

REPUBLIC OF SOUTH AFRICA

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# REVENUE LAWS AMENDMENT BILL

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

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(MINISTER OF FINANCE)

[B 80—2008]

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## GENERAL EXPLANATORY NOTE:

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

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

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# BILL

To—

- amend the Transfer Duty Act, 1949, so as to provide for exemptions from duty;
- amend the Estate Duty Act, 1955, so as to exclude certain proceeds from estate duty;
- amend the Pension Funds Act, 1956, so as to effect a technical correction;
- amend the Income Tax Act, 1962, so as to amend and insert certain definitions; to effect technical corrections; to repeal certain provisions; to amend certain provisions; to make new provision for: passive holding companies; deductions in respect of residential units; additional investment and training allowances, venture capital companies, licence fees, intellectual property, environmental conservation and maintenance, micro businesses, dividends tax and education loans; and to lower a rate of tax;
- amend the Customs and Excise Act, 1964, so as to amend certain provisions; to make new provision for: removal of dutiable imported goods from a customs and excise storage warehouse; losses in respect of certain liquid bulk goods; liability for underpayments of duty; certain exemptions in respect of environmental levy goods; and dutiability of waste and scrap after the destruction of goods; to prohibit refund of a duty; to provide for the continuation of certain amendments to the Schedules; to deem a date on which an international trade agreement came into operation; and to effect consequential and textual amendments;
- repeal the Stamp Duties Act, 1968;
- amend the Value-Added Tax Act, 1991, so as to amend certain definitions; to repeal a provision; to amend certain provisions; to raise a limit; and to effect consequential and textual amendments;
- amend the Income Tax Act, 1993, so as to repeal a provision;
- amend the Income Tax Act, 1994, so as to repeal a provision;
- amend the Restitution of Land Rights Act, 1994, so as to amend provisions relating to transfer duty and stamp duty;
- repeal the Company Tax Amendment Decree, 1994, of the former Republic of Ciskei;
- repeal the Tax Amnesty Act, 1995;
- repeal the Final Relief on Tax, Interest, Penalty and Additional Tax Act, 1996;

- amend the Revenue Laws Amendment Act, 2006, so as to amend provisions relating to the 2010 FIFA World Cup;
  - amend the Taxation Laws Amendment Act, 2007, so as to effect a technical correction;
  - amend the Securities Transfer Tax Act, 2007, so as to amend provisions;
  - amend the Revenue Laws Amendment Act, 2007, so as to amend commencement dates;
  - amend the Taxation Laws Amendment Act, 2008, so as to amend commencement dates and to effect a technical correction,
- and to provide for matters connected therewith.

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

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

1. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by the addition to subsection (1) of the following paragraphs:

- “(n) any person to whom the Minister of Land Affairs has made available state land administered or controlled by him or her in terms of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993), or section 42E of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);
- (o) any person in respect of so much of the value of the property as does not exceed an amount equal to any advance or subsidy granted to that person in terms of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993), for the purposes of that acquisition.”

(2) Subsection (1) comes into operation on a date determined by the Minister by notice in the *Gazette* and applies in respect of the acquisition of property acquired on or after that date.

**Amendment of section 3 of Act 45 of 1955, as amended by section 2 of Act 65 of 1960, section 8 of Act 77 of 1964, section 2 of Act 81 of 1965, section 4 of Act 92 of 1971, section 3 of Act 89 of 1972, section 3 of Act 102 of 1979, section 10 of Act 106 of 1980, section 2 of Act 92 of 1983, section 4 of Act 81 of 1985, section 9 of Act 87 of 1988, section 7 of Act 97 of 1993, section 6 of Act 27 of 1997, section 13 of Act 30 of 1998, section 7 of Act 30 of 2000 and section 5 of Act 31 of 2005**

2. (1) Section 3 of the Estate Duty Act, 1955, is hereby amended—

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

- “(i) so much of any benefit which is due and payable by, or in consequence of membership or past membership of, any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as defined in the Income Tax Act, 1962 (Act No. 58 of 1962), on or as a result of the death of the deceased.”; and

(b) by the deletion in subsection (3) of paragraph (a)bis.

(2) Subsection (1) comes into operation on 1 January 2009 and applies in respect of the estate of a person who dies on or after that date.

**Amendment of section 37D of Act 24 of 1956, as inserted by section 14 of Act 94 of 1977 and amended by section 14 of Act 80 of 1978, section 4 of Act 65 of 2001, section 4 of Act 35 of 2007 and section 16 of Act 22 of 2008**

3. (1) Section 37D of the Pension Funds Act, 1956, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 5

“(d) deduct from a member’s benefit or minimum individual reserve, as the case may be—

(i) any amount assigned from such benefit or individual reserve to a non-member spouse in terms of a decree granted under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979); 10

(iA) any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998); and

(ii) employees’ tax required to be deducted or withheld in terms of the Fourth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), as a result of the deduction referred to in subparagraph (i) or (iA);” and 15

(b) by the substitution in subsection (3)(b) for subparagraph (i) of the following subparagraph: 20

“(i) any maintenance order referred to in subsection [(1)(d)(i) (1)(d)(iA)];”.

(2) Subsection (1) is deemed to have come into operation on the date on which section 16 of the Financial Services Laws General Amendment Act, 2008, comes into operation.

**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 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R780 of 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, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007 and section 2 of Act 3 of 2008** 25 30 35 40 45

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

(a) by the deletion in the definition of “benefit fund” of the word “or” at the end of paragraph (b);

(b) by the insertion after the definition of “connected person” of the following definition: 50

“**contributed tax capital**”, in relation to a class of shares issued by a company, means an amount equal to the sum of—

(a) the share capital and share premium immediately before the effective date as defined in section 64D in relation to shares issued before that date, less so much of the share capital and share premium as would have constituted a dividend, as defined before that date, had the share capital and share premium been distributed immediately before that date; and 55

(b) the consideration received by or accrued to the company for the issue of shares on or after that date, 60

- reduced by so much of that amount as the company has transferred on or after that date to shareholders in relation to those shares, and has by the date of the transfer determined in writing to be an amount so transferred: Provided that the amount so transferred to a shareholder of any class of shares is deemed to be an amount that bears to the total of the amounts so transferred to all shareholders of that class the same ratio as the number of shares of that class held by that shareholder bears to the total number of shares of that class;”;
- (c) by the substitution for the definition of “dividend” of the following definition: “**‘dividend’** means any amount transferred by a company to a shareholder in relation to a share held by the shareholder, to the extent that the amount transferred—
- (a) does not result in a reduction of contributed tax capital; and
- (b) does not constitute shares in that company;”;
- (d) by the substitution for the definition of “foreign dividend” of the following definition: “**‘foreign dividend’** means any dividend, as defined prior to the coming into operation of Part VIII of Chapter II of this Act, received by or which accrued to any person from a foreign company as defined in section 9D;”;
- (e) by the substitution in the definition of “gross income” for subparagraphs (iii) and (iv) of paragraph (cA) of the following subparagraphs:
- “(iii) is or was a personal service **[company]** provider as defined in the Fourth Schedule; or
- (iv) **[is or ]** was a personal service company or personal service trust as defined in the Fourth Schedule prior to section 66 of the Revenue Laws Amendment Act, 2008, coming into operation;”;
- (f) by the insertion in the definition of “gross income” after paragraph (eB) of the following paragraph: “(eC) any amount awarded to a person by a beneficiary fund as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), to the extent that the amount does not form part of any amount transferred to that beneficiary fund for or on behalf of that person by a trust;”;
- (g) by the substitution in the definition of “living annuity” for the words preceding paragraph (a) of the following words: “**‘living annuity’** means a right of a member or former member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, or his or her dependant or nominee, or any subsequent nominee, to an annuity purchased from a person or provided by that fund on or after the retirement date of that member or former member in respect of which—”;
- (h) by the substitution in the definition of “living annuity” for paragraph (a) of the following paragraph: “(a) the value of the annuity is determined solely by reference to the value of assets which are specified in the annuity agreement and are held **[by or on behalf of that person]** for purposes of providing the annuity;”;
- (i) by the substitution in the definition of “living annuity” for paragraphs (d) and (e) of the following paragraphs: “(d) the amount of the annuity is not guaranteed by that person or fund; (e) on the death of the member or former member, the value of the assets referred to in paragraph (a) may be paid to a **[dependant or]** nominee of the member or former member as an annuity or lump sum, or, in the absence of a **[dependant or]** nominee, to the deceased’s estate as a lump sum; and”;
- (j) by the insertion after the definition of “living annuity” of the following definition: “**‘low-cost residential unit’** means—
- (a) an apartment qualifying as a residential unit in a building located within the Republic, where—
- (i) the cost of the apartment does not exceed R250 000; and

- (ii) the owner of the apartment does not charge a monthly rental in respect of that apartment that exceeds one per cent of the cost; or
- (b) a building qualifying as a residential unit located within the Republic, where—
- (i) the cost of the building does not exceed R200 000; and
- (ii) the owner of the building does not charge a monthly rental in respect of that building that exceeds one per cent of the cost contemplated in subparagraph (i) plus a proportionate share of the cost of the land and the bulk infrastructure;
- Provided that for the purposes of paragraphs (a)(ii) and (b)(ii), the cost is deemed to be increased by 10 per cent in each year succeeding the year in which the apartment or building is first brought into use;”;
- (k) by the substitution in the definition of “pension fund” for the words preceding the proviso to paragraph (c) of the following words:
- “the Municipal Councillors Pension Fund provisionally registered under the Pension Funds Act, 1956 (Act No. 24 of 1956), on 23 May 1988, or any fund (other than a retirement annuity fund, a pension preservation fund or a fund contemplated in paragraph (a) or (b)) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the said Act”;
- (l) by the substitution in the definition of “pension fund” for paragraph (i) of the proviso to paragraph (c) of the following paragraph:
- “(i) that the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement from employment or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act, 1956 (Act No. 24 of 1956); and”;
- (m) by the substitution in the definition of “pension fund” for subparagraph (dd) of paragraph (ii) of the proviso to paragraph (c) of the following subparagraph:
- “(dd) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R50 000 or where the employee is deceased;”;
- (n) by the addition to paragraph (c) of the definition of “pension fund” of the following further proviso:
- “: Provided further that a fund contemplated in subparagraph (i) of the further proviso to the definition of ‘pension preservation fund’ which is deemed to be approved or which is approved in terms of that definition or which fails to submit its rules as required by that paragraph is deemed with effect from the earlier of the date of the deemed approval or 30 September 2009 to be a fund which is not approved in terms of this definition”;
- (o) by the substitution in the definition of “pension preservation fund” for paragraphs (b) and (c) of the proviso of the following paragraphs:
- “(b) **[contributions]** payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph **[2(b)(ii)]** 2(b) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that is paid or transferred to the fund by—
- (i) a pension fund or any other pension preservation fund of which such member was previously a member; or
- (ii) a pension fund, pension preservation fund, provident preservation fund or retirement annuity fund of which such **[the]** member’s former spouse is or was previously a member and such payment or transfer was made pursuant to an election by



- such member in terms of section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (c) with the exception of amounts transferred to any other pension preservation fund, not more than one amount contemplated in paragraph [2(b)(ii)] 2(b) of the Second Schedule [(excluding amounts transferred to any other pension preservation fund)] is allowed to be paid to the member during the period of membership of the fund **[and]** or any other pension preservation fund: Provided that this paragraph applies separately to each payment or transfer to the fund contemplated in paragraph (b);”; 5 10
- (p) by the substitution in the definition of “pension preservation fund” for paragraph (e) of the proviso of the following paragraph:  
 “(e) not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder 15 must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R50 000 or where the member is deceased;”;
- (q) by the addition to the definition of “pension preservation fund” of the following further proviso: 20  
 “: Provided further that—  
 (i) the rules of a pension fund that is doing the business of a preservation fund as prescribed by the Commissioner from time to time must be submitted to the Commissioner for approval in terms of the provisions of this definition before 30 25 September 2009; and  
 (ii) the rules of a pension fund contemplated in paragraph (i) that are submitted before 30 September 2009 are deemed to have been approved under this definition with effect from the date that the rules are submitted until the date that the Commissioner notifies the fund of its status under this definition;”;
- (r) by the substitution in the definition of “provident fund” for the words preceding the proviso of the following words:  
 “ ‘**provident fund**’ means any fund (other than a pension fund, pension preservation fund, provident preservation fund, benefit fund or retirement annuity fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act, 1956 (Act No. 24 of 1956)”;
- (s) by the substitution in the definition of “provident fund” for paragraph (a) of the proviso of the following paragraph: 40  
 “(a) that the fund is a permanent fund *bona fide* established solely for the purpose of providing benefits for employees on retirement from employment or solely for the purpose of providing benefits for the dependants or nominees of deceased employees or deceased former 45 employees or solely for a combination of such purposes or mainly for the said purpose and also for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act, 1956 (Act No. 24 of 1956); and”; 50
- (t) by the addition to the definition of “provident fund” of the following further proviso:  
 “: Provided further that a fund contemplated in paragraph (i) of the further proviso to the definition of ‘provident preservation fund’ which is deemed to be approved or which is approved in terms of that definition or which fails to submit its rules as required by that paragraph is deemed with effect from the earlier of the date of the deemed approval or 30 September 2009 to be a fund which is not approved in terms of this 55 definition;”;

- (u) by the substitution in the definition of “provident preservation fund” for paragraphs (b) and (c) of the proviso of the following paragraphs:
- “(b) **[contributions]** payments or transfers to the fund in respect of a member are limited to **[amounts]** any amount contemplated in paragraph **[2(b)(ii)]** 2(b) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that is paid or transferred to the fund by—
- (i) a provident fund or any other provident preservation fund of which **[the]** such member was previously a member; or
- (ii) a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund of which such **[the]** member’s former spouse is or was previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (c) with the exception of amounts transferred to any other provident preservation fund, not more than one amount contemplated in paragraph **[(2)(b)(ii)]** 2(b) of the Second Schedule **[(excluding amounts transferred to any other provident preservation fund)]** is allowed to be paid to the member during the period of membership of the fund **[and]** or any other provident preservation fund: Provided that this paragraph applies separately to each payment or transfer to the fund contemplated in paragraph (b); and”;
- (v) by the addition to the definition of “provident preservation fund” of the following further proviso:
- “: Provided further that—
- (i) the rules of a provident fund that is doing the business of a preservation fund as prescribed by the Commissioner from time to time must be submitted to the Commissioner for approval in terms of the provisions of this definition before 30 September 2009; and
- (ii) the rules of the provident fund contemplated in paragraph (i) that are submitted before 30 September 2009 are deemed to have been approved under this definition with effect from the date that the rules are submitted until the date that the Commissioner notifies the fund of its status under this definition”;
- (w) by the insertion after the definition of “resident” of the following definition: “**‘residential unit’** means a building or self-contained apartment mainly used for residential accommodation, unless the building or apartment is used by a person in carrying on a trade as an hotel keeper;”;
- (x) by the substitution in the definition of “retirement annuity fund” for subparagraph (ii) of paragraph (b) of the proviso of the following subparagraph:
- “(ii) that not more than one-third of the total value of the retirement interest may be commuted for a single payment and that the remainder must be taken in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R50 000 or where the member is deceased;”;
- (y) by the substitution in the definition of “retirement-funding employment” for subparagraph (i) of paragraph (a) of the following subparagraph:
- “(i) in the case of such employee, derives in respect of his employment any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule (but leaving out of account the provisions of **[paragraph]** paragraphs (c) and (cA) of that definition and including the amount of any allowance or advance in respect of transport expenses contemplated in section 8(1)(b), but not an allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under the said section **[(8)(1)(b)(iii)]** 8(1)(b)(iii), and excluding any



retirement fund lump sum benefit and any retirement fund lump sum withdrawal benefit) and is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived; or”;

- (z) by the substitution for the definition of “securities lending arrangement” 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)**] Securities Transfer Tax Act, 2007 (Act No. 25 of 2007);”;

- (zA) by the substitution for the definition of “tax” of the following definition:

“**‘tax’ or ‘the tax’ or ‘taxation’** means any levy, tax leviable under this Act or administrative penalty [**leviable under this Act**] imposed in terms of section 75B, and for the purposes of Part IV of Chapter III includes any levy or tax leviable under any previous Income Tax Act;”.

(2) Paragraphs (b), (c) and (d) of subsection (1) come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

(3) Paragraph (e) of subsection (1) comes into operation on 1 March 2009 and applies in respect of years of assessment commencing on or after that date.

(4) Paragraphs (j) and (w) of subsection (1) are deemed to have come into operation on 21 October 2008.

(5) Paragraphs (l) and (s) of subsection (1) are deemed to have come into operation on 1 January 2006.

(6) Paragraph (y) of subsection (1) comes into operation on 1 March 2009 and applies in respect of lump sum benefits withdrawn on or after that date.

(7) Paragraph (zA) of subsection (1) comes into operation on the date on which section 75B of the Income Tax Act, 1962, comes into operation.

**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, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007, section 3 of Act 36 of 2007 and section 1 of Act 4 of 2008**

5. Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) to approve a fund contemplated in the definition of a ‘pension fund’, ‘pension preservation fund’, ‘provident fund’, provident preservation fund’ or [**‘retirement fund’**] ‘retirement annuity fund’, subject to—”.

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

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

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

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

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

“(c) ‘B’ represents the taxpayer’s taxable income (excluding any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit) for the said year;”.

(2) Paragraph (b) of subsection (1) comes into operation on 1 March 2009 and applies in respect of lump sum benefits withdrawn on or after that date.

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

7. (1) Section 6 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) There shall be deducted from the normal tax payable by any natural person, other than normal tax in respect of any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit, an amount equal to the sum of the amounts allowed to the taxpayer by way of rebates under subsection (2).”

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of lump sum benefits withdrawn on or after that date.

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

8. Section 7 of the Income Tax Act, 1962, is hereby amended—

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

“(a) any benefit paid or payable to a spouse in his or her capacity as a member or past member of a pension fund, pension [presevation] preservation fund, provident fund, provident preservation fund, benefit fund, retirement annuity fund or any other fund of a similar nature shall be deemed to be income derived by such spouse from a trade carried on by him or her;” and

(b) by the substitution for subsection (11) of the following subsection:

“(11) Any deduction of a recurrent nature from the minimum individual reserve of a person in terms of section 37D(1)(d) of the Pension Funds Act, 1956 (Act No. 24 of 1956), shall be deemed for purposes of this Act to be income accrued to that person on the date of the deduction.”

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

9. Section 8 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for paragraph (n) of the following paragraph:

“(n) Where a taxpayer disposes of an industrial asset contemplated in section 12G or a manufacturing asset contemplated in section 12I before completion of the write off period of that asset for purposes of section 11(e), 12C or 13, as applicable, there shall be included in the taxpayer’s income, all amounts allowed to be deducted in respect of that industrial asset under section 12G or manufacturing asset under section 12I, whether in the current year or any previous year of assessment, which have been recovered or recouped during the current year of assessment, in addition to the inclusion of those amounts in terms of paragraph (a).”.

