed liability, otherwise than by way of either the Commissioner or the person concerned accepting the other party’s interpretation of the facts or the law applicable to those facts, or of both the facts and the law, and ‘settlement’ shall be construed accordingly.</p> | <p>5</p> <p>10</p> |
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Purpose of Part

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| <p>88B. (1) The basic principle in law is that it is the duty of the Commissioner to assess and collect taxes, duties, levies, charges and other amounts according to the laws enacted by Parliament and not to forgo any such taxes, duties, levies, charges or other amounts properly chargeable and payable.</p> <p>(2) Circumstances may, however, require that the strictness and rigidity of this basic principle be tempered where it would be to the best advantage of the state.</p> <p>(3) The purpose of this Part is to prescribe the circumstances whereunder it would be inappropriate and whereunder it would be appropriate that the basic rule be tempered and for a decision to be taken to settle a dispute.</p> | <p>15</p> <p>20</p> <p>25</p> |
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Circumstances where inappropriate to settle

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| <p>88C. It will be inappropriate and not to the best advantage of the state to settle a dispute, where, in the opinion of the Commissioner,—</p> | |
| <p>(a) the action on the part of the person concerned which relates to the dispute, constitutes intentional tax evasion or fraud and no circumstances contemplated in section 88D exist;</p> <p>(b) the settlement would be contrary to the law or a clearly established practice of the Commissioner on the matter, and no exceptional circumstances exist to justify a departure from the law or practice;</p> <p>(c) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose;</p> <p>(d) the pursuit of the matter through the courts will significantly promote compliance of the tax laws and the case is suitable for this purpose; or</p> <p>(e) the person concerned has not complied with the provisions of any Act administered by the Commissioner and the Commissioner is of the opinion that the non-compliance is of a serious nature.</p> | <p>30</p> <p>35</p> <p>40</p> |

Circumstances where appropriate to settle

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| <p>88D. The Commissioner may, where it will be to the best advantage of the state, settle a dispute, in whole or in part, on a basis that is fair and equitable to both the person concerned and the Commissioner, having regard to <i>inter alia</i>—</p> | |
| <p>(a) whether that settlement would be in the interest of good management of the tax system, overall fairness and the best use of the Commissioner’s resources;</p> <p>(b) the cost of litigation in comparison to the possible benefits with reference to—</p> <p style="margin-left: 20px;">(i) the prospects of success in a court;</p> <p style="margin-left: 20px;">(ii) the prospects of the collection of the amounts due; and</p> <p style="margin-left: 20px;">(iii) the costs associated with collection;</p> | <p>45</p> <p>50</p> |

- (c) whether there are any—
 - (i) complex factual or quantum issues in contention; or
 - (ii) evidentiary difficulties, which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative dispute resolution procedures or the courts: 5
- (d) a situation where a participant or a group of participants in a tax avoidance arrangement has accepted the Commissioner's position in the dispute, in which case the settlement may be negotiated in an appropriate manner required to unwind existing structures and arrangements; or 10
- (e) whether the settlement of the dispute will promote compliance of the tax laws by the person concerned or a group of taxpayers or a section of the public in a cost-effective way.

Power to settle and disclosure

88E. (1) A dispute may be settled, as contemplated in section 88D, by the Commissioner personally or any official delegated by the Commissioner for that purpose. 15

(2) The Commissioner or the relevant delegated official must ensure that he or she does not have, or did not at any stage have, a personal, family, social, business, professional, employment or financial relationship with the person concerned. 20

Procedure for settlement

88F. (1) The person concerned should at all times disclose all relevant facts in discussions during the process of settling a dispute. 25

(2) Any settlement will be conditional upon full disclosure of material facts known to the person concerned at the time of settlement.

(3) All disputes settled in whole or in part, as contemplated in section 88D, must be evidenced by a written agreement between the parties in the format as may be prescribed by the Commissioner and must include details on— 30

- (a) how each particular issue was settled;
- (b) relevant undertakings by the parties;
- (c) treatment of that issue in future years;
- (d) withdrawal of objections and appeals; and
- (e) arrangements for payment. 35

(4) The written agreement will represent the final agreed position between the parties and will be in full and final settlement of all or the specified aspects of the dispute in question between the parties.

(5) The Commissioner must, where the dispute is not ultimately settled, explain the further rights of objection and appeal to the person concerned. 40

(6) Subject to section 88G, the Commissioner and delegated official must adhere to the secrecy provisions with regard to the information relating to the person concerned and may not disclose the terms of any agreement to third parties unless authorised by law or by the person concerned.

(7) The Commissioner must adhere to the terms of the agreement, unless it emerges that material facts were not disclosed to it or there was fraud or misrepresentation of the facts. 45

(8) The Commissioner has the right to recover any outstanding amounts involved in the settlement in full where the person concerned fails to adhere to any agreed payment arrangement. 50

Register of settlements and reporting

88G. (1) The Commissioner must—

- (a) maintain a register of all disputes settled in the circumstances contained in these regulations; and 55
- (b) fully document the process in terms of which each dispute was settled, which document must be signed on behalf of the Commissioner and the person concerned.

(2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister of Finance a summary of all disputes which were settled in whole or in part during the period of 12 months covered by that summary, which must—

- (a) be in such format which, subject to section 4(1)(b), does not disclose the identity of the person concerned, and be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister of Finance, as the case may be; and
- (b) contain details of the number of disputes settled or part settled, the amount of revenue forgone and estimated amount of savings in costs of litigation, which must be reflected in respect of main classes of taxpayers or sections of the public.

Alteration of assessment on settlement

88H. (1) Where any dispute between the Commissioner and the person aggrieved by an assessment has been settled in terms of this Part, the Commissioner may, notwithstanding anything to the contrary contained in this Act, alter that assessment for purposes of giving effect to that settlement.

(2) Any altered assessment contemplated in subsection (1) shall not be subject to objection and appeal.”.

Substitution of section 89~~sex~~ of Act 58 of 1962

75. The following section hereby substitutes section 89~~sex~~ of the Income Tax Act, 1962:

“Determination of day and time for payment of tax, interest or penalties

89~~sex~~. (1) Where any day specified for any payment to be made under the provisions of this Act, or the last day of any period within which payment under any provision of this Act shall be made, falls on a Saturday, Sunday or a public holiday, such payment shall be made not later than the last business day falling prior to such Saturday, Sunday or public holiday.

(2) The Commissioner may prescribe the time by which any payment made on any business day must be received by the Commissioner and any payment received after that time shall be deemed to have been made on the first business day following that day.”.

Amendment of section 106 of Act 58 of 1962, as substituted by section 29 of Act 69 of 1975, amended by section 26 of Act 103 of 1976, section 51 of Act 30 of 2000 and section 53 of Act 74 of 2002

76. Section 106 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (2) for the word “and” at the end of paragraph (c) of the word “or”;
- (b) by the insertion in subsection (2) after paragraph (c) of the following paragraph:
“(cA) if transmitted to that person by electronic means to that person’s last known electronic address;”;
- (c) by the addition in subsection (2) of the word “or” at the end of subparagraph (iii) of paragraph (d); and
- (d) by the addition in subsection (2) to paragraph (d) of the following subparagraph:
“(iv) if transmitted to the company or its public officer by electronic means to that company’s or public officer’s last known electronic address;”.

Repeal of section 107B of Act 58 of 1962

77. Section 107B of the Income Tax Act, 1962, is hereby repealed.

Amendment of paragraph 1 of First Schedule to Act 58 of 1962, as substituted by section 15 of Act 72 of 1963

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

“(a) a reference to a year of assessment shall in the case of any taxpayer who has under the provisions of **[subsection (13) or (13)ter of section sixty-six]** **section 66(13A)** of this Act been permitted to furnish accounts in respect of the income derived by him from pastoral, agricultural or other farming operations made up to a date other than the last day of the relevant year of assessment, be construed as a reference to the period covered by such accounts; and”.

Amendment of paragraph 8 of First Schedule to Act 58 of 1962, as deleted by section 19 of Act 72 of 1963 and inserted by section 38 of Act 90 of 1988

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

“(1) Where any farmer has during any year of assessment incurred expenditure in respect of the acquisition of livestock, the deduction which may be allowed to him under section 11(a) **[or (b)]** of this Act in respect of the cost price of such livestock shall be limited to an amount which, together with the value of livestock held and not disposed of by him at the beginning of such year, does not exceed the income received by or accrued to him from farming during such year and the value of livestock held and not disposed of by him at the end of such year.”.

Amendment of paragraph 12 of First Schedule to Act 58 of 1962

80. Paragraph 12 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (3B) of the following subparagraph:

“(3C) The amount of any expenditure carried forward and deemed to be incurred by a person in the next succeeding year in terms of subparagraph (3) must be reduced by any amount of expenditure in respect of which an election has been made in terms of paragraph 20A(1) of the Eighth Schedule.”.

Amendment of paragraph 19 of First Schedule to Act 58 of 1962, as added by section 28 of Act 95 of 1967 and amended by section 43 of Act 89 of 1969, section 33 of Act 88 of 1971, section 22 of Act 90 of 1972, section 32 of Act 69 of 1975, section 30 of Act 103 of 1976, section 16 of Act 104 of 1979, section 25 of Act 104 of 1980, section 29 of Act 91 of 1982, section 45 of Act 94 of 1983, section 42 of Act 129 of 1991, section 34 of Act 21 of 1995 and section 40 of Act 28 of 1997

81. Paragraph 19 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (4) of the following subparagraph:

“(4) In determining under this paragraph any amount of normal tax which is or would be chargeable no regard shall be had to the deductions provided for in section 6 **[or 6bis]** of this Act, and nothing in this paragraph contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of **[his] that person's** taxable income.”.

Amendment of paragraph 1 of Second Schedule to Act 58 of 1962

82. Paragraph 1 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in “formula C” for item (i) of symbol “B” in subparagraph (b) of the following item:

“(i) where the number of completed years of employment are in terms of the rules of the fund in question taken into account for the purpose of determining the amount of the benefit payable to him by the fund, the number of completed years of employment of the taxpayer after 1 March 1998, including previous or other periods of service approved as pensionable service in terms of the rules of any fund after 1 March 1998, other than completed years of employment representing—

- (aa) any benefit of a member of any fund referred to in paragraph (a) or (b) of the definition of 'pension fund' in section 1, hereinafter referred to as a 'public sector fund', which is after 1 March 1998 paid for the benefit of such member into another public sector fund in respect of any previous or other periods of service or membership accounted for prior to 1 March 1998 in terms of the rules of any public sector fund; or 5
- (bb) years of pensionable service purchased after 1 March 1998 by 'non-statutory force members' as defined in the Government Employees' Pension Law, 1996 (Proclamation No. 21 of 1996), in respect of any previous or other periods of service accounted for prior to 1 March 1998; or". 10

Amendment of paragraph 6 of Fourth Schedule to Act 58 of 1962

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

- (a) by the substitution for subparagraph (2) of the following subparagraphs: 15
- “(2) The Commissioner may [if he is satisfied that the employer's failure to pay the amount of employees' tax was not due to an intent to postpone payment of such tax or otherwise evade his obligations under this Act and was not designed to enable the employee concerned to evade such employee's obligations under this Act] 20
having regard to the circumstances of the case remit the whole or any part of the penalty imposed under subparagraph (1).”;
- (b) by the insertion after subparagraph (2) of the following paragraphs:
- “(2A) If an employer fails to pay an amount of employees' tax with intent to evade that employer's or any employee's obligations under this Act, the employer may be liable to pay a penalty not exceeding an amount equal to twice the amount of employees' tax which that employer so failed to pay. 25
- (2B) Any penalty contemplated in subparagraph (2A)—
- (a) must be determined by the Commissioner and must be paid within such period as the Commissioner may determine; and 30
- (b) shall be deemed to be a tax for purposes of—
- (i) the determination of any interest payable in terms of section 89; and
- (ii) the application of the provisions relating to the allocation of payments by the employer in terms of section 89ter (1A).” 35

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

Substitution of paragraph 11 of Fourth Schedule to Act 58 of 1962, as substituted 40 by section 39 of Act 21 of 1995

84. The following paragraph hereby substitutes paragraph 11 of the Fourth Schedule to the Income Tax Act, 1962:

- “11. The Commissioner may, having regard to the circumstances of the case, issue a directive— 45
- (a) to an employer authorising that employer—
- (i) to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to any employee of that employer; or
- (ii) to deduct or withhold by way of employees' tax from any remuneration in terms of paragraph 2, a specified amount or an amount to be determined in accordance with a specified rate or scale, 50
in order to alleviate hardship to that employee due to circumstances outside the control of the employee or where the remuneration constitutes commission or to correct any error in regard to the calculation of employees' tax and the employer must comply with that directive; or 55
- (b) to an employer which is a private company, authorising that employer—
- (i) to refrain from paying any amount under paragraph 11C(2); or

- (ii) to pay under that paragraph a specified amount or an amount to be determined in accordance with a specified rate or scale, in order to alleviate hardship to an employer which is a private company and the employer must comply with that directive.".

Amendment of paragraph 11C of Fourth Schedule to Act 58 of 1962, as inserted by section 22 of Act 19 of 2001 5

85. (1) Paragraph 11C of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for subitem (A) of item (aa) of paragraph (ii) of the proviso of the following subitem: 10
 "(A) 'T' shall be determined based on the balance of remuneration paid or payable by that company to that director in respect of the year of assessment preceding that last year of assessment, increased by an amount equal to 20 per cent (or such other percentage as the Minister may from time to time determine by notice in the *Gazette*) of that remuneration; and"; 15
- (b) by the substitution for subparagraph (2) of the following subparagraph:
 "(2) Subject to subparagraph (6), every private company shall on a monthly basis, in respect of every director of that company, pay to the Commissioner an amount determined in accordance with subparagraph (3), which shall for the purposes of sections 79, 89bis, 89ter, 89quat, 90, 102 and 102A of the Act and paragraphs 1, 4, 6, 11, 12, 13 and 14 and Parts III and IV of this Schedule, be deemed to be an amount of employees' tax which was required to be deducted or withheld by the company as an employer in terms of paragraph 2 of this Schedule."; 20 25
- (c) by the substitution for subparagraph (4) of the following subparagraph:
 "(4) A company shall have a right of recovery against a director in respect of any amount paid by that company in terms of subparagraph [(1)](2), in respect of that director and that amount may, in addition to any other right of recovery, be deducted from [future remuneration] any amount which is or may become payable by that company to that director."; and 30
- (d) by the addition of the following subparagraph:
 "(6) Subparagraph (2) does not apply to a private company in respect of a director where more than 75 per cent of the amount contemplated in 'T' in subparagraph (1)(b) in respect of the last year of assessment of that director as contemplated in 'T', represents fixed monthly payments of remuneration paid by that company to that director during that year of assessment." 35
- (2) Subsection (1)(d) shall come into operation on 1 March 2004 and shall apply in respect of any year of assessment commencing on or after that date. 40

Amendment of paragraph 16 of Fourth Schedule to Act 58 of 1962

86. Paragraph 16 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 45

- (a) by the substitution for subparagraphs (1) and (2) of the following subparagraphs:
 "(1) Every representative employer shall, as regards the remuneration which [he] the employer whom he or she represents pays or is liable to pay to any employee or which is paid or payable by the representative employer in his or her representative capacity, be subject in all respects to the same duties, responsibilities and liabilities under this Schedule as if that remuneration were remuneration paid or liable to be paid by him or her in his or her personal capacity. 50
- (2) Any liability for employees' tax or interest on employees' tax or any penalty imposed under this Part [shall be recovered from the] of any person who in terms of the definition of 'employer' in paragraph 1 is an employer by virtue of his having paid or become liable to pay remuneration in a fiduciary capacity or in his capacity as a trustee in an 55

- insolvent estate, an executor, or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund, or from the representative employer, **[but]** shall be limited to the extent only of any assets belonging to the person, body, trust, estate or fund represented or administered by him which may be in his possession or under his management, disposal or control[, **and the provisions of sections ninety-six and ninety-seven of this Act shall *mutatis mutandis* apply in the case of such first-mentioned person or representative employer as if he were a representative taxpayer].**”;
- (b) by the insertion after subparagraph (2) of the following subparagraphs:
- “(2A) Every representative employer or other person who is personally liable as contemplated in subparagraphs (2), (2B) or (2C), who, as such, pays any employees’ tax, additional tax, penalty or interest due under this Act shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his or her possession or may come to the representative employer in his or her representative capacity, an amount equal to the amount so paid.
- (2B) Every representative employer and person contemplated in subparagraph (2) shall be personally liable for the payment of any employees’ tax, additional tax, penalty or interest payable by that representative employer in his or her representative capacity to the extent that the representative employer or person, while it remains unpaid,—
- (a) alienates, charges or disposes of any money received or accrued in respect of which the tax is chargeable; or
- (b) disposes of or parts with any fund or money belonging to the employer whom he or she represents which is in his or her possession or comes to him or her after the employees’ tax, additional tax, penalty or interest has become payable, if such employees’ tax, additional tax, penalty or interest could legally have been paid from or out of such fund or money.
- (2C) Where an employer is a company, every shareholder and director who controls or is regularly involved in the management of the company’s overall financial affairs shall be personally liable for the employees’ tax, additional tax, penalty or interest for which the company is liable.
- (2D) Notwithstanding subparagraph (2), the employees’ tax, additional tax, penalty or interest for which any representative employer or other person is liable in terms of subsection (2B) or (2C) shall be fully recoverable by the Commissioner from that representative employer or other person to the extent that it remains unpaid by the employer.

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995 and section 37 of Act 5 of 2001

87. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words in subitem (ii) of item (e) preceding the proviso of the following words:

- “(ii) in respect of which a notice of assessment relevant to the estimate has been issued by the Commissioner not less than **[fourteen]** 60 days before the date on which the estimate is submitted to the Commissioner:”.

Amendment of paragraph 20A of Fourth Schedule to Act 58 of 1962, as inserted by section 25 of Act 52 of 1970 and amended by section 45 of Act 88 of 1971, section 52 of Act 85 of 1974 and section 40 of Act 121 of 1984

88. Paragraph 20A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) Subject to the provisions of subparagraphs (2) and (3), where any provisional taxpayer is liable for the payment of normal tax in respect of any amount of taxable income derived by [him] that provisional taxpayer during any year of assessment and the estimate of his or her taxable income for that year required to be submitted by him or her under paragraph 19(1) during the period contemplated in paragraph 21(1)(b), 22(1) or 23(b), as the case may be, was not submitted by him or her on or before the last day of that year or, if the period for the payment of provisional tax due by him or her in respect of such period has under paragraph 25(2) been extended to a date later than the end of such year, on or before such date, the taxpayer shall, unless the Commissioner has estimated the said taxable income under paragraph 19(2) or has increased the amount thereof under paragraph 19(3), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of such taxable income, an amount by way of additional tax equal to 20 per cent of the amount by which the normal tax payable by him or her in respect of such taxable income exceeds the sum of any amounts of provisional tax paid by him or her in respect of such taxable income within any period allowed for the payment of such provisional tax under this Part or within any extension of such period under paragraph 25(2) and any amounts of employees’ tax deducted or withheld from his or her remuneration by his or her employer during such year.”.

Amendment of paragraph 21 of Fourth Schedule to Act 58 of 1962, as substituted by section 30 of Act 88 of 1965 and amended by section 46 of Act 88 of 1971 and amended by section 59 of Act 74 of 2002

89. Paragraph 21 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for items (a) and (b) of the following items:

- “(a) within the period of six months reckoned from the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such taxpayer (as determined in accordance with paragraph 17) for normal tax in respect of that year, less the total amount of—
 - (i) any employees’ tax deducted by the taxpayer’s employer from the taxpayer’s remuneration during such period; and
 - (ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6quat; and
- (b) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such taxpayer (as finally determined in accordance with paragraph 17) for normal tax in respect of that year, less the [sum of the amounts] total amount of—
 - (i) any employees’ tax deducted by the taxpayer’s employer from the taxpayer’s remuneration during such year and the amount paid in terms of item (a); and
 - (ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6quat.”.

Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 65 of Act 60 of 2001 and section 63 of Act 74 of 2002

90. Paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “valuation date” of the following definition:

- “‘valuation date’ means—
- (a) in the case of any person contemplated in section 10(1)(cA) which after 1 October 2001 ceases to be an exempt person for purposes of that section and paragraph 63, the date on which that person so ceases to be an exempt person; or
 - (b) in any other case, 1 October 2001;”.

Amendment of paragraph 2 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 25 of Act 19 of 2001, section 66 of Act 60 of 2001 and section 64 of Act 74 of 2002

91. Paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item (a) of the following words: 5

“(1) Subject to paragraph [86] 97, this Schedule applies to the disposal on or after valuation date-”.

Amendment of paragraph 11 of the Eighth Schedule of Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 71 of Act 60 of 2001 and section 67 of Act 74 of 2002 10

92. (1) Paragraph 11 of the Eighth Schedule of the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (h) of following item:

“(h) by a lender to a borrower or by a borrower to a lender where any [marketable] security has been lent by a lender to a borrower in terms of a ‘securities lending arrangement’ [as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968), and another marketable security of the same kind and of the same or equivalent quantity and quality has been or will be returned by the borrower to that lender before the end of the 12 month period contemplated in that definition;] or” 15 20

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

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 72 of Act 60 of 2001 and section 68 of Act 74 of 2002 25

93. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) Where an event described in subparagraph (2) occurs, a person will be treated for the purposes of this Schedule as having disposed of an asset described in that subparagraph for [proceeds] an amount received or accrued equal to the market value of the asset at the time of the event and to have immediately reacquired the asset at an expenditure equal to that market value, which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”;

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

“(a) a person who ceases to be a resident, [or a resident who is as a result of the application of any agreement entered into by the Republic for the avoidance of double taxation treated as not being a resident], in respect of all assets of that person other than assets in the Republic listed in paragraph 2(1)(b)(i) and (ii);”;

(c) by the substitution in subparagraph (5) for the words following subitem (ii) of item (a) of the following:

“but does not apply where—

(aa) the amount of that reduction or discharge constituted—

(A) a capital gain in terms of paragraph 3(b)(ii); or

(B) has been taken into account in terms of section 8(4)(m) or 20(1)(a)(ii) or paragraph 20(3); or

(bb) that person and that creditor are members of the same group of companies unless—

(A) that debt (or any substituted debt) was acquired directly or indirectly from a person who is not a member of that group of companies; or

- (B) that person or another person became members of that group of companies after that debt (or any substituted debt) arose; and these transactions were part of a scheme to avoid any tax otherwise imposed by virtue of this subparagraph.”.

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

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

Amendment of paragraph 19 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

94. Paragraph 19 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(2) The provisions of subparagraph (1) shall not apply to the extent that dividends **[were received by or accrued to a holding company or an intermediate company with respect to the company distributing the dividends]** were declared by a company to a shareholder (as defined in Part III of the Act) which forms part of the same group of companies as the company declaring the dividend, where the controlling company and the company declaring the dividend are residents.”;

(b) by the substitution in subparagraph (3) for subitem (i) of item (b) of the following subitem:

“(i) any foreign dividend **[as defined in section 9E,]** that has been included in the income of the person disposing of the share and any foreign dividend which is exempt from tax in terms of section **[9E(7)(e)(i)] 10(1)(k)(ii)(cc);**”; and

(c) by the deletion of paragraph (d) of subparagraph (3).

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 26 of Act 19 of 2001, section 75 of Act 60 of 2001 and section 71 of Act 74 of 2002

95. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(g) the following amounts actually incurred as expenditure directly related to the cost of ownership of the asset, which is used wholly and exclusively for business purposes or which constitutes a share listed on a recognised **[stock]** exchange or a participatory interest in a portfolio of a collective investment scheme—”; and

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

“(iii) a share in a controlled foreign company, an amount equal to the proportional amount of the net income of that company (or any other controlled foreign company in relation to that resident in which that controlled foreign company directly or indirectly has an interest) which was included in the income of that person in terms of section 9D during any year of assessment (other than such portion of that proportional amount which relates to the amount of any taxable capital gain included in that proportional amount) plus the proportional amount of the net capital gains of that controlled foreign company, less the amount of any foreign dividend distributed by that company to that person during any year of assessment which was exempt from tax in terms of section **[9E(7)(e)(i)] 10(1)(k)(ii)(cc);** or”.

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

Insertion of paragraph 20A of Eighth Schedule to Act 58 of 1962

96. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 20:

“Provisions relating to farming development expenditure

20A. (1) Despite the provisions of paragraph 20(3)(a), where a person carrying on pastoral, agricultural or other farming operations as contemplated in section 26, incurred expenditure in respect of the matters referred to in items (c) to (i) of paragraph 12(1) of the First Schedule (referred to in this paragraph as ‘capital development expenditure’) and that person—

(a) ceased to carry on such pastoral, agricultural or other farming operations during any year of assessment; and

(b) at any time thereafter disposes of immovable property on which those operations were carried on,

that person may elect that the amount of the capital development expenditure, or part thereof, which is carried forward and deemed in terms of paragraph 12(3) of the First Schedule to be expenditure which has been incurred in the next succeeding year of assessment for purposes of paragraph 12(1) of the First Schedule (as reduced in terms of paragraph 12(3B) of the First Schedule, if applicable), must be treated as expenditure incurred and paid in respect of that immovable property for the purposes of this Part.

(2) The amount of the capital development expenditure in respect of which the election may be made in terms of subparagraph (1) may not exceed the proceeds from the disposal of that immovable property contemplated in subparagraph (1), reduced by—

(a) in the case of a pre-valuation date asset, any other amount allowable in terms of paragraph 25; or

(b) in any other case, paragraph 20.

(3) Where a person adopts or determines the market value of immovable property on which pastoral, agricultural or other farming operations were carried on as the valuation date value of that asset in terms of paragraph 29(4), only capital development expenditure incurred by that person on or after 1 October 2001 must be taken into account for the purpose of calculating the amount in respect of which an election can be made in terms of subparagraph (1).”.

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

Amendment of paragraph 27 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 79 of Act 60 of 2001 and amended by section 75 of Act 74 of 2002

97. Paragraph 27 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (4) of the following subparagraph:

“(4) Where the provisions of subparagraph (3) do not apply, the valuation date value of that asset, contemplated in subparagraph (1), is the time-apportionment base cost of that asset, as contemplated in paragraph 30.”.

Amendment of paragraph 30 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 82 of Act 60 of 2001 and section 77 of Act 74 of 2002

98. (1) Paragraph 30 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the first formula in subparagraph (4) of the following formula:

$$“Y = B + \frac{[(P_1 - B_1) \times N]}{T + N},”.$$

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

Substitution of paragraph 33 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 80 of Act 74 of 2002

99. The following paragraph hereby substitutes paragraph 33 of the Eighth Schedule to the Income Tax Act, 1962:

“Part-disposals

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33. (1) Subject to subparagraphs (2), (3), **[and]** (4) and (5), where part of an asset is disposed of—

- (a) the proportion of the **[base cost]** expenditure attributable to the part disposed of is an amount which bears to the **[base cost]** expenditure allowable in terms of paragraph 20 in respect of the entire asset the same proportion as the market value of the part disposed of bears to the market value of the entire asset immediately prior to that disposal; and 10
- (b) the market value on valuation date attributable to the part disposed of is an amount which bears to the market value adopted or determined in terms of paragraph 29(4) in respect of the entire asset the same proportion as the market value of the part disposed of bears to the market value of the entire asset immediately prior to that disposal. 15

(2) Subject to subparagraph (4), where a part of the **[base cost]** expenditure allowable in terms of paragraph 20 or the market value adopted or determined in terms of paragraph 29(4) in respect of an asset can be directly attributed to the part of the asset that is disposed of or retained then the apportionment contemplated in subparagraph (1) does not apply in respect of that part of that **[the base cost]** expenditure or market value as the case may be. 20

(3) For the purposes of subparagraph (1) and (2) there is no part-disposal of an asset by a person in respect of— 25

- (a) the granting of an option by that person in respect of an asset; **[and]**
- (b) the granting, variation or cession of a right of use or occupation of that asset by that person in respect of which no proceeds are received by or accrue to that person; 30
- (c) the improving or enhancing of that asset which is leased to that person;
- or
- (d) the replacement of part of that asset in repairing that asset.

(4) Where proceeds are received by or accrue to a person in respect of the granting, variation or cession of a right of use or occupation of an asset by that person, the portion of the **[base cost]** expenditure allowable in terms of paragraph 20 or market value adopted or determined in terms of paragraph 29(4) attributable to the part of the asset in respect of which those proceeds were received or accrued is an amount which bears to **[the base cost]** that expenditure or market value as the case may be of the entire asset the same proportion as those proceeds bear to the market value of the entire asset immediately prior to that disposal. 35 40

(5) Where a person has adopted the 20 percent of proceeds method contemplated in paragraph 26(1)(b) in determining the valuation date value of a part of an asset that has been disposed of, that person must adopt that method in determining the valuation date value of any remaining part of that asset.” 45

Amendment of paragraph 39 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 88 of Act 60 of 2001

100. Paragraph 39 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph: 50

“(1) A person must, when determining the aggregate capital gain or aggregate capital loss of that person, disregard any capital loss determined in respect of the disposal of an asset to any person—

- (a) who was a connected person in relation to that person immediately before that disposal; or 55
- (b) which is—
- (i) a member of the same group of companies as that person; or

- (ii) a trust with a beneficiary which is a member of the same group of companies as that person,
immediately after that disposal, subject to subparagraph (3).”.

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 91 of Act 60 of 2001 and substituted by section 84 of Act 74 of 2002 5

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

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

“(1) Subject to subparagraph (4), where a person during any year of assessment disposes of an asset for proceeds **[denominated]** in a **[foreign]** currency other than currency of the Republic after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal in that **[foreign]** currency and that capital gain or capital loss must be translated **[into the local currency]** in accordance with the provisions of section 25D(2).”;

- (b) by the substitution for subparagraph (2) of the following subparagraph:

“(2) **[Despite section 25D,]** Where a person disposes of an asset, (other than an asset contemplated in **[subsection]** subparagraph (4)), for proceeds which are either received or accrued or denominated for purposes of financial reporting of a permanent establishment of that person in any currency (hereinafter referred to as the ‘currency of disposal’) after having incurred expenditure in respect of that asset which is either actually incurred or denominated for purposes of financial reporting in another currency (hereinafter referred to as the ‘currency of expenditure’), that person must for purposes of determining the capital gain or capital loss on the disposal of that asset—

- (a) where the currency of expenditure is actually incurred or denominated in the local currency, translate the proceeds into the local currency at the average exchange rate for that year of assessment during which that asset was disposed of;

- (b) where the currency of disposal is received or accrued or denominated in the local currency, translate the expenditure which is allowable in terms of paragraph 20, into the local currency at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the local currency did not exist at the time of expenditure, the first available exchange rate for that local currency); and

- (c) where neither the currency of disposal nor the currency of expenditure constitutes local currency—

- (i) translate the amount of the expenditure, which is allowable in terms of paragraph 20, to the currency of disposal at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the currency of disposal did not exist at the time of expenditure, the first available exchange rate for that currency of disposal); and

- (ii) translate the amount of the capital gain or capital loss determined in foreign currency to the local currency at the average exchange rate for the year of assessment during which the asset was disposed of, and must translate the amount of the capital gain or loss in accordance with the provisions of section 25D.”;

- (c) by the substitution in subparagraph (4) for the words preceding item (a) of the following words:

“**[Despite section 25D,]** Where a person during any year of assessment disposes of any-”;

- (d) by the substitution in subparagraph (4) for item (b) of the following item:

“(b) asset the capital gain or capital loss from the disposal of which is derived or deemed to have been derived from a source in the Republic, as contemplated in section 9(2) (other than [an asset contemplated in section 9(2)(b)(i) or] an asset contemplated in paragraph (b) of the definition of ‘foreign currency asset’ in paragraph 84),”;

(e) by the substitution in subparagraph (4) for item (ii) of the following item:

“(ii) the expenditure incurred in respect of that foreign equity instrument or that asset, as the case may be, into the currency of the Republic at the average exchange rate for the year of assessment during which that expenditure was incurred.”;

(f) by the substitution in subparagraph (5) for item (b) of the following item:

“(b) the base cost of the person acquiring that asset must for purposes of paragraphs 12, 38 and 40[, 42 and 67] be treated as being denominated in that currency.”;

(g) by the insertion after subparagraph (5) of the following subparagraph:

“(5A) Where paragraph 12(5) applies in respect of any debt owed by a person in any foreign currency, the base cost of the claim which is treated as having been acquired by that person in terms of paragraph 12(5)(b)(i) must be treated as being denominated in that foreign currency.”; and

(h) by the substitution in subparagraph (7) for item (a) of the definition of “local currency” of the following item:

“(a) in relation to a permanent establishment of a person, the currency used by that permanent establishment for purposes of financial reporting (other than the currency of any country in the common monetary area);”.

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

Amendment of paragraph 55 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 32 of Act 19 of 2001, section 98 of Act 60 of 2001 and section 87 of Act 74 of 2002

102. Paragraph 55 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(b) in respect of any policy, where that person is or was an employee or director whose life was insured in terms of that policy and any premiums paid by that person’s employer were deducted in terms of section 11(w);”;

(b) by the substitution in subparagraph (1) for the words in item (c) preceding subitem (i) of the following words:

“(c) in respect of a policy that was taken out to insure against the death, disability or severe illness of that person by any other person who was a partner of that person, or held any shares or similar interest in a company in which that person held any share or similar interest, for the purpose of enabling that person to acquire, upon the death, disability or severe illness of that person, the whole or part of—”.

Substitution of paragraph 62 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

103. (1) The following paragraph is hereby substituted for paragraph 62 of the Eighth Schedule to the Income Tax Act, 1962:

“Donations and bequests to public benefit organisations and exempt persons

62. A person must disregard a capital gain or capital loss determined in respect of the donation or bequest of an asset by that person to—

(a) the Government or any provincial administration;

- (b) a public benefit organisation exempt from tax in terms of section 10(1)(cN);
- (c) a person approved by the Commissioner in terms of section 10(1)(cA) or (d); or
- (d) a person referred to in section 10(1)(b), (cE) or (e).”

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

Substitution of paragraph 63 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 91 of Act 74 of 2002

104. The following paragraph is hereby substituted for paragraph 63 of the Eighth Schedule to the Income Tax Act, 1962:

“Exempt persons

63. A person must disregard any capital gain or capital loss in respect of the disposal of an asset where **[all the receipts and accruals of that person would have been]** any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10[**if those receipts and accruals had been received by or accrued to that person]** were it to be received by or to accrue to that person.”

Insertion of paragraph 64B in Eighth Schedule to Act 58 of 1962

105. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 64A:

“Disposal of interest in equity share capital of foreign company

64B. (1) For purposes of this paragraph—

‘foreign company’ means a foreign company as defined in section 9D;
‘foreign financial instrument holding company’ means a foreign financial instrument holding company as defined in section 41.

(2) A person must disregard any capital gain or capital loss determined in respect of the disposal of any interest in the equity share capital of any foreign company (other than a foreign financial instrument holding company), if—

(a) that person (in the case of a company, together with any other company in the same group of companies as that company) immediately before that disposal—

(i) held more than 25 per cent of the equity share capital in that foreign company; and

(ii) held the interest contemplated in subitem (i) for a period of at least 18 months prior to that disposal, unless that person is a company and that interest was acquired by that company from any other company which forms part of the same group of companies and that company and other company in aggregate held that interest for more than 18 months: Provided that in determining the total equity share capital in a foreign company, there shall not be taken into account any share which would have constituted an affected instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; and

(b) in the case where that person is a resident, that interest is disposed of to a person who is not a resident.”

(2) Subsection (1) shall come into operation on 1 June 2004 and shall apply in respect of the disposal of any interest in the equity share capital of any foreign company on or after that date.

Substitution for paragraph 65 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 103 of Act 60 of 2001

106. (1) The following paragraph hereby substitutes paragraph 65 of the Eighth Schedule to the Income Tax Act, 1962:

“Involuntary disposal

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65. (1) A person may elect that this paragraph applies in respect of the disposal of an asset (other than a financial instrument), where—

- (a) that asset is disposed of by way of operation of law, theft or destruction;
 - (b) proceeds accrue to that person by way of compensation in respect of that disposal;
 - (c) those proceeds are equal to or exceed the base cost of that asset;
 - (d)
 - (i) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more asset (hereinafter referred to as the ‘replacement asset or assets’);
 - (ii) all the replacement assets constitute assets contemplated in section 9(2);
 - (iii) the contracts for the acquisition of the replacement asset or assets have all been or will be concluded within 12 months after the date of the disposal of that asset; and
 - (iv) the replacement asset or assets will all be brought into use within three years of the disposal of that asset:
- Provided that the Commissioner may extend the period within which the contract must be concluded or asset brought into use by no more than six months if all reasonable steps were taken to conclude those contracts or bring those assets into use; and
- (e) that asset is not deemed to have been disposed of and to have been reacquired by that person.

(2) Where a person has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5) and (6) be disregarded when determining that person’s aggregate capital gain or aggregate capital loss.

(3) Where a person acquires more than one replacement asset as contemplated in subparagraph (1), that person must, in applying subparagraphs (4) and (5), apportion the capital gain derived from the disposal of that asset to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

(4) Where a replacement asset contemplated in subsection (1) constitutes a depreciable asset, the person must treat as a capital gain for a year of assessment, so much of the disregarded capital gain contemplated in subparagraph (3), as bears to the total amount of that disregarded gain apportioned to that replacement asset as contemplated in subsection (3) the same ratio as the amount of any capital deduction or allowance allowed in that year in respect of the replacement asset bears to the total amount of the capital deduction or allowance (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable for all years of assessment in respect of that replacement asset.

(5) Where a person during any year of assessment disposes of a replacement asset contemplated in subparagraph (4) and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4), that person must treat that portion of disregarded gain as a capital gain from the disposal of that replacement asset in that year of assessment.

- (6) Where a person fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in subsection (1)(d)(iii) or (iv), subparagraph (2) shall not apply and that person must—
- (a) treat the capital gain contemplated in subparagraph (2) as a capital gain on the date on which the relevant period ends;
 - (b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (a); and
 - (c) treat that interest as a capital gain on the date contemplated in item (a) when determining that person's aggregate capital gain or aggregate capital loss.
- (7) Where a replacement asset or assets constitute personal use assets, the provisions of this paragraph shall not apply, unless the asset disposed of as contemplated in subparagraph (1)(a) constitutes a personal use asset.”.

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

Substitution for paragraph 66 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 33 of Act 19 of 2001

107. (1) The following paragraph hereby substitutes paragraph 66 of the Eighth Schedule to the Income Tax Act, 1962:

“Reinvestment in replacement assets

66. (1) A person may elect that this paragraph applies in respect of the disposal of an asset, where—

- (a) that asset qualified for a capital deduction or allowance in terms of section 11(e), 12B, 12C, 12E, 14 or 14bis;
- (b) the proceeds received or accrued from that disposal are equal to or exceed the base cost of that asset;
- (c) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more assets (hereinafter referred to as the ‘replacement asset or assets’), all of which will qualify for a capital deduction or allowance in terms of section 11(e), 12B, 12C or 12E;
- (d) all the replacement assets constitute assets contemplated in section 9(2)(b);
- (e) the contracts for the acquisition of a replacement asset or assets are or will be concluded within 12 months after the asset contemplated in item (a) is disposed of and are all brought into use within three years after that disposal: Provided that the Commissioner may extend the period by which the contracts must be concluded or assets brought into use by no more than six months if all reasonable steps were taken to conclude those contracts or bring those assets into use; and
- (f) that asset is not deemed to have been disposed of and to have been reacquired by that person.

(2) Where a person has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5), (6) and (7), be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

(3) Where a person acquires more than one replacement asset as contemplated in subparagraph (1), that person must, in applying subparagraphs (4), (5) and (6), apportion the capital gain derived from the disposal of that asset to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

(4) A person must treat as a capital gain for a year of assessment, so much of the disregarded capital gain contemplated in subparagraph (2), as bears to the total amount of that disregarded capital gain apportioned to that replacement asset as contemplated in subparagraph (3) the same ratio as the

amount of any deduction or allowance allowed in that year in terms of section 11(e), 12B, 12C or 12E in respect of the replacement asset bears to the total amount of the deduction or allowance in terms of that section (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable for all years of assessment in respect of that replacement asset. 5

(5) Where a person during any year of assessment disposes of a replacement asset and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4) or (6), that person must treat that portion of disregarded capital gain as a capital gain from the disposal of that replacement asset in that year of assessment. 10

(6) Where during any year of assessment a person ceases to use a replacement asset for the purposes of that person's trade and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4) or (5), that person must treat that portion of disregarded capital gain as a capital gain for that year of assessment. 15

(7) Where a person fails to conclude a contract or to bring any replacement asset into use within the period prescribed in subparagraph (1)(e), subparagraph (2) shall not apply and that person must— 20

- (a) treat the capital gain contemplated in subparagraph (2) as a capital gain on the date that the relevant period ends;
- (b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (a); and 25
- (c) treat that interest as a capital gain on the date contemplated in item (a) when determining that person's aggregate capital gain or aggregate capital loss.”.