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

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

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

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

(b) by the substitution in subsection (3) for paragraphs (a), (b) and (c) of the definition of “broad-based employee share plan” of the following paragraphs:

“(a) equity shares in that employer, or in a company **[in the same group of companies as]** that is an associated institution as defined in the Seventh Schedule in relation to the employer, are acquired by employees of that employer, for consideration which does not exceed the minimum consideration required by the Companies Act, 1973 (Act No. 61 of 1973);

(b) employees who participate in any other equity scheme of that employer or of a company **[in the same group of companies as]** that is an associated institution as defined in the Seventh Schedule in relation to that employer are not entitled to participate and where at least **[90] 80** per cent of all other employees who are employed by that employer on a permanent basis on the date of grant (and who have continuously been so employed on a full-time basis for at least one year) are entitled to participate;

(c) the **[persons] employees** who acquire the equity shares as contemplated in paragraph (a) are entitled to all dividends and full voting rights in relation to those equity shares; and”;

- (c) by the substitution in subsection (3) for subparagraphs (ii) and (iii) of paragraph (d) of the definition of “broad-based employee share plan” of the following subparagraphs:
- “(ii) a right of any person to acquire those equity shares from the **[person] employee or former employee** who acquired the equity shares as contemplated in paragraph (a) **[at market value]** —
    - (aa) in the case where the employee or former employee is or was guilty of misconduct or poor performance, at the lower of market value on the date of grant or the market value on the date of acquisition by that employer; or
    - (bb) in any other case, at market value on the date of acquisition by that person; or
  - (iii) a restriction in terms of which the **[person] employee or former employee** who acquired the equity shares as contemplated in paragraph (a) may not dispose of those equity shares for a period, which may not extend beyond five years from the date of grant;”;
- and
- (d) by the substitution in subsection (3) for the definition of “qualifying equity share” of the following definition:
- “**‘qualifying equity share’**, in relation to a person, means an equity share acquired in a year of assessment in terms of a broad-based employee share plan, where the market value of all equity shares (as determined on the relevant date of grant of each equity share and excluding the market value of any qualifying equity share acquired in the circumstances contemplated in subsection (2A)), which were acquired by that person in terms of that plan in that year and the **[two] four** immediately preceding years of assessment, does not in aggregate exceed **[R9 000] R50 000.**”.

(2) Paragraph (b) (insofar as it relates to the substitution for 90 per cent of 80 per cent and the substitution for the word “persons” of the word “employees”) and paragraph (d) of subsection (1) are deemed to have come into operation on 21 February 2008 and apply in respect of a qualifying equity share granted to a taxpayer on or after that date.

(3) Paragraphs (a) and (c) and paragraph (b) (insofar as it relates to the substitution for the words “in the same group of companies as” of the words “that is an associated institution as defined in the Seventh Schedule in relation to”) of subsection (1) are deemed to have come into operation on 21 October 2008 and apply in respect of a qualifying equity share granted to a taxpayer on or after that date.

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

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

- (a) by the insertion of the following subsection:
  - “(1A) If a capital distribution as contemplated in paragraph 74 of the Eighth Schedule is received by or accrues to a taxpayer in respect of a restricted equity instrument, the taxpayer must include the amount of the capital distribution in his or her income for the year of assessment during which the amount is received or accrues.”;
- (b) by the substitution in the definition of “equity instrument” in subsection (7) for the words preceding paragraph (a) of the following words:
  - “**‘equity instrument’** means a share **[or part thereof in the equity share capital of a company]** or a member’s interest in a company **[which is a close corporation]**, and includes—”;
- (c) by the deletion in the definition of “equity instrument” in subsection (7) of the word “and” at the end of paragraph (a);
- (d) by the substitution for paragraph (b) of the definition of “equity instrument” in subsection (7) of the following paragraph:
  - “(b) any **[other]** financial instrument that is convertible to a share, **[part of a share]** or member’s interest; **and**”;
- (e) by the addition to the definition of “equity instrument” in subsection (7) of the following paragraph:

“(c) any contractual right or obligation the value of which is determined directly or indirectly with reference to a share or member’s interest;”; and

(f) by the substitution for paragraph (b) of the definition of “restricted equity instrument” in subsection (7) of the following paragraph: 5

“(b) which is subject to any restriction that could result in the taxpayer—

(i) forfeiting ownership or the right to acquire ownership of that equity instrument otherwise than at market value; or

(ii) being penalised financially in any other manner for not complying with the terms of the agreement for the acquisition of that equity instrument;”. 10

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of a capital distribution received by or accrued to a taxpayer on or after that date.

(3) Paragraphs (b), (c), (d) and (e) of subsection (1) are deemed to have come into operation on 21 October 2008 and apply in respect of an equity instrument acquired by a taxpayer on or after that date. 15

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

12. (1) Section 9C of the Income Tax Act, 1962, is hereby amended by the insertion 20 of the following subsection:

“(2A) Subsection (2) does not apply in respect of so much of the amount received or accrued in respect of the disposal of a qualifying share contemplated in that subsection as does not exceed the expenditure allowed in respect of that share in terms of section 12J(3).”. 25

(2) Subsection (1) comes into operation on 1 July 2009.

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

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

(a) by the substitution in subsection (1) for the definition of “participation rights” of the following definition: 35

“‘**participation rights**’, in relation to a **[foreign]** company, means—

(a) the right to participate directly or indirectly in the share capital, share premium, current or accumulated profits or reserves of that company, whether or not of a capital nature; or

(b) in the case where no person has any right in that **[foreign]** company as contemplated in paragraph (a) or no such rights can be determined for any person, the right to exercise any voting rights in that company.”; 40

(b) by the substitution in subsection (2A) for paragraph (c) of the proviso of the following paragraph: 45

“(c) no deduction shall be allowed in respect of any—

(i) interest, royalties, rental or income of a similar nature which is paid or payable or deemed to be paid or payable by that company to any other controlled foreign company (including any similar amount adjusted in terms of section 31) [or]; 50

(ii) **[any]** exchange difference determined in terms of section 24I in respect of any exchange item to which that **[controlled foreign]** company and any other controlled foreign company are parties;

(iii) exchange difference in respect of any forward exchange contract or foreign currency option contract entered into to hedge the exchange item referred to in subparagraph (ii); or 55

(iv) reduction or discharge by that company of a debt owed to that company by any other controlled foreign company for no



consideration or for consideration less than the amount by which the face value of the debt has been so reduced or discharged,

where that controlled foreign company and that other controlled foreign company form part of the same group of companies, unless—

- (i) **that** any resident has elected in terms of subsection (12) that the provisions of subsection (9) shall not apply in respect of the net income of that other controlled foreign company for the relevant foreign tax year[;] or
- (ii) that interest, rental, royalty, other income, adjusted amount [or], exchange difference, reduction or discharge is **included in** taken into account to determine the net income of that other controlled foreign company;”;
- (c) by the addition in subsection (9) to paragraph (ii) of the proviso to paragraph (b) of the following subparagraph:  
 “(dd) the granting by that controlled foreign company of the use, right of use or permission to use an intangible asset as defined in paragraph 16(2) of the Eighth Schedule to a connected person (in relation to such controlled foreign company) who is a resident;”;
- (d) by the addition in subsection (9) to paragraph (iii) of the proviso to paragraph (b) of the following subparagraph:  
 “(dd) in the case of royalties received by or accrued to that controlled foreign company, if that company directly and regularly creates, develops or substantially upgrades any intellectual property as defined in section 23I which gives rise to those royalties;”;
- (e) by the substitution in subsection (10)(a) for subparagraph (ii) of the following subparagraph:  
 “(ii) disregards the application of [subsection (9)(b)(ii)] paragraph (ii) of the proviso to subsection (9)(b) in respect of the sale of goods or performance of services by a controlled foreign company where the foreign business establishment of that controlled foreign company situated in that company’s country of residence mainly serves as a central location for the sale or performance of identical or similar goods or services in at least two countries that are contiguous to the country of residence of that company;”;
- (f) by the deletion of subsection (10)(a)(iii); and
- (g) by the substitution in subsection (10)(a)(iv)(bb) for item (B) of the following item:  
 “(B)[after] disregarding any assessed losses; or”.
- (2) Paragraph (a) of subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.
- (3) Paragraphs (c), (d) and (f) of subsection (1) come into operation on 1 January 2009 and apply in respect of amounts derived on or after that date.

#### **Insertion of section 9E into Act 58 of 1962**

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

##### **“Taxation of passive holding companies**

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

**‘excluded company’** means any company that is—

- (a) a listed company;
- (b) a member of the same group of companies as defined in section 41 as a listed company;
- (c) a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), or a person carrying on a trade in respect of money-lending;
- (d) an authorised user as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);
- (e) a long-term insurer as defined in section 1 of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998);



- (f) a short-term insurer as defined in section 1 of the Short-Term Insurance Act, 1998 (Act No. 53 of 1998);
- (g) a company contemplated in paragraph (e)(i) of the definition of 'company' in section 1;
- (h) a public benefit organisation as defined in section 30 and has been approved by the Commissioner in terms of that section; 5
- (i) a recreational club as defined in section 30A and has been approved by the Commissioner in terms of that section;
- (j) a foreign company as defined in section 9D; or
- (k) a venture capital company as defined in section 12J; 10
- 'gross income'** means gross income as defined in section 1, other than any—
- (a) royalty received or accrued; and
- (b) dividend received by or accrued to a company if that company holds at least 20 per cent of the total equity share capital and voting rights in the company declaring the dividend; 15
- 'passive holding company'** means any company, other than an excluded company, where—
- (a) the passive income of the company for the year exceeds 80 per cent of the sum of the gross income for the year of the company and the gross income (other than passive income) of all other companies that form part of the same group of companies, as defined in section 41, as the company; and 20
- (b) five or fewer natural persons that are resident in the Republic, together with any connected persons in relation to those persons, at any time during the year directly or indirectly hold more than 50 per cent of the participation rights as defined in section 9D in the company; 25
- 'passive income'**, in relation to a company, means an amount equal to so much of the gross income of the company for a year of assessment as is derived from financial instruments. 30
- (2) There must be levied and paid for the benefit of the National Revenue Fund a tax in respect of the dividends received by or accrued to a passive holding company during a year of assessment.
- (3) The rate of tax chargeable in respect of dividends received or accrued as contemplated in subsection (2) is fixed annually by Parliament. 35
- (4) A dividend paid by a company is not subject to the dividends tax imposed in terms of Part VIII of Chapter II to the extent that the sum of that dividend and all other dividends paid on or after the effective date defined in that Part does not exceed the sum of—
- (a) the dividends received by or accrued to the company on or after that date to the extent that the dividends are subject to tax in terms of subsection (2); and 40
- (b) the taxable income derived by the company on or after that date to the extent that that taxable income is subject to a rate of tax that is fixed in terms of section 5 in respect of the taxable income of a passive holding company. 45
- (5) If the Commissioner is satisfied that any tax imposed in terms of this section has not been paid in full, he or she may estimate the unpaid amount and issue to the person concerned a notice of assessment of the unpaid amount. 50
- (6) If a person fails to pay any tax imposed in terms of this section within the required period, interest must be paid by that person on the balance of the tax outstanding at the prescribed rate reckoned from the end of that period.
- (7) The provisions of this Act relating to the assessment and recovery of tax and administrative penalties in the event of default or omission apply, with the changes required by the context, in respect of tax imposed in terms of this section. 55
- (8) Every person that controls or is regularly involved in the management of the overall financial affairs of any company that is liable for tax in terms of this section, and that is a shareholder or director of that company is personally liable for the tax, additional tax, penalty or interest for which that company is liable." 60

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

**Amendment of section 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, section 25 of Act 45 of 2003 and section 15 of Act 31 of 2005**

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15. Section 9G of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs:

- “(a) expenditure incurred by a person in any foreign currency in respect of any foreign equity instrument acquired during any year of assessment ending before 8 November 2005 which is allowable as a deduction in terms of the provisions of this Act; or
- (b) amount in any foreign currency which is taken into account in the determination of the taxable income of any person in respect of any foreign equity instrument acquired during any year of assessment ending before 8 November 2005.”

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**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, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, section 8 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, section 10 of Act 20 of 2006, section 10 of Act 8 of 2007, section 16 of Act 35 of 2007 and section 9 of Act 3 of 2008**

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

- (a) by the substitution in subsection (1)(cN)(ii)(dd) for subitems (i) and (ii) of the following subitems:
- “(i) 5 per cent of the total receipts and accruals of that public benefit organisation during the relevant year of assessment; or
- (ii) [R100 000] R150 000.”;
- (b) by the substitution in subsection (1)(cO)(iv) for item (bb) of the following item:
- “(bb) [R50 000] R100 000.”;
- (c) by the substitution in subsection (1)(k)(i) for paragraph (cc) of the proviso of the following paragraph:
- “(cc) to any dividend received by or accrued to or in favour of any person where such dividend constitutes or forms part of any consideration paid or payable to such person in respect of the disposal of shares (other than affected shares in respect of which the taxpayer has, in terms of the provisions of section 9B, elected the amount received or accrued on disposal to be deemed to be of a capital nature and other than qualifying shares as defined in section 9C), which were held as trading stock by such person in a company and such shares were acquired by such company in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973);”;
- (d) by the substitution in subsection (1)(u) for subparagraphs (i) and (ii) of the following subparagraphs:

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- “(i) from or on behalf of such person’s spouse or former spouse by way of alimony or allowance or maintenance of such person under an order of judicial separation or divorce granted in consequence of proceedings instituted after the twenty-first day of March, 1962, or under any agreement of separation entered into after that date; or 5
- (ii) by way of deduction from the minimum individual reserve of any other person in terms of section 37D(1)(d) of the Pension Funds Act, 1956 (Act No. 24 of 1956), if that deduction is of a recurrent nature, other than any amount accrued to that person in terms of section 7(11);” 10

(e) by the deletion in subsection (1) of paragraph (z);

(f) by the deletion in subsection (1) of paragraph (zD); and

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

- “(zJ) any amount received by or accrued to or in favour of a registered micro business as defined in the Sixth Schedule, from the carrying on of a business in the Republic, other than an amount received by or accrued to a natural person registered as a micro business that constitutes— 15
- (i) investment income as defined in section 12E; or
- (ii) remuneration as defined in the Fourth Schedule.” 20

(2) Paragraphs (a), (b) and (g) of subsection (1) come into operation on 1 March 2009 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 October 2007 and applies in respect of a disposal on or after that date.

**Amendment of section 10A of Act 58 of 1962, as inserted by section 8 of Act 65 of 1973 and amended by section 11 of Act 85 of 1974, section 8 of Act 113 of 1993, section 11 of Act 21 of 1995, section 11 of Act 28 of 1997, section 19 of Act 53 of 1999, section 14 of Act 59 of 2000, section 11 of Act 5 of 2001, section 15 of Act 32 of 2004 and section 17 of Act 31 of 2005** 25

17. Section 10A of the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “annuity contract” in subsection (1) for the words following paragraph (c) of the following words: 30

“but does not include any agreement for the payment by any insurer of any annuity which is under the rules of a pension fund [or of a] pension preservation fund, provident fund, provident preservation fund or [of a] retirement annuity fund payable to a member of such fund or to any other person;” 35

**Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 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 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, section 9 of Act 16 of 2004, section 16 of Act 32 of 2004, section 6 of Act 9 of 2005, section 18 of Act 31 of 2005, section 11 of Act 20 of 2006, section 11 of Act 8 of 2007, section 17 of Act 35 of 2007 and section 10 of Act 3 of 2008** 40 45 50 55

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

- (a) by the substitution in paragraph (c) for subparagraph (ii) of the following subparagraph:

- “(ii) is not incurred in respect of any claim made against the taxpayer for the payment of damages or compensation if by reason of the nature of the claim or the circumstances any payment which is or might be made in satisfaction or settlement of the claim does not or would not rank for deduction from his income under paragraph (a) [or (b)]; and”;
- (b) by the substitution in paragraph (cA) for subparagraphs (iii) and (iv) of the following subparagraphs:
- “(iii) was a personal service company or personal service trust as defined in the Fourth Schedule prior to section 66 of the Revenue Laws Amendment Act, 2008, coming into operation; or
- (iv) is a personal service provider as defined in the Fourth Schedule.”;
- (c) by the substitution in paragraph (e) for subparagraph (ix) of the following subparagraph:
- “(ix) where any such machinery, plant, implement, utensil or article was used by the taxpayer during any previous [financial] year of assessment or years of assessment for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, the Commissioner shall take into account the period of use of such asset during such previous year or years in determining the amount by which the value of such machinery, plant, implement, utensil or article has been diminished.”;
- (d) by the insertion of the following paragraph:
- “(gD) where that trade constitutes the provision of telecommunication services, the exploration, production or distribution of petroleum or the provision of gambling facilities, any expenditure (other than in respect of infrastructure) incurred to acquire a licence from the Government, a provincial administration or a municipality contemplated in section 10(1)(a) or (b), or an institution or entity contemplated in Schedule 1 or Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), where that expenditure is incurred in terms of the licence and the licence is required to carry on that trade, which deduction must not exceed for any one year such portion of the expenditure as is equal to the amount of the expenditure divided by the number of years for which the taxpayer has the right to the licence after the date on which the expenditure was incurred, or 30, whichever is the lesser.”;
- (e) by the substitution for the proviso to paragraph (lA) of the following proviso:
- “: Provided that the deduction under this paragraph may not during any year of assessment in aggregate exceed an amount of [R3 000] R10 000 in respect of all qualifying equity shares granted to a single employee and so much as exceeds that amount may be carried forward to the immediately succeeding year of assessment and that excess is deemed to be the market value of qualifying equity shares granted to the relevant employee during that immediately succeeding year for purposes of this paragraph”;
- (f) by the substitution in paragraph (n)(aa) for item (A) of the following item:
- “(A) 15 per cent of an amount equal to the amount remaining after deducting from, or setting off against, the income derived by the taxpayer during the year of assessment (excluding income derived from any retirement-funding employment (being the income or part thereof referred to in the definition of ‘retirement-funding employment’ in section 1), and any retirement fund lump sum benefit and retirement fund lump sum withdrawal benefit) the deductions or assessed losses admissible against such income under this Act (excluding this paragraph, sections 17A, 18 and 18A of this Act and [paragraphs 12(1)(c)] items (c) to (i), inclusive, of paragraph 12(1) of the First Schedule); or”;

(g) by the insertion of the following paragraphs:

“(nA) so much of any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered or any amount received or accrued in respect of or by virtue of any employment or the holding of any office as was included in the taxable income of that person and is refunded by that person;

(nB) so much of any amount contemplated in paragraph (cA) of the definition of ‘gross income’ received by or accrued to any person as is refunded by that person;”;

(h) by the deletion of paragraphs (p) and (q); and

(i) by the deletion of paragraph (t).

(2) Paragraph (b) of subsection (1) comes into operation on 1 March 2009 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraph (d) of subsection (1) is deemed to have come into operation on 1 January 2008 and applies in respect of years of assessment ending on or after that date.

(4) Paragraph (e) of subsection (1) is deemed to have come into operation on 21 February 2008 and applies in respect of shares granted on or after that date.

(5) Paragraph (i) of subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of expenditure incurred on or after that date.