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

Amendment of paragraph 67 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 104 of Act 60 of 2001

108. Paragraph 67 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (a) of the following item: 35
 - “(1) (a) Subject to subparagraph [3] (3), a person (hereinafter referred to as the ‘transferor’) must disregard any capital gain or capital loss determined in respect of the disposal of an asset to his or her spouse (hereinafter referred to as the ‘transferee’).”; and
- (b) by the substitution in subparagraph (1) for subitem (iii) of item (b) of the following subitem: 40
 - “(iii) incurred that expenditure on the same date and in the same currency that it was incurred by the transferor; and”.

Amendment of paragraph 67A of Eighth Schedule to Act 58 of 1962

109. (1) Paragraph 67A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph: 45

- “(3) For the purposes of subparagraph (2) proceeds include the amount of any cash received and the market value on the date of acquisition of any assets acquired by a holder of a participatory interest from the collective investment scheme prior to the disposal of his or her participatory interest to the extent that that amount and that market value do not constitute gross income in the hands of that holder. 50
- (4) Any asset acquired by a holder of a participatory interest as contemplated in subparagraph (3) must be treated as having been acquired for expenditure equal to the market value of that asset on the date of acquisition, which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposals of participatory interests on or after that date. 55

Insertion of paragraph 67B of Eighth Schedule to Act 58 of 1962

110. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 67A:

“Transfer of a unit by a share block company to its member

67B. (1) Where any company which operates a share block scheme as contemplated in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), transfers a unit in immovable property in terms of Item 8 of Schedule 1 to that Act to a person who holds a share in that company,—

(a) that company must disregard any capital gain or capital loss determined in respect of that disposal of that unit to that person; and

(b) that person must disregard any capital gain or capital loss determined in respect of the disposal of that share.

(2) Where a person who held a share in a share block company acquires a unit in the circumstances contemplated in subparagraph (1), that person must be treated as having—

(a) acquired that unit for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in acquiring that share;

(b) effected improvements to that unit for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in effecting improvements to the immovable property in respect of which that person had a right of use as a result of the ownership of that share;

(c) acquired that unit on the date that that share was acquired;

(d) incurred the amount of expenditure contemplated in paragraph 20 on the same date that it was incurred by that person to acquire that share and improve that immovable property;

(e) used that unit in the same manner as that person used the immovable property in respect of which that person had a right of use as a result of the ownership of that share; and

(f) adopted or determined the market value as contemplated in paragraph 29(4) as the valuation date value of that unit, for an amount equal to the market value adopted or determined by that person in terms of that paragraph for that share.”.

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

Insertion of paragraph 67C of Eighth Schedule to Act 58 of 1962

111. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 67B:

“Mineral rights conversions and renewals

67C. Notwithstanding paragraph 11, there is no disposal where—

(a) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002), wholly or partially continues in force or is wholly or partially converted into a new right pursuant to the same Schedule; or

(b) any prospecting right, mining right, exploration right or production right, mining permit or retention permit, as defined in section 1 of the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002), is wholly or partially renewed in terms of this Act, and the continued, converted or renewed right or permit will be treated as one and the same asset as the right before continuation, conversion or renewal for purposes for purposes of this Act.”.

(2) Subsection (1) shall come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), comes into operation.

Amendment of paragraph 72 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 94 of Act 74 of 2002

112. Paragraph 72 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by substitution for subparagraph (a) of the following subparagraph:

- “(a) a resident has made a donation, settlement or other disposition to any person (other than **[a public benefit organisation contemplated in section 30 or a foreign] an entity, [as defined in section 9D,] which is not resident and which is [of a] similar [nature] to a public benefit organisation contemplated in section 30); and”.**

Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 106 of Act 60 of 2001 and section 95 of Act 74 of 2002

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

- (a) by the deletion in subparagraph (1) of the definition of “company”;
(b) by the insertion after the definition of “capital distribution” of the following definition:

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

- (a) by a company subject to the condition that it be payable to a shareholder of the company registered in that company’s share register on a specified date, in which case it must be that date;
(b) by a company to a shareholder of that company otherwise than by way of a formal declaration of a dividend, in which case it must be the date on which the shareholder became entitled to that distribution; or
(c) by the liquidator of a company to a shareholder of that company in the course of the winding up or liquidation of that company, in which case it must be the date on which the shareholder became entitled to that distribution.”; and

- (c) by the substitution in subparagraph (1) for the definition of “share” of the following definition:

“‘share’ in relation to a company means—

- (a) any share capital of, or member’s interest in, that company and any right or interest in or to such share capital or member’s interest, whether or not that share capital or member’s interest carries a right to participate in dividends or a capital distribution; or
(b) a participatory interest in a portfolio of a collective investment scheme referred to in paragraph (e) of the definition of ‘company’.”.

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

Amendment of paragraph 75 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

114. (1) Paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of subparagraph (2) by the substitution for subparagraph (1) of the following subparagraph:

“Where a company makes a distribution of an asset *in specie* to a shareholder (including an interim dividend), that company must be treated as having disposed of that asset to that shareholder for **[proceeds] an amount received or accrued equal to the market value of that asset on the date of distribution.**”; and

- (b) by the deletion of subparagraph (2).

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

Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962

115. (1) Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution of subparagraph (1) of the following subparagraph:

“Subject to subparagraph (2), where a capital distribution of cash or an asset *in specie* is received by or accrues to a shareholder in respect of a share, that shareholder must where the date of distribution of that capital distribution occurs— 5

- (a) **[where that capital distribution is received or accrues]** before valuation date, reduce the expenditure contemplated in paragraph 20 actually incurred before valuation date in respect of that share by the amount of that cash or the market value of that asset *in specie*; and 10
- (b) **[where that capital distribution is received or accrues]** on or after valuation date, treat the amount of that cash or the market value of that asset *in specie* as proceeds when that share is disposed of.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of disposals of assets on or after that date. 15

Amendment of paragraph 78 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 97 of Act 74 of 2002

116. (1) Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) Where a company issues capitalisation shares, those capitalisation shares must be treated as having been acquired for expenditure incurred and paid of nil, except to the extent that the issue of those shares constitutes a dividend, in which case they must be treated as having been acquired on the date of distribution for expenditure incurred and paid equal to the amount of that dividend.”; 25

- (b) by the substitution in subparagraph (2) for item (b) of the following item:

“(b) those newly issued shares must be treated as—

- (i) having **[an aggregate base cost]** been acquired for an amount of expenditure equal to the aggregate [base cost] expenditure allowable in terms of paragraph 20 incurred in respect of [the] those previously held shares which expenditure must be treated as having been incurred on the same date as the expenditure incurred in respect of those previously held shares [with the aggregate base cost allocated among all those newly issued shares in proportion to their relative market values; and]; 30

- (ii) having been acquired on the same date as those previously held shares; and

- (iii) having a market value equal to any market value adopted or determined in respect of those previously held shares in terms of paragraph 29(4), 40

with the aggregate expenditure or market value as the case may be allocated among all those newly issued shares in proportion to their relative market values.”; and 45

- (c) by the substitution in subparagraph (3) for item (b) of the following item:

“(b) both the substitution and that capital distribution must be treated as separate transactions with the **[base cost]** expenditure allowable in terms of paragraph 20 and any market value adopted or determined in terms of paragraph 29(4) in respect of those previously held shares allocated between both transactions based on the relative market values of the newly issued shares on the date of distribution and that capital distribution received in exchange therefor.”. 50

(2) Subsection (1)(b) and (c) shall to the extent it replaces the words “base cost” with “expenditure allowable in terms of paragraph 20 in respect of” be deemed to have come into operation on 1 October 2001. 55

Amendment of paragraph 84 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 34 of Act 19 of 2001, section 110 of Act 60 of 2001 and section 40 of Act 30 of 2002 and substituted by section 100 of Act 74 of 2002

117. Paragraph 84 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “foreign currency” of the following definition:

“‘foreign currency’ means any currency [**which is not legal tender in**] other than the currency of the Republic.”

Amendment of paragraph 86 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 35 of Act 19 of 2001 and section 112 of Act 60 of 2001 and substituted by section 100 of Act 74 of 2002

118. (1) Paragraph 86 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) of the item (a) of the following item: 15
 “(a) the disposal of a foreign currency asset (other than a personal foreign currency asset), is so much of the amount by which the foreign currency proceeds exceed the foreign currency base cost, as has not otherwise been taken into account in determining the taxable income of that person (or of that person’s spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset.”; 20

(b) by the substitution in subparagraph (2) of the item (a) of the following item: 25
 “(a) the disposal of a foreign currency asset (other than a personal foreign currency asset), is so much of the amount by which the foreign currency base cost exceed the foreign currency proceeds, as has not otherwise been taken into account in determining the taxable income of that person (or of that person’s spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset.”. 30

(2) Subsection (1) is deemed to have come into operation on 1 March 2003.

Amendment of paragraph 88 of Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002

119. Paragraph 88 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 35

(a) by the substitution for subparagraph (1) of the following subparagraph: 40
 “(1) A person must for purposes of this Part be treated as having acquired on valuation date all foreign currency assets (other than personal foreign currency assets) of that person which [**have not been**] were held and not disposed of by that person [before] on that date.”; 40

(b) by the substitution for subparagraph (2) of the following subparagraph: 45
 “(2) Where a person[—
 (a)] ceases to be a resident [**or**]
 [(b) **who is a resident, is as a result of the application of any agreement entered into by the Republic with any other country for the avoidance of double taxation, treated as not being a resident,**] 50

that person must be treated as having disposed of all foreign currency assets (other than personal foreign currency assets) acquired and not disposed of by that person immediately before so ceasing to be [**or treated as not being**] a resident.”; and 50

(c) by the substitution of subparagraph (6) for the following subparagraph: 55
 “(6) Where a person ceases to hold a foreign currency asset as a personal foreign currency asset, that person must be treated as having acquired that foreign currency asset on the date that the person so ceases to hold that foreign currency asset as a personal foreign currency asset.”. 55

Amendment of paragraph 92 of Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002

120. (1) Paragraph 92 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (a) of the following subparagraph:

“(a) reducing that amount by[—

(i)] any capital gain determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part), which was included in that amount; or

[(ii) **any other amount included therein, which is or was during any year of assessment included in the taxable income of that person (or of that person’s spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset; or]**”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2003.

Amendment of paragraph 93 of Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002

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

(a) by the substitution in subparagraph (3) for item (c) of the following item:

“(c) acquire any foreign equity instrument or any asset in local currency as contemplated in paragraph 43(4); or”; and

(b) by the addition of the following subparagraph:

“(4) Where a person incurred any foreign currency liability before the valuation date, that person must, for purposes of this paragraph be treated as having incurred that foreign currency liability on the valuation date.”.

Substitution of paragraph 94 of Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002

122. The following paragraph hereby substitutes paragraph 94 of the Eighth Schedule to the Income Tax Act, 1962:

“Involuntary disposal of foreign currency asset

94. A person must disregard any foreign currency capital gain or foreign currency capital loss determined in respect of an involuntary disposal of any foreign currency asset by way of expropriation, theft or physical loss.”.

Amendment of paragraph 96 of Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002

123. Paragraph 96 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

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

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

“(a) the market value shall be treated as a reference to the relevant value in foreign currency translated to the currency of the Republic at the average exchange rate for the relevant year of assessment; and”.

Amendment of paragraph 1 of Part I of Ninth Schedule to Act 58 of 1962

124. Paragraph 1 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following item:

“(q) The promotion of access to media and a free press.”.

Amendment of paragraph 3 of Part I of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002

125. (1) Paragraph 3 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (a) of the following subparagraph: 5
 “(a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of **[poor and needy]** persons whose monthly household income falls within the housing subsidy eligibility requirements of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997).”; 10
- (b) by the substitution for subparagraph (c) of the following subparagraph:
 “(c) The provision of residential care for retired persons, where—
 (i) more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and **[regular meals and]** nursing services are provided by the organisation 15
 carrying on such activity; and
 (ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost.”; and
- (c) by the substitution for subparagraph (d) of the following subparagraph: 20
 “(d) Building and equipping of—
 (i) **[community centres,]** clinics **[sport facilities]** or crèches; or
 (ii) community centres, sport facilities or other facilities of a similar nature,
 for the benefit of the poor and needy.”. 25

(2) Subsection (1)(b) shall come into operation on 1 January 2005 and shall apply in respect of years of assessment commencing on or after that date.

Amendment of paragraph 11 of Part I of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002

126. Paragraph 11 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (b) for the words preceding item (i) of the following words: “The bid to host or hosting of any international event approved by the Minister for purposes of **[these regulations]** this paragraph, having regard to—”. 30

Amendment of paragraph 1 of Part II of Ninth Schedule to act 58 of 1962, as inserted by section 41 of Act 30 of 2002 35

127. Paragraph 1 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraphs:

- “(c) The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatised persons. 40
- (d) The provision of disaster relief.
- (e) The rescue or care of persons in distress.
- (f) The provision of poverty relief.
- (g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
- (h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances. 45
- (i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.
- (j) The promotion or advocacy of human rights and democracy. 50
- (k) The protection of the safety of the general public.
- (l) The promotion or protection of family stability.
- (m) The provision of legal services for poor and needy persons.
- (n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents. 55
- (o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.

(p) Community development for poor and needy persons and anti-poverty initiatives, including—

- (i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;
 - (ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or
 - (iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation.
- (q) The promotion of access to media and a free press.”.

Amendment of paragraph 2 of Part II of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002

128. Paragraph 2 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraphs:

- “(e) The provision of blood transfusion, organ donor or similar services.
- (f) The provision of primary health care education, sex education or family planning.”.

Amendment of paragraph 3 of Part II of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002

129. Paragraph 3 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

- “(l) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.
- (m) Career guidance and counseling services provided to persons for purposes of attending any school or higher education institution as envisaged in subparagraphs (a) and (b).
- (n) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).
- (o) The provision of scholarships, bursaries and awards for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.”.

Addition of paragraph 5 to Part II of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002

130. The following paragraph is hereby added to Part II of the Ninth Schedule to the Income Tax Act, 1962:

“LAND AND HOUSING

- 5. (a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income falls within the housing subsidy eligibility requirements of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997).
- (b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph (a).
- (c) Building and equipping of clinics or crèches for the benefit of the poor and needy.
- (d) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.
- (e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.”.

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1996, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000 and section 113 of Act 60 of 2001

131. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the insertion after the definition of “customs duty” of the following definitions:

“ ‘degrouper depot’ means any degrouper depot for air cargo contemplated in section 6(1)(hC) and licensed under the provisions of this Act”; and

“ ‘degrouper operator’ means the licensee of a degrouper depot;”;

(b) by the substitution for the definition of “duty” of the following definition:

“ ‘duty’ means any duty leviable under this Act and subject to—

(a) section 47B, any air passenger tax leviable under that section; and

(b) Chapter VA, any environmental levy leviable under that Chapter.”;

(c) by the insertion after the definition of “entry for home consumption” of the following definitions:

“ ‘environmental levy’ means any duty leviable under Part 3 of Schedule No. 1 on any goods which have been manufactured in or imported into the Republic; and

‘environmental levy goods’ means any goods specified in Part 3 of Schedule No. 1 which have been manufactured in or imported into the Republic.”;

(d) by the insertion after the definition of “importer” of the following definition:

“ ‘International Trade Administration Commission’ means the International Trade Administration Commission established by section 7 of the International Trade Administration Act, 2002 (Act No. 71 of 2002);”.

(2) Subsection (1)(b) and (c) shall come into operation on the date Chapter VA comes into operation.

Amendment of section 3 of Act 91 of 1964, as amended by section 114 of Act 60 of 2001 and section 42 of Act 30 of 2002

132. Section 3 of the Customs and Excise Act, 1964, is hereby amended—

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

“(1) Any duty imposed or power conferred on the Commissioner may be performed or exercised by the Commissioner personally or by an officer or any other person under a delegation from or under the control or direction of the Commissioner.

(2) (a) Any decision made and any notice or communication signed or issued by any such officer or person may be withdrawn or amended by the Commissioner or by the officer or person concerned (with effect from the date of making such decision or signing or issuing such notice or communication or the date of withdrawal or amendment thereof) and shall, until it has been so withdrawn, be deemed, except for the purposes of this subsection, to have been made, signed or issued by the Commissioner.

(b) The Commissioner may make rules regarding any matter which the Commissioner considers reasonably necessary and useful for the purposes of administering the provisions of this section.”; and

(b) by the deletion of subsections (3) and (4).

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002 and section 39 of Act 12 of 2003 5

133. Section 4 of the Customs and Excise Act, 1964 is hereby amended—

(a) by the insertion of the following subsection:

“3E. Notwithstanding anything to the contrary contained in subsection (3), the Auditor-General shall in the performance of the Auditor-General’s duties in terms of section 3 of the Auditor-General Act, 1995 (Act No. 12 of 1995) have access to the documents in the possession or custody of the Commissioner or a Controller.” 10

(b) by the addition of the following paragraph:

“(8A) (a) An officer may stop and detain any goods in order to determine whether the provisions of this Act or any other law have been complied with in respect of such goods as contemplated in section 107(2)(a). 15

(b) (i) The release of goods may be stopped at any time while such goods are under customs control. 20

(ii) For the purposes of this subsection the expression “goods under customs control” includes but is not limited to any goods to which this Act relates which are—

(aa) in, on or at any premises licensed, registered or approved for any purpose in terms of this Act; 25

(bb) in, on or at any premises or at any place appointed or prescribed in terms of section 6;

(cc) deemed in terms of any provision of this Act to be under customs control.

(c) (i) Whenever any goods are stopped as contemplated in this paragraph the goods may be detained under the control of a Controller for any reasonable period required to determine whether the goods comply with the provisions of this Act or such other law. 30

(ii) Any detention under this section is not subject to the provisions of section 93 and the officer or Controller must release the goods if found to comply with the provisions of this Act or such other law. 35

(iii) Where at any time during such detention the officer or Controller decides that it is necessary to establish whether the goods are liable to forfeiture, a detention under section 88(1)(a) may be substituted for the detention under this subsection. 40

(d) The provisions of this subsection shall not be construed as affecting any other provision of this Act, including the provisions of this section, relating to the detention, examination, or seizure of goods.”

Amendment of section 6 of Act 91 of 1964, as amended by section 2 of Act 71 of 1975, section 1 of Act 52 of 1986, section 6 of Act 59 of 1990, section 3 of Act 45 of 1995 and section 116 of Act 60 of 2001 45

134. Section 6 of the Customs and Excise Act, 1964 is hereby amended by—

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

“(g) places where secure premises to be known as transit sheds may be established into which goods before due entry thereof, may be removed from a ship, aircraft or vehicle or to which such goods may be removed after removal from such ship, aircraft or vehicle.”; 50

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

“(hC) places where degrouping depots may be established to which air cargo may be removed from a transit shed before due entry thereof for— 55

(a) the storage, detention, unpacking or examination of consolidated packing or its contents;

- (b) the removal to another such degrouping depot or the delivery to importers of such contents after due entry thereof;
- (c) such other purposes or activities as may be specified by rule.

Amendment of section 35A of Act 91 of 1964, as inserted by section 5 of Act 112 of 1977 and amended by section 24 of Act 45 of 1995

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135. Section 35A of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

- “(1) The Commissioner may prescribe by rule—
- (a) the sizes and types of containers which may be used by a manufacturer for the packing of cigarettes and cigarette tobacco; 10
 - (b) distinguishing marks or numbers in addition to the stamp impression referred to in subsection (2) which must or must not appear on containers of cigarettes and cigarette tobacco removed from a customs and excise warehouse for home consumption or for export;
 - (c) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section. 15
- (2) No licensee may remove any cigarettes or allow any cigarettes to be removed from a customs and excise warehouse unless—
- (a) if removed for home consumption, a stamp impression determined by the Commissioner has been made on their containers; or 20
 - (b) if removed for export, such stamp impression does not appear on the containers; and
 - (c) the cigarettes otherwise comply in every respect with the requirements prescribed by rule.”.

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995, section 51 of Act 53 of 1999, section 43 of Act 19 of 2001 and section 125 of Act 60 of 2001

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136. Section 44 of the Customs and Excise Act, 1964 is hereby amended—

- (a) by the substitution in subsection (5) for paragraph (b) of the following paragraph:
 - “(b) if due entry of the goods has not been made—
 - (i) upon delivery thereof to the State Warehouse or other place indicated for the purposes of this section by the Controller; or 35
 - (ii) in the case of air cargo, upon receipt thereof by a degrouping operator.”;
- (b) by the deletion of paragraph (d).”; and
- (c) by the insertion after subsection (5B) of the following subsection: 40
 - “(5C) (a) The degrouping operator shall be liable for the duty on all goods received by the—
 - (i) degrouping operator at the degrouping depot;
 - (ii) degrouping operator from the transit shed operator (as defined by rule) where the degrouping operator takes delivery from the transit shed operator at the transit shed; 45
 - (iii) degrouping operator from another degrouping operator.
 - (b) The liability for duty of the degrouping operator shall cease—
 - (i) upon receipt of such goods by any other degrouping operator in accordance with the procedures prescribed by rule in terms of section 64G; 50
 - (ii) upon lawful delivery after due entry thereof to the importer or the importer’s agent;
 - (iii) in respect of any goods of which due entry has not been made upon delivery thereof to the state warehouse or other place indicated for the purposes of this section by the Controller; 55
 - (iv) on complying with any condition or procedure prescribed by rule in terms of section 64G.”.

Amendment of section 46 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995 and section 52 of Act 53 of 1999

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

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

“(c) such other processes as the Commissioner may, at the request of the International Trade Administration Commission, by rule prescribe in respect of any class or kind of goods, have taken place in the production or manufacture of goods of such class or kind in that territory.”; and

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

“(2) The Commissioner may from time to time, at the request of the International Trade Administration Commission, by rule increase the percentage prescribed in subsection (1), in regard to any class or kind of imported goods, or in regard to any class or kind of such goods from a particular territory, to which that subsection applies.”.

Amendment of section 47 of Act 91 of 1964

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138. (1) Section 47 of the Customs and Excise Act, 1964, is hereby amended—

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

“(1) Subject to the provisions of this Act, duty shall be paid for the benefit of the National Revenue Fund on all imported goods, all excisable goods, all surcharge goods, all environmental levy goods and all fuel levy goods in accordance with the provisions of Schedule No. 1 at the time of entry for home consumption of such goods: Provided that the Commissioner may condone any underpayment of such duty where the amount of such underpayment in the case of—

(a) goods imported by post is less than fifty cents;

(b) goods imported in any other manner is less than five rand; or

(c) excisable goods is less than two rand.”

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

“(7) To the extent that any goods, classifiable under any tariff heading or subheading of Part 1 of Schedule No. 1 that is expressly quoted in any tariff item, environmental levy item or fuel levy item or item of Part 2, 3, 5 or 6 of the said Schedule or in any item in Schedule No. 2, are specified in any such tariff item, environmental levy item or fuel levy item or item, the item concerned shall be deemed to include only such goods classifiable under such tariff heading or subheading.”;

- (c) by the substitution in subsection (9) for subparagraph (i) of paragraph (b) of the following paragraph:

“(i) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under paragraph (d), any amount due in terms thereof shall, notwithstanding that [an internal administrative appeal has been filed as contemplated in section 95A or] any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown, suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.”;

- (d) by the substitution in subsection (9) for subparagraph (cc) of paragraph (b)(ii) of the following subparagraph:

“(cc) any amendment of a determination or new determination is made effective under paragraph (d).[or section 95A]”;

- (e) by the substitution in subsection (9) for paragraph (c) of the following paragraph:

- “(c) Whenever a court amends or orders the Commissioner to amend any determination made under subsection (9) (a) or (d) or any determination is amended or a new determination is made under paragraph (d) [or section 95A] the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (b)(i) for any period during which such determination remained in force.”; 5
- (f) by the substitution in subsection (9) for subparagraph (bb) of paragraph (d) (i) of the following subparagraph: 10
- “(bb) [except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed, before it has been considered,] amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”; 15
- (g) by the substitution in subsection (9) for subparagraph (i) of paragraph (b) of the following subparagraph: 20
- “(i) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under paragraph (d), any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown, suspend such payment until the date the appeal is decided or the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.”; 25
- (h) by the substitution in subsection (9) for subparagraph (cc) of paragraph (b)(ii) of the following subparagraph: 30
- “(cc) any amendment of a determination or new determination is made effective under paragraph (d) or as contemplated in section 77F.”;
- (i) by the substitution in subsection (9) for paragraph (c) of the following paragraph: 35
- “(c) Whenever a court amends or orders the Commissioner to amend any determination made under subsection (9)(a) or (d) or any determination is amended or a new determination is made under paragraph (d) or section 77E or 77F, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (b)(i) for any period during which such determination remained in force.”; and; 40
- (j) by the substitution in subsection (9) for subparagraph (bb) of paragraph (d)(i) of the following subparagraph: 45
- “(bb) except when an internal administrative appeal has been lodged in terms of the provisions of Part A of Chapter XA, or if lodged, before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”. 50
- (2) (a) The amendments in subsection (1)(a) and (b) shall come into operation on the date Chapter VA comes into operation. 55
- (b) The amendments in subsection (1)(c), (d), (e) and (f) shall come into operation on the date of promulgation of this Act.
- (c) The amendments in subsection (1)(g), (h), (i) and (j) shall come into operation on the date Parts A and B of Chapter XA comes into operation.

Insertion of Chapter VA in Act 91 of 1964

139. (1) The following Chapter is hereby inserted in the Customs and Excise Act, 1964, after Chapter V:

“Chapter VA

Environmental Levies

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Imposition of Environmental Levy

47C. A levy known as environmental levy shall be leviable on such imported goods and goods manufactured in the Republic as may be specified in any item of Part 3 of Schedule No. 1.

Rate of Environmental Levy

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47D. (1) The environmental levy shall be levied at a rate as may be specified in any item of Part 3 of Schedule No. 1 and the environmental levy so specified in such item shall be payable in addition to any duty prescribed in respect of the goods concerned in any heading or subheading of Part 1 or Part 2 of Schedule No. 1.

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(2) Notwithstanding anything to the contrary contained in this Act, the environmental levy shall, subject to the provisions of this Chapter and except for the purposes of any customs union agreement contemplated in section 51 or any other law, be deemed to be a duty leviable under this Act.

Application of other provisions of this Act

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47E. (1) Subject to such exceptions and adaptations as may be prescribed in this Chapter, any Schedule or any rule, the provisions of this Act relating to—

- (a) the importation of goods and imported goods;
- (b) (i) the manufacture of excisable goods; and
- (ii) entry for home consumption, removal from any customs and excise manufacturing warehouse and payment of duty contemplated in section 19A,

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shall apply *mutatis mutandis* to environmental levy goods imported into or manufactured in the Republic.

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Rebates, Refunds and Drawbacks

47F. The Minister may, notwithstanding anything to the contrary contained in this Act, provide under section 75 (15) for a rebate, refund or drawback of any environmental levy in an item of a separate Part of Schedule No. 3, 4, 5 or 6, which shall be deemed to be an amendment of such Schedule, in the circumstances and for the purposes and on compliance with any conditions that may be specified in such Part or item.

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Licensing

47G. (1) From the date this Chapter comes into operation, no environmental levy goods may be manufactured in the Republic except in a customs and excise manufacturing warehouse licensed in terms of this Act.

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(2) The applicant for such a license must apply on the form prescribed by rule and must comply with all the provisions of this Act and any requirements the Commissioner may prescribe in each case.

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(3) The application must be supported by the agreement and other documents as may be prescribed by rule.

(4) Before such warehouse is licensed the applicant for a license must—

- (a) furnish such security as contemplated in section 60(c)(i); and
- (b) pay the licence fee prescribed in Schedule No. 8.

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(5) The provisions of section 60 (2) shall apply *mutatis mutandis* in respect of any application for a licence or the suspension or cancellation of a licence.

Rules

47H. The Commissioner may prescribe by rule—

- (a) any procedure in addition to or in substitution of any existing rule regulating procedures in respect of the importation of goods and imported goods or excisable goods in order to provide for any necessary exception or adaptation in administering the provisions of this Chapter; 5
- (b) *mutatis mutandis* for the purposes of this Chapter, any procedure to which section 19 A and its rules relate; 10
- (c) the form of agreement to be entered into between the applicant and the Commissioner; 10
- (d) the accounts and other documents to be kept and to be submitted when payment is made; 15
- (e) all matters which are required or permitted in terms of this Chapter to be prescribed by rule; 15
- (f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this Chapter."

(2) Subsection (1) shall come into operation on a date to be determined by the President by notice in the *Gazette*.

Amendment of section 48 of Act 91 of 1964, as amended by section 6 of Act 57 of 1966, section 18 of Act 105 of 1969, section 3 of Act 98 of 1970, section 1 of Act 68 of 1973, section 8 of Act 105 of 1976, section 11 Act 112 of 1977, sections 10 and 15 of Act 98 of 1980, section 9 of Act 86 of 1982, section 18 of Act 84 of 1987, section 7 of 68 of 1989, section 23 of Act 59 of 1990, section 4 of Act 61 of 1992, section 3 of Act 19 of 1994, section 39 of Act 45 of 1995, section 64 of Act 30 of 1998 and section 54 of Act 53 of 1999 20 25

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

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

"(2) The Minister may from time to time by like notice amend or withdraw or, if so withdrawn, insert Part 2, Part 3, Part 4 or Part 5 of Schedule No. 1, whenever he deems it expedient in the public interest to do so: Provided that the Minister may, whenever he deems it expedient in the public interest to do so, reduce any duty specified in the said Parts with retrospective effect from such date and to such extent as may be determined by him in such notice."; and 30 35

- (b) by the substitution in subsection (2A) for paragraphs (a) and (b) of the following paragraphs:

"(2A) (a) (i) The Minister may from time to time by like notice, whenever he deems it expedient in the public interest to do so, authorize the International Trade Administration Commission or the Commissioner to withdraw, with or without retrospective effect, and subject to such conditions as the said Commission or Commissioner may determine, any duty specified in Part 2 or Part 4 of Schedule No. 1. 40

(ii) The International Trade Administration Commission or the Commissioner may at any time cancel, amend or suspend any withdrawal referred to in subparagraph (i). 45

(b) Any application for such withdrawal, with retrospective effect, shall be submitted to the said International Trade Administration Commission or Commissioner, as the case may be, not later than six months from the date of entry for home consumption as provided in section 45 (2)." 50

Substitution of section 54 of Act 91 of 1964, as amended by section 3 of Act 85 of 1968 and substituted by section 13 of Act 112 of 1977 and amended by section 43 of Act 45 of 1995

141. Section 54 of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsections (1) and (2) of the following subsections: 55

- “(1) The Commissioner may prescribe by rule—
- (a) the sizes and types of containers in which cigarettes may be imported into the Republic;
 - (b) distinguishing marks or numbers in addition to the stamp impression referred to in subsection (2) which must or must not appear on containers of imported cigarettes;
 - (c) any other matter which is necessary and useful to achieve the efficient and effective administration of this section.
- (2) No person may import any cigarettes unless—
- (a) if entered for home consumption, a stamp impression determined by the Commissioner has been made on their containers; or
 - (b) if entered for storage in a customs and excise warehouse for export such stamp impression does not appear on the containers; and
 - (c) the cigarettes otherwise comply with the requirements prescribed by rule.”.

Substitution of section 57A of Act 91 of 1964, as substituted by section 17 of Act 112 of 1977, section 11 of Act 61 of 1992 and amended by section 8 of Act 19 of 1994

142. Section 57A of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

- “(1) Whenever the International Trade Administration Commission publishes a notice in the *Gazette* to the effect that it is investigating the imposition of an anti-dumping, countervailing or safeguard duty on goods imported from a supplier or originating in a territory specified in that notice, the Commissioner shall, in accordance with any request by the said Commission, by notice in the *Gazette* impose a provisional payment in respect of those goods for such period and for such amount as the Commission may specify in such request.
- (2) The Commissioner shall, in accordance with any request by the said Commission, by further notice in the *Gazette* extend the period for which the provisional payment mentioned in subsection (1) is imposed or withdraw or reduce it with or without retrospective effect and to such extent as may be specified in the request.”.

Insertion of section 64G in Act 91 of 1964

143. The following section is hereby inserted in the Customs and Excise Act, 1964 after section 64F:

“Licensing of degrouping depot

- 64G.** (1) (a) Any reference in this section to a—
- ‘degrouping depot’ shall mean a licensed degrouping depot for air cargo defined in section 1 for the purposes and activities contemplated in section 6(1)(hC);
- ‘degrouping operator’ shall mean the licensee of a degrouping depot.
- (b) No person shall from a date prescribed by the Commissioner by rule perform any act in connection with, or be in possession of, any air cargo for the purposes and activities contemplated in paragraph (a) unless such person has obtained the appropriate licence for a degrouping depot in accordance with the requirements of section 60, this section, any note to Schedule No. 8, any relevant rule, the application form and any conditions the Commissioner may impose in each case.
- (2) (a) (i) Application for such a licence shall be made on the form prescribed by the Commissioner by rule and the applicant shall furnish such information and supporting documents as may be specified in such form and comply with all requirements contemplated in subparagraph (1)(b).
- (ii) The Commissioner may require the degrouping operator to enter into an agreement with the Commissioner and may prescribe such agreement by rule.
- (b) Before any licence is issued, the applicant must furnish security; and such security may be altered, as contemplated in section 60(1)(c).
- (3) The degrouping operator shall be liable for duty on goods received and such liability shall cease as contemplated in section 44(5C).

(4) (a) Goods in a degrouping depot shall be deemed to be under customs control and the degrouping operator shall comply with all requirements in respect thereof specified in this section, and any other relevant provision of this Act including any rule made in terms of this section or any agreement entered into between the degrouping operator and the Commissioner or any condition specified by or directive issued by the Commissioner.

(b) Any goods received by the degrouping operator which are in excess of manifested quantities or excess goods unmanifested or any shortages, of whatever nature, shall be reported and dealt with as prescribed by rule.

(c) Subject to any adaptation or other special requirement prescribed by rule, the provisions of section 18 shall apply *mutatis mutandis* to the movement of goods to a degrouping depot or from a degrouping depot to another degrouping depot.

(5) The Controller may require any consolidated or other package to be detained in the degrouping depot for examination of the package or its contents.

(6) (a) The Commissioner may refuse any application for a degrouping depot licence or cancel or suspend such licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph (a).

(7) The Commissioner may prescribe by rule—

(a) the application form and any other form required for the purposes of any customs procedure;

(b) the documents to be furnished in support of the application form or to be submitted, completed and kept in respect of any activity relating to the operation of the degrouping depot;

(c) activities allowed in a degrouping depot;

(d) any procedure or obligation or standards of conduct to be observed in the operation of the degrouping depot;

(e) any condition and procedure relating to liability for duty;

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

(g) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of the air cargo and a degrouping depot as contemplated in this section; and

(h) subject to section 3(2), any delegation of powers or duties as contemplated in that section.”.

Amendment of section 65 of Act 91 of 1964

144. (1) Section 65 of the Customs and Excise Act, 1964, is hereby amended—

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

“(i) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under subsection (5), any amount due in terms thereof shall, notwithstanding **[an internal administrative appeal has been filed as contemplated in section 95A or]** that any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner on good cause shown may suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.”;

(b) by the substitution in subsection (4) for subparagraph (cc) of paragraph (c)(ii) of the following subparagraph:

“(cc) any amendment of a determination or new determination is made effective under subsection (5). **[or section 95A]**”;

(c) by the substitution in subsection (4) for subparagraph (iii) of paragraph (c) of the following subparagraph:

- “(iii) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (5) or any determination is amended or a new determination is made under subsection (5) **[or section 95A]** the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (c) (i) for any period during which such determination remained in force.”; 5
- (d) by the substitution in subsection (5) for subparagraph (ii) of paragraph (a) of the following subparagraph: 10
- “(ii) **[except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed before it has been considered,]** amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”; 15
- (e) by the substitution in subsection (4) for subparagraph (i) of paragraph (c) of the following subparagraph: 20
- “(i) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under subsection (5), any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown suspend such payment until the date the administrative appeal is decided or the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.”; 25
- (f) by the substitution in subsection (4) for subparagraph (cc) of paragraph (c)(ii) of the following subparagraph: 30
- “(cc) any amendment of a determination or new determination is made effective under subsection (5) or as contemplated in section 77F.”; 35
- (g) by the substitution in subsection (4) for subparagraph (iii) of paragraph (c) of the following subparagraph: 40
- “(iii) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (5) or any determination is amended or a new determination is made under subsection (5) or sections 77E or 77F, the Commissioner shall not be liable to pay interest on any amount which remained payable in terms of the provisions of paragraph (c)(i) refundable for any period during which such determination remained in force.”; and 45
- (h) by the substitution in subsection (5) for subparagraph (ii) of paragraph (a) of the following subparagraph: 50
- “(bb) except when an internal administrative appeal has been lodged in terms of the provisions of Part A of Chapter XA, or if lodged before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”. 55
- (2) (a) Subsection (1)(a), (b), (c) and (d) shall come into operation on the date of promulgation of this Act.
- (b) Subsection (1)(e), (f), (g) and (h) shall come into operation on the date Parts A and B of Chapter XA comes into operation.

Amendment of section 69 of Act 91 of 1964, as amended by section 22 of Act 105 of 1969, section 6 of Act 93 of 1978, section 9 of Act 101 of 1985, section 7 of Act 69 of 1988, as substituted by section 12 of Act 68 of 1989, section 1 of Act 111 of 1991, as amended and deleted by section 3 of Act 105 of 1992, section 6 of Act 98 of 1993, and as amended by section 6 of Act 44 of 1996, section 61 of Act 53 of 1999, section 49 of Act 19 of 2001 and section 129 of Act 60 of 2001 5

145. (1) Section 69 of the Customs and Excise Act, 1964 is hereby amended—

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

“(d) For the purposes of assessing the excise duty on any goods manufactured in the Republic and specified in any items of Section B of Part 2 of Schedule No. 1 other than those specified in paragraph (a) and contemplated in paragraph (dA), the value thereof shall be the ‘invoice price’ which shall mean—”;

(b) by the insertion of the following paragraph:

“(dA) (i) The provisions of this paragraph apply to digital video discs (DVD’s), recorded compact discs, audio tapes and video tapes dutiable in terms of item 124.65 of Section B of Part 2 of Schedule No. 1.

(ii) Subject to such definitions, descriptions, limitations, adaptations and requirements as the Commissioner may prescribe by rule, the value for assessing the excise duty on such goods shall be in the case of—

(aa) recorded compact discs and audio tapes, the contract price of the manufacturer thereof to the retailer, plus, to the extent that may be prescribed in such rule, a maximum of 15 per cent of such price;

(bb) recorded video tapes and digital video discs (DVD’s), the manufacturer’s duplicating costs in respect of the duplication of such tapes and discs for a video distributor, plus, to the extent that may be prescribed in such rule, a maximum of 10 per cent of such costs;

(iii) The provisions of paragraph (d)(ii) shall, subject to the rules, apply *mutatis mutandis* in respect of any relationship as contemplated in that paragraph between the manufacturer and retailer referred to in subparagraph (ii)(aa) or the manufacturer and distributor referred to in subparagraph (ii)(bb).”;

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

“(c) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under subsection (4), any amount due in terms thereof shall, notwithstanding that [an administrative appeal has been filed as contemplated in section 95A or] any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.”;

(d) by the substitution in subsection (3) for subparagraph (iii) of paragraph (d) of the following subparagraph:

“(iii) any amendment of a determination or new determination is made effective under subsection (4) [or section 95A].”;

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

“(e) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (4) or any determination is amended or a new determination is made under subsection (4) [or section 95A] the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (c) for any period during which such determination remained in force.”;

- (f) by the substitution in subsection (4) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) **[except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed before it has been considered,]** amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”;

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

“(c) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under subsection (4), any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the date the administrative appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal;”;

- (h) by the substitution in subsection (3) for subparagraph (iii) of paragraph (d) of the following subparagraph:

“(iii) any amendment of a determination or new determination is made effective under subsection (4) or as contemplated in section 77F.”;

- (i) by the substitution in subsection (3) for paragraph (e) of the following paragraph:

“(e) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (4) or any determination is amended or a new determination is made under subsection (4) or section 77E or 77F, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (c) for any period during which such determination remained in force;” and

- (j) by the substitution in subsection (4) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) except when an internal administrative appeal has been lodged in terms of the provisions of Part A of Chapter XA, or if lodged, before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”.

(2) (a) Subsection (1)(a), (b), (c), (d), (e) and (f) shall come into operation on the date of promulgation of this Act.

(b) Subsection (1)(g), (h), (i) and (j) shall come into operation on the date Parts A and B of Chapter XA comes into operation.

Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 25 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act of 1977, section 28 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000, section 50 of Act 19 of 2001, section 130 of Act 60 of 2001 and section 109 of Act 74 of 2002

146. Section 75 of the Customs and Excise Act, 1964 is hereby amended—

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

“(c) only in respect of goods entered for use in such industry in a factory, mine, works or activity which complies with such requirements in respect of quantity of material used or quantity of goods produced or manufactured as the Commissioner may impose in consultation with the International Trade Administration Commission.”; and

(b) by the addition to subsection (11A) of the following paragraph:

“(c) Notwithstanding anything to the contrary in this section or in any other provision of this Act contained but subject to the provisions of this subsection, any amount duly refundable in terms of any item of Schedule No. 6 may be an amount that may be set off, if such item so provides, by a licensee of a customs and excise warehouse in terms of section 77 where the goods have been entered or are deemed to have been entered for home consumption and payment of duty in accordance with the provisions of this Act.”.