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

19. (1) Section 11D of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words following subparagraph (iv) of the following words:

“if that information, invention, design, computer program or knowledge is of a scientific or technological nature, and is intended to be used by the taxpayer in the production of his or her income or is discovered, devised, developed or created by the taxpayer for purposes of deriving income.”.

(2) Subsection (1) is deemed to have come into operation on 2 November 2006 and applies in respect of any activities undertaken on or after that date.

**Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990 and amended by section 11 of Act 113 of 1993, section 7 of Act 140 of 1993, section 11 of Act 21 of 1994, section 13 of Act 21 of 1995, section 10 of Act 46 of 1996, section 18 of Act 59 of 2000, section 11 of Act 19 of 2001, section 15 of Act 30 of 2002, section 30 of Act 45 of 2003, section 8 of Act 9 of 2005, section 20 of Act 31 of 2005, section 14 of Act 8 of 2007 and section 22 of Act 35 of 2007**

20. Section 12C of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4A) of the following subsection:

“(4A) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous **[financial]** year of assessment **[brought into use for the first time]** used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year that such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”.

**Amendment of section 12D of Act 58 of 1962, as amended by section 19 of Act 59 of 2000, section 23 of Act 30 of 2000, section 28 of Act 60 of 2001, section 16 of Act 30 of 2002 and section 23 of Act 35 of 2007**

21. Section 12D of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3A) of the following subsection:

“(3A) Where any affected asset in respect of which any deduction is claimed in terms of this section was during any previous **[financial]** year of assessment **[brought into use for the first time]** used by the taxpayer for the



purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year in which such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.” 5

**Amendment of section 12DA of Act 58 of 1962, as inserted by section 24 of Act 35 of 2007**

22. Section 12DA of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection: 10

“(4) Where any rolling stock in respect of which any deduction is claimed in terms of this section was during any previous **[financial]** year of assessment **[brought into use for the first time]** used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.” 15 20

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

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

- (a) by the deletion in subsection (4)(a)(ii) of the word “or” at the end of item (bb);
- (b) by the deletion in subsection (4)(a)(ii) of the word “and” at the end of item (cc);
- (c) by the deletion in subsection (4)(a)(ii) of the word “or” at the end of item (ee);
- (d) by the addition to subsection (4)(a)(ii) of the word “or” at the end of item (ff);
- (e) by the addition to subsection (4)(a)(ii) of the following item: 35

“(gg) a venture capital company as defined in section 12J;”;

- (f) by the substitution in subsection (4)(a) for subparagraph (iv) of the following subparagraph:

“(iv) such company is not **[an employment company]** a personal service provider as defined in the Fourth Schedule;”;

- (g) by the deletion in subsection (4) of paragraph (b). 40

(2) Paragraphs (c), (d) and (e) of subsection (1) come into operation on 1 July 2009.

(3) Paragraphs (f) and (g) of subsection (1) come into operation on 1 March 2009 and apply in respect of a year of assessment commencing on or after that date.

**Amendment of section 12F of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 26 of Act 35 of 2007** 45

24. Section 12F of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3A) of the following subsection:

“(3A) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous **[financial]** year of assessment **[brought into use for the first time]** used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.” 50 55



**Amendment of section 12H of Act 58 of 1962, as amended by section 32 of Act 45 of 2003, section 22 of Act 31 of 2005, section 25 of Act 9 of 2006 and section 2 of Act 8 of 2007**

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

(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 5

“(b) the completion of any registered learnership agreement as contemplated in subsection (1)(b)[, **is an amount equal to the lesser of**]—

(i) in the case of a learnership agreement contemplated in paragraph (a) of the definition of ‘registered learnership agreement’ in subsection (6), is an amount equal to the lesser of— 10

[(i)](aa) in the case of a learnership with a duration of—  
[(aa)](A) less than 12 months, the total amount of the remuneration of that learner for the period of that learnership as stipulated in the agreement of employment between that learner and employer; or 15

[(bb)](B) 12 months or more, the annual equivalent of the remuneration of that learner stipulated in the agreement of employment between that learner and employer; or 20

[(ii)](bb) R30 000; or

(ii) in the case of a learnership agreement contemplated in paragraph (b) of the definition of ‘registered learnership agreement’ in subsection (6), is an amount equal to the sum of the deductions that would have been allowed in terms of paragraphs (a) and (b)(i) during— 25

(aa) the year that such agreement was entered into, had the employer and the learner entered into any other agreement contemplated in paragraph (a) of that definition on the date on which such agreement was entered into and had the learner completed that other agreement at the end of that year; 30 35

(bb) any year subsequent to the year contemplated in item (aa), other than the year during which the minimum period contemplated in paragraph (b) of that definition terminates and any year subsequent to that year, had the employer and the learner entered into any other agreement as contemplated in paragraph (a) of that definition at the beginning of each such year and had the learner completed that other agreement at the end of each such year; and 40

(cc) the year that the minimum period contemplated in paragraph (b) of that definition terminates, had the employer and the learner entered into any other agreement as contemplated in paragraph (a) of that definition at the beginning of that year and had the learner completed that other agreement at the end of that period, 45 50

less the deduction allowed in terms of paragraph (a) in respect of such agreement.”;

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

“(b) the completion of any registered learnership agreement as contemplated in subsection (1)(b)[, **is an amount equal to the lesser of**]— 55

(i) in the case of a learnership agreement contemplated in paragraph (a) of the definition of ‘registered learnership agreement’ in subsection (6), is an amount equal to the lesser of— 60

- [(i)](aa) in the case of a learnership agreement with a duration of—
- [(aa)](A) less than 12 months, 175 per cent of the total amount of the remuneration of that learner for the period of that learnership agreement as stipulated in the agreement of employment between that learner and employer; or
- [(bb)](B) 12 months or more, 175 per cent of the annual equivalent of the remuneration of that learner stipulated in the agreement of employment between that learner and employer; or
- [(ii)](bb) R50 000; or
- (ii) in the case of a learnership agreement contemplated in paragraph (b) of the definition of ‘registered learnership agreement’ in subsection (6), is an amount equal to the sum of the deductions that would have been allowed in terms of paragraphs (a) and (b)(i) during—
- (aa) the year that such agreement was entered into, had the employer and the learner entered into any other agreement contemplated in paragraph (a) of that definition on the date on which such agreement was entered into and had the learner completed that other agreement at the end of that year;
- (bb) any year subsequent to the year contemplated in item (aa), other than the year during which the minimum period contemplated in paragraph (b) of that definition terminates and any year subsequent to that year, had the employer and the learner entered into any other agreement as contemplated in paragraph (a) of that definition at the beginning of each such year and had the learner completed that other agreement at the end of each such year; and
- (cc) the year that the minimum period contemplated in paragraph (b) of that definition terminates, had the employer and the learner entered into any other agreement as contemplated in paragraph (a) of that definition at the beginning of that year and had the learner completed that other agreement at the end of that period, less the deduction allowed in terms of paragraph (a) in respect of such agreement.”;
- (c) by the substitution for subsection (4) of the following subsection:
- “(4) The provisions of this section shall not apply—
- (a) in respect of the substitution of any employer which is party to an existing registered learnership agreement by any other employer, as contemplated in regulation [5(1)] 8(1) of the Learnership Regulations, [2001] 2007;
- (b) where an employer enters into a registered learnership agreement with a learner as a result of the substitution of an existing registered learnership agreement, as contemplated in regulation [5(2)] 7(4) of the Learnership Regulations, [2001] 2007; or
- (c) where an employer enters into a registered learnership agreement with a learner, and a deduction is or was allowable to that employer during any year of assessment in respect of any other registered learnership agreement entered into by that employer with that learner in respect of the same learnership registered by the Director General of Labour, as contemplated in regulation [3(3)] 5(3) of the Learnership Regulations, 2007.”;
- (d) by the insertion of the following subsections:
- “(5A) Any SETA with which a learnership agreement has been registered as contemplated in section 17(3) of the Skills Development Act, 1998, must submit to the Minister the information that the Minister

requires in the form and manner and at the place and within the time that the Minister prescribes.

(5B) In respect of each year of assessment during which an employer is eligible for any deduction contemplated in subsection (1), the employer must submit to the SETA with which the learnership agreement is registered the information that the SETA requires in the form and manner and at the place and within the time indicated by the SETA.”;

(e) by the substitution in subsection (6) for the definition of “Learnership Regulations, 2001” of the following definition:

“**‘Learnership Regulations, 2007’** means the Learnership Regulations, 2007 (Government Notice No. R.519 published in *Government Gazette* No. 30010 of 29 June 2007), made by the Minister of Labour in terms of section 36, read with sections 16 and 17, of the Skills Development Act, 1998 (Act No. 97 of 1998);”;

(f) by the substitution in subsection (6) for paragraph (b) of the definition of “registered learnership agreement” of the following paragraph:

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

#### Insertion of section 12I into Act 58 of 1962

26. The Income Tax Act, 1962, is hereby amended by the insertion of the following section:

#### “Additional investment and training allowances in respect of industrial policy projects

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

**‘adjudication committee’** means the committee contemplated in subsection (16);

**‘brownfield project’** means a project that represents an expansion or upgrade of an existing industrial project;

**‘cost of training’** means—

(a) in the case of training provided by the taxpayer, the cost of remuneration of employees of the taxpayer who are employed exclusively to provide training to the taxpayer’s employees and the cost of training materials;

(b) in the case of training provided by a person that is a connected person in relation to the taxpayer, so much of the cost charged by the connected person as is incurred in respect of the remuneration of employees who are employed to provide training to the taxpayer’s employees and the cost of materials used by the connected person to provide the training; and

(c) in any other case, the cost to the taxpayer of the training charged by the person providing the training;

**‘date of approval’** means the date of the approval contemplated in subsection (8);

**‘greenfield project’** means a project that represents a wholly new industrial project which does not utilise any manufacturing assets other than wholly new and unused manufacturing assets;

**‘industrial project’** means a trade solely or mainly for the manufacture of products, goods, articles, or other things within the Republic that—

(a) is classified under ‘Major Division 3: Manufacturing’ in the most recent Standard Industrial Classification Code (referred to as the ‘SIC Code’) issued by Statistics South Africa; or

(b) in the case of products, goods, articles or things which are not yet classified, the adjudication committee is of the view will be classified as contemplated in paragraph (a),

but does not include the manufacture of—

- (i) spirits and ethyl alcohol from fermented products and wine (SIC Code 3051);
- (ii) beer and other malt liquors and malt (SIC Code 3052);
- (iii) tobacco products (SIC Code 3060);
- (iv) arms and ammunition (SIC Code 3577); and
- (v) bio-fuels if that manufacture negatively impacts on food security in the Republic;
- ‘manufacturing asset’** means any new and unused building, plant or machinery acquired, contracted for or brought into use by a company, which—
- (a) will mainly be used by that company in the Republic for the purposes of carrying on an industrial project of that company within the Republic; and
- (b) will qualify for a deduction in terms of section 12C(1)(a), 13 or 13quat;
- (2) In addition to any other deductions allowable in terms of this Act, a company may, subject to subsection (3), deduct an amount (hereinafter referred to as an additional investment allowance) equal to—
- (a) 55 per cent of the cost of any manufacturing asset used in an industrial policy project with preferred status; or
- (b) 35 per cent of the cost of any manufacturing asset used in any other industrial policy project,
- in the year of assessment during which that asset is first brought into use by the company as owner thereof for the furtherance of the industrial policy project carried on by that company, if that asset was acquired or contracted for on or after the date of approval and was brought into use within four years from the date of approval.
- (3) The additional investment allowance contemplated in subsection (2) may not exceed—
- (a) R900 million in the case of any greenfield project with preferred status, or R550 million in the case of any other greenfield project;
- (b) R550 million in the case of any brownfield project with preferred status, or R350 million in the case of any other brownfield project.
- (4) In addition to any other deductions allowable in terms of this Act, a company may, subject to subsection (5), deduct an amount (hereinafter referred to as an additional training allowance) equal to the cost of training provided to employees in the year of assessment during which the cost of training is incurred for the furtherance of the industrial policy project carried on by that company.
- (5) (a) The cost of training contemplated in subsection (4) must be incurred within six years from the date of approval, and the additional training allowance contemplated in subsection (4) allowed to a company may not exceed R36 000 per employee.
- (b) The additional training allowance contemplated in subsection (4) allowed to a company within the six-year period from the date of approval may not exceed—
- (i) R30 million in the case of an industrial policy project with preferred status; and
- (ii) R20 million in the case of any other industrial policy project.
- (6) (a) Where a taxpayer is allowed a deduction in terms of subsection (2) in the current or any previous year of assessment, any balance of assessed loss carried forward by the taxpayer during a year of assessment must be increased by the amount by which that balance of assessed loss exceeds an amount equal to any balance of assessed loss that would have been carried forward during that year had that deduction not been allowed, multiplied by the rate contemplated in paragraph (a) of the definition of ‘prescribed rate’ as at the end of the year of assessment.
- (b) Paragraph (a) does not apply in respect of any balance of assessed loss incurred by a taxpayer during any year of assessment more than four years after the year during which the approval contemplated in subsection (8) is granted.

- (7) An industrial project of a company constitutes an industrial policy project if—
- (a) the Minister of Trade and Industry, after taking into account the recommendations of the adjudication committee, is satisfied that—
    - (i) the cost of all manufacturing assets to be acquired by the company for the purposes of the project will exceed—
      - (aa) in the case of greenfield projects, R200 million; and
      - (bb) in the case of brownfield projects, the higher of—
        - (A) R30 million; or
        - (B) the lesser of R200 million or 25 per cent of the expenditure incurred to acquire assets previously used in the project;
    - (ii) the project does not constitute an industrial participation project and does not receive any concurrent industrial incentive provided by any national sphere of government; and
    - (iii) the project is not integrally related to any other project of the company (or any other company that forms part of the same group of companies as that company) that has been approved as contemplated in section 12G or subsection (8);
    - (iv) the project will upgrade an industry within the Republic by—
      - (aa) providing skills development; and
      - (bb) utilising new technology that results in improved energy efficiency;
  - (b) the company and any other person that forms part of the same group of companies as that company submit in this regard—
    - (i) a declaration of good standing stating that all their tax affairs are in order and that they have complied with all the relevant provisions of the laws administered by the Commissioner; and
    - (ii) a certificate obtained from the Commissioner confirming that the company and all connected persons are registered for tax purposes, that all returns required to be rendered by that company and connected persons in terms of this Act, or any other Act administered by the Commissioner, have been timeously rendered and that any taxes, duties or levies due to the Commissioner have been paid, or that arrangements acceptable to the Commissioner have been made for the submission of any outstanding returns or the payment of any outstanding taxes, duties or levies: Provided that where the company submits a request to the Commissioner for a certificate and the Commissioner fails to respond within 60 days, the company is, in the absence of any proof to the contrary, deemed to have complied with the provisions of this subparagraph;
  - (c) more than 50 per cent of the manufacturing assets to be acquired by the company for the purposes of the project will be brought into use by that company within four years from the date of approval; and
  - (d) the application for approval of the project by the company is received by the Minister of Trade and Industry not later than 31 December 2014, in such form and containing such information as the Minister of Trade and Industry may prescribe.
- (8) The Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, approve an industrial project as an industrial policy project, either with or without preferred status, where that Minister is satisfied that the industrial policy project will significantly contribute to the Industrial Policy Programme within the Republic having regard to—
- (a) the extent to which the project will upgrade an industry within the Republic by—
    - (i) utilising innovative processes;
    - (ii) utilising new technology that results in—

- (aa) improved energy efficiency; and  
(bb) cleaner production technology; and  
(iii) providing skills development;
- (b) the extent to which the project will provide general business linkages within the Republic; 5
- (c) the extent to which the project will acquire goods or services from small, medium and micro enterprises;
- (d) the extent to which the project will create direct employment within the Republic;
- (e) the extent to which the project will provide skills development in the Republic; and 10
- (f) in the case of a greenfield project, the location of the project within an Industrial Development Zone.
- (9) Notwithstanding subsection (8), the Minister of Trade and Industry may not approve any industrial project where the potential additional investment allowances in respect of that project and all other approved industrial projects (other than those projects where the approval thereof has been withdrawn under subsection (12)), will in the aggregate exceed R20 billion. 15
- (10) The Minister of Finance, in consultation with the Minister of Trade and Industry, must make regulations prescribing— 20
- (a) the factors to be taken into account in determining whether the industrial project will significantly contribute to the Industrial Policy Programme within the Republic;
- (b) the factors to be taken into account in determining whether the project will provide general business linkages within the Republic; 25
- (c) the factors to be taken into account in determining whether goods or services will be acquired from small, medium and micro enterprises;
- (d) the factors to be taken into account in determining the extent to which the project creates direct employment within the Republic; 30
- (e) the extent to which the project must provide skills development in the Republic and the factors to be taken into account in determining whether the project provides skills development in the Republic;
- (f) the factors to be taken into account in determining the location of the project within an Industrial Development Zone; 35
- (g) the extent to which the project must improve energy efficiency and the factors to be taken into account in determining the extent to which the project must utilise new technology that results in improved energy efficiency and cleaner production technology; and
- (h) what constitutes an industrial participation project and a concurrent industrial incentive. 40
- (11) Within 12 months after the close of each year of assessment, starting with the year in which approval is granted in terms of subsection (8), a company carrying on an industrial policy project must report to the adjudication committee with respect to the progress of the industrial policy project in terms of the requirements of subsections (7) and (8) in such form and in such manner as the Minister of Finance may prescribe. 45
- (12) Where in respect of any company carrying on an industrial policy project—
- (a) during any year of assessment— 50
- (i) any material fact changes; or
- (ii) the company fails to comply with any requirement contemplated in subsection (7) or (8), which would have had the effect that approval in terms of subsection (8) would not have been granted had such change in fact or such failure been known to the Minister of Trade and Industry at the time of granting approval; 55
- (b) the company fails to submit a report to the adjudication committee as required in terms of subsection (11); or
- (c) the approval granted in terms of subsection (8) was based on fraudulent information or misrepresentation or non-disclosure of material facts, 60



the Minister of Trade and Industry may, after taking into account the recommendations of the adjudication committee, withdraw the approval granted in respect of that industrial policy project with effect from a date specified by that Minister, and must inform the Commissioner of that withdrawal and of that date.

(13) The Commissioner may, notwithstanding the provisions of section 4—

- (a) notify the Minister of Trade and Industry whenever the Commissioner discovers information that may cause a withdrawal of approval in terms of subsection (12);
- (b) disallow all deductions otherwise provided for under this section starting with the date of approval if the company is guilty of fraud or misrepresentation or non-disclosure of material facts with regard to any tax, duty or levy administered by the Commissioner and must notify the Minister of Trade and Industry accordingly; and
- (c) inform the Minister of Trade and Industry where any company has requested the Commissioner to issue a certificate contemplated in subsection (7)(b)(ii) and that certificate was denied.

(14) The Commissioner may, notwithstanding the provisions of sections 79, 81(5) and 83(18), raise an additional assessment for any year of assessment where an additional investment allowance which has been allowed in any previous year must be disallowed in terms of subsection (12) or (13).

(15) Where the approval of an industrial project has been withdrawn as contemplated in subsection (12), a company is in addition to any normal tax liable for an amount of additional tax not exceeding twice the difference between the tax as calculated in respect of its taxable income returned by it and the tax properly chargeable in respect of its taxable income as determined after disallowing the additional investment allowance provided by this section.

(16) There shall for the purposes of this section be an adjudication committee which must consist of at least—

- (a) three persons employed by the Department of Trade and Industry, appointed by the Minister of Trade and Industry; and
- (b) three persons employed by the National Treasury or the South African Revenue Service, appointed by the Minister of Finance:

Provided that the Minister of Trade and Industry or the Minister of Finance, as the case may be, may appoint alternative persons so employed if any person appointed in terms of paragraph (a) or (b) is not available to perform any function as a member of the committee.

(17) The adjudication committee is an independent committee which performs its functions impartially and without fear, favour or prejudice and for the purpose of this section, the adjudication committee may—

- (a) evaluate any application and make recommendations to the Minister of Trade and Industry for purposes of the approval of any industrial project in terms of subsection (8);
- (b) investigate or cause to be investigated any industrial policy project for the purposes of this section;
- (c) monitor all industrial policy projects—
  - (i) to determine whether the objectives of this section are being achieved; and
  - (ii) to advise the Minister of Finance and the Minister of Trade and Industry on any future proposed amendment or adjustment thereof;
- (d) require any company applying for approval of any industrial project as an industrial policy project in terms of this section to furnish such information or documents as are necessary for the committee and Minister of Trade and Industry to perform their functions in terms of this section;
- (e) for a specific purpose and on such conditions and for such period as it may determine obtain the assistance of any person to advise the adjudication committee relating to any function assigned to the committee in terms of this section; and

- (f) appoint its own chairperson and determine the procedures for its meetings provided that all procedures must be properly recorded and minuted.
- (18) The members of the adjudication committee and any person whose assistance has been obtained by that committee may not—
- (a) act in any way that is inconsistent with the provisions of subsection (17) or expose themselves to any situation involving the risk of a conflict between their responsibilities and private interests; or
  - (b) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.
- (19) The Minister of Trade and Industry—
- (a) may, after taking into account the recommendations of the adjudication committee, extend the periods contemplated in subsections (2) and (6)(b) by a period not exceeding one year;
  - (b) must provide written reasons for any decision to grant or deny any application for approval of an industrial project as an industrial policy project in terms of subsection (8), or for any withdrawal of approval as contemplated in subsection (12);
  - (c) must inform the Commissioner of the approval of any industrial project as an industrial policy project in terms of subsection (8), setting out such particulars as are required by the Commissioner to determine the amount of the additional investment allowance allowable in terms of this section;
  - (d) must publish the particulars of any application received from a company for approval of an industrial project as an industrial policy project in the *Gazette* not later than 30 days after providing to that company the written reasons for any decision as contemplated in paragraph (b);
  - (e) must submit an annual report to Parliament, and must provide a copy of that report to the Auditor-General, setting out the following information in respect of each company that received approval in terms of subsection (8):
    - (i) The name of each company;
    - (ii) the description of each industrial policy project;
    - (iii) the potential national revenue forgone by virtue of the deductions allowable in respect of that industrial policy project in terms of this section;
    - (iv) the annual progress relating to the direct benefits of the industrial policy project in terms of economic growth or employment, setting out the details of the factors contemplated in subsections (7) and (8) on the basis of which approval of the industrial project as an industrial policy project was granted;
    - (v) any decision to withdraw the approval of an industrial policy project in terms of subsection (12); and
    - (vi) any decisions not to withdraw the approval of an industrial policy project, despite any material change in facts.
- (20) The Commissioner must submit an annual report to the Auditor-General containing a list of all—
- (a) certificates issued under subsection (7)(b)(ii); and
  - (b) failures to respond within 60 days as contemplated in the proviso to subsection (7)(b)(ii).
- (21) Notwithstanding the provisions of section 4, the Commissioner must disclose to the Minister of Trade and Industry and the adjudication committee, including any person whose assistance has been obtained by that committee, such information relating to the affairs of any company carrying on an industrial policy project as is necessary to enable the Minister of Trade and Industry and the adjudication committee to perform their functions in terms of this section.
- (22) Every employee of the Department of Trade and Industry and every member of the adjudication committee, including any person whose assistance has been obtained by that committee, must preserve and aid in preserving secrecy with regard to all matters that may come to their knowledge in the performance of their functions in terms of this section,

and may not communicate any such matter to any person whatsoever other than to the company concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of that Department or committee, except in terms of the law or an order of court.

(23) Any person who contravenes the provisions of subsections (18) and (22), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(24) For the purposes of this section the cost to a taxpayer of any manufacturing asset is deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if the person had acquired that manufacturing asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition was in fact concluded, have incurred in respect of the direct cost of the acquisition of the manufacturing asset."

### Insertion of section 12J into Act 58 of 1962

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

#### **“Deductions in respect of expenditure incurred in exchange for issue of venture capital company shares**

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

**‘impermissible trade’** means—

- (a) any trade carried on in respect of immovable property, other than a trade carried on as an hotel keeper;
- (b) any trade carried on by a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), a long-term insurer as defined in the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), a short term insurer as defined in the Short-Term Insurance Act, 2008 (Act No. 53 of 1998), and any trade carried on in respect of money-lending or hire-purchase financing;
- (c) any trade carried on in respect of financial or advisory services, including trade in respect of legal services, tax advisory services, stock broking services, management consulting services, auditing or accounting services;
- (d) any trade carried on in respect of gambling;
- (e) any trade carried on in respect of liquor, tobacco, arms or ammunition;
- (f) any trade carried on as a franchisee; or
- (g) any trade carried on mainly outside the Republic;

**‘junior mining company’** means any company that is solely carrying on a trade of mining exploration or production which is either an unlisted company as defined in section 41 or listed on the alternative exchange division of the JSE Limited;

**‘qualifying company’** means any company if—

- (a) that company is a resident;
- (b) the company is not a controlled group company in relation to a group of companies contemplated in paragraph (d)(i) of the definition of ‘connected person’;
- (c) the tax affairs of the company are in order and the company has complied with all the relevant provisions of the laws administered by the Commissioner;

- (d) the company is an unlisted company as defined in section 41 or a junior mining company;
- (e) the company is carrying on any trade or will carry on any trade within a period of—
- (i) in the case of a junior mining company, 36 months;
  - (ii) in the case of any other company, 18 months,
- after the issue of any shares by that company as contemplated in the definition of ‘qualifying share’, and the trade mainly carried on or that will be mainly carried on by that company is not an impermissible trade;
- (f) within a period of—
- (i) in the case of junior mining companies, 36 months; or
  - (ii) in the case of any other company, 18 months,
- the sum of the investment income, as defined in section 12E(4)(c), derived by that company during a year of assessment does not exceed an amount equal to 20 per cent of the gross income of that company for that year; and
- (g) within 18 months after an amount is received by or accrued to the company for the issue of any shares by the company as contemplated in the definition of ‘qualifying share’, the company incurs an amount of expenditure which is allowable as a deduction in terms of this Act for purposes of any trade carried on by that company, equal to the amount so received or accrued;
- ‘qualifying share’** means an equity share held by a venture capital company which is issued to that company by a qualifying company, unless that venture capital company has an option to dispose of the share, or the qualifying company has an obligation to redeem that share, for an amount other than the market value of the share at the time of that disposal or redemption;
- ‘venture capital company’** means a company that has been approved by the Commissioner in terms of subsection (5).
- (2) There must be allowed as a deduction from the income of a natural person, a listed company or a controlled group company in relation to a listed company as contemplated in the definition of group of companies in section 41, a deduction determined in terms of subsection (3) in respect of expenditure actually incurred by that person or company in acquiring shares issued to that person or company by a venture capital company.
- (3) The deduction to be allowed in terms of subsection (2) during a year of assessment in respect of expenditure incurred by—
- (a) any natural person must not exceed R750 000: Provided that the amount allowed to be deducted in that year plus the aggregate of the amounts allowed to be so deducted in any other year must not exceed R2,25 million plus so much of that expenditure as has been included in the income of that person in terms of section 8(4);
  - (b) any company is the expenditure incurred in respect of shares which, together with other shares held by that company and any other company forming part of the same group of companies as defined in section 41 as that company in the venture capital company, do not constitute more than 10 per cent of the equity shares of the venture capital company.
- (4) A claim for a deduction in terms of subsection (2) must be supported by a certificate issued by the venture capital company stating the amounts invested in that company and that the Commissioner approved that company as contemplated in subsection (5).
- (5) The Commissioner must approve a venture capital company if that company has applied for approval and the Commissioner is satisfied that—
- (a) the company complies with the conditions contemplated in paragraphs (a), (b), (c) and (d) of the definition of ‘qualifying company’;
  - (b) from a date not later than 36 months after the date of application for approval, no more than 10 per cent of the gross income of the company will be derived from sources other than financial instruments or

- services rendered to a qualifying company in which the company holds shares;
- (c) the company together with any connected person in relation to that company does not control any qualifying company;
- (d) the company is licensed in terms of section 7 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); and
- (e) from a date not later than 36 months after the date of application for approval—
- (i) the expenditure incurred by the company to acquire qualifying shares will be at least R30 million or, where the company acquires qualifying shares in any junior mining company, at least R150 million;
  - (ii) at least 10 per cent of the expenditure incurred by the company to acquire assets held by the company will be for qualifying shares held by that company which were issued to it by qualifying companies that hold assets with a book value not exceeding R5 million immediately after that issue; and
  - (iii) at least 80 per cent of the expenditure incurred by the company to acquire assets held by the company will be for qualifying shares issued to it by qualifying companies that hold assets with a book value not exceeding R10 million immediately after that issue or, if any such company is a junior mining company, not exceeding R100 million; and
  - (iv) no more than 15 per cent of the expenditure incurred by the company to acquire qualifying shares held by the company will be incurred for qualifying shares issued to it by any one qualifying company.
- (6) If the Commissioner is satisfied that any venture capital company approved in terms of subsection (5) has during a year of assessment failed to comply with the provisions of that subsection, the Commissioner must after due notice to the company withdraw that approval from the commencement of that year if corrective steps acceptable to the Commissioner are not taken by that company within a period stated in that notice.
- (7) A company may apply for approval in terms of subsection (5) in respect of the year following the year during which approval was withdrawn in respect of that company in terms of subsection (6) if the non-compliance which resulted in the withdrawal has been rectified to the satisfaction of the Commissioner.
- (8) If the Commissioner withdraws the approval of a company in terms of subsection (6) as a result of non-compliance with subsection (5), an amount equal to 125 per cent of the expenditure incurred by any person for the issue of shares held in the company must be included in the income of the company during the year of withdrawal.
- (9) A venture capital company must submit to the Commissioner an annual return within such time and containing such information as the Commissioner may prescribe.
- (10) A venture capital company must submit to the Minister a report providing the Minister with the information that the Minister may prescribe.
- (11) No deduction shall be allowed under this section in respect of shares acquired after 30 June 2021.”

(2) Subsection (1) comes into operation on 1 July 2009.

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

**28.** Section 13ter of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “residential unit” of the following words:

“ ‘**residential unit**’ means any self-contained residential accommodation consisting of more than one room (but excluding any hostel, hotel or similar accommodation), the erection of which was commenced by the taxpayer on or after



1 April 1982 and before 21 October 2008 and which was erected under a housing project of the taxpayer—”.

**Amendment of section 13quat of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004, section 19 of Act 32 of 2004, section 23 of Act 31 of 2005 and section 16 of Act 8 of 2007**

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

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

“There must be allowed to be deducted from the income of the taxpayer an allowance determined in terms of subsection [(3)] (3)(a) or (3A)(a), in respect of the cost of the erection, extension, addition or improvement of any commercial or residential building or part of a building which is owned by the taxpayer and is [to be] used solely for purposes of that taxpayer’s trade, if—”;

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

“(iii) if the developer improved the building or part as contemplated in subsection (3)(b) or (3A)(b), that developer has incurred expenditure in respect of those improvements which is equal to at least 20 per cent of the purchase price paid by the taxpayer in respect of that building or part; and”;

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

(d) by the substitution in subsection (3)(a) for subparagraph (ii) of the following subparagraph:

“(ii) [five] eight per cent of that cost in each of the [16] 10 succeeding years of assessment;”;

(e) by the substitution for subsection (3A) of the following subsections:

“(3A) The amount of the allowance contemplated in subsection (2)—

(a) in the case of the erection of any new building or the extension of or addition to any building, to the extent that it relates to a low-cost residential unit, (other than any improvement in respect of which paragraph (b) applies) is equal to—

(i) 25 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;

(ii) 13 per cent of that cost in each of the five succeeding years of assessment; and

(iii) 10 per cent of that cost in the year of assessment following the last year contemplated in subparagraph (ii);

(b) in the case of the improvement of any existing building or part of a building, to the extent that it relates to a low-cost residential unit, (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved, is equal to—

(i) 25 per cent of the cost to the taxpayer of the improvement, which is deductible in the year of assessment during which the part of the building so improved, is brought into use by the taxpayer; and

(ii) 25 per cent of that cost in each of the three succeeding years of assessment.

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

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

(b) 30 per cent of the purchase price of that part of a building, in the case of a building improved by that developer as contemplated in subsection (3)(b) or (3A)(b),

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



- (f) by the substitution in subsection (5) for paragraph (c) of the following paragraph:

“(c) which is brought into use by the taxpayer after 31 March [2009] 2014.”;

- (g) by the addition to subsection 7(d) of the word “and” at the end of subparagraph (ii);

- (h) by the deletion in subsection (7)(d) of subparagraph (iii); and

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

“(9) Every municipality must provide a report annually to the Commissioner and the Minister in respect of each urban development zone located within that municipality containing such information, within such time and in such manner as is prescribed by the Minister.”.

(2) Subsection (1) is deemed to have come into effect on 21 October 2008 and applies in respect of an erection, extension, addition or improvement that commences on or after that date.

### **Amendment of section 13quin of Act 58 of 1962, as inserted by section 28 of Act 35 of 2007**

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

“(7) For the purposes of subsection (1), to the extent that the taxpayer acquires a part of a building without erecting or constructing that part—

- (a) 55 per cent of the acquisition price, in the case of a part being acquired; and  
(b) 30 per cent of the acquisition price, in the case of an improvement being acquired,

is deemed to be the cost incurred by that taxpayer in respect of that part or improvement, as the case may be.”.

(2) Subsection (1) is deemed to have come into effect on 21 October 2008 and applies in respect of a part or improvement acquired on or after that date.

### **Insertion of section 13sex into Act 58 of 1962**

**31.** (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 13quin of the following section:

#### **“Deduction in respect of certain residential units**

**13sex.** (1) Subject to section 36, there must be allowed to be deducted from the income of a taxpayer an allowance equal to five per cent of the cost to the taxpayer of any new and unused residential unit (or of any new and unused improvement to a residential unit) owned by the taxpayer if—

- (a) that unit or improvement is used by the taxpayer solely for the purposes of a trade carried on by the taxpayer;  
(b) that unit is situated within the Republic; and  
(c) the taxpayer owns at least five residential units within the Republic, which are used by the taxpayer for the purposes of a trade carried on by the taxpayer.

(2) There shall be allowed to be deducted from the income of the taxpayer an additional allowance of five per cent of the cost of a low-cost residential unit of a taxpayer for a year of assessment if deductions are allowable to that taxpayer in respect of that unit in terms of subsection (1) during that year of assessment.

(3) For the purposes of this section, the cost to the taxpayer of a residential unit (or an improvement thereto) shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if that person had acquired or improved the residential unit under a cash transaction concluded at arm’s length on the date on which the transaction for the acquisition of the new and unused residential unit (or of the new and unused improvement to the residential unit) was in fact concluded, have incurred in respect of the direct cost of the acquisition or erection of the residential unit or improvement.

(4) Where any residential unit (or an improvement to the residential unit) in respect of which any deduction is claimed in terms of this section was during any year of assessment used by the taxpayer for the purpose of any trade carried on by that taxpayer, the receipt and accruals of which were not included in the income of that taxpayer during that year, any deduction which could have been allowed in terms of this section during that year or any subsequent year in which that residential unit (or an improvement to the residential unit) was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during that previous year or those years as if the receipts and accruals of that trade had been included in the income of that taxpayer.

(5) No deduction shall be allowed under this section in respect of the cost of any residential unit (or an improvement to a residential unit) that has been disposed of by the taxpayer during any previous year of assessment.

(6) No deduction shall be allowed under this section in respect of the cost of a residential unit (or an improvement to a residential unit) if any of the cost has qualified or will qualify for deduction from the taxpayer's income as a deduction of expenditure or an allowance in respect of expenditure under any other section of this Act.

(7) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any residential unit (or any improvement to a residential unit) shall not in the aggregate exceed the amount of such cost.

(8) For the purposes of this section, to the extent that the taxpayer acquires a residential unit (or improvement to a residential unit) representing only a part of a building without erecting or constructing that unit or improvement—

(a) 55 per cent of the acquisition price, in the case of the unit being acquired; and

(b) 30 per cent of the acquisition price, in the case of the improvement being acquired,

is deemed to be the cost incurred by that taxpayer in respect of that unit or improvement, as the case may be.”

(2) Subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of a residential unit or improvement thereto acquired, or the erection of which commences, on or after that date.

#### **Insertion of section 13*sept* into Act 58 of 1962**

**32.** (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 13*sex* of the following section:

#### **“Deduction in respect of sale of low-cost residential units on loan account**

**13*sept.*** (1) Subject to section 36, there must be allowed as a deduction from the income of the taxpayer an amount determined in terms of subsection (2) in respect of the disposal of any low-cost residential unit by the taxpayer to an employee of the taxpayer (or an associated institution as defined in the Seventh Schedule in relation to the taxpayer).

(2) The deduction contemplated in subsection (1) is an amount equal to 10 per cent of any amount owing to the taxpayer by the employee in respect of the unit at the end of the taxpayer's year of assessment: Provided that no such deduction shall be allowed in the eleventh and subsequent years of assessment after the disposal of that low-cost residential unit, as contemplated in subsection (1).

(3) No deduction is allowed in terms of this section in respect of any disposal by the taxpayer if—

(a) the disposal is subject to any condition other than a condition in terms of which the employee is required—

(i) on termination of employment; or

(ii) in the case of consistent failure for a period of three months on the part of the employee to pay an amount owing to the

taxpayer (or an associated institution, as defined in the Seventh Schedule, in relation to the taxpayer) in respect of a low-cost residential unit,

to dispose of the low-cost residential unit to the taxpayer (or an associated institution, as defined in the Seventh Schedule, in relation to the taxpayer) for an amount equal to the actual cost (other than borrowing or finance costs) to the employee of the unit and the land on which the unit is erected;

- (b) the employee must pay interest to the taxpayer in respect of the amount owing to the taxpayer by the employee in respect of the unit; or
- (c) the disposal is for an amount that exceeds the actual cost (other than borrowing or finance costs) to the taxpayer of the unit and the land on which the unit is erected.

(4) If the amount owing contemplated in subsection (2) or any part thereof is paid to the taxpayer, the taxpayer is deemed to have recovered or recouped an amount equal to the lesser of—

- (a) the amount so paid; or
- (b) the amount allowed as a deduction in terms of this section in the current and any previous year of assessment.”.