Insertion of Chapter XA in Act 91 of 1964

147. (1) The following Chapter is hereby inserted in the Customs and Excise Act, 1964 after Chapter X:

“CHAPTER XA

Internal Administrative Appeal; Alternative Dispute Resolution; Dispute Settlement

Part A: Internal Administrative Appeal

Definitions

77A. (1) For the purposes of this Chapter—

‘Commissioner’ includes, depending on the context, the delegated officer who made the decision in dispute against which an appeal is lodged;
‘day’ means any day other than a Saturday, Sunday or a public holiday:
Provided that the days between 16 December of a year and 15 January of the following year, both inclusive, shall not be taken into account in determining days or the period allowed for complying with any provision in this Part or the rules;

‘decision’ includes—

(a) any determination or other act of an administrative nature for the purposes of this Act;

(b) any amendment or withdrawal or withdrawal and making of a decision; and

(c) any refusal to take a decision;

‘dispute’ means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or both the facts and the law;
‘officer’ includes, depending on the context, an officer who is delegated by the Commissioner and acts on behalf of the Commissioner as contemplated in section 3(2);

‘SARS’ means the South African Revenue Service;

'tax' or 'taxation' includes any duty leviable under this Act.

(b) Any decision made by the Commissioner or an officer under the provisions of this Act, including any amendment or withdrawal thereof, shall be deemed to be effective from the date any notice or communication in respect of such decision is issued in writing or the date specified in such notice or communication. 5

Persons who may appeal

77B. (1) Any person who may institute judicial proceedings in respect of any decision by an officer may, before or as an alternative to instituting such proceedings, lodge an appeal— 10

- (a) to the Commissioner against a decision of an officer; or
- (b) to the appeal committee contemplated in this Part in respect of those matters and decisions of officers that the appeal committee is authorised by rule to consider and decide upon or make recommendations to the Commissioner. 15

(2) If dissatisfied with a final decision as contemplated in (a) or (b) and the Commissioner is of the opinion that the matter is appropriate, such a person may make use of the alternative dispute procedure contemplated in section 77I.

Submission of appeal 20

77C. (1) Any person who intends submitting an appeal as provided for in this Part must do so—

- (a) within 90 days from the date such person was notified of such decision;
- (b) within 90 days after the date any such person became aware or the date such person might reasonably be expected to have become aware of such decision; or 25
- (c) where the Commissioner on good cause shown is satisfied that such person was prevented from submitting an appeal as required in paragraphs (a) and (b), within a further period of 90 days. 30

(2) The appeal may be brought by the person concerned or a duly authorized representative.

(3) Such appeal must be in writing and must set forth the particulars and be supported by the documents prescribed by rule.

Time within which appeal must be considered 35

77D. (1) An appeal shall subject to subsection (2) be considered within a period of 90 days after the date of the lodging of a notice of appeal and the Commissioner shall notify the person who lodged the appeal of the final determination or decision in writing within that period.

(2) (a) No appeal shall be considered later than 180 days after the date of the decision, unless the period is on good cause shown extended by the Commissioner. 40

(b) Where the Commissioner refuses to extend the said period it may be extended on application by the person concerned by the High Court.

Appointment and function of appeal committee 45

77E. (1) The Commissioner may appoint a committee of officers or a committee of officers and other persons to consider and decide appeals or make recommendations in relation to such appeals to the Commissioner.

- (2) An appeal committee may— 50
 - (a) consider and decide; or
 - (b) make recommendations to the Commissioner on matters prescribed by rule

(3) Any decision signed by the chairperson of the appeal committee shall be regarded as a decision of the committee and to have been made by an officer. 55

(4) The chairperson of the appeal committee must maintain a record of the proceedings prescribed by rule.

Decision of Commissioner and Committee

77F. (1) The Commissioner may—

- (a) refer the matter back to the committee for further consideration;
- (b) reject or accept or accept and vary the recommendation of the committee;
- (c) confirm or amend the decision or withdraw it and make a new decision.

(2) Whenever an appeal has been considered in terms of this section any period within which any person may prosecute an appeal against or institute any other judicial proceedings in connection with such decision, shall commence on the date on which the Commissioner or the chairperson of the committee in writing advises the person concerned of the final decision of the appeal.

Obligation to pay amount demanded

77G. Notwithstanding anything to the contrary contained in this Act, the obligation to pay to the Commissioner and right of the Commissioner to receive and recover any amount demanded in terms of any provision of this Act, shall not, unless the Commissioner so directs, be suspended by an appeal in terms of this section or pending a decision by court.

Rules

77H. The Commissioner may make rules—

- (a) to prescribe at which office any appeal committee shall be constituted, and the composition of such committee;
- (b) to prescribe which decisions or categories of decisions of officers may be appealed against to the appeal committee;
- (c) to prescribe appeal procedures, conduct of meetings of committees and such forms as may be required for the purpose of this Part;
- (d) in respect of all matters which are required or permitted in terms of this Part to be prescribed by rule;
- (e) in respect of any matter relating to the appointment of persons other than officers to an appeal committee which may include requirements relating to qualifications, conduct, resignation, removal from office and remuneration;
- (f) to delegate, subject to subsection 3(2), any of the powers that may be exercised or assign any of the duties that shall be performed by the Commissioner in accordance with the provisions of this Part or any other relevant provision of this Act;
- (g) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this Part.

Part B

Alternative Dispute Resolution

77I. (1) The Minister may, after consultation with the Minister of Justice, promulgate rules to provide for—

- (a) alternative dispute resolution procedures in terms of which the Commissioner and the person aggrieved by a decision may resolve a dispute; and
- (b) categories of decisions which are or are not suitable for alternative dispute resolution.

(2) The rules so published shall be part of this Act.

Part C: Settlement of dispute

Definitions

77J. (1) For the purposes of this Part 'settle' means to resolve a dispute by compromising any disputed liability, otherwise than by way of either the Commissioner or the person concerned accepting the other party's interpretation of the facts or the law applicable to those facts, or of both the facts and the law, and 'settlement' shall be construed accordingly.

Purpose of this Part

77K. (1) The basic principle in law is that it is the duty of the Commissioner to assess and collect taxes, duties, levies, charges and other amounts according to the laws enacted by Parliament and not to forgo any such taxes, duties, levies, charges or other amounts properly chargeable and payable.

(2) Circumstances may, however, require that the strictness and rigidity of this basic principle be tempered where it would be to the best advantage of the state.

(3) The purpose of this Part is to prescribe the circumstances whereunder it would be inappropriate and whereunder it would be appropriate that the basic rule be tempered and for a decision to be taken to settle a dispute.

Circumstances where inappropriate to settle

77L. (1) It will be inappropriate and not to the best advantage of the state to settle a dispute, where, in the opinion of the Commissioner—

- (a) the action on the part of the person concerned which relates to the dispute, constitutes intentional tax evasion or fraud and no circumstances contemplated in section 77M exist;
- (b) the settlement would be contrary to the law or a clearly established practice of the Commissioner on the matter, and no exceptional circumstances exist to justify a departure from the law or practice;
- (c) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose;
- (d) the pursuit of the matter through the courts will significantly promote compliance of the tax laws and the case is suitable for this purpose; or
- (e) the person concerned has not complied with the provisions of any Act administered by the Commissioner and the Commissioner is of the opinion that the non-compliance is of a serious nature.

Circumstances where appropriate to settle

77M. (1) The Commissioner may, where it will be to the best advantage of the state, settle a dispute, in whole or in part, on a basis that is fair and equitable to both the person concerned and SARS, having regard to *inter alia*—

- (a) whether that settlement would be in the interest of good management of the tax system, overall fairness and the best use of the Commissioner's resources;
- (b) the cost of litigation in comparison to the possible benefits with reference to—
 - (i) the prospects of success in a court;
 - (ii) the prospects of collection of the amounts due; and
 - (iii) the costs associated with collection;
- (c) whether there are any—
 - (i) complex factual or quantum issues in contention; or
 - (ii) evidentiary difficulties,

- which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative dispute resolution procedures or the courts;
- (d) a situation where a participant or a group of participants in a tax avoidance arrangement has accepted the Commissioner's position in the dispute, in which case the settlement may be negotiated in an appropriate manner required to unwind existing structures and arrangements; or
 - (e) whether the settlement of the dispute will promote compliance of the tax laws by the person concerned or a group of taxpayers or a section of the public in a cost-effective way.

Power to settle and conduct of officials

77N. (1) A dispute may be settled, as contemplated in this Part, by the Commissioner personally or any official delegated by the Commissioner for that purpose.

(2) The Commissioner or the relevant delegated official must ensure that he or she does not have, or did not at any stage have, a personal, family, social, business, professional, employment or financial relationship with the person concerned.

Procedure for settlement

77O. (1) The person concerned should at all times disclose all relevant facts in discussions during the process of settling a dispute.

(2) Any settlement will be conditional upon full disclosure of material facts known to the person concerned at the time of settlement.

(3) All disputes settled in whole or in part, as contemplated in this Part, must be evidenced by a written agreement between the parties in the format as may be prescribed by the Commissioner and must include details on—

- (a) how each particular issue was settled;
- (b) relevant undertakings by the parties;
- (c) treatment of that issue in future years;
- (d) withdrawal of appeals; and
- (e) arrangements for payment.

(4) The written agreement will represent the final agreed position between the parties and will be in full and final settlement of all the specified aspects of the dispute in question between the parties.

(5) The Commissioner must, where the dispute is not ultimately settled, explain the further rights regarding the institution of judicial proceedings to the person concerned.

(6) Subject to section 77P, the Commissioner and delegated official must adhere to the secrecy provisions with regard to the information relating to the person concerned and may not disclose the terms of any agreement to third parties unless authorised by law or by the person concerned.

(7) The Commissioner must adhere to the terms of the agreement, unless it emerges that material facts were not disclosed to it or there was fraud or misrepresentation of the facts.

(8) The Commissioner has the right to recover any outstanding amounts in full where the person concerned fails to adhere to any agreed payment arrangement.

Register of settlements and reporting

77P. (1) The Commissioner must—

- (a) maintain a register of all disputes settled in the circumstances contained in this Part; and
- (b) fully document the process in terms of which each dispute was settled, which document must be signed on behalf of the Commissioner and the person concerned.

(2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister of Finance a summary of all disputes

which were settled in whole or in part during the period of 12 months covered by that summary, which must—

- (a) be in such format which, subject to section 3E, does not disclose the identity of the person concerned, and be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister of Finance, as the case may be; and
- (b) contain details of the number of disputes settled or part settled, the amount of revenue forgone and estimated amount of savings in costs of litigation, which must be reflected in respect of main classes of persons or sections of the public.”.

(2) Subsection (1) shall, to the extent that it inserts—

- (a) Parts A and B shall come into operation on the date fixed by the President by proclamation in the *Gazette*;
- (b) Part C shall come into operation on the date of Promulgation of this Act.

Amendment of section 80 of Act 91 of 1964, as amended by section 10 of Act 85 of 1968, section 27 of Act 105 of 1969, section 28 of Act 112 of 1977, section 22 of Act 86 of 1982, section 7 of Act 89 of 1984, section 12 of Act 52 of 1986, section 27 of Act 84 of 1987, section 32 of act 59 of 1990, section 8 of Act 105 of 1992, section 8 of Act 98 of 1993, section 68 of Act 30 of 1998, section 63 of Act 53 of 1999 and section 62 of Act 59 of 2000

148. Section 80 of the Customs and Excise Act, 1964, is hereby amended by the insertion of the following paragraph:

“(r) without lawful cause fails to comply with a notice of appointment as agent in terms of section 114A within the period specified in such notice.”.

Amendment of section 89 of Act 91 of 1964

149. (1) Section 89 of the Customs and Excise Act, 1964, is hereby amended—

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

“(2) (a) Any litigant must give notice to the Commissioner in writing before serving any process for instituting any proceedings as contemplated in section 96(1)(a) within 90 days after the date of seizure.”;

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

“(4) Whenever goods are seized and in consequence of the seizure—

(a) delivery thereof under section 93 is refused or the terms of delivery thereunder are not accepted; or

(b) [no internal administrative appeal under section 95A is filed or is filed and is not successful; (c)] no proceedings are instituted as contemplated in this section or have been instituted and have been dismissed in a final judgment of the High Court or a judgment by the Supreme Court of Appeal,

the goods concerned shall, subject to the provisions of section 90, be deemed to be condemned and forfeited.”

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

“(2) Any litigant must give notice to the Commissioner in writing before serving any process for instituting any proceedings as contemplated in section 96(1)(a)—

(a) within 90 days after the date of seizure;

(b) in the case of an internal administrative appeal, where such appeal is unsuccessful, within 90 days from the date contemplated in [subsection 95A (7)] section 77F.”;

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

“(4) Whenever goods are seized and in consequence of the seizure—

(a) delivery thereof under section 93 is refused or the terms of delivery thereunder are not accepted;

- (b) no internal administrative appeal contemplated in Part A of Chapter XA is lodged or is lodged and is not successful;
- (c) any dispute is not resolved as contemplated in Part B of Chapter XA or not settled as contemplated in Part C of that Chapter;
- (d) no proceedings are instituted as contemplated in this section or have been instituted and have been dismissed in a final judgment of the High Court or a judgment by the Supreme Court of Appeal, the goods concerned shall, subject to the provisions of section 90, be deemed to be condemned and forfeited.”.

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

(b) Subsection (1)(c) and (d) shall come into operation when Parts A and B of Chapter XA comes into operation.

Substitution of section 93 of Act 91 of 1964, as substituted by section 67 of Act 53 of 1999

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

“Remission or mitigation of penalties and forfeiture

93. (1) The Commissioner may, on good cause shown by the owner thereof, direct that any ship, vehicle container or other transport equipment, plant, material or other goods detained or seized or forfeited under this Act be delivered to such owner, subject to—

- (a) payment of any duty that may be payable in respect thereof;
- (b) payment of any charges that may have been incurred in connection with the detention or seizure or forfeiture thereof; and
- (c) such conditions as the Commissioner may determine, including conditions providing for the payment of an amount not exceeding the value for duty purposes of such ship, vehicle container or other transport equipment, plant, material or goods plus any unpaid duty thereon.

(2) The Commissioner may, on good cause shown mitigate or remit any penalty incurred under this Act on such conditions as the Commissioner may determine.

(3) (a) Any person who, for the purposes contemplated in this section alleges ownership of any ship, vehicle, container or other transport equipment, plant material or other goods shall have the burden of proving such ownership to the satisfaction of the Commissioner; and

(b) Where two or more persons claim ownership of the same ship, vehicle, container or other transport equipment, plant, material or other goods, ownership must be decided by a competent court and the Commissioner shall only grant release thereof to the person or persons as ordered by such court.”.

Repeal of section 93A of Act 91 of 1964

151. Section 93A of the Customs and Excise Act, 1964, is hereby repealed.

Amendment of section 101 of Act 91 of 1964, as substituted by section 18 of Act 85 of 1968, and amended by section 12 of Act 98 of 1980, section 63 of Act 45 of 1995 and section 70 of Act 53 of 1999

152. Section 101 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2B) of the following subsection:

“(2B) Any person referred to in subsection (1) shall keep and produce on demand any [data created by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983), including data in the

electronic form in which it was originally created or in which it is stored for the purposes of backing up such data] electronic representations of information in any form.".

Amendment of section 101A of Act 91 of 1964, as inserted by section 51 of Act 19 of 2001

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153. Section 101A of the Customs and Excise Act, 1964 is hereby amended by the insertion in subsection (10) of the following paragraph:

"(d) (i) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit, as prescribed by rule, any person who is registered as a user and has entered into a user agreement as contemplated in subsection (3), to submit electronically any report referred to in paragraph (a), by using the Internet.

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(ii) Subject to such exceptions, adaptations or additional requirements as the Commissioner may prescribe by rule, the provisions of this section shall apply to the submission of such report.

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(iii) 'Internet' shall have the meaning assigned thereto in the Electronic Communications and Transactions Act, 2002 (Act. No. 25 of 2002)."

Insertion of sections 114A and 114B in Act 91 of 1964

154. The following sections are hereby inserted in the Customs and Excise Act, 1964, after section 114:

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"Power to appoint agent

114A. The Commissioner may, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared an agent—

(a) shall for the purposes of this Act be the agent of such other person in respect of the payment of any amount of duty, interest, fine, penalty or forfeiture payable by such other person under this Act, and

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(b) may be required to make payment of such amount from any moneys which may be held by him or her for or be due by him or her to the person whose agent he or she has been declared to be:

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Provided that a person so declared an agent who, is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of Commissioner against agent or trustee

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114B. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or person acting in a fiduciary capacity as the Commissioner would have against the property of any person liable to pay any duty, interest, fine, penalty or forfeiture payable under this Act and in as full and ample a manner."

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Substitution of Part 3 of Schedule No. 1 to Act 91 of 1964

155. Part 3 of Schedule No. 1 of the Customs and Excise Act, 1964 is hereby substituted by the following Part:

"PART 3

ENVIRONMENTAL LEVY

NOTES:

1. Any rate of environmental levy specified in this Part in respect of any goods shall apply to any such goods which are manufactured in the Republic or imported into the Republic. 5
2. Any environmental levy payable in terms of this Part in respect of any goods specified therein shall be additional to any customs or excise duty payable in terms of Part 1 or 2 in respect of goods of the same class or kind. 10
3. Imported goods shall not be declared on separate bills of entry for the purpose of Parts 1, 2, 3 and 5 of this Schedule.
4. Whenever the tariff heading or subheading under which any goods are classified in Part 1 of this Schedule is expressly quoted in any environmental levy item of this Part in which such goods are specified, the goods so specified in such environmental levy item shall be deemed to include only goods which are classifiable under the said tariff heading or subheading. 15
5. Appropriation for own use for any purpose by the manufacturer or owner of any goods specified in this Part shall render such goods liable to entry for home consumption and payment of any environmental levy. 20

Environmental Levy Item	Tariff Heading	Description	Environmental Levy	Annotations
147.00	3823.2	PLASTICS AND ARTICLES THEREOF; RUBBER AND ARTICLES THEREOF Carrier and flat bags, of polymers of ethylene or propylene, of a thickness exceeding 24µ, unprinted or printed with a single resin system ink based on a co-solvent polyamide with a mass of dry solid content not exceeding 2,25 per cent of the mass of the unprinted bag or printed with other inks with a mass of the solid content exceeding 1,125 per cent of the mass of the unprinted bag (excluding bags for use as immediate packing, refuse bags and refuse bin liners)	1 000c/kg"	25 30 35 40

Amendment of section 7 of Act 77 of 1968, as amended by section 18 of Act 103 of 1969, section 10 of Act 89 of 1972, section 8 of Act 66 of 1973, section 3 of Act 70 of 1975, section 5 of Act 87 of 1982, section 7 of Act 118 of 1984, section 5 of Act 69 of 1989, section 55 of Act 19 of 2001 and section 43 of Act 12 of 2003 45

156. Section 7 of the Stamp Duties Act, 1968, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (g) of the following paragraph: 50

“(g) in the case of the original issue of a marketable security or of a negotiable certificate of deposit, the company or corporate body issuing the marketable security or negotiable certificate of deposit;” and 55

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

“(h) in the case of the registration of transfer of a marketable security or of a negotiable certificate of deposit, the transferee;”.