(2) Subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of a unit disposed of on or after that date.

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

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

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

“(d) any expenditure that is prescribed by the Commissioner (other than expenditure recoverable by the taxpayer or his or her spouse) necessarily incurred and paid by the taxpayer in consequence of any physical impairment or disability suffered by the taxpayer, his or her spouse or [any] child, or any dependant of the taxpayer contemplated in paragraph (b)(i).”;

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

“(b) where the taxpayer, his or her spouse or child is a **[handicapped]** person with a disability, the sum of the amounts referred to in subsection (1); or”;

- (c) by the substitution in subsection (2)(c)(ii) for the words following item (bb) of the following words:

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

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

“(3) For the purposes of this section **‘disability’** means a moderate to severe limitation of a person’s ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if—

(a) the limitation has lasted or has a prognosis of lasting more than a year; and

(b) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner.”;

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

“(b) in the case of any other child, was incapacitated by **[physical or mental infirmity]** a disability from maintaining himself or herself and was wholly or partially dependent for **[his]** maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of **[the]** such year **[of assessment]**.” 5

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 18A of Act 58 of 1962, as inserted by section 15 of Act 52 of 1970, substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007 and section 31 of Act 35 of 2007** 10

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

(a) by the insertion in subsection (1) after paragraph (b) of the following paragraph: 15

“(bA) any agency contemplated in the definition of ‘specialized agencies’ in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), which— 20

(i) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section; 25

(ii) furnishes the Commissioner with a written undertaking that such agency will comply with the provisions of this section; and

(iii) waives diplomatic immunity for the purposes of subsection (5)(i); or”;

(b) by the substitution in subsection (1) for the words following paragraph (c) of the following words: 30

“as does not exceed ten per cent of the taxable income (excluding any retirement fund lump sum benefit and retirement fund lump sum withdrawal benefit) of the taxpayer as calculated before allowing any deduction under this section or section 18.”; 35

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

“(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by—

(a) a receipt issued by the public benefit organisation, institution, board **[or]**, body or agency or the government, provincial administration or municipality concerned, on which the following details are given, namely— 40

**[(a)]** (i) the reference number of the public benefit organisation, institution, board **[or]**, body or agency issued by the Commissioner for the purposes of this section; 45

**[(b)]** (ii) the date of the receipt of the donation;

**[(c)]** (iii) the name of the public benefit organisation, institution, board **[or]**, body or agency or the government, provincial administration or municipality which received the donation, together with an address to which enquiries may be directed in connection therewith; 50

**[(d)]** (iv) the name and address of the donor;

**[(e)]** (v) the amount of the donation or the nature of the donation (if not made in cash);

**[(f)]** (vi) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board **[or]**, body or agency concerned or, in the case of the government, provincial administration or municipality in carrying on the relevant public benefit activity; or 55 60

- (b) an employees' tax certificate as defined in the Fourth Schedule on which the amount of donations contemplated in paragraph 2(4)(f) of that Schedule, for which the employer has received a receipt contemplated in paragraph (a), is given.”; and
- (d) by the substitution for subsection (5) of the following subsection: 5
- “(5) If the Commissioner has reasonable grounds for believing that any person who is in a fiduciary capacity responsible for the management or control of the income or assets of any public benefit organisation, institution, board **[or]**, body or agency (other than an institution, board or body in respect of which subsection (5B) applies) has— 10
- (a) in any material way failed to ensure that the objects for which the public benefit organisation, institution, board **[or]**, body or agency was established are carried out or has expended moneys belonging to the public benefit organisation, institution, board **[or]**, body or agency for **[the]** purposes not covered by such objects; 15
- (b) issued or allowed a receipt to be issued to any taxpayer for the purposes of this section in respect of any fees or other emoluments payable to that organisation, institution, board **[or]**, body or agency by that taxpayer; or
- (c) issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection, 20
- the Commissioner may by notice in writing addressed to that person direct that— 25
- (i) any donation in respect of which a receipt was issued by that public benefit organisation, institution, board **[or]**, body or agency during any year of assessment specified in that notice, will be deemed to be taxable income of that public benefit organisation, institution, board **[or]**, body or agency in that year; and 30
- (ii) if corrective steps are not taken by that public benefit organisation, institution, board **[or]**, body or agency within a period stated by the Commissioner in that notice, any receipt issued by that public benefit organisation, institution, board **[or]**, body or agency in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).” 35

(2) Paragraph (b) of subsection (1) comes into operation on 1 March 2009 and applies in respect of lump sum benefits withdrawn on or after that date.

(3) Paragraph (c) of subsection (1), insofar as it adds paragraph (b) to subsection (2), comes into operation on 1 March 2009 and applies in respect of years of assessment commencing on or after that date. 40

**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 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 16 of Act 113 of 1993, section 15 of Act 65 of 1973, section 15 of Act 28 of 1997, section 19 of Act 101 of 1990, section 17 of Act 21 of 1995, section 26 of Act 30 of 2000, section 27 of Act 59 of 2000, section 23 of Act 74 of 2002, section 35 of Act 45 of 2003, section 19 of Act 8 of 2007, section 32 of Act 35 of 2007 and section 15 of Act 3 of 2008** 45

**35.** (1) Section 20 of the Income Tax Act, 1962, is hereby amended— 50

- (a) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (c) of the proviso of the following words: 55
- “that is a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit included in taxable income, any—”; and
- (b) by the substitution in subsection (1) for subparagraph (ii) of paragraph (c) of the proviso of the following subparagraph: 55
- “(ii) **‘assessed loss’** as defined in subsection (2) incurred in such year before taking into account that retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit.”

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of lump sum benefits withdrawn on or after that date. 60



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

36. (1) Section 22 of the Income Tax Act, 1962, is hereby amended— 10
- (a) by the substitution in subsection (3)(a) for subparagraph (i) of the following subparagraph: 10
- “(i) subject to **[subparagraph]** subparagraphs (iA) and (ii), be the cost incurred by such person, whether in the current or any previous year of assessment in acquiring such trading stock, plus, subject to the provisions of paragraph (b), any further costs incurred by him up to and including the said date in getting such trading stock into its then existing condition and location, but excluding any exchange difference as defined in section 24I(1) relating to the acquisition of such trading stock; **[or]**”; 15 20
- (b) by the insertion in subsection (3)(a) of the following subparagraph: 20
- “(iA) include an amount that has been included in that person’s income in terms of section 8(5), which was applied in reduction or towards settlement of the purchase price of that trading stock;”; 25
- (c) by the substitution in subsection (3)(a) for the full stop at the end of subparagraph (ii) of the expression “; or”; 25
- (d) by the addition to subsection (3)(a) of the following subparagraph: 25
- “(iii) in the case of—
- (aa) a right in a controlled foreign company held directly by a resident, include an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10 of the Eighth Schedule) of that company and of any other controlled foreign company in which that controlled foreign company and that resident directly or indirectly have an interest, which was included in the income of that resident in terms of section 9D during any year of assessment, less the amount of any foreign dividend distributed by that company to that resident during any year of assessment which was exempt from tax in terms of section 10(1)(k)(ii)(cc); or 30 35 40
- (bb) a right in a controlled foreign company held directly by another controlled foreign company, include an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10 of the Eighth Schedule) of that first-mentioned controlled foreign company and of any other controlled foreign company in which both the first- and second-mentioned controlled foreign companies directly or indirectly have an interest, which during any year of assessment would have been included in the income of that second-mentioned controlled foreign company in terms of section 9D had it been a resident, less the amount of any foreign dividend distributed by that first-mentioned controlled foreign company to the second-mentioned controlled foreign company if that dividend would have been exempt from tax in terms of section 10(1)(k)(ii)(cc) had that second-mentioned controlled foreign company been a resident;”; and 45 50 55
- (e) by the substitution for subsection (4) of the following subsection: 60
- “(4) If any trading stock has been acquired by any person for no consideration or for a consideration which is not measurable in terms of money, such person shall for the purposes of subsection (3), unless subsection (3)(a)(iA) applies, be deemed to have acquired such trading



stock at a cost equal to the current market price of such trading stock on the date on which it was acquired by such person[: **Provided that any capitalization shares awarded by any company to shareholders of that company on or after 1 July 1957 shall have no value as trading stock in the hands of such shareholders: Provided further that options or any other rights to acquire shares in any company which have been acquired as aforesaid shall have no value**].” 5

(2) Paragraph (e) of subsection (1), insofar as it deletes the provisos, comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation. 10

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

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

(a) by the substitution for paragraph (i) of the following paragraph:  
“(i) any expenditure, loss or allowance to the extent to which it is claimed as a deduction from any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit;” 20

(b) by the substitution for paragraph (k) of the following paragraph:  
“(k) any expense incurred by—

- (i) a labour broker as defined in the Fourth Schedule, other than a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5) of the said Schedule; or 25
- (ii) a personal service **[company]** provider as defined in the said Schedule; or

(iii) a **personal service trust as defined in the said Schedule**, other than any expense which constitutes an amount paid or payable to any employee of such labour broker, **company or trust** or personal service provider for services rendered by such employee, which is or will be taken into account in the determination of the taxable income of such employee and, in the case of such personal service **[company or personal service trust]** provider, any expense, deduction or contribution contemplated in paragraphs (c), (i) **[and]**, (l), (nA) or (nB) of section 11, expenses in respect of premises, finance charges, insurance, repairs and fuel and maintenance in respect of assets, if such premises or assets are used wholly and exclusively for purposes of trade;” 30 35 40

(c) by the insertion in paragraph (m) after subparagraph (ii) of the following subparagraph:

“(iiA) any deduction which is allowable under section 11(nA) or (nB);” 45

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2009 and applies in respect of lump sum benefits withdrawn on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2009 and applies in respect of a year of assessment commencing on or after that date.

**Substitution of section 23I of Act 58 of 1962, as inserted by section 37 of Act 35 of 2007**

**38.** (1) The following section is hereby substituted for section 23I of the Income Tax Act, 1962:

**“Prohibition of deductions in respect of certain intellectual property 5**

**23I.** (1) For the purposes of this section—

**‘end user’** means a taxable person or a person with a permanent establishment within the Republic that uses intellectual property or any corresponding invention during a year of assessment to derive income, other than a person that derives income mainly by virtue of the grant of use, right of use or permission to use intellectual property or any corresponding invention; 10

**‘intellectual property’** means any—

- (a) patent as defined in the Patents Act, 1978 (Act No. 57 of 1978), including any application for a patent in terms of that Act; 15
- (b) design as defined in the Designs Act, 1993 (Act No. 195 of 1993);
- (c) trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993);
- (d) copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978);
- (e) patent, design, trade mark or copyright defined or described in any similar law to that in paragraph (a), (b), (c) or (d) of a country other than the Republic; 20
- (f) property or right of a similar nature to that in paragraph (a), (b), (c), (d) or (e); and
- (g) knowledge connected to the use of such patent, design, trade mark, copyright, property or right; 25

**‘tainted intellectual property’** means intellectual property—

- (a) which was the property of the end user or a person that is or was a connected person, as defined in section 31(1A), in relation to the end user; 30
- (b) which is the property of a taxable person;
- (c) a material part of which was used by a taxable person in carrying on a business while that property was the property of a taxable person and the end user of that property acquired that business or a material part thereof as a going concern; or 35
- (d) which was discovered, devised, developed, created or produced by the end user of that property, or by a taxable person that is a connected person, as defined in section 31(1A), in relation to the end user, if that end user, together with any taxable person that is a connected person in relation to that end user, holds at least 20 per cent of the participation rights, as defined in section 9D, in a person by or to whom an amount is received or accrues— 40
  - (i) by virtue of the grant of use, right of use or permission to use that property; or
  - (ii) where that receipt, accrual or amount is determined directly or indirectly with reference to expenditure incurred for the use, right of use or permission to use that property; 45

**‘taxable person’** means any person other than—

- (a) a person that is not a resident;
- (b) the Government, a provincial administration or a municipality contemplated in section 10(1)(a) or (b); 50
- (c) an institution, board or body contemplated in section 10(1)(cA);
- (d) any public benefit organisation as defined in section 30 that has been approved by the Commissioner in terms of that section;
- (e) any recreational club as defined in section 30A that has been approved by the Commissioner in terms of that section; 55
- (f) any company or trust contemplated in section 37A;
- (g) any fund contemplated in section 10(1)(d)(i) or (ii); or
- (h) any person contemplated in section 10(1)(t).

(2) Other than a deduction allowed in terms of section 11(gC) or a deduction allowed in respect of trading stock, a deduction is not allowed in respect of—

(a) any amount of expenditure incurred for the use, right of use or permission to use tainted intellectual property; or

(b) expenditure the incurral or amount of which is determined directly or indirectly with reference to expenditure incurred for the use, right of use or permission to use tainted intellectual property,

to the extent that the amount of expenditure does not constitute income received by or accrued to any other person or to the extent that the amount of expenditure does not constitute a proportional amount of net income of a controlled foreign company an amount equal to which is included in the income of any resident in terms of section 9D.

(3) Notwithstanding any provision of subsection (2) to the contrary, an amount equal to one third of any expenditure contemplated in subsection (2) shall be allowed to be deducted if tax contemplated in section 35 is payable in respect of that amount at a rate of at least 10 per cent.”.

(2) Subsection (1) comes into operation on 1 January 2009 and applies in respect of expenditure incurred on or after that date.

**Amendment of section 24B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1978 and amended by section 13 of Act 104 of 1979, section 20 of Act 113 of 1993, section 32 of Act 30 of 2000, section 22 of Act 32 of 2004 and section 39 of Act 35 of 2007**

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

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

“(1) Subject to subsection (2), if a company acquires any asset, as defined in paragraph 1 of the Eighth Schedule, from any person **[in exchange]** as consideration for shares issued by that company—

(a) that company is for purposes of this Act deemed to have actually incurred an amount of expenditure in respect of the acquisition of that asset, which is equal to the lesser of the market value of that asset **[as determined at the time of]** immediately after the acquisition or the market value of the shares immediately after the acquisition; and

(b) that person is for purposes of this Act deemed to have disposed of that asset for an amount equal to **[that] the** market value of the shares immediately after the acquisition.”;

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

“(2) **[If]** For purposes of this Act, other than Part V of Chapter II, if a company acquires any share or debt instrument which is issued to that company **[directly or indirectly in exchange for]** by reason of or in consequence of and within a period of 18 months after the issue of shares by that company or any connected person in relation to that company[,]

(a) that company is **[for purposes of this Act]** deemed not to have incurred any expenditure in respect of the acquisition of that share or debt instrument so acquired; and

(b) that company or that connected person, as the case may be, is deemed to have issued that share for an amount of nil.”; and

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

“(3) If a company issues any debt instrument **[directly or indirectly in exchange for]** by reason of or in consequence of and within a period of 18 months after the issue of shares or of a debt instrument **[which is issued]** to that company or to a connected person in relation to that company, that company or that connected person, as the case may be, is for purposes of this Act deemed to have incurred expenditure in respect of the acquisition of that share or debt instrument so acquired, only to the extent that the amounts are paid by that company in terms of the debt instrument so issued.”.

(2) Subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of shares or debt instruments acquired or issued on or after that date.

**Amendment of section 28 of Act 58 of 1962, as amended by section 17 of Act 90 of 1962, section 22 of Act 55 of 1966, section 24 of Act 89 of 1969, section 21 of Act 88 of 1971, section 19 of Act 65 of 1973, section 19 of Act 91 of 1982, section 22 of Act 94 of 1983, section 17 of Act 65 of 1986, section 23 of Act 90 of 1988, section 13 of Act 70 of 1989, section 25 of Act 101 of 1990, section 29 of Act 129 of 1991, section 24 of Act 113 of 1993, section 19 of Act 21 of 1994, section 33 of Act 30 of 2000 and section 42 of Act 35 of 2007** 5

40. Section 28 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (cA) of the following paragraph:

“(cA) **[the sum of]** the liabilities contemplated in section 32(1)(a)[,] **and (b) [and (d)]** of the Short-Term Insurance Act, 1998 (Act No. 53 of 1998), that have been included as liabilities of that person in respect of a year of assessment, subject to such adjustments as may be made by the Commissioner.”. 10

**Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 16 of Act 19 of 2001, section 39 of Act 60 of 2001, section 31 of Act 74 of 2002, section 16 of Act 16 of 2004, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007 and section 22 of Act 3 of 2008** 15

41. Section 30 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the definition of “public benefit organisation” of the following subparagraph: 20

“(ii) any branch within the Republic of any company, association or trust incorporated, formed or established in **[terms of the laws of]** any country other than the Republic that is exempt from tax on income in that other country;”. 25

**Amendment of section 30A of Act 58 of 1962, as inserted by section 25 of Act 20 of 2006 and amended by section 26 of Act 8 of 2007**

42. Section 30A of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2)(a) for subparagraph (i) of the following subparagraphs: 30

“(i) it is required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that club and no single person directly or indirectly controls the decision making powers relating to that club; 35

**[(i)(iA) its activities must be carried on in a non-profit manner;”]; and**  
(b) by the substitution in subsection (2)(a) for subparagraph (iv) of the following subparagraph: 40

“(iv) it may not pay any remuneration to any person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered, nor may any remuneration be determined as a percentage of any amounts received or accrued to that **[recreational]** club;”. 40

**Amendment of section 31 of Act 58 of 1962, as amended section 23 of Act 21 of 1995, section 37 of Act 30 of 1998, section 31 of Act 53 of 1999, section 37 of Act 59 of 2000, section 16 of Act 5 of 2001, section 46 of Act 45 of 2003 and section 44 of Act 35 of 2007** 45

43. (1) Section 31 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1A) of the following subsection: 50

“(1A) For the purposes of subsection (2), where any supply of goods or services has been effected in respect of any intellectual property as contemplated in the definition of ‘intellectual property’ in section 23I(1) or knowledge, **‘connected person’** shall mean a connected person as defined in section 1, provided that the expression ‘and no shareholder holds the majority voting rights of such company’ 55 in paragraph (d)(v) of that definition must be disregarded.”.

(2) Subsection (1) comes into operation on 1 January 2009 and applies in respect of any goods or services supplied on or after that date.

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

44. (1) Section 36 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (11) for subparagraph (i) of paragraph (d) of the definition of “capital expenditure” of the following subparagraphs:
- “(i) **[housing] new and unused low-cost residential units or improvements to low-cost residential units for [residential] occupation by the taxpayer’s employees [(other than housing intended for sale) and furniture for such housing];**
- (iA) new and unused residential units (other than low-cost residential units) or improvements to residential units for occupation by the taxpayer’s employees;”;
- (b) by the substitution in subsection (11) for item (aa) of the proviso to paragraph (d) of the definition of “capital expenditure” of the following item:
- “(aa) such expenditure shall for the purposes of this definition be deemed to be payable—
- (A) where subparagraphs (i), (ii), (iii), (iv) and (v) are applicable, in ten successive equal annual instalments;
- (B) where subparagraph (iA) is applicable, in 20 successive equal annual instalments; or[,]
- (C) where subparagraph (vi) is applicable, five successive equal annual instalments,
- the first of which shall be deemed to be payable on the date on which payment of the relevant expenditure became due and the succeeding instalments on the appropriate anniversaries of that date, but if any such anniversary falls on a date after the asset to which such expenditure relates has been sold, disposed of or scrapped by the taxpayer, the instalment of such expenditure so deemed to be payable on such anniversary shall be disregarded;”;
- (c) by the addition in subsection (11) to the proviso to paragraph (d) of the definition of “capital expenditure” of the following item:
- “(dd) for purposes of subparagraphs (i) and (iA), to the extent that the taxpayer acquires a residential unit (or improvement to a residential unit) representing only a part of a building without erecting or constructing that unit or improvement—
- (a) 55 per cent of the acquisition price, in the case of the unit being acquired; and
- (b) 30 per cent of the acquisition price, in the case of the improvement being acquired,
- is deemed to be the cost incurred by that taxpayer in respect of that unit or improvement, as the case may be.”;
- (d) by the addition in subsection (11) to the definition of “capital expenditure” of the following paragraph:
- “(e) where that trade constitutes mining, any expenditure other than in respect of infrastructure incurred to acquire a mining right pursuant to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), where that expenditure is incurred in terms of the right: Provided that such expenditure shall for the purposes of this definition be deemed to have been incurred in successive annual instalments equal to the amount of the expenditure divided by the number of years for which the taxpayer has the right after the date on which the expenditure was incurred;” and



(e) by the addition in subsection (11) to the definition of “capital expenditure” of the following paragraph:

“(f) in respect of the disposal of any low-cost residential unit of the taxpayer, an amount equal to 10 per cent of any amount owing to the taxpayer or an ‘associated institution’, as defined in the Seventh Schedule, in relation to the taxpayer by the employee in respect of the unit at the end of the taxpayer’s year of assessment: Provided that no amount shall be taken into account in terms of this paragraph in the eleventh and subsequent years of assessment, and that this paragraph shall not apply in respect of any disposal by the taxpayer if—

- (i) the disposal is subject to any condition other than a condition in terms of which the employee is required—
  - (aa) on termination of employment; or
  - (bb) in the case of consistent failure for a period of three months on the part of the employee to pay an amount owing to the taxpayer or an ‘associated institution’, as defined in the Seventh Schedule, in relation to the taxpayer in respect of a low-cost residential unit, to dispose of the low-cost residential unit to the taxpayer (or any associated institution, as defined in the Seventh Schedule, in relation to the taxpayer) for an amount equal to the actual cost (other than borrowing or finance costs) to the employee of the unit and the land on which the unit is erected;
- (ii) the employee must pay interest to the taxpayer in respect of the amount owing to the taxpayer by the employee in respect of the unit; or
- (iii) the disposal is for an amount that exceeds the actual cost (other than borrowing or finance costs) to the taxpayer of the unit and the land on which the unit is erected:

Provided further that if the amount owing or any part thereof is paid to the taxpayer, the taxpayer is deemed to have recovered or recouped an amount equal to the lesser of—

- (i) the amount so paid; or
- (ii) the amount of the expenditure in terms of this section in the current and any previous year of assessment;”.

(2) Paragraphs (a), (b) and (c) of subsection (1) are deemed to have come into operation on 21 October 2008 and apply in respect of a residential unit or improvement acquired, or the erection of which commences, on or after that date.

(3) Paragraph (d) of subsection (1) is deemed to have come into operation on 1 January 2008 and applies in respect of years of assessment ending on or after that date.

(4) Paragraph (e) of subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of disposals taking place on or after that date.

#### **Amendment of section 37B of Act 58 of 1962 as inserted by section 48 of Act 35 of 2007**

45. (1) Section 37B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous **[financial]** year of assessment **[brought into use for the first time]** used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”.

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of years of assessment commencing on or after that date.



**Insertion of section 37C into Act 58 of 1962**

46. The Income Tax Act, 1962, is hereby amended by the insertion of the following section:

**“Deductions in respect of environmental conservation and maintenance**

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**37C.** (1) Expenditure actually incurred by a taxpayer to conserve or maintain land is deemed to be expenditure incurred in the production of income and for purposes of a trade carried on by that taxpayer, if—

- (a) the conservation or maintenance is carried out in terms of a biodiversity management agreement that has a duration of at least five years entered into by the taxpayer in terms of section 44 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); and
- (b) land utilised by the taxpayer for the production of income and for purposes of a trade consists of, includes or is in the immediate proximity of the land that is the subject of the agreement contemplated in paragraph (a).

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(2) (a) Any deduction of expenditure contemplated in subsection (1) must not be allowed to the extent that the expenditure exceeds the income of the taxpayer derived from trade carried on by the taxpayer on land utilised as contemplated in subsection (1)(b) in any year of assessment.

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(b) The amount by which the deduction exceeds the income of the taxpayer so derived must be deemed to be expenditure incurred by the taxpayer in the following year of assessment.

(3) An amount equal to the expenditure actually incurred by a taxpayer to conserve or maintain land owned by the taxpayer is for purposes of section 18A deemed to be a donation by the taxpayer actually paid or transferred during the year to the Government for which a receipt has been issued in terms of section 18A(2), if the conservation or maintenance is carried out in terms of a declaration that has a duration of at least 30 years in terms of section 20, 23 or 28 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003).

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(4) If during the current or any previous year of assessment a deduction is or was allowed to the taxpayer in terms of subsection (1) or (3) in respect of expenditure incurred to conserve or maintain land in terms of an agreement or declaration contemplated in those subsections, and the taxpayer subsequently is in breach of that agreement or violates that declaration, an amount equal to the deductions allowed in respect of expenditure incurred within the period of five years preceding the breach or violation must be included in the income of the taxpayer for the current year of assessment.

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(5) If—

- (a) land is declared a national park or nature reserve in terms of an agreement under section 20(3) or 23(3) of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003); and
- (b) the declaration is endorsed on the title deed of the land and has a duration of at least 99 years,

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an amount equal to 10 per cent of the lesser of the cost or market value of the land without regard to any right of use retained by any taxpayer is for purposes of section 18A and paragraph 62 of the Eighth Schedule deemed to be a donation paid or transferred to the Government for which a receipt has been issued in terms of section 18A(2), in the year of assessment in which the land is so declared and each of the succeeding nine years of assessment.

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(6) If the taxpayer retains a right of use of land contemplated in subsection (5), the amount deemed to be a donation in terms of that subsection is an amount that bears to the amount determined in terms of that subsection the same ratio as the market value of the land subject to the right of use bears to the market value of the land had that land not been subject to the right of use.

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(7) If during the current or any previous year of assessment a deduction is or was allowed to the taxpayer in terms of subsection (5) in respect of a deemed donation in terms of a declaration contemplated in that subsection, and the taxpayer subsequently violates that declaration, an amount equal to the deduction allowed in respect of the deemed donation within the period of five years preceding the violation must be included in the income of the taxpayer for the current year of assessment.” 5

#### **Insertion of section 40C into Act 58 of 1962**

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

#### **“Issue of shares or options for no consideration**

**40C.** For purposes of this Act, where a company issues shares (or an option or other right for the issue of shares) to a person for no consideration, the expenditure actually incurred by the person to acquire the shares, option or right is deemed to be nil.” 15

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

**Amendment of section 41 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001, substituted by section 34 of Act 74 of 2002 and amended by section 49 of Act 45 of 2003, section 32 of Act 32 of 2004, section 37 of Act 31 of 2005, section 28 of Act 20 of 2006, section 32 of Act 8 of 2007, section 52 of Act 35 of 2007 and section 25 of Act 3 of 2008** 20

48. (1) Section 41 of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection:

“(9) Where a person has made an election in respect of an asset under paragraph 65 or 66 of the Eighth Schedule and disposes of or distributes any replacement asset in relation to that asset in terms of section 42, 44, 45 or 47— 25

(a) the person so disposing of or distributing that replacement asset must disregard any capital gain or amount recovered or recouped which was apportioned to that asset under paragraph 65 or 66 of the Eighth Schedule or section 8(4)(e) and (eA), as the case may be, and which otherwise would have had to be brought to account at the time of that disposal or distribution; and 30

(b) the company acquiring that replacement asset and the person referred to in paragraph (a) must be treated as one and the same person for the purposes of section 8(4)(eB), (eC) or (eD) and paragraphs 65 and 66 of the Eighth Schedule.” 35

(2) Subsection (1) is deemed to have come into operation on 1 January 2008 and applies in respect of an asset disposed of on or after that date.

**Amendment of section 42 of Act 58 of 1962, as amended by section 21 of Act 88 of 1965, section 17 of Act 95 of 1967, section 29 of Act 89 of 1969, section 19 of Act 52 of 1970, section 23 of Act 88 of 1971, section 18 of Act 90 of 1972, section 22 of Act 65 of 1973, section 32 of Act 85 of 1974, section 22 of Act 69 of 1975, section 18 of Act 103 of 1976, section 19 of Act 113 of 1977, section 20 of Act 91 of 1982, section 28 of Act 94 of 1983, section 31 of Act 129 of 1991, section 27 of Act 141 of 1992, section 23 of Act 21 of 1994, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 34 of Act 8 of 2007, section 53 of Act 35 of 2007 and section 26 of Act 3 of 2008** 40

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

(a) by the addition in subsection (1) of the word “and” at the end of paragraph (a) of the definition of “asset-for-share transaction”;

(b) by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph (b) of the definition of “asset-for-share transaction” of the following subparagraphs: 55

- “(i) as trading stock, where that person holds it as trading stock;  
(ii) as a capital asset, where that person holds it as a capital asset; or  
(iii) as trading stock, where that person holds it as a capital asset and that company and that person do not form part of the same group of companies”;
- (c) by the deletion in subsection (1) of the word “and” at the end of paragraph (b) of the definition of “asset-for-share transaction”;
- (d) by the deletion in subsection (1) of paragraph (c) of the definition of “asset-for-share transaction”;
- (e) by the substitution in subsection (2)(a)(ii) for the words preceding item (aa) of the following words:  
“acquired the equity shares in that company on the date that such person acquired that asset (other than for purposes of determining whether that share is a ‘qualifying share’ as defined in section 9C where that asset is not an equity share) and for a cost equal to—”;
- (f) by the substitution in subsection (2) for paragraph (bA) of the following paragraph:  
“(bA) that company must, where that company is a listed company or a company contemplated in paragraph (e)(i) of the definition of ‘company’ and the asset was acquired by that company from any person who does not hold more than 20 per cent of the equity share capital of that company after the asset-for-share transaction, be deemed to have acquired the asset at a cost equal to the market value of the asset; and”;
- (g) by the insertion of the following subsection:  
“(3A) For purposes of the definition of ‘contributed tax capital’, if an asset is disposed of by a person to a company in terms of an asset-for-share transaction and that person at the close of the day on which that asset is disposed of holds a qualifying interest in that company as contemplated in paragraph (c) of the definition of ‘qualifying interest’, or is a natural person who will be engaged on a full-time basis in the business of that company or a controlled group company in relation to that company of rendering a service, the amount received by or accrued to the company for the issue of the shares is deemed to be equal to—  
(a) if the asset is trading stock, the amount taken into account by that person in respect of the asset in terms of section 11(a) or 22(1) or (2); or  
(b) if the asset is an asset other than trading stock, the base cost of that asset determined at the time of that disposal in relation to the person disposing of that asset;”;
- (h) by the substitution in subsection (4) for paragraph (a) of the following paragraph:  
“(a) [**where**] a person disposes of an asset to a company in terms of an asset-for-share transaction; and”;
- (i) by the addition of the following subsection:  
“(8A) This section does not apply to the disposal of an asset by a person to a company if—  
(a) the person and the company jointly elect that this section does not apply; or  
(b) the disposal would not be taken into account for purposes of determining any taxable income or assessed loss of that person.”.
- (2) Paragraphs (a), (b), (c), (d) and (i) of subsection (1) come into operation on 1 January 2009 and apply in respect of a transaction entered into on or after that date.
- (3) Subsection (1)(e) is deemed to have come into operation on 1 October 2007 and applies in respect of a disposal on or after that date.
- (4) Subsection (1)(f) is deemed to have come into operation on 1 January 2007 and applies in respect of a transaction entered into on or after that date.
- (5) Subsection (1)(g) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

**Amendment of section 44 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and amended by section 34 of Act 74 of 2002, section 52 of Act 45 of 2003, section 40 of Act 31 of 2005, section 34 of Act 8 of 2007, section 55 of Act 35 of 2007 and section 27 of Act 3 of 2008**

**50.** (1) Section 44 of the Income Tax Act, 1962, is hereby amended— 5

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

“(4A) For purposes of the definition of ‘contributed tax capital’, if the resultant company issues shares in exchange for the disposal of an asset in terms of an amalgamation transaction, the amount received by or accrued to the resultant company as consideration for the issue of shares is deemed to be equal to an amount which bears to the contributed tax capital of the amalgamated company at the time of termination contemplated in subsection (1)(b) the same ratio as the value of the shares held in the amalgamated company at that time by shareholders other than the resultant company bears to the value of all shares held in the amalgamated company at that time.”; and 10 15

(b) by the substitution in subsection (11) for the words preceding paragraph (a) of the following words:

“Where a person disposed of any equity share in an amalgamated company in terms of a qualifying transaction contemplated in subsection (6) and that person ceases to hold an interest in the resultant company, as contemplated in paragraph (c) of the definition of ‘qualifying interest’ in subsection (1), within a period of 18 months after the disposal in terms of that qualifying transaction (whether or not by way of the disposal of any shares in the resultant company), that person must for purposes of section 22 or the Eighth Schedule be deemed to have—”. 20 25

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

(3) Subsection (1)(b) is deemed to have come into operation on 1 January 2007 and applies in respect of a transaction entered into on or after that date. 30

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

**51.** Section 45 of the Income Tax Act, 1962, is hereby amended—

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

(b) by the deletion in subsection (1) of the word “and” at the end of paragraph (b);

(c) by the deletion in subsection (1) of paragraph (c); 40

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

“(b) Where a transferee company which has acquired an asset as contemplated in paragraph (a) ceases within a period of six years after the acquisition to form part of any group of companies in relation to the transferor company contemplated in paragraph (a)(i) or a controlling group company in relation to the transferor company, and the transferee company has not disposed of that asset— 45

(i) an amount equal to the lesser of— 50

(aa) the greatest capital gain that would have been determined in respect of any disposal of the asset in terms of an intra-group transaction within the period of six years preceding the date on which the transferee company ceased to form part of the group of companies, had subsection (2) not applied in respect of that disposal; or 55

(bb) the capital gain that would be determined if the asset was disposed of on the date on which the transferee company ceases to form part of the group of 60

- companies for an amount equal to the market value of the asset on that date,  
is deemed to be a capital gain of the transferee company for the current year of assessment and the base cost of the asset must be increased by that amount and, where the asset is an allowance asset, the cost or value of the asset must be increased by 50 per cent of that amount; 5
- (ii) an amount equal to the greater of—
- (aa) the amount contemplated in paragraph (j) or (n) of the definition of ‘gross income’ that would have been included in income as a result of any disposal of the asset in terms of an intra-group transaction within the period of six years preceding the date on which the transferee company ceases to form part of the group of companies, had subsection (3) not applied in respect of that disposal; or 10 15
- (bb) the amount contemplated in paragraph (j) or (n) of the definition of ‘gross income’ that would be included in income if the asset was disposed of on the date on which the transferee company ceases to form part of the group of companies for an amount equal to the market value of the asset on that date, must be included in the gross income of the transferee company for the current year of assessment and the cost or value of the asset for purposes of any deductions allowable in respect of that asset (other than deductions allowable in terms of section 12G or 12I) must be increased by that amount: Provided that where an amount contemplated in paragraph (j) of the definition of ‘gross income’ is so included, the cost or value is deemed to be so increased immediately before any subsequent disposal of the asset; and 20 25 30
- (iii) an amount equal to the lesser of—
- (aa) the greatest amount of taxable income (other than any taxable capital gain and any taxable income derived as a result of an amount being included in gross income in terms of paragraph (j) or (n) of the definition of ‘gross income’) that would have been determined in respect of any disposal of the asset in terms of an intra-group transaction within the period of six years preceding the date on which the transferee company ceases to form part of the group of companies, had subsection (2) not applied in respect of that disposal; or 35 40
- (bb) the taxable income (other than any taxable capital gain and any taxable income derived as a result of an amount being included in gross income in terms of paragraph (j) or (n) of the definition of ‘gross income’), that would be determined if the asset was disposed of on the date on which the transferee company ceases to form part of the group of companies for an amount equal to the market value of the asset on that date, must be included in the taxable income of the transferee company for the current year of assessment and the cost of the asset must be increased by that amount;” 45 50 55
- (e) by the substitution for subsection (4A) of the following subsection:  
“(4A) Subsection (4)(b) does not apply in respect of any asset disposed of [by a company] prior to [the coming into operation of section 52(1)(c) of the Revenue Laws Amendment Act, 2007 (Act No. 35 of 2007)] 21 February 2008, where that transferee company and that transferor company contemplated in that subsection cease to form part of a group of companies by reason of the coming into operation of [that] 60



section 52(1)(c) of the Revenue Laws Amendment Act, 2007 (Act No. 35 of 2007).”;

- (f) by the substitution in subsection (4B)(b) for the words preceding subparagraph (i) of the following words:  
 “more than 10 per cent of any amount derived directly or indirectly from such consideration, has, within two years of that disposal, been disposed of—”;
- (g) by the substitution in subsection (6) for the words preceding paragraph (b) of the following words:  
 “This section does not apply in respect of the disposal of an asset if—”;
- (h) by the substitution in subsection (6) for paragraph (b) of the following paragraph:  
 “(b) all the receipts and accruals of the transferee company are exempt from tax in terms of section 10(1)(cA), [(cH), (cM),] (cN), (cO), (cP), (d)[,] or (t) [**and (tA)**];”;
- (i) by the deletion in subsection (6) of the word “or” at the end of paragraph (d);
- (j) by the substitution in subsection (6) for the full stop at the end of paragraph (e) of a semi-colon; and
- (k) by the addition to subsection (6) of the following paragraphs:  
 “(f) the asset constitutes a share in the transferee company; or  
 (g) the transferor company and the transferee company jointly elect that this section does not apply.”.
- (2) Paragraphs (a), (b), (c), (g), (h), (i), (j) and (k) of subsection (1) come into operation on 1 January 2009 and apply in respect of transactions entered into on or after that date.
- (3) Subsection (1)(d) is deemed to have come into operation on 21 October 2008 and applies in respect of cessations on or after that date.
- (4) Subsection (1)(e) is deemed to have come into operation on 21 February 2008.
- (5) Subsection (1)(f) is deemed to have come into operation on 21 February 2008 and applies in respect of an asset disposed of on or after that date.