Amendment of section 23 of Act 77 of 1968, as amended by section 20 of Act 103 of 1969, section 13 of Act 92 of 1971, section 11 of Act 89 of 1972, section 10 of Act 66 of 1973, section 10 of Act 88 of 1974, section 20 of Act 106 of 1980, section 6 of Act 87 of 1982, section 5 of Act 92 of 1983, section 25 of Act 87 of 1988, section 8 of Act 69 of 1989, section 7 of Act 136 of 1991, section 80 of Act 30 of 1998 and section 76 of Act 53 of 1999 5

157. Section 23 of the Stamp Duties Act 1968 is hereby amended—

- (a) by the deletion in subsection (1) of the definition of “lending arrangement”;
- (b) by the deletion in subsection (4) of subparagraphs (ii) and (viiB) of paragraph (b); and 10
- (c) by the substitution for subsection (6) of the following subsection:
 - “(6) Any instrument of transfer referred to in subsection (4) shall at all reasonable times during a period of ~~[three]~~ five years after the date of registration of the relevant transfer be open for inspection by any person acting under the authority of the Commissioner.”. 15

Insertion of section 30A in Act 77 of 1968

158. (1) The following sections are hereby inserted in the Stamp Duties Act, 1968, after section 30:

“Schemes for obtaining undue tax benefits

- 30A.** (1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any transaction, operation, scheme or understanding (whether enforceable or not), including all steps by which it is carried into effect— 20
- (a) has been entered into or carried out which has the effect of any person obtaining a tax benefit; 25
 - (b) having regard to the substance of the transaction, operation, scheme or understanding—
 - (i) was entered into or carried out in a manner which would not normally be employed for *bona fide* business purposes other than the obtaining of a tax benefit; or 30
 - (ii) has created rights or obligations which would not normally be created between persons dealing at arm’s length; and
 - (c) was entered into or carried out solely or mainly for the purposes of obtaining a tax benefit, 35
- the Commissioner shall determine the liability for any duty imposed by this Act and the amount thereof, as if the transaction, operation, scheme or understanding had not been entered into or carried out, or in such manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of such tax benefit.
- (2) For the purpose of this section ‘tax benefit’ means— 40
- (a) any reduction in the liability of any person to pay duty;
 - (b) any increase in the entitlement of any person to the refund of duty; or
 - (c) any other avoidance or postponement of liability for the payment of any duty imposed by this Act or any tax, duty or levy imposed by any other Act administered by the Commissioner. 45
- (3) Any decision of the Commissioner under subsection (1) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it shall be presumed, until the contrary is proved, that such scheme was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit. 50

Power to appoint agent

30B. The Commissioner may, if he or she deems it necessary, declare any person to be the agent of any other person, and the person so declared an agent— 55

- (a) shall for the purposes of this Act be the agent of that other person in respect of the payment of any amount of duty, additional duty, penalty or interest payable by that other person under this Act; and
- (b) may be required to make payment of such amount from any moneys which may be held by that agent for or be due by that agent to the person whose agent he or she has been declared to be:
- Provided that a person so declared an agent who is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of Commissioner against agent or trustee

30C. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property of any person liable to pay any duty and in as full and ample a manner."

(2) Subsection (1) shall in so far as it inserts section 30A in the Income Tax Act, 1962, come into operation on the date of promulgation of this Act and shall apply in respect of the purchase of any marketable security in terms of a transaction, operation, scheme or understanding entered into on or after that date.

Amendment of section 31 of Act 77 of 1968, as substituted by section 18 of Act 46 of 1996 and amended by section 81 of Act 30 of 1998 and section 144 of Act 60 of 2001

159. Section 31 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "information" of the following definitions:

" 'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any [**'computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)**] printout of information generated, sent, received, stored, displayed or processed by electronic means;

'information' includes any [**data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983**] electronic representations of information in any form;"

Amendment of section 32B of Act 77 of 1968

160. Section 32B of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

"(b) settlement of disputes, as provided for in [**section 107B**] Part IIIA of Chapter III of that Act,"

Amendment of Item 7 of Schedule 1 to Act 77 of 1968, as amended by section 18 of Act 88 of 1974, section 12 of Act 66 of 1973, section 15 of Act 114 of 1977, section 41 of Act 5 of 2001 and section 55 of Act 30 of 2002

161. Item 7 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

- (a) by the deletion of subitem (5);
- (b) by the substitution for paragraph (c) of "*Exemptions*" of the following paragraph:
- "(c) any cession or substitution of debtors in respect of any bond."; and
- (d) by the deletion of paragraph (d) of "*Exemptions*".

Amendment of item 13 of Schedule 1 to Act 77 of 1968, as amended by section 12 of Act 92 of 1983, section 12 of Act 108 of 1986 and section 85 of Act 30 of 1998

162. Item 13 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

- (a) by the substitution in the introductory paragraph of Item 13 for the expression "*Fixed deposit receipt*" of the following paragraph:

- “Fixed deposit receipt, [including any certificate or other instrument whereby any fixed deposit is acknowledged or is expressed to have been received, deposited or paid:]”;
- (b) by the substitution after the introductory paragraph “Fixed deposit receipt” of the following paragraph: 5
 “In respect of the original issue or transfer of any fixed deposit made with any bank, company or association, whether corporate or unincorporated: for every R200 (or part thereof) of the amount of the fixed deposit and for every period of twelve months (or part thereof) for which the deposit is made0 10;”;
- (c) by the deletion of the paragraph preceding *Exemptions*; 10
 (d) by the deletion of paragraph (a) of *Exemptions*.

Amendment of Item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994, section 86 of Act 30 of 1998, section 79 of Act 53 of 1999, section 72 of Act 30 of 2000, section 63 of Act 59 of 2000, section 42 of Act 5 of 2001, section 147 of Act 60 of 2001, section 56 of Act 30 of 2002 and section 113 of Act 74 of 2002 15 20

- 163.** (1) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended— 25
- (a) by the substitution in paragraph (1) for the words preceding subparagraph (a) of the following words:
 “in respect of the original issue within the Republic of any such shares, stock or debentures which constitute marketable securities.”;
- (b) by the substitution in paragraph (2) for the words preceding subparagraph (a) of the following words: 30
 “In respect of the issue within the Republic of any certificate or other like instrument representing any interest in respect of such shares, stock or debentures which constitute marketable securities, whether called unit or fixed trust certificates or by any other name.”; 35
- (c) by the deletion of paragraphs (b), (c) and (h) under *Exemptions from the duty under paragraph (1) or (2)*;
- (d) by the substitution in *Exemptions from the duty under paragraph (1) or (2)* for paragraph (g) of the following paragraph: 40
 “(g) the original issue of any share by a company to any other company in terms of an intra-group transaction contemplated in section 45 of the Income Tax Act, 1962 (Act No. 58 of 1962), or in terms of any transaction which would have constituted an intra-group transaction regardless of whether or not an election has been made for the provisions of that section to apply and regardless of whether or not those shares were acquired in terms of that transaction as a capital asset or as trading stock, where the public officer of that company has made a sworn affidavit or solemn declaration that such intra-group transaction complies with the provisions [contained in section 45 of that Act] of this paragraph.”;
- (e) by the addition to the *Exemptions from duty under paragraph (1) or (2)* of the following paragraph: 50
 “(i) where the securities are interest-bearing debentures, including debenture stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not, unless convertible into shares or similar equity interest or eligible to participate in dividends;”;
- (f) by the deletion of subparagraphs (b) to (g) of *Paragraph (3)*; 55

- (g) by the substitution of subparagraph (h) of Paragraph (3) of the following subparagraph:

“(h) if the marketable security was sold or disposed of (whether conditionally or not) after 31 March 1997 and the date of sale or disposal is noted on the relevant instrument of transfer referred to in section 23 of this Act by the transferee or his agent and such note is signed by the transferee or his agent—”;

- (h) the deletion of paragraphs (c), (d), (dA), (f), (j), (nB) and (p) of the *Exemptions from the duty under paragraph (3)*; and

- (i) by the addition in *Exemptions from the duty under paragraph (3)* at the end of item (ee) of subparagraph (ii) of paragraph (v) of the word “or”;

- (j) by the addition in *Exemptions from the duty under paragraph (3)* of the following item to paragraph (v):

“(iii) which in terms of the Transfer Duty Act, 1949 (Act No. 40 of 1949), constitutes a transaction for the acquisition of property and in terms of that Act the acquisition of that property is subject to transfer duty.”;

- (k) by the substitution in *Exemptions from the duty under paragraph (3)* for subparagraph (v) of paragraph (x) of the following subparagraph:

“(v) in **[pursuance]** terms of **[a distribution in specie in the course of]** an unbundling transaction contemplated in section 46 of that Act;”;

- (l) by the substitution in the *Exemptions from the duty under paragraph (3)* for subparagraph (vii) of paragraph (x) of the following subparagraph:

“(vii) in terms of any transaction **[contemplated in subparagraph (v) or transaction]** which would have constituted a transaction or distribution contemplated—

(aa) in subparagraphs (i) **[(iv) or]** to (vi) regardless of whether or not **[had]** an election has been made for the provisions of that section to apply;

(bb) in subparagraph (i), (ii) or (iii) **[had]** regardless of the market value of the asset **[transferred]** disposed of in exchange for **[those]** that marketable **[securities]** security **[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.];** or

(cc) in subparagraphs (i) to (vi) regardless of whether or not that person acquired that marketable security as a capital asset or as trading stock,

where the public officer of the relevant company has made a sworn affidavit or solemn declaration that the transfer of that marketable security complies with the provisions of this paragraph.”;

- (m) by the addition to the *Exemption from duty under paragraph (3)* of the following paragraph:

“(z) where the securities are interest-bearing debentures, including debenture stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not, unless convertible into shares or similar equity interest or eligible to participate in dividends;”;

- (n) by the substitution in paragraph (5) for the words preceding subparagraph (a) of the following words:

“(5) In respect of the acquisition **[(other than an acquisition by way of a purchase in respect of which the tax referred to in section 2 of the Marketable Securities Tax Act, 1948 (Act 32 of 1948), has become payable)]** by any person (hereinafter referred to as the transferee) from any other person (hereinafter referred to as the transferor) of any marketable security on or after 1st August, 1972, if—”.

- (o) by the deletion of items (i) to (vi) of *Paragraph (5)*.

(2) (a) Subsection (1)(c) shall in so far as it deletes paragraph (c) come into operation on the date of promulgation of this Act.

(b) Subsection (1)(d), (k) and (l) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of transfers of marketable securities in terms of any transaction which takes effect on or after that date.

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002 and section 47 of Act 12 of 2003 5

164. Section 1 of the Value Added Tax Act, 1991, is hereby amended—

- (a) by the insertion before the definition of “ancillary transport expenses” of the following definition:

“ ‘adjusted cost’ means the cost of any goods or services where tax has been charged or would have been charged if section 7 of this Act had been applicable prior to the commencement date, in respect of the supply of goods and services or if the vendor was or would have been entitled to an input tax deduction in terms of paragraph (b) of the definition of ‘input tax’;”;

- (b) the substitution in the definition of “consideration” for the words preceding the proviso of the following words:

“ ‘consideration’, in relation to the supply of goods or services to any person, includes any payment made or to be made (including any deposit on any returnable container and tax), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include—

(a) any payment made by any person as an unconditional gift to any association not for gain;

(b) any grant;”;

- (c) by the insertion after the definition of “Customs and Excise Act” of the following definitions:

“ ‘customs controlled area’ has the meaning assigned thereto in section 21A of the Customs and Excise Act;

‘customs controlled area enterprise’ has the meaning assigned thereto in section 21A of the Customs and Excise Act, 1964;

‘designated entity’ means a vendor—

(i) to the extent that its supplies of goods and services of an activity carried on by that vendor are in terms of (b)(i) of the definition of ‘enterprise’ treated as supplies made in the course or furtherance of an enterprise;

(ii) which is a major public entity, national government business enterprise or provincial government business enterprise listed in Schedule 2 or Part B or D of Schedule 3 of the Public Finance Management Act, 1999 (Act No.1 of 1999), respectively; or

(iii) which is a ‘Public Private Partnership’ as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or;

(iv) which is a welfare organisation;”;

- (d) by the deletion of the definition of “customs secured area”;

- (e) by the substitution in the definition of “enterprise” for item (i) of paragraph (b) of the following item:

“(i) the making of supplies by any public authority or any national public entity or provincial public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), respectively, of goods or services which the Minister, having regard to the circumstances of the case, is satisfied are of the same kind or are similar to taxable supplies of goods or services which are or might be made by any person other than such public authority or such public entity in the course or furtherance of any enterprise, if the Commissioner, in pursuance of a decision of the Minister under this subparagraph, has notified such public authority or such public entity that its supplies of such goods or services are to be treated as supplies made in the course or furtherance of an enterprise;”;

- (f) by the substitution in the definition of “enterprise” for item (aa) of subparagraph (iii) of the proviso:
 “(aa) the rendering of services by an employee to his employer in the course of his employment or the rendering of services by the holder of any office in performing the duties of his office, shall not be deemed to be the carrying on of an enterprise to the extent that any amount constituting remuneration as contemplated in the definition of “remuneration” in paragraph 1 of the Fourth Schedule to the Income Tax Act [(disregarding paragraphs (i) and (vii) of that definition)] is paid or is payable to such employee or office holder, as the case may be;”;
- (g) by the insertion in the definition of “enterprise” of the following paragraph to the proviso:
 “(viii) the making of supplies by a constitutional institution listed in Schedule 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), shall be deemed not to be the carrying on of an enterprise;”;
- (h) by the insertion after the definition of “goods” of the following definition:
 “ ‘grant’ means the amount of any payment, including any appropriation, grant-in-aid, subsidy and contribution granted or paid to a vendor by a public authority or local authority, but does not include a payment made for any goods or services supplied, to be supplied or deemed to be supplied to such public authority or local authority or a payment contemplated in section 8(23);”;
- (i) by the substitution for the definition of “Industrial Development Zone” of the following definition:
 “ ‘Industrial Development Zone (IDZ)’ has the meaning assigned thereto in [the regulations made by the Minister of Trade and Industry under section 10(1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993)] section 21A of the Customs and Excise Act;”;
- (j) by the insertion after the definition of ‘Industrial Development Zone’ of the following definitions:
 “ ‘Industrial Development Zone (IDZ) operator’ has the meaning assigned thereto in terms of section 21A of the Customs and Excise Act;”;
- (k) by the insertion after the definition of “money” of the following definition:
 “ ‘month’ means any of the twelve portions into which any calendar year is divided;”;
- (l) by the deletion in the definition of “second-hand goods” of the word “and” at the end of paragraph (i) and the addition of the word “and” at the end of paragraph (ii);
- (m) by the addition to the definition of “second-hand goods” of the following paragraph:
 “(iii) any prospecting right, mining right, exploration right or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), issued or renewed in terms of that Act or received upon conversion pursuant to Schedule II;”;
- (n) by the insertion after the definition of “second-hand goods” of the following definition:
 “ ‘service enterprise’ has the meaning assigned thereto in terms of section 21A of the Customs and Excise Act;”;
- (o) by the deletion of the definition of “transfer payment”.
- (2) (a) Subsection (1)(b), (c), (e), (g), (h), (i), (j) and (o) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.
- (b) Subsection (1)(m) shall come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), comes into operation.

Amendment of section 7 of Act 89 of 1991

165. (1) Section 7 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) of paragraph (b) of the following paragraph:

“(b) on the importation of any goods into the Republic by any person on or after the commencement date or on the importation of goods from a customs controlled area into the Republic; and”.

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

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001 and section 151 of Act 60 of 2001

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

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

“(iv) this subsection shall not apply to a vendor which is a Constitutional Institution or a Public Entity listed in Schedule 1 or 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), respectively, where that vendor ceases to be a vendor as a result of the substitution of paragraph (b)(i) and the insertion of paragraph (viii) to the proviso to the definition of ‘enterprise’ in the Revenue Laws Amendment Act, 2003.”;

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

“(5) For the purposes of this Act a **[vendor] designated entity** shall be deemed to supply services to any public authority or local authority to the extent of any payment made by the authority concerned to or on behalf of **[the vendor] that designated entity** in respect of the taxable supply of goods or services by **[the vendor to any person.] that designated entity**”; and

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

“(9) For the purposes of this Act, where any vendor in carrying on an enterprise in the Republic **[transfers] consigns or delivers goods to an address outside the Republic** or provides any service to or for the purposes of his branch or main business outside the Republic in respect of which the provisions of paragraph (ii) of the proviso to the definition of ‘enterprise’ in section 1 are applicable, the vendor shall be deemed to supply such goods or service in the course or furtherance of his enterprise.”;

(d) by the addition of the following subsections:

“(22) For the purposes of this Act, where two or more public higher education institutions or one or more subdivisions of such institutions are merged with or incorporated into a single public higher education institution in terms of a direction by the Minister of Education in terms of section 23 or 24 of the Higher Education Act, 1997 (Act No. 101 of 1997), such institutions or such subdivisions thereof prior to the merger or incorporation and the newly merged or incorporated single institutions shall be deemed to be one and the same institution.

(23) For the purposes of this Act a vendor shall be deemed to supply services to any public authority or local authority to the extent of any payment in terms of the Housing Subsidy Scheme referred to in section 3(5)(a) of the Housing Act, 1997 (Act No. 107 of 1997), made to or on behalf of that vendor in respect of the taxable supply of goods and services by that vendor.”.

(2) Subsection (1)(a), (b) and (d) shall to the extent it inserts subsection (23) come into operation on the date determined by the President by proclamation in the *Gazette*.

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

167. Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (e) of the following paragraph:

“(e) where the provisions of section 8(9) are applicable in respect of **[transfer of] the consignment or delivery of goods at an address outside the Republic or the provision of any service by a vendor to his branch or main branch at the time the goods are [delivered] consigned or delivered** to such branch or the service is performed, as the case may be.”.

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, paragraph 5 of Government Notice 2695 of 8 November 1991, section 16 of Act 13 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994, section 21 of Act 37 of 1996, section 22 of Act 46 of 1996, section 27 of act 27 of 1997, section 84 of Act 53 of 1999, section 68 of Act 19 of 2001 and section 152 of Act 60 of 2001 5

168. Section 10 of the Value Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (5) for subparagraph (iii) of paragraph (a) of the following paragraph:
 - “Any costs (including tax) incurred by the vendor in respect of the transportation or delivery of such goods or the provision of such services in **[connection with the transfer]** respect of such goods that are consigned or delivered or the provision of such services as contemplated in section 8(9); and”;
- (b) by the substitution in subsection (9) for item (aa) of subparagraph (i) of symbol “A” of the formula of the following item:
 - “(aa) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply or would in terms of that section have been deemed to be the open market value of the supply were it not for the fact that the recipient would have been entitled under section 16(3) to make a deduction of the full amount of tax in respect of that supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or”.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, paragraph 6 of Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001 and section 153 of Act 60 of 2001 30

169. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (m) of the following paragraph:
 - “(m) a registered vendor supplies goods in terms of a sale or instalment credit agreement to a registered vendor in **[the]** customs **[secured]** controlled area **[of an Industrial Development Zone]** and consigns or delivers the goods to that vendor in that area.”;
- (b) by the addition in subsection (1) of the following paragraph:
 - “(n) the goods consist of—
 - (i) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), wholly or partially continuing in force or wholly or partially converted into a new right pursuant to the same Schedule; or
 - (ii) any prospecting right, mining right, exploration right or production right mining permit or retention permit as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), renewed in terms of that Act.”;
- (c) by the substitution for paragraph (i) of subsection (1) of the following paragraph:
 - “(i) the goods are supplied as contemplated in section 8(9);”;
- (d) by the addition to subsection (1) of the following paragraph:
 - “(o) the goods are supplied by a vendor to the extent that the consideration for such goods is from donor funds granted under any international agreement to which the Government of the Republic is a party;”;

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

“(k) the services are physically rendered elsewhere than in the Republic
[not being telecommunication services supplied to any person
who utilizes such services in the Republic] or to a registered
vendor in a customs controlled area; or”;

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

“(n) the services comprise the carrying on by a welfare organization of
the activities referred to in the definition of “welfare organization”
in section 1 and to the extent that any payment in respect of those
services is made in terms of section 8(5) those services shall be
deemed to be supplied by that organisation to a public authority or
local authority; or”;

- (g) by the substitution in subsection (2) for paragraph (o) of the following paragraph:

“(o) the services are supplied as contemplated in section 8(9) by a
vendor, not being services which are supplied directly—
(i) in connection with land or any improvements thereto situated
inside the Republic; or
(ii) in connection with movable property (excluding debt securi-
ties, equity securities or participatory securities) situated inside
the Republic at the time the services are rendered, except
movable property which—
(aa) is consigned or delivered to the said person at an address
in an export country subsequent to the supply of such
services; or
(bb) forms part of a supply by the said person to a registered
vendor and such services are supplied to the said person
for purposes of such supply to the registered vendor; or
(iii) to the said person or any other person, other than in the
circumstances contemplated in subparagraph (ii)(bb), if the
said person or such other person is in the Republic at the time
that the services are rendered.”;

- (h) by the deletion of paragraph (p) of subsection (2);

- (i) by the substitution for paragraph (q) of subsection (2) of the following paragraph:

“(q) the services are [in terms of section 8(5) deemed to be] supplied
by a vendor [to a public authority or local authority] to the extent
that the consideration for such services [payment contemplated in
that section] is [made] from donor funds granted under any
international agreement to which the Government of the Republic is
a party; or”;

- (j) by the addition in subsection (2) of the word “or” at the end of paragraph (r);

- (k) by the addition in subsection (2) of the following paragraph:

“(s) the services are deemed to be supplied to a public authority or local
authority in terms of section 8(23);”.

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

“(3) Where a rate of zero per cent has been applied by any vendor
under the provisions of this section or section 13(1)(ii), the vendor shall
obtain and retain such documentary proof substantiating the vendor’s
entitlement to apply the said rate under [the] those provisions as is
acceptable to the Commissioner.”.

(2) (a) Subsection (1)(b) shall come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), comes into operation.