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

52. (1) Section 46 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (d) of the following paragraph:  
 “(d) where that unbundled company is a controlled foreign company, to a person that holds at least 95 per cent of the equity shares in that unbundling company;”;
- (b) by the insertion after subsection (3) of the following subsection:  
 “(3A) If shares are distributed in terms of an unbundling transaction, the contributed tax capital of—
- (a) the unbundling company immediately after the distribution is deemed to be an amount which bears to the contributed tax capital of that company immediately before distribution the same ratio as the aggregate market value, immediately after the distribution, of the shares in that company bears to the aggregate market value of the shares immediately before distribution; and
- (b) the unbundled company immediately after the distribution is deemed to be an amount equal to the sum of—
- (i) an amount which bears to the contributed tax capital of the unbundling company immediately before the distribution the same ratio as the aggregate market value of the distributed shares before the distribution bears to the aggregate market value of the shares in the unbundling company immediately before the distribution; and
- (ii) an amount which bears to the contributed tax capital of the unbundled company immediately before the distribution the same ratio as the shares held in that company immediately before the distribution by persons other than the unbundling



company bear to all shares held in that company immediately before the distribution.”; and

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

“(7) (a) This section does not apply if, immediately after any distribution of shares in terms of an unbundling transaction, 20 per cent or more of the shares in the unbundled company are held by a disqualified person either alone or together with any connected person (who is a disqualified person) in relation to that disqualified person.

(b) For the purposes of paragraph (a), a ‘**disqualified person**’ means—

- (i) a person that is not a resident;
- (ii) the Government, a provincial administration or a municipality;
- (iii) a public benefit organisation as defined in section 30 that has been approved by the Commissioner in terms of that section;
- (iv) a recreational club as defined in section 30A that has been approved by the Commissioner in terms of that section;
- (v) a company or trust contemplated in section 37A;
- (vi) a fund contemplated in section 10(1)(d)(i) or (ii); or
- (vii) a person contemplated in section 10(1)(cA) or (t).”

(2) Subsection (1)(a) is deemed to have come into operation on 21 February 2008 and applies in respect of a disposal on or after that date.

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

(4) Subsection (1)(c) comes into operation on 1 January 2009 and applies in respect of a distribution on or after that date.

**Amendment of section 47 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 34 of Act 74 of 2002, section 55 of Act 45 of 2003, section 37 of Act 32 of 2004, section 43 of Act 31 of 2005, section 31 of Act 20 of 2006, section 37 of Act 8 of 2007 and section 31 of Act 3 of 2008**

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

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

(i) is **[subject to normal tax in the Republic, unless that company is subject to tax in the Republic at a reduced rate as a result of the application of any agreement for the avoidance of double taxation]** not—

- (aa) a person that is not a resident;
- (bb) a public benefit organisation as defined in section 30 that has been approved by the Commissioner in terms of that section;
- (cc) a recreational club as defined in section 30A that has been approved by the Commissioner in terms of that section;
- (dd) a person contemplated in section 10(1)(cA), (d) or (t); and

(ii) on the date of that disposal forms part of the same group of companies as the liquidating company or holds at least 95 per cent of the equity shares in that company; **[and]**”;

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

(c) by the deletion in subsection (6) of paragraph (a); and

(d) by the insertion in subsection (6) after paragraph (a) of the following paragraphs:

“(b) the holding company and the liquidating company jointly elect that this section does not apply;

(bA) the distribution would not be taken into account for purposes of determining any taxable income or assessed loss of the liquidating company; or”.

(2) Subsection (1) comes into effect on 1 January 2009 and applies in respect of a liquidation distribution on or after that date.

### Insertion of Part IV into Chapter II of Act 58 of 1962

54. (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the insertion of the following Part: 5

#### “PART IV

#### *Turnover tax payable by micro businesses*

##### **Definitions**

10 48. For purposes of this Part, unless the context otherwise indicates, any word or expression that has been defined in section 1 shall bear the meaning so defined and any word or expression that has been defined in the Sixth Schedule shall bear the meaning so defined.

##### **Imposition of tax**

15 48A. There must be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the turnover tax, payable by a person that was a registered micro business during a year of assessment, in respect of its taxable turnover for that year of assessment.

##### **Rates**

20 48B. (1) The rates of tax chargeable in terms of section 48A must be fixed annually by Parliament.

(2) The rates fixed by Parliament in respect of any year of assessment continue to apply until the next such determination of rates and will be applied for the purposes of calculating the tax payable in respect of the taxable turnover of a registered micro business during the next succeeding year of assessment if, in the opinion of the Commissioner, the calculation and collection of the tax chargeable in respect of such taxable turnover cannot without the risk of loss of revenue be postponed until after the rates for that year have been determined. 25

##### **Transitional Provisions**

30 48C. (1) Where an amount—

- (a) was received by a person during a year of assessment when it was a registered micro business;
- (b) was included in that person’s taxable turnover for that year of assessment; and
- (c) accrues to that person when it is no longer a registered micro business, that amount must not be taken into account as a receipt or accrual for purposes of determining the taxable income of that person. 35

(2) Where an amount—

- (a) accrued to a person when it was a registered micro business;
- (b) would have been included in that person’s taxable turnover had it been received on the date that it accrued; and
- (c) is received by that person when it is no longer a registered micro business, 40

20 per cent of that amount must be included in the taxable income of that person for the year of assessment in which it is received. 45

(3) Where a registered micro business is deregistered, any trading stock held and not disposed of by it as at the date with effect from which it is deregistered shall, for purposes of the application of section 22, be deemed to have been trading stock held and not disposed of by it at the beginning of the year of assessment within which that date falls.”. 50

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of a year of assessment commencing on or after that date.

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

55. (1) Section 64B of the Income Tax Act, 1962, is hereby amended by the addition of the following subsections:

“(18) For the purposes of this section, a company that has not declared a dividend on the day immediately before the effective date defined in section 64D is deemed to have declared a dividend of nil on that day.

(19) Secondary tax on companies must not be levied in respect of a dividend declared on or after the effective date as defined in section 64D.”

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

#### **Insertion of Part VIII into Chapter II of Act 58 of 1962**

56. (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the insertion of the following Part after Part VII:

#### *“PART VIII*

#### *Dividends Tax*

#### **Definitions**

**64D.** In this Part—

‘**beneficial owner**’ means the person entitled to the benefit of the dividend attaching to a share;

‘**certificated share**’ means a share other than an uncertificated share;

‘**dividend cycle**’ means a dividend cycle as defined in section 64B;

‘**effective date**’ means the date on which this Part comes into operation;

‘**intermediary**’ means a regulated or unregulated intermediary;

‘**regulated intermediary**’ means any—

(a) central securities depository participant as contemplated in section 34 of the Securities Services Act, 2004 (Act No. 36 of 2004);

(b) authorised user as defined in the Securities Services Act, 2004;

(c) collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

(d) insurer as defined in section 29A; or

(e) approved nominee as contemplated in section 36(2) of the Securities Services Act, 2004;

‘**uncertificated share**’ means a share that is not evidenced by a certificate or written instrument and is transferable by entry without a written instrument; and

‘**unregulated intermediary**’ means a registered shareholder in respect of a share, other than a regulated intermediary, where that shareholder is not entitled to the benefit of a dividend attaching to that share.

**Levy of tax**

**64E.** (1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the dividends tax, calculated at the rate of 10 per cent of the amount of any dividend paid by a company that is a resident.

(2) For the purposes of this Part, the date on which the dividend is paid is deemed to be the date on which it accrues to a shareholder.

**Exemption from tax**

**64F.** A dividend is exempt from the dividends tax if the beneficial owner is—

- (a) a company which is a resident;
- (b) the Government, a provincial administration or a municipality;
- (c) a public benefit organisation approved by the Commissioner in terms of section 30(3);
- (d) a trust contemplated in section 37A; or
- (e) an institution, board or body contemplated in section 10(1)(cA);
- (f) a fund contemplated in section 10(1)(d)(i) or (ii);
- (g) a person contemplated in section 10(1)(t);
- (h) a shareholder in a registered micro business, as defined in the Sixth Schedule, paying that dividend, to the extent that the aggregate amount of dividends paid by that registered micro business to its shareholders during the year of assessment in which that dividend is paid does not exceed the amount of R200 000.

**Withholding of tax by company declaring dividend**

**64G.** (1) A company that declares and pays a dividend must withhold from that payment any dividends tax imposed in respect of that dividend.

(2) Subject to subsection (4), a company must not withhold any dividends tax if—

- (a) the share in respect of which the dividend is paid is a certificated share and the beneficial owner—
  - (i) has by a date determined by the company submitted to the company—
    - (aa) a written declaration that the beneficial owner is exempt from the dividends tax; and
    - (bb) a written undertaking to forthwith inform the company in writing should the beneficial owner cease to be the beneficial owner; or
  - (ii) forms part of the same group of companies, as defined in section 41, as the company that paid the dividend; or
- (b) the share in respect of which the dividend is paid is an uncertificated share.

(3) Subject to subsections (2) and (4), if the beneficial owner has by a date determined by the company submitted to the company—

- (a) a declaration in such form as may be prescribed by the Commissioner that the dividend is subject to a reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation; and
  - (b) a written undertaking to forthwith inform the company in writing should the beneficial owner cease to be the beneficial owner,
- the company must withhold the dividends tax as determined in accordance with the reduced rate.

(4) If a beneficial owner submits to the company a declaration contemplated in subsection (2) or (3), the company may rely on the declaration during the period commencing on the date of submission and terminating on the earlier of—

- (a) the date on which the beneficial owner informs the company that it has ceased to be the beneficial owner pursuant to the undertaking contemplated in subsection (2) or (3);

- (b) the date on which the registered shareholder as at the date of the submission of the declaration contemplated in subsection (2) or (3) ceases to be the registered shareholder; or
- (c) a date three years after that date.

#### **Withholding of tax by intermediaries**

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**64H.** (1) An intermediary that pays a dividend that was declared by any other person must withhold from that payment any dividends tax imposed in respect of that dividend.

(2) Subject to subsection (4), an intermediary must not withhold any dividends tax if—

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- (a) any other person has paid the tax;
- (b) the share in respect of which the dividend is paid is a certificated share and the beneficial owner has by a date determined by the intermediary submitted to the intermediary—
  - (i) a written declaration that the beneficial owner is exempt from the dividends tax; and
  - (ii) a written undertaking to forthwith inform the intermediary in writing should the beneficial owner cease to be the beneficial owner; or

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(c) the share in respect of which the dividend is paid is an uncertificated share and—

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- (i) the person to whom the dividend is to be paid—
  - (aa) is a person which the register of the intermediary indicates is exempt from the dividends tax, unless that person has by a date determined by the intermediary submitted to the intermediary a written declaration requiring that the intermediary withhold the dividends tax; or

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(bb) is a regulated intermediary; or

(ii) the beneficial owner has by a date determined by the intermediary submitted to the intermediary—

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(aa) a written declaration that the beneficial owner is exempt from the dividends tax; and

(bb) a written undertaking to forthwith inform the intermediary in writing should the beneficial owner cease to be the beneficial owner.

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(3) Subject to subsections (2) and (4), if the beneficial owner has by a date determined by the intermediary submitted to the intermediary—

(a) a declaration in such form as may be prescribed by the Commissioner that the dividend is subject to a reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation; and

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(b) a written undertaking to forthwith inform the intermediary in writing should the beneficial owner cease to be the beneficial owner, the intermediary must withhold the dividends tax as determined in accordance with the reduced rate.

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(4) If a beneficial owner submits to the intermediary a declaration contemplated in subsection (2)(b) or (2)(c) the intermediary may rely on the declaration from the period commencing on the date of submission and terminating on the earlier of—

(a) the date on which the beneficial owner informs the intermediary that it has ceased to be the beneficial owner pursuant to the undertaking contemplated in subsection (2)(b) or (2)(c);

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(b) the date on which the registered shareholder as at the date of the submission of the declaration contemplated in subsection (2)(b) or (c) ceases to be the registered shareholder; or

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(c) a date three years after that date.



**Secondary tax on companies credit (STC credit)**

**64I.** (1) A dividend paid by a company is not subject to the dividends tax to the extent that—

- (a) the dividend does not exceed the STC credit of the company; and
- (b) the company has by the date of payment notified the person to whom the dividend is paid by the date of payment of the amount by which the dividend reduces the STC credit of the company.

(2) The STC credit of a company is an amount equal to the sum of—

- (a) the amount by which the dividends accrued to that company during the dividend cycle ending on the day immediately before the effective date and the dividends which are deemed in terms of section 64B to have accrued to that company during that dividend cycle, exceed the dividends declared by that company on that day; and

- (b) the dividends accrued to that company to the extent that the person paying the dividend submits prior written notice to the company of the amount by which the dividend reduces the STC credit of that person or any other person on behalf of whom the dividend is paid by that person,

reduced by the dividends declared and paid by the company to the extent the dividends are paid by the company on or after the effective date.

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

(4) The STC credit of a company on or after the fifth anniversary of the effective date is deemed to be nil.

**Transitional exemption**

**64J.** Any dividend declared before the effective date is exempt from the dividends tax.

**Payment and recovery of tax**

**64K.** (1) The beneficial owner is liable for the dividends tax and must pay the tax by the last day of the month following the month during which the dividend is paid by the company that declared the dividend, unless the tax has been paid by any other person.

(2) (a) Any person that withholds any dividends tax in terms of this Part must pay the tax to the Commissioner by the last day of the month following the month during which the dividend is paid by the company that declared the dividend.

(b) The amount of tax that must be paid to the Commissioner may be reduced by the amount refunded in terms of section 64L.

(3) Any person that fails to withhold tax as required in terms of this Part or withholds tax but fails to pay the tax to the Commissioner as required by this Part is liable for the payment of the tax as if it were tax due by that person in terms of this Act, unless the tax is paid by any other person.

(4) If the Commissioner is satisfied that any dividends tax has not been paid in full, he or she may estimate the unpaid amount and issue to the person concerned a notice of assessment of the unpaid amount.

(5) If a person fails to pay any dividends tax within the required period, interest must be paid by that person on the balance of the tax outstanding at the prescribed rate reckoned from the end of that period.

(6) The provisions of this Act relating to the assessment and recovery of tax and administrative penalties in the event of default or omission apply, with the changes required by the context, in respect of the dividends tax.

(7) Every person that controls or is regularly involved in the management of the overall financial affairs of an unlisted company as defined in section

41 or an unregulated intermediary that is liable to withhold tax and that is a shareholder or director of that company is personally liable for the dividends tax, additional tax, penalty or interest for which that company or intermediary is liable.

### Refund of tax

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**64L.** (1) If an amount is withheld by a person in respect of a dividend paid to any other person and the declaration and undertaking contemplated in section 64G(2)(a)(i), 64G(3), 64H(2)(b), 64H(2)(c)(ii) or 64H(3) are submitted in respect of that dividend within one year after payment of the dividend, so much of that amount as would not have been withheld had that declaration and undertaking been submitted by the date contemplated in those sections is refundable to that other person.

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(2) The person that withheld the initial amount as contemplated in subsection (1) must pay the amount that is refundable to that other person in terms of that subsection to the extent of an amount of tax withheld in respect of the payment within that year of any subsequent dividend.

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(3) An amount withheld in respect of a dividend paid as contemplated in subsection (1) may be recovered from the Commissioner to the extent that the amount has not been refunded as contemplated in subsection (2) within a period of 13 months after the month in which the dividend was paid.

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(4) No amount may be refunded or recovered in terms of subsection (2) or (3) after a period of three years reckoned from the date on which the amount was withheld.”.

(2) Subsection (1) comes into operation on a date determined by the Minister by notice in the *Gazette*, which date must be at least three months after the date of the notice.

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**Amendment of paragraph 12 of First Schedule to Act 58 of 1962, as amended by section 27 of Act 55 of 1966, section 42 of Act 89 of 1969, section 24 of Act 113 of 1977, section 24 of Act 104 of 1980, section 27 of Act 96 of 1981, section 28 of Act 91 of 1982, section 39 of Act 90 of 1988, section 45 of Act 113 of 1993, section 80 of Act 45 of 2003 and section 2 of Act 8 of 2007**

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**57.** (1) Paragraph 12 of the First Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (a) of the following item:
  - “(a) the eradication of noxious plants and alien invasive vegetation;”;
- (b) by the substitution in subparagraph (1) for item (f) of the following item:
  - “(f) the erection of, or extensions, additions or improvements (other than repairs) to, buildings used in connection with farming operations, other than those used for [the] domestic purposes [of persons who are not employees of such farmer];
- (c) by the insertion of the following subparagraph after subparagraph (1):
  - “(1A) For purposes of this Schedule, expenditure incurred in respect of any matter contemplated in subparagraph (1)(a), (b), (d) or (e) to conserve and maintain land owned by the taxpayer shall be deemed to be expenditure incurred in the carrying on of pastoral, agricultural or other farming operations if—
    - (a) conservation and maintenance is carried out in terms of a biodiversity management agreement that has a duration of at least five years; and
    - (b) the agreement contemplated in item (a) is entered into by the taxpayer in terms of section 44 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); and
    - (c) land utilised by the taxpayer for purposes of carrying on the pastoral, agricultural or other farming operations consists or includes or is in the immediate proximity of the land that is the subject of the agreement contemplated in item (a).”;

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(d) by the insertion of the following subparagraph after subparagraph (1C):

“(1D) If during the current or any previous year of assessment deductions are allowed to the taxpayer in terms of subparagraph (1A) in respect of capital expenditure incurred to conserve or maintain land in terms of an agreement contemplated in that subparagraph and the taxpayer is in breach of that agreement or violates that declaration, an amount equal to the deductions allowed in respect of expenditure incurred within the period of five years preceding the breach of violation must be included in the income of the taxpayer for the current year.”; and

(e) by the deletion of subparagraph (5).

(2) Subsection (1)(b) is deemed to have come into operation on 21 October 2008 and applies in respect of expenditure incurred on or after that date.

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

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

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

“(b) ‘C’ represents an amount of R300 000 reduced by the aggregate of all amounts included in the gross income of the taxpayer on or after 1 March 2009 in terms of paragraph 2(b) of this Schedule and amounts deducted on or after 1 March 2009 in terms of paragraph 6(b) of this Schedule;”;

(b) by the substitution in the definition of “formula B” for paragraph (c) of the following paragraph:

“(c) ‘D’ represents the sum of the deductions allowed to the taxpayer in terms of paragraph 5 of this Schedule during any previous year, and during the period commencing on 1 March 2007 and terminating on 30 September 2007; and”;

(c) by the deletion in the definition of “formula B” of the word “and” at the end of paragraph (d)(i);

(d) by the insertion in paragraph (d) of the definition of “formula B” of the following subparagraphs:

“(iA) any amount that is deemed to have accrued to the taxpayer as contemplated in paragraph 2(b)(iB);

(iB) any amount, to the extent that that amount was paid or transferred to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and was subject to tax prior to that transfer or payment; and”;

(e) by the substitution for the definition of “lump sum benefit” of the following definition:

“‘**lump sum benefit**’ includes any amount determined in respect of the commutation of an annuity or portion of an annuity and any fixed or ascertainable amount (other than an annuity) payable by or provided in consequence of membership or past membership of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund whether in one amount or in instalments, other than any amount deemed to be income accrued to a person in terms of section 7(11).”;

(2) Subsection (1)(b) is deemed to have come into operation on 1 October 2007 and ceases to apply on 1 March 2008.