(b) Subsection (1)(a), (e), (f), (h), (j) and (k) shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.

Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 29 of Act 97 of 1993, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001 and section 155 of Act 60 of 2001

170. (1) Section 13 of the Value-Added Tax Act, 1991, is hereby amended— 5
- (a) by the substitution in subsection (1) for the words preceding the proviso of the following words: 10
- “(1) For the purposes of this Act goods shall be deemed to be imported into the Republic on the date on which the goods are in terms of section 10 or 21A of the Customs and Excise Act deemed to be imported:”
- (b) by the substitution in subsection (1) for paragraph (ii) of the proviso of the following paragraph: 15
- “(ii) where any goods have been imported and entered in a licensed Customs and Excise warehouse or customs controlled area but have not been entered for home consumption, any supply of such goods before they are entered for home consumption shall be [**disregarded**] zero-rated for the purposes of this Act;”;
- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 20
- “(b) where such goods have their origin in Botswana, Lesotho, Swaziland or Namibia or a customs controlled area, and are imported from such a country or such customs controlled area, the amount of the value as contemplated in paragraph (a), except that such value shall not be increased by the factor of 10 per cent:”.
- (2) Subsection (1) shall to the extent that it inserts a reference to— 25
- (a) a customs controlled area come into operation on a date determined by the President by proclamation in the *Gazette*;
- (b) zero-rating of goods be deemed to have come into operation on 1 January 2002 and apply in respect of any supply made on or after that date. 30

Amendment of section 14 of Act 89 of 1991

171. (1) Section 14 of the Value-Added Tax Act, 1991, is hereby amended by the addition to subsection (5) of the following paragraph: 35
- “(c) a supply of an educational service by an educational institution established in an export country which is regulated by an educational authority in that export country.”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 December 1998.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001 and section 156 of Act 60 of 2001 40

172. Section 16 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the deletion in subsection (2) of the provisos to paragraphs (a) and (e); and
- (b) by the substitution in subsection (3) of item (aa) of subparagraph (i) of symbol “B” in paragraph (h) of the following item: 45
- “(aa) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or”.

Amendment of section 17 of Act 89 of 1991, as amended by section 31 of Act 136 of 1991, paragraph 9 of Government Notice 2695 of 8 November 1991, section 22 of Act 136 of 1992, section 31 of Act 97 of 1993, section 17 of Act 20 of 1994, section 33 of Act 27 of 1997, section 92 of Act 30 of 1998 and section 88 of Act 53 of 1999

173. (1) Section 17 of the Value-Added Tax Act is hereby amended— 5

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

“(iii) such goods or services consist of a meal or refreshment supplied by the vendor as operator of any conveyance to a passenger and a crew member, in such conveyance during a journey, where such meal or refreshment is supplied as part of or in conjunction with the transport service supplied by the vendor, where the supply of such transport service is a taxable supply.”; 10

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

“(vii) such goods or services (where no consideration relating specifically to the supply of entertainment is payable shall be deemed to constitute a single supply for purposes of this subsection) are acquired by a vendor for an employee or office holder of such vendor, that are incidental to the admission into a medical care facility.”; and 15 20

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

“(e) in respect of goods and services that were acquired or imported for the purpose of consumption, use or supply in the course of making taxable supplies to the extent that those goods or services were acquired as a result of or in anticipation of the receipt of a grant.”. 25

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

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998 and section 89 of Act 53 of 1999 30

174. Section 18 of the Value-Added Tax Act is hereby amended—

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

“Provided that this subsection shall not apply to any capital goods or services which have an adjusted cost of less than R40 000 (excluding tax) or where such goods or services were deemed to be supplied to the vendor by subsection (4) if the amount which was represented by ‘B’ in the formula contemplated in that subsection was less than R40 000 when such goods or services were deemed to be supplied to such vendor.”; 35

(b) by the substitution in subsection (4) for subparagraph (i) of symbol “B” of the following subparagraph: 40

“(i) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or”; and 45 50

(c) by the substitution in subsection (5) for item (aa) subparagraph (i) of symbol “B” of the following item:

“(aa) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in 55

respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or”.

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Amendment of section 20 of Act 89 of 1991, as amended by paragraph 11 of Government Notice 2695 of 8 November 1991, section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999 and section 157 of Act 60 of 2001

175. (1) Section 20 of the Value Added Tax Act, 1991, is hereby amended by the substitution in subsection (4) for paragraph (c) of the following paragraph: 10

“(c) the [legal or trading] name, address and where the recipient is a registered vendor, the registration number of the recipient.”.

(2) Subsection (1) shall come into operation on 1 March 2005 and shall apply in respect of any supply made on or after that date. 15

Amendment of section 21 of Act 89 of 1991, as amended by section 26 of Act 136 of 1992

176. (1) Section 21 of the Value Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (3) for subparagraph (iii) of paragraph (a) of the following subparagraph: 20

“(iii) the [legal or trading] name, address and, where the recipient is a registered vendor, the registration number of the recipient, except where the credit note relates to a supply in respect of which a tax invoice contemplated in section 20(5) was issued.”; and

(b) by the substitution in subsection (3) for subparagraph (iii) of paragraph (b) of the following subparagraph: 25

“(iii) the [legal or trading] name, address and, where the recipient is a registered vendor, the registration number of the recipient, except where the debit note relates to a supply of goods in respect of which a tax invoice contemplated in section 20(5) was issued.”. 30

(2) Subsection (1) shall come into operation on 1 March 2005 and shall apply in respect of any supply made on or after that date.

Amendment of section 22 of Act 89 of 1991, as amended by section 33 of Act 136 of 1991, paragraph 13 of Government Notice 2695 of 8 November 1991, section 27 of Act 136 of 1992, section 25 of Act 37 of 1996, section 36 of Act 27 of 1997 and section 95 of Act 30 of 1998 35

177. Section 22 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (5).

Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997 and section 92 of Act 53 of 1999 40

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

Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992, section 79 of Act 30 of 2000, section 44 of Act 5 of 2001, section 158 of Act 60 of 2001 and section 118 of Act 74 of 2002 45

179. Section 28 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(iv) the Commissioner may prescribe the time by which any payment made on any business day must be received by the Commissioner and any payment received after that time shall be deemed to have been made on the first business day following that day.”; 50

(b) by the deletion of subsection (4).

Amendment of section 31 of Act 89 of 1991, as amended by section 80 of Act 30 of 2000

180. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the addition to subsection (1) of the following paragraph:

- “(f) any person who produces, furnishes, authorises, or makes use of any false tax invoice or debit note and has obtained any undue tax benefit or refund under the provisions of an export incentive scheme referred to in paragraph (d) of the definition of ‘exported’ in section 1, to which such person is not entitled.”.

Insertion of sections 31A and 31B in Act 89 of 1991

181. The following sections are hereby inserted in the Value-Added Tax Act, 1991, after section 31:

“Reduced assessments

31A. (1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal noted in terms of the provisions of Part V of this Act, reduce an assessment—

- (a) to rectify any processing error made in issuing that assessment; or
- (b) where it is proved to the satisfaction of the Commissioner that in issuing that assessment any amount which—
 - (i) was taken into account by the Commissioner in determining the liability for tax, should not have been taken into account; or
 - (ii) should have been taken into account in determining the liability for tax, was not taken into account by the Commissioner.

Provided that such assessment, wherein the amount was so taken into account or not taken into account, as contemplated in subparagraph (i) or (ii), as the case may be, was issued by the Commissioner based on information provided in the vendor’s return for the current or any previous tax period.

(2) The Commissioner shall not reduce an assessment under subsection (1)—

- (a) after the expiration of three years from the date of that assessment; or
- (b) if the amount was assessed in terms of an assessment accepted by the taxpayer and which was made in accordance with the practice generally prevailing at the date of that assessment.

Withdrawal of assessments

31B. (1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal has been noted in terms of Part V, withdraw an assessment, which—

- (a) was issued to the incorrect person; or
- (b) was issued in respect of the incorrect tax period.

(2) Any assessment withdrawn by the Commissioner in terms of this section shall for all purposes of this Act be deemed not to have been issued.”.

Amendment of section 32 of Act 89 of 1991, as amended by section 38 of Act 27 of 1997, section 97 of Act 30 of 1998, section 95 of Act 53 of 1999 and section 159 of Act 60 of 2001

182. Section 32 of the Value-Added Tax Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The provisions of sections 107A and Part IIIA of Chapter III of the Income Tax Act, 1962 (Act No. 58 of 1962), and any rules under that Act relating to any objection or to the settlements of disputes shall *mutatis mutandis* apply with reference to any objection under this section.”.

Amendment of section 33 of Act 89 of 1991

183. Section 33 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The provisions of sections 83 (8), (11), (12), (14), (17), (18), (19), 84, 85, 107A and [107B] Part IIIA of Chapter III of the Income Tax Act and any [regulations] rules under that Act relating to any appeal to the tax court or to the settlement of disputes shall *mutatis mutandis* apply with reference to any appeal under this section which is or is to be heard by that court or to any settlement of a dispute in terms of this Act.”.

Amendment of section 39 of Act 89 of 1991, as amended by section 166 of Act 60 of 2001

184. (1) Section 39 of the Value-Added Tax Act is hereby amended—

(a) by the insertion of the following subsection:

“(4) Where any importer of goods which are required to be entered under the Customs and Excise Act, fails to pay any amount of tax payable in respect of the importation of the goods on the date on which the goods are entered under the said Act for home consumption in the Republic or the date on which customs duty is payable in terms of the said Act in respect of the importation or, if such duty is not payable, the date on which it would be so payable if it had been payable, whichever date is later, that importer shall, in addition to such amount of tax pay—
(a) a penalty equal to 10 per cent of the said amount of tax; and
(b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.”; and

(b) by the deletion of subsection (8).

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

Amendment of section 46 of Act 89 of 1991

185. Section 46 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The natural person who is a resident of the Republic responsible for the duties imposed by this Act—”.

Amendment of section 48 of Act 89 of 1991

186. Section 48 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(3) For purposes of subsection (2), any tax, additional tax, penalty or interest payable by any representative vendor in his representative capacity shall be recoverable from him, but to the extent only of any assets belonging to the person whom he represents which may be in his possession or under his management, disposal or control: Provided that any tax, additional tax, penalty or interest payable by a company shall not be recoverable from the public officer of the company but shall be recoverable from the company.

(4) Every representative vendor or other person who is personally liable, who, as such, pays any tax, additional tax, penalty or interest due under this Act shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the amount so paid.”;

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

“(6) Every representative vendor shall be personally liable for the payment of any tax, additional tax, penalty or interest payable by him in his representative capacity, [if, while] to the extent that it remains unpaid, [the amount thereof remains unpaid]—”;

(c) by the insertion of the following subsection after subsection (6): 5

“(6A) The additional tax, penalty or interest payable by any representative vendor in terms of subsection (6) shall be recoverable by the Commissioner from that representative vendor.”;

(d) by the addition of the following subsection:

“(9) Where a vendor is a company, every shareholder and director who controls or is regularly involved in the management of the company’s overall financial affairs shall be personally liability for the tax, additional tax, penalty or interest for which the company is liable.”. 10

Amendment of section 57 of Act 89 of 1991, as amended by section 24 of Act 46 of 1996, section 47 of Act 27 of 1997 and section 172 of Act 60 of 2001 15

187. Section 57 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for the definitions of “documents” and “information” of the following definitions:

“ ‘documents’ include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any [**‘computer print-out’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)**] printout of information generated, sent, received, stored, displayed or processed by electronic means; 20

‘information’ includes any [**data stored by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983**] electronic representations of information in any form;” 25

Amendment of section 74 of Act 89 of 1991

188. Section 74 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the heading of the following heading: **“Schedules and Regulations”**; and 30

(b) by the addition of the following subsections:

“(3) (a) Whenever the Minister amends any Schedule under any provision of the Customs and Excise Act, 1964 (Act No. 91 of 1964), by notice in the *Gazette* and it is necessary to amend in consequence thereof Schedule 1 of this Act, the Minister, may by like notice amend the said Schedule 1. 35

(b) The provisions of section 48(6) of the Customs and Excise Act, 1964, shall apply *mutatis mutandis* in respect of any amendment by the Minister under this subsection.”. 40

Amendment of Schedule 1 to Act 89 of 1991, as substituted by section 106 of Act 53 of 1999 and section 177 of Act 60 of 2001 and amended by section 58 of Act 30 of 2002 and section 121 of Act 74 of 2002

189. Schedule 1 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for Item No. 490.40 of paragraph 8 of the following Item: 45

“490.40/00.00/01.00 Machinery or plant (excluding tower cranes) for use on contract in civil engineering or construction work, in such quantities and at such times and subject to such conditions as the Commissioner [**on the recommendation of the Board of Trade and Industry,**] may allow by specific permit.”. 50

Amendment of section 1 of Act 31 of 1998

190. (1) Section 1 of the Uncertificated Securities Tax Act, 1998, is hereby amended—

(a) by the substitution for the definition of “lending arrangement” of the following definition: 55

“ ‘lending arrangement’ means any arrangement in terms of which—

- (a) a person (hereinafter referred to as the lender) lends securities to another person (hereinafter referred to as the borrower) in order to enable that borrower to effect delivery (for any purpose other than for delivery to any lender in relation to that borrower unless the borrower can demonstrate that the arrangement was not entered into for purposes of the avoidance of any tax and was not entered into for purposes of keeping any position open for more than 12 months) of the security within 10 business days after the date of transfer of those securities from the lender to the borrower in terms of that arrangement;
- (b) that borrower in return contractually agrees in writing to deliver securities of the same kind and quality to that lender within a period of 12 months from the date of transfer of those securities from the lender to the borrower in terms of that arrangement;
- (c) that borrower is contractually required to compensate that lender for any distributions in respect of the securities which that lender would have been entitled to receive during that period had that arrangement not been entered into; and
- (d) that arrangement does not affect the lender’s benefits or risks arising from fluctuations in the market value of the securities:

Provided that where—

- (i) that borrower has not on delivered the securities within the period contemplated in paragraph (a); or
- (ii) that borrower has not returned securities as contemplated in paragraph (b) to the lender within the period contemplated in that paragraph,

that arrangement shall be deemed not to be a lending arrangement.”;

- (b) by the insertion after the definition of “participant” of the following definition:

“ ‘person’ includes any public authority, any local authority, any company, any body of persons (corporate or unincorporate), the estate of any deceased or insolvent person and any trust fund;”;

- (c) by the substitution for the definition of “securities” of the following definition:

“ ‘securities’ means listed securities as defined in section 1 of the Stock Exchange Control Act, 1985 (Act No. 1 of 1985)[, **which are transferable without a written instrument and which are not evidenced by a certificate**];”.

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

Amendment of section 6 of Act 31 of 1998, as amended by section 15 of Act 32 of 1999, section 87 of Act 30 of 2000, section 75 of Act 19 of 2001, section 180 of Act 60 of 2001, section 60 of Act 30 of 2002 and section 122 of Act 74 of 2002

- 191.** (1) Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for item (ee) of subparagraph (ix) of paragraph (b) of the following item:

“(ee) in **[pursuance] terms of [a distribution in specie in the course of]** an unbundling transaction contemplated in section 46 of that Act;”;

- (b) by the substitution for item (gg) of subparagraph (ix) of paragraph (b) of the following item:

“(gg) in terms of any transaction which would have constituted a transaction or distribution contemplated—

- (A) in subparagraphs (i) to (vi) regardless of whether or not an election has been made for the provisions of that section to apply;
- (B) in subparagraph (i), (ii) or (iii) regardless of the market value of the asset disposed of in exchange for those securities; or

(C) in subparagraphs (i) to (vi) regardless of whether or not that person acquired those securities as capital assets or as trading stock,

where the public officer of the relevant company has made a sworn affidavit or solemn declaration that the acquisition of those securities complies with the provisions of this paragraph.”

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of a change in beneficial ownership in securities in terms of any transaction which takes effect on or after that date.

Insertion of section 11A in Act 31 of 1998

192. (1) The following sections are hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 11:

“Schemes for obtaining undue tax benefits

11A. (1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any transaction, operation, scheme or understanding (whether enforceable or not), including all steps by which it is carried into effect—

(a) has been entered into or carried out which has the effect of any person obtaining a tax benefit;

(b) having regard to the substance of the transaction, operation, scheme or understanding—

(i) was entered into or carried out in a manner which would not normally be employed for *bona fide* business purposes other than the obtaining of a tax benefit; or

(ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and

(c) was entered into or carried out solely or mainly for the purposes of obtaining a tax benefit,

the Commissioner shall determine the liability for any tax imposed by this Act and the amount thereof, as if the transaction, operation, scheme or understanding had not been entered into or carried out, or in such manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of such tax benefit.

(2) For the purpose of this section ‘tax benefit’ means—

(a) any reduction in the liability of any person to pay tax;

(b) any increase in the entitlement of any person to the refund of tax; or

(c) any other avoidance or postponement of liability for the payment of any tax imposed by this Act or any tax, duty or levy imposed by any other Act administered by the Commissioner.

(3) Any decision of the Commissioner under subsection (1) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it shall be presumed, until the contrary is proved, that such scheme was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.

Power to appoint agent

11B. The Commissioner may, if he or she deems it necessary, declare any person to be the agent of any other person, and the person so declared an agent—

(a) shall for the purposes of this Act be the agent of that other person in respect of the payment of any amount of tax, penalty or interest payable by that other person under this Act; and

(b) may be required to make payment of such amount from any moneys which may be held by that agent for or be due by that agent to the person whose agent he or she has been declared to be:

Provided that a person so declared an agent who is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of Commissioner against agent or trustee

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11C. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property of any person liable to pay any tax and in as full and ample a manner.”

(2) Subsection (1) shall in so far as it inserts section 12A in the Uncertificated Securities Tax Act, 1998, come into operation on the date of promulgation of this Act and shall apply in respect of the purchase of any security in terms of a transaction, operation, scheme or understanding entered into on or after that date.

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Amendment of section 13 of Act 31 of 1998, as amended by section 181 of Act 60 of 2001

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193. Section 13 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for the definitions of “documents” and “information” of the following definitions:

“ ‘documents’ include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any [**‘computer print-out’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)**] printout of information generated, sent, received, stored, displayed or processed by electronic means;”;

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‘information’ includes any [**data stored by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983**] electronic representations of information in any form;”.

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Insertion of section 14A in Act 31 of 1998

194. (1) The following section is hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 14:

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“Records

14A. Any issuer, member or participant must keep such records of every issue of, or change in beneficial ownership in, any securities issued by the issuer or in respect of which a change in beneficial ownership has been effected by the member, or any transfer of securities by the participant for a period of five years as may be required to enable the issuer, member or participant, as the case may be, to observe the requirements of this Act and to enable the Commissioner to be satisfied that those requirements have been observed.”

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(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any records relating to the issue of, or change in beneficial ownership in, any securities on or after that date.

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Amendment of section 17A of Act 31 of 1998

195. Section 17A of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

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“(b) settlement of disputes, as provided for in [**section 107B**] Part IIIA of Chapter III of that Act,”.

Amendment of section 4 of Act 9 of 1999, as amended by section 112 of Act 53 of 1999, section 91 of Act 30 of 2000 and section 62 of Act 30 of 2002

196. Section 4 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for paragraph (c) of the following paragraph:

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“(c) any public benefit organisation contemplated in section 10(1)(cN) of the Income Tax Act, which—

- (i) solely carries on any public benefit activity contemplated in paragraphs 1, 2 (a), (b), (c) and (d) and 5 of Part I of the Ninth Schedule to that Act; or
- (ii) **[any public benefit organisation which] solely provides funds [solely] to [such] public benefit [organisation which so carries on any such public benefit activity] organisations contemplated in subparagraph (i); or”.**

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Amendment of section 12 of Act 9 of 1999, as amended by section 113 of Act 53 of 1999

197. (1) Section 12 of the Skills Development Levies Act, 1999, is hereby amended by the addition of the following subsections:

“(3) If an employer fails to pay an amount of levy with intent to evade that employer’s obligations under this Act, the employer may be liable to pay a penalty not exceeding an amount equal to twice the amount of levy which that employer so failed to pay.

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(4) Any penalty contemplated in subparagraph (3)—

- (a) must be determined by the Commissioner and must be paid within such period as the Commissioner may determine; and
- (b) shall be deemed to be a tax for purposes of—
 - (i) the determination of any interest payable in terms of section 11; and
 - (ii) the provisions relating to the allocation of payments by the employer as applied in terms of section 13(e) and (iii).”

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(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any failure by an employer to pay any amount which becomes payable on or after that date.

Amendment of section 21 of Act 30 of 2000, as amended by section 78 of Act 19 of 2001 and section 63 of Act 30 of 2002

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198. Section 21 of the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution in subsection (2) for the first proviso to paragraph (a) of the following proviso:

“Provided that—

- (a) any company, society, trust, institution, union, chamber, exchange, other association of persons or fund—

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- (i) whose receipts and accruals were exempt from tax in terms of the provisions of paragraphs (cB), (cC), (cD), (cF), (cI), (cJ), (f) and (fA) of section 10(1) of the Income Tax Act, 1962, prior to the amendment thereof by this section[, **which company, society, trust, institution, union, chamber, exchange, other association of persons or fund applies for approval by the Commissioner in terms of section 10(1)(d)(iii) or (iv) or section 30 of that Act before 31 December 2003, or submits a written undertaking as provided for in the said section 30 before that date,]; or**

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- (ii) which was exempt from any other tax, duty, levy charge or other amount imposed in terms of any other Act administered by the Commissioner for the South African Revenue Service,

shall continue to enjoy such exemption if that company, society, trust, institution, union, chamber, exchange, other association of persons or fund applies for approval by the Commissioner in terms of section 10(1)(d)(iii) or (iv) or section 30 of that Act before 31 December 2004, or submits a written undertaking as provided for in the said section 30 before that date; and

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- (b) where the provisions of section 18A of the Income Tax Act, 1962, prior to its amendment by section 24 of this Act were applicable in respect of any entity, section 18A shall continue to apply in respect of that entity if that entity applies for approval by the Commissioner in terms of section 18A of the Income Tax Act before 31 December 2003,

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until written notification by the Commissioner of his or her decision in terms of [the said] section 10(1)(d)(iii) or (iv) or section 30 of [that Act] the Income Tax Act, 1962, as the case may be.”.

Amendment of section 113 of Act 60 of 2001, as amended by section 73 of Act 30 of 2002

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199. Section 113 of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the deletion of paragraphs (a) to (d) and (f) to (i) of subsection (1) and paragraph (b) of subsection (2).

Amendment of section 116 of Act 60 of 2001, as amended by section 74 of Act 30 of 2002

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200. Section 116 of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the deletion of paragraph (d) of subsection (1) and paragraph (b) of subsection (2).

Repeal of sections 117 and 118 of Act 60 of 2001

201. Sections 117 and 118 of the Second Revenue Laws Amendment Act, 2001 are hereby repealed.

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Amendment of section 121 of Act 60 of 2001

202. Section 121(1) of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the substitution for the proposed section 21A of the Customs and Excise Act, 1964 of the following—

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“Provisions for the administration of customs controlled areas within industrial development zones

21A. (1) For the purposes of this section, unless the context otherwise indicates—

‘Customs Controlled Area’ or ‘CCA’ means an area within an IDZ, designated by the Commissioner in concurrence with the Director General: Trade and Industry, which area is controlled by the Commissioner;

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‘Industrial Development Zone’ or ‘IDZ’ means an area designated by the Minister of Trade and Industry in terms of any regulation made under section 10 (1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993);

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‘IDZ operator’, ‘CCA enterprise’, ‘Service enterprise’ or any other expression as may be necessary, relating to any activity inside or outside an IDZ or a CCA shall have the meaning assigned thereto in any Schedule or rule.

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(2) Any reference in this section, any Schedule or any rule to ‘regulations’ or ‘regulation’ shall, unless otherwise specified, be a reference to the regulations made under section 10(1) of the Manufacturing Act 1993.

(3) Where any provision of the Manufacturing Development Act, 1993, or any regulation made thereunder for the purpose of the IDZ is inconsistent or in conflict with any provision of this Act governing the administration of the CCA, including any matter relating to the liability or levying of duty or any rebate, refund or drawback of duty, the provisions of this Act shall prevail over the provisions of the Manufacturing Development Act, 1993, or the regulations made thereunder.

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(4) Notwithstanding anything to the contrary contained in this section or any other provision of this Act or in the Value-Added Tax Act, 1991, goods to which subsection (7) relates shall, subject to any exception or adaptation prescribed in any Schedule or rule—

(a) even if free of duty, be deemed to be goods liable to duty for the purposes of the application of any provision of this Act; and

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(b) if removed from a CCA, be deemed to have been imported into the Republic.

(5) Any reference in this section to liability for duty or termination of liability for duty or in any Schedule or rule to which it relates shall, subject to any exemption or exception allowed in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and notwithstanding anything to the contrary contained in that Act, be deemed to include a reference to the liability or termination of liability for value-added tax. 5

(6) A CCA shall be subject to such controls and procedures, as the Commissioner may prescribe by rule.

(7) Any goods to which this section or any other provision of this Act relates, whether or not such goods are free of duty, which are— 10

(a) brought into a CCA;

(b) produced or manufactured, stored, or moved for any purpose therein; or

(c) removed therefrom,

shall, except to the extent that this section, any Schedule or any rule may otherwise provide, be subject to the provisions of this Act and any procedure that may be prescribed in terms of such provisions. 15

(8) Any person, including, where relevant, a CCA enterprise or an IDZ operator, who for the purposes of any activity within a CCA—

(a) brings any goods to which this section or any other provision of this Act relates into or receives any such goods in the CCA, including any licensed or registered premises therein; 20

(b) produces or manufactures any goods therein;

(c) removes any goods therefrom; or

(d) otherwise deals with goods to which this section relates, shall, except where any provision of this Act otherwise provides— 25

(i) be liable for the fulfilment of all obligations imposed in terms of this section or any other provision of this Act in respect of such goods;

(ii) in addition to any liability incurred by any other person in terms of the provisions of this Act, be liable for the duty on such goods. 30

(9) The liability for duty in respect of any goods to which this section relates of an IDZ operator or a CCA enterprise or such other person shall cease—

(a) if the IDZ operator or CCA enterprise or such other person proves that, as the case may be— 35

(i) the duty on the goods concerned has been paid;

(ii) the goods have been duly consumed or otherwise used in the manufacture or production of any goods by the CCA enterprise in accordance with any CCA enterprise permit and any relevant provision of this Act; 40

(iii) the goods have been duly exported;

(iv) the goods have, where relevant, been removed and received in any other premises registered or licensed under the provisions of this Act; or

(v) any goods brought temporarily into the CCA are removed therefrom in accordance with the provisions of this Act and any conditions imposed by the Commissioner; 45

(b) where liability otherwise ceases in terms of any provision of this Act, including in terms of any provision of any Schedule or rule made for the purposes of this section; 50

(c) where the goods are abandoned or destroyed under the provisions of this Act.

(10) Any goods manufactured or produced in a CCA shall, when removed therefrom for any purpose other than export, except if otherwise provided in any Schedule or rule, be deemed to be imported goods. 55

(11) Notwithstanding anything to the contrary contained in this Act or the Manufacturing Development Act, 1993 (Act No. 187 of 1993), or any regulation or any other law, the Minister may, at the request of the Minister of Trade and Industry, in respect of any goods produced or manufactured in or removed for home consumption or exported from or brought into or used in any activity in the CCA, by notice in the *Gazette*— 60

- (a) in a schedule which shall be deemed to be incorporated in Schedule No. 1 as Part 9 thereof and to constitute an amendment of Schedule No. 1, specify the duty leviable on goods manufactured or produced in, or any other goods brought into a CCA on entry for home consumption; 5
- (b) in any item in a separate Part of each of Schedule No. 3, 4, 5 or 6, as the case may be, which shall be deemed to be an amendment of such Schedule, provide for a rebate, refund or drawback of duty in respect of any goods brought into, produced or manufactured or used in or removed from a CCA, in the circumstances and for the purposes and on compliance with any conditions that may be specified in such Part or item. 10
- (12) Any amendment contemplated in subsection (11) may be made with retrospective effect from such date as may be specified in such notice.
- (13) Notwithstanding the provisions of sections 48 and 75(15) any amendment to the said Part 9 or Schedule No. 3, 4, 5 or 6 shall unless otherwise specified in any amendment to any Schedule be made under the provisions of this section. 15
- (14) The provisions of section 48(6) shall apply *mutatis mutandis* to any amendment to which subsections (11), (12) and (13) relates. 20
- (15) 'Manufactured or produced' shall have the meaning applied in terms of this Act to goods imported into the Republic, and in determining the duty leviable in Part 9 of Schedule No. 1, the Minister shall take into account the preferential rates of duty in operation in Part 1 of the said Schedule No. 1 in respect of goods originating in a country which is entitled to such preferential rates. 25
- (16) The provisions of sections 65, 66 and 67 shall, subject to the rules, apply *mutatis mutandis* in respect of the valuation of such goods.
- (17) The Commissioner may make rules—
- (a) to designate a CCA; 30
- (b) to ensure the security and control of a CCA;
- (c) to regulate the customs and excise administration of a CCA in connection with goods received or removed or manufactured or produced or consumed or any other activity to which this section or any other provisions of this Act relates; 35
- (d) notwithstanding anything contained to the contrary in this section or any other provision of this Act, requiring that—
- (i) any person who participates in any activity within or having access to a CCA must be licensed or registered in terms of this Act; 40
- (ii) any premises or area in the CCA used for any activity specified in such rule must be licensed as a customs and excise warehouse;
- (e) to prescribe after consultation with the Director-General: Trade and Industry conditions and procedures regulating the activities and registration or licensing in respect of any enterprise or any other person partaking in any activity in, or having access to a CCA; 45
- (f) after consultation with the Director-General: Trade and Industry in addition to or in substitution of any power, duty or function relating to the South African Revenue Service or any officer thereof or any procedure or process prescribed in the regulations; 50
- (g) after consultation with the Director-General: Trade and Industry regarding duties or functions of an IDZ operator or a CCA enterprise;
- (h) in respect of all matters which are required or permitted in terms of this section to be prescribed by rule; 55
- (i) regarding any other matter which may be necessary and useful for the purpose of the effective and efficient administration of a CCA.
- (18) (a) The Commissioner may refuse any application for a licence or registration required in terms of this section or cancel or suspend any such licence or registration. 60
- (b) The provisions of sections 59A (2) or 60 (2), as the case may be, shall apply *mutatis mutandis* for the purposes of paragraph (a).

- (19) Any person who, in connection with any activity to which this section relates—
- (a) makes any false statement or makes use of any declaration or document containing such statement; or
 - (b) contravenes or fails to comply with any provision of this section or any other provision of the Act,
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 5 years, or to both such fine and such imprisonment and the goods in respect of which the offence was committed shall be liable to forfeiture in accordance with this Act.”.

Repeal of section 125 of Act 60 of 2001

203. Section 125 of the Second Revenue Laws Amendment Act, 2001, is hereby repealed.

Repeal of section 135 of Act 60 of 2001

204. Section 135 of the Second Revenue Laws Amendment Act, 2001 is hereby repealed.

Repeal of section 137 of Act 60 of 2001, as amended by section 76 of Act 30 of 2002

205. Section 137 of the Second Revenue Laws Amendment Act, 2001 is hereby repealed.

Amendment of section 190 of Act 60 of 2001

206. Section 190 of the Second Revenue Laws Amendment Act, 2001, is hereby amended by the deletion of subsection (2).

Amendment of section 1 of Act 4 of 2002

- 207.** (1) Section 1 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the deletion of the definition of “seasonal worker”.
- (2) Subsection (1) shall come into operation on the date that section 1 of the Unemployment Insurance Amendment Act, 2003 (Act No. ?? of 2003), comes into operation.

Amendment of section 4 of Act 4 of 2002

208. (1) Section 4 of the Unemployment Insurance Contributions Act, 2002, is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:
 - “(b) **[an employee and his or her employer, where that employee receives remuneration under a learnership agreement registered in terms]** employees under a contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act 97 of 1998), and their employers;
 - (c) **[employers and]** employees in the national and provincial spheres of government who are officers or employees as defined in section 1(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and their employers; and”;

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

(2) Subsection (1) shall come into operation on the date that section 2 of the Unemployment Insurance Amendment Act, 2003 (Act No. ?? of 2003), comes into operation.

Amendment of section 7 of Act 4 of 2002

209. (1) Section 7 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the insertion after subsection (4) of the following subsection:

“(4A) Where an amount of an employee’s contribution which has been deducted or withheld by an employer which is a company (other than a listed company) in terms of this section has not been paid over to the Commissioner or the Unemployment Insurance Commissioner, as the case may be, the representative employer and every director and shareholder of that company who controls or is regularly involved in the management of the company’s overall financial affairs shall be personally liable for the payment of that amount to the Commissioner or the Unemployment Insurance Commissioner and for any penalty contemplated in section 13(2) which may be imposed in respect of that payment.”. 5

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount deducted or withheld on or after that date. 10

Repeal of section 73 of Act 30 of 2002

210. Section 73 of the Taxation Laws Amendment Act, 2002 is hereby repealed.

Repeal of section 76 of Act 30 of 2002

211. Section 76 of the Taxation Laws Amendment Act, 2002 is hereby repealed. 15

Amendment of section 14 of Act 74 of 2002

212. (1) Section 14 of the Revenue Laws Amendment Act, 2002, is hereby amended—

(a) by the substitution in the definition of ‘foreign financial instrument holding company’ inserted by that Act in section 9D of the Income Tax Act, 1962, for the words preceding paragraph (a) of the following words: 20

“ ‘foreign financial instrument holding company’ means any foreign company where more than 50 per cent of the market value or two-thirds of the 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—”;

(b) by the substitution in the definition of ‘foreign financial instrument holding company’ inserted by that Act in section 9D of the Income Tax Act, 1962, for the proviso of the following proviso: 25

“Provided that in determining whether more than 50 per cent of the market value or two-thirds of the 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 35
- (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;”.

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002.

Amendment of section 33 of Act 74 of 2002

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213. Section 33 of the Revenue Laws Amendment Act, 2002, is hereby amended—

(a) by numbering the existing wording of the English text as subsection (1); and

(b) by the addition in the English text of the following subsection:

“(2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.”.

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Amendment of section 34 of Act 74 of 2002

214. (1) Section 34 of the Revenue Laws Amendment Act, 2002, is hereby amended—

(a) by the substitution in the definition of ‘domestic financial instrument holding company’ inserted by that Act in section 41 of the Income Tax Act, 1962, 50

- “ ‘domestic financial instrument holding company’ means any company which is a resident, where more than 50 per cent of the market value or two-thirds of the actual cost of all the assets of that company together with the assets of all controlled group companies in relation to that company consists of financial instruments, other than—”;
- (b) by the substitution in the definition of ‘domestic financial instrument holding company’ inserted by that Act in the Income Tax Act, 1962, for the proviso of the following proviso:
- “Provided that in determining the 50 per cent and two-thirds ratio, the following will be wholly disregarded—
- (i) any share of a controlled group company in relation to that company; and
- (ii) any financial instrument which constitutes a loan, advance or debt if both the debtor and creditor companies are members within the same group of companies;”.
- (2) Subsection (1) shall be deemed to have come into operation on 6 November 2002.

Amendment of section 36 of Act 74 of 2002

- 215.** (1) Section 36 of the Revenue Laws Amendment Act, 2002, is hereby amended by the deletion in subsection (1) of paragraph (b).
- (2) Subsection (1) shall be deemed to have come into operation on 13 December 2002.

Amendment of section 113 of Act 74 of 2002

- 216.** Section 113 of the Revenue Laws Amendment Act, 2002, is hereby amended by the addition of the following subsection:
- “(2) Subsection (1)(a) and (b) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any registration of transfer of a marketable security in terms of a transaction which takes effect on or after that date.”.

Amendment of section 122 of Act 74 of 2002

- 217.** Section 122 of the Revenue Laws Amendment Act, 2002, is hereby amended by the substitution for subsection (2) of the following subsection:
- “(2) Subsection (1) shall be deemed to have come into operation on [the date of promulgation of this Act] 6 November 2002 and shall apply in respect of any acquisition of beneficial ownership in terms of a transaction which takes effect on or after that date.”.

Repeal of section 128 of Act 74 of 2002

- 218.** Section 128 of the Revenue Laws Amendment Act, 2002, is hereby repealed.

Amendment of section 1 of Act 12 of 2003

- 219.** (1) Section 1 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, is hereby amended by—
- (a) the substitution for the definition of “Commissioner” of the following definition:
- “ ‘Commissioner’ means the Commissioner for the South African Revenue Service appointed in terms of section [13] 6 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);”.
- (b) by the addition of the word “or” at the end of paragraph (b) of the definition of “unlawful activity” and by the addition of the following paragraph:
- “(c) any contravention or failure to comply with any other Act administered by the Commissioner, if the applicant or facilitator, as the case may be, no later than 60 days after the date of application rectifies any such contravention or failure and makes arrangements with the Commissioner to pay any outstanding liability relating to that contravention or failure.”;
- (2) Subsection (1) is deemed to have come into operation on 1 June 2003.

Amendment of section 4 of Act 12 of 2003

220. (1) Section 4 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, is hereby amended—

- (a) by the substitution for the heading of the following heading:
 - “Special rules for donors to and beneficiaries of discretionary trust”; 5
 - (b) by the substitution for subsection (1) of the following subsection:
 - “(1) A person who is a donor (or the deceased estate of a donor) or a beneficiary in relation to a discretionary trust which is not a resident, may elect that any foreign asset contemplated in subsection (2), which was held by that discretionary trust on 28 February 2003, must be deemed to be held by that person.”; 10
 - (c) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:
 - “(a) was acquired by that discretionary trust by way of a donation **[made by the person contemplated in subsection (1)]**; 15
 - (b) has been wholly or partly derived from any unauthorised asset or from any amount not declared **[by that donor]** to the Commissioner as required by the Estate Duty Act, 1955, or the Income Tax Act, 1962; and”; and
 - (d) by the substitution in subsection (3) for subparagraph (ii) of paragraph (a) of the following subparagraph:
 - “(ii) for the purposes of the Income Tax Act, 1962, (other than Part V and VII of that Act) from the first day of the last year of assessment ending on or before 28 February 2003;”. 20
- (2) Subsection (1) is deemed to have come into operation on 1 June 2003. 25

Substitution of section 5 of Act 12 of 2003

221. (1) The following section hereby substitutes section 5 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003:

“Application for amnesty and period for application

- 5. An applicant or facilitator applying for amnesty contemplated in this Chapter must submit an application by way of a sworn affidavit or solemn declaration which must be delivered to the amnesty unit during the period commencing 1 June 2003 and ending **[30 November 2003]** 29 February 2004, at the address and in the form and manner as may be prescribed by the amnesty unit.”. 30 35
- (2) Subsection (1) is deemed to have come into operation on 1 June 2003.

Amendment of section 10 of Act 12 of 2003

222. (1) Section 10 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 40

- “(a) that applicant delivered the application to the amnesty unit within the period commencing 1 June 2003 and ending **[30 November 2003]** 29 February 2004;”. 40
- (2) Subsection (1) is deemed to have come into operation on 1 June 2003.

Amendment of section 17 of Act 12 of 2003

223. (1) Section 17 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, is hereby amended by the addition of the following subsection: 45

- “(3) No tax relief shall be granted in terms of this section in respect of any—
 - (a) normal tax which could have been imposed in terms of the Income Tax Act, 1962, in respect of any year of assessment ending after 28 February 2002; 50
 - (b) secondary tax on companies which could have been imposed in terms of the Income Tax Act, 1962, in respect of any dividend declared or amount distributed after 28 February 2002;

- (c) donations tax which could have been imposed in terms of the Income Tax Act, 1962, in respect of any donation after 28 February 2003; or
 (d) estate duty which could have been imposed in terms of the Estate Duty Act, 1955, in respect of the estate of any person who died after 28 February 2003.”
 (2) Subsection (1) is deemed to have come into operation on 1 June 2003. 5

Repeal of Act and withdrawal of regulations

224. (1) The Marketable Securities Tax Act, 1948 (Act No. 32 of 1948), is hereby repealed.

(2) The provisions of the Marketable Securities Tax Act, 1948, shall continue to apply in respect of any purchase of marketable securities before the date of the repeal of that Act as if that Act had not been so repealed. 10

(3) The regulations prescribing the circumstances under which the Commissioner for the South African Revenue Service may settle a dispute between the Commissioner and any person, issued in terms of section 107B of the Income Tax Act, 1962 (Act No. 58 of 1962), and section 93A of the Customs and Excise Act, 1964 (Act No. 91 of 1964), and published as Government Notice R. 468 in *Gazette* No. 24639 of 1 April 2003, are hereby withdrawn. 15

Transitional provisions relating to gold bullion and shares of companies acquired from funds transferred to Republic

225. A company contemplated in section 10(1)(s) of the Income Tax Act, 1962, must disregard any capital gain or capital loss in respect of the disposal during any year of assessment of that company commencing on or before 1 January 2004 of any asset consisting of gold bullion or shares as contemplated in section 10(1)(s). 20

Short title and commencement

226. (1) This Act shall be called the Revenue Laws Amendment Act, 2003. 25

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected by this Act to the Income Tax Act, 1962, shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2004. 30