**Amendment of paragraph 2 of Second Schedule to Act 58 of 1962, as amended by section 42 of Act 28 of 1997, section 48 of Act 30 of 1998, section 47 of Act 8 of 2007, section 62 of Act 35 of 2007 and section 37 of Act 3 of 2008**

59. (1) Paragraph 2 of the Second Schedule to the Income Tax Act, 1962, is hereby amended— 5

- (a) by the deletion in subparagraph (b) of item (i);
- (b) by the insertion in subparagraph (b) of the following items:
  - “(iA) the amount awarded to the person in terms of an order of divorce to the extent that the amount is payable by a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and 10
  - (iB) any amount that is transferred for the benefit of the person to any provident fund or provident preservation fund from any pension fund or pension preservation fund of which the person is or was previously a member, which amount is deemed to have accrued to the person on the date of transfer; and” 15
- (c) by the substitution in subparagraph (b) for item (ii) of the following item:
  - “(ii) **[the aggregate of]** any amounts, other than any amount contemplated in **[paragraphs (a) and (b)(i)]** item (a) and subitems (iA) and (iB), received by or accrued to such person during that year by way of lump sum benefits from or in consequence of membership or past membership of any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, less the deductions permitted under the provisions of paragraph 6 of this Schedule.” 20 25

(2) Subsection (1)(a) comes into operation on 1 March 2009 and applies in respect of any lump sum benefit accrued on or after that date.

(3) Subsection (1)(b), to the extent that it inserts item (iA) into paragraph 2(b) of the Second Schedule to the Income Tax Act, 1962, comes into operation on 1 March 2009 and applies in respect of any lump sum benefit accrued on or after that date. 30

**Amendment of paragraph 2B of Second Schedule to Act 58 of 1962, as inserted by section 42 of Act 53 of 1999 and amended by section 64 of Act 60 of 2001, section 45 of Act 32 of 2004, section 63 of Act 35 of 2007 and section 38 of Act 3 of 2008**

60. Paragraph 2B of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso of the following words: 35  
 “For the purposes of paragraphs 2 and 2A, where a court has made an order that any part of the pension interest of a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund shall be paid to the former spouse of that member, as provided for in the Divorce, 1979 (Act No. 70 of 1979), the amount of that part is, to the extent that 40  
 that amount is not deemed to have been received by or to have accrued to **[the member]** a person other than the member in terms of paragraph 2(b), deemed to be amount that accrues to that member on the date on which the pension interest, of which that amount forms part, accrues to that member”.

**Amendment of paragraph 2C of Second Schedule to Act 58 of 1962, as inserted by section 49 of Act 8 of 2007 and amended by section 39 of Act 3 of 2008** 45

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

- “2C. Any lump sum benefit, or part thereof, received by or accrued to a person subsequent to the person’s retirement or death, or withdrawal or resignation from 50  
 any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or the winding up of any such fund, and in consequence of or following upon an event that is prescribed by the Minister by notice in the *Gazette* and contemplated by the rules of any such fund or the approval of a scheme in terms of section 15B of the Pensions Funds Act, 1956 (Act No. 24 of 1956), or **[regulation]** paragraph 5.3(1)(b) of the Schedule which amends regulation 30 of the Regulations under the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), shall not constitute gross income of that person.” 55

**Amendment of paragraph 3 of Second Schedule to Act 58 of 1962, as amended by section 47 of Act 94 of 1983, section 50 of Act 30 of 1998, section 50 of Act 8 of 2007 and section 40 Act 3 of 2008**

62. (1) The Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 3 of the following paragraph: 5

“3. Any lump sum benefit which becomes recoverable in consequence of or following upon the death of a member or past member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund shall be deemed to be a lump sum benefit which accrued to such member or past member immediately prior to his or her death on the date of payment in terms of section 37C of the Pension Funds Act, 1956 (Act No. 24 of 1956), where applicable: Provided that— 10

(i) so much of any tax payable as is due to the provisions of this paragraph[,] may be recovered from the person to whom or in whose favour the lump sum benefit in question accrues: **Provided further that**]; 15

(ii) where any annuity [**which became**] (including a living annuity) becomes payable [**or may become payable or which is provided or may be provided**] on or in consequence of or following upon the death of a member or past member of any such fund has [**on or after 1 July 1983**] been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum benefit which has become recoverable in consequence of or following upon the death of such member or past member [.]]; 20

(iii) where any such lump sum benefit becomes payable but the dependants or nominees elect an annuity (including a living annuity) that is purchased or provided by that fund, no lump sum benefit shall be deemed to have so accrued to the extent that the lump sum benefit was utilised to purchase or provide the annuity; 25

(iv) where any such lump sum benefit is paid to a beneficiary fund as defined in section 1 of the Pension Funds Act 1956 (Act No. 24 of 1956), no lump sum benefit shall be deemed to have so accrued; 30

(v) where any lump sum benefit is paid to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), no lump sum benefit shall be deemed to have so accrued.”. 35

(2) Subsection (1) insofar as it inserts paragraphs (iv) and (v) of the proviso comes into operation on 1 January 2009 and insofar as it amends any other provision comes into operation on 1 March 2009.

**Amendment of paragraph 4 of Second Schedule to Act 58 of 1962, as amended by section 20 of act 72 of 1963, section 24 of Act 90 of 1964, section 36 of Act 21 of 1995 and section 41 of Act 3 of 2008** 40

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

(a) by the substitution for subparagraph (1) of the following subparagraph: 45

“(1) [**If in terms of**] Notwithstanding the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, any lump sum benefit arising out of a member’s withdrawal or resignation [**is payable at a fixed or ascertainable future date such benefit**] shall, subject to paragraph 3, be deemed to have accrued to such member [on that date] the date that he or she elects to have the benefit paid to him or her or the date on which the benefit is transferred to another pension fund, pension preservation fund, provident fund provident preservation fund or retirement annuity fund or on the date of his or her death, whichever is the earlier, and shall be assessed to tax in respect of the year of assessment during which such benefit is deemed to accrued as though it were a lump sum benefit derived by him or her upon his or her withdrawal or resignation from the fund or upon his or her retirement or immediately prior to his or her death, as the case may be.”; and 50 55



(b) by the addition of the following subparagraph:

“(4) If a person is awarded an amount in terms of an order of divorce granted before 13 September 2007, that amount shall be deemed to have accrued to that person on the date on which that person makes an election contemplated in section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956) or on the date the amount is payable in terms of section 37D(4)(b)(iv) of that Act, to the extent that the amount is payable by a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.”

(2) Subsection (1)(a) comes into operation on 1 March 2009. 10

(3) Subsection (1)(b) comes into operation on the date on which the Financial Services Laws General Amendment Act, 2008, comes into operation.

**Amendment of paragraph 6 of Second Schedule to Act 58 of 1962, section 26 of Act 90 of 1964, section 18 of Act 104 of 1979, section 5 of Act 30 of 1984, as amended by section 32 of Act 141 of 1992, section 51 of Act 30 of 1998, section 38 of Act 20 of 2006, section 52 of Act 8 of 2007 and section 42 of Act 3 of 2008** 15

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

(a) by the substitution for the words preceding subparagraph (a) of the following words: 20

“The deduction to be allowed in determining the amount required to be included in the taxpayer’s gross income for a year of assessment in terms of paragraph [2(b)(ii)] 2(b)(iA) and (ii) is the sum of the following amounts—”;

(b) by the insertion of the following subparagraph after subparagraph (a): 25

“(aA) any amount received by or accrued to the taxpayer as contemplated in paragraph 2(b)(iA) of this Schedule as is paid or transferred for the benefit of the taxpayer into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;” 30

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

“(b) so much of the excess of the aggregate value of the lump sum benefits in question so derived by the taxpayer from all the funds over the sum of the amounts allowed to be deducted by the taxpayer under [item (a)] the preceding items as does not exceed [R1 800] the amount of R22 500 reduced by any amount previously deducted in terms of this paragraph on or after 1 March 2009”;

(d) by the deletion in paragraph (i)(bb) of the proviso of the word “and” at the end of item (A); 40

(e) by the addition to paragraph (i)(bb) of the proviso of the following items:

“(C) any amount that on transfer into the fund was deemed to have been received by or accrued to the person as contemplated in paragraph 2(b)(iB); and

(D) any amount, to the extent that it was paid or transferred to a pension preservation fund or a provident preservation fund as an unclaimed benefit as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and was subject to tax prior to that transfer or payment;” and 45

(f) by the substitution for paragraph (iii) of the proviso of the following paragraph: 50

“(iii) where the lump sum benefit in question has been derived in consequence of or following upon the taxpayer’s withdrawal or resignation from a fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1 of this Act, the deduction to be allowed in terms of subparagraph [(a) or (b)] (a)(i), (ii), (iii) or (iv) or (aA) of this paragraph shall be limited to the amount determined in accordance with ‘formula C’.”. 55

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of lump sum benefits withdrawn on or after that date. 60

### Repeal of paragraph 7 of Second Schedule to Act 58 of 1962

65. (1) The Income Tax Act, 1962, is hereby amended by the repeal of paragraph 7 of the Second Schedule.

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of lump sum benefits withdrawn on or after that date. 5

**Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001, section 32 of Act 30 of 2002, section 46 of Act 32 of 2004, section 49 of Act 31 of 2005, section 28 of Act 9 of 2006, section 39 of Act 20 of 2006, section 54 of Act 8 of 2007, section 64 of Act 35 of 2007 and section 43 of Act 3 of 2008** 10 15

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

(a) by the addition in the definition of “employee” of the word “and” at the end of paragraph (d); 20

(b) by the substitution for paragraph (e) of the following paragraph:

“(e) any personal service [**company**] provider; and”;

(c) by the deletion of paragraph (f);

(d) by the substitution for the definition of “labour broker” of the following definition: 25

“**labour broker**’ means any natural person who conducts or carries on any business whereby such person for reward provides a client of such business with other persons to render a service or perform work for such client, or procures such other persons for the client, for which services or work such other persons are remunerated by such person;” 30

(e) by the deletion of the definitions of “personal service company” and “personal service trust”; and

(f) by the addition of the following definition:

“**personal service provider**’ means any company or trust, where any service rendered on behalf of such company or trust to a client of such company or trust is rendered personally by any person who is a connected person in relation to such company or trust, and— 35

(a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company or trust; or 40

(b) where those duties must be performed mainly at the premises of the client, such person or such company or trust is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service; or 45

(c) where more than 80 per cent of the income of such company or trust during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from any one client of such company or trust, or any associated institution as defined in the Seventh Schedule to this Act, in relation to such client, 50

except where such company or trust throughout the year of assessment employs three or more full-time employees who are on a full-time basis engaged in the business of such company or trust of rendering any such service, other than any employee who is a shareholder or member of the company or trust or is a connected person in relation to such person;” 55

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of a year of assessment commencing on or after that date.

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

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

- (a) by the substitution for subparagraph (1A) of the following subparagraph:  
 “(1A) Notwithstanding the provisions of subparagraph (1), a person shall not be required to deduct or withhold employee’s tax in respect of any year of assessment of a company or trust solely by virtue of paragraph [(d)] (c) of the definition of [**‘personal service company’ or paragraph (d) of the definition of ‘personal service trust’**] ‘personal service provider’ where the company or trust has in respect of such year of assessment provided that person with an affidavit or solemn declaration stating that the relevant paragraph does not apply and that person relied on that affidavit or declaration in good faith.”;
- (b) by the deletion in subparagraph (4) of the word “and” at the end of item (d) and the addition of the word “and” at the end of item (e); and
- (c) by the addition to subparagraph (4) of the following item:  
 “(f) so much of any donation made by the employer on behalf of the employee—  
 (i) as does not exceed 5 per cent of that remuneration after deducting therefrom the amounts contemplated in items (a) to (e); and  
 (ii) for which the employer will be issued a receipt as contemplated in section 18A(2)(a).”

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of a year of assessment commencing on or after that date.

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

68. (1) Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of the proviso to subparagraph (3).

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of any lump sum benefit accrued on or after that date.

**Amendment of paragraph 11 of Fourth Schedule to Act 58 of 1962, as substituted by section 84 of Act 45 of 2003 and amended by section 42 of Act 20 of 2006**

69. (1) Paragraph 11 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (a) for the words after item (ii) of the following words:

“in order to alleviate hardship to that employee due to circumstances outside the control of the employee or to correct any error in regard to the calculation of employees’ tax, or in the case of remuneration constituting commission or where the remuneration is [**received by a personal service company or a personal service trust**] paid or payable to a personal service provider and that directive must be complied with; or”.

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of a year of assessment commencing on or after that date.

**Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962, as amended by section 41 of Act of Act 90 of 1988, section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992, section 3 of Act 168 of 1993, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996, section 48 of Act 28 of 1997, section 53 of Act 30 of 1998, section 56 of Act 59 of 2000, section 33 of Act 30 of 2002, section 56 of Act 74 of 2002, section 22 of Act 16 of 2004, section 43 of Act 20 of 2006, section 57 of Act 8 of 2007 and section 44 of Act 3 of 2008** 5

**70.** (1) Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for paragraph (j) of the definition of “net remuneration” of the following paragraph: 10

“(j) any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit”.

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of a lump sum benefit withdrawn on or after that date.

**Insertion of Sixth Schedule into Act 58 of 1962** 15

**71.** (1) The Income Tax Act, 1962, is hereby amended by the insertion of the following Schedule:

**“SIXTH SCHEDULE DETERMINATION OF TURNOVER TAX  
PAYABLE BY MICRO BUSINESSES**

*(Part IV of Chapter II)* 20

**Part I: Interpretation**

**Part II: Application of Schedule**

**Part III: Taxable turnover**

**Part IV: Registration**

**Part V: Administration** 25

**Part VI: Miscellaneous**

**Part I**

**INTERPRETATION**

**DEFINITIONS**

**1.** In this Schedule, unless the context indicates otherwise, any meaning ascribed to a word or expression in this Act must bear the meaning so ascribed and— 30

‘**micro business**’ means a person that meets the requirements set out in Part II of this Schedule;

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

‘**qualifying turnover**’ means the total receipts from carrying on business activities, excluding any— 40

(a) amount of a capital nature; and

(b) amount exempt from normal tax in terms of section 10(1)(y), 10(1)(zA), 10(1)(zG), and 10(1)(zH); 45

‘**registered micro business**’ means a micro business that is registered in terms of paragraph 8;

**‘taxable turnover’** means the amount determined in terms of paragraph 5 of this Schedule.

## Part II

### APPLICATION OF SCHEDULE

#### PERSONS THAT QUALIFY AS MICRO BUSINESSES 5

- 2.** (1) A person qualifies as a micro business if that person is a—
- (a) natural person (or the deceased or insolvent estate of a natural person that was a registered micro business at the time of death or insolvency); or
  - (b) company,
- where the qualifying turnover of that person for the year of assessment does not exceed an amount of R1 million.
- (2) If a person described in subparagraph (1) carries on a business during the relevant year of assessment for a period which is less than 12 months, the amount described in subparagraph (1) is reduced proportionally taking into account the number of full months that it did not carry on business during that year.

#### PERSONS THAT DO NOT QUALIFY AS MICRO BUSINESSES

- 3.** A person does not qualify as a micro business for a year of assessment where—
- (a) that person at any time during that year of assessment holds any shares or has any interest in the equity of a company other than a share or interest described in paragraph 4;
  - (b) more than 10 per cent of that person’s total receipts during that year of assessment consists of investment income as defined in section 12E;
  - (c) at any time during that year of assessment that person is a ‘personal service provider’ or a ‘labour broker’, as defined in the Fourth Schedule, other than a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5) of that Schedule;
  - (d) that person renders a professional service during the year of assessment;
  - (e) the total of all amounts received by that person from the disposal of—
    - (i) immovable property, to the extent that it was used for business purposes; and
    - (ii) any other asset of a capital nature used mainly for business purposes,
 exceeds R1,5 million over a period of three years comprising the current year of assessment and the immediately preceding two years of assessment, or such shorter period during which that person was a registered micro business;
  - (f) in the case of a company—
    - (i) its year of assessment ends on a date other than the last day of February;
    - (ii) at any time during its year of assessment, any of its shareholders is a person other than a natural person (or the deceased or insolvent estate of a natural person);
    - (iii) at any time during its year of assessment, any of its shareholders holds any shares or has any interest in the equity of any other company other than a share or interest described in paragraph 4;
    - (iv) it is a public benefit organisation approved by the Commissioner in terms of section 30; or
    - (v) it is a recreational club approved by the Commissioner in terms of section 30A;
  - (g) in the case of a person that is a partner in a partnership during that year of assessment—
    - (i) any of the partners in that partnership is not a natural person;

- (ii) that person is a partner in more than one partnership at any time during that year of assessment; or
- (iii) the qualifying turnover of that partnership for that year of assessment exceeds the amount described in paragraph 2.

#### **PERMISSIBLE SHARES AND INTERESTS** 5

- 4.** The disqualification in terms of paragraph 3(a) or 3(f)(iii) does not apply to a share or interest—
- (a) in a company as described in paragraph (a) of the definition of a ‘listed company’;
  - (b) in a portfolio in a collective investment scheme as described in paragraph (e) of the definition of a company; 10
  - (c) in a company as described in section 10(1)(e);
  - (d) in a venture capital company as defined in section 12J;
  - (e) that constitutes less than 5 per cent of the interest in a social or consumer co-operative or a co-operative burial society as defined in section 1 of the Co-operatives Act, 2005 (Act No. 14 of 2005), or any other similar co-operative if all of the income derived from the trade of that co-operative during any year of assessment is solely derived from its members; 15
  - (f) that constitutes less than 5 per cent of the interest in a primary savings co-operative bank or a primary savings and loans co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007), that may provide, participate in or undertake only banking services as described in section 14(2)(a) or (b) of that Act; or 20
  - (g) in any friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956). 25

### **Part III**

#### **TAXABLE TURNOVER**

##### **TAXABLE TURNOVER**

- 5.** The taxable turnover of a registered micro business in relation to any year of assessment consists of all amounts not of a capital nature received by that registered micro business during that year of assessment from carrying on business activities in the Republic, including amounts described in paragraph 6 and excluding amounts described in paragraph 7. 30

##### **INCLUSIONS IN TAXABLE TURNOVER** 35

- 6.** The taxable turnover of a registered micro business includes—
- (a) 50 per cent of all receipts of a capital nature from the disposal of—
    - (i) immovable property, to the extent that it was used for business purposes;
    - (ii) any other asset used mainly for business purposes; 40
  - (b) in the case of a company, investment income as defined in section 12E (other than dividends); and
  - (c) in the case of a micro business that—
    - (i) becomes a registered micro business during a year of assessment; and
    - (ii) claimed any allowances in terms of this Act in the preceding year of assessment that are required to be included in the income of a taxpayer in the following year of assessment, so much of those allowances as exceeds the balance of any assessed loss it is prevented from carrying forward in terms of section 20 of this Act. 45 50



**EXCLUSIONS FROM TAXABLE TURNOVER**

- 7.** The taxable turnover of a registered micro business does not include—
- (a) in the case of a natural person, investment income as defined in section 12E;
  - (b) any amount exempt from normal tax in terms of section 10(1)(y), 10(1)(zA), 10(1)(zG), and 10(1)(zH);
  - (c) any amount received by that registered micro business where that amount accrued to it prior to its registration as a micro business and that amount accrued was subject to tax in terms of this Act.

**Part IV** 10**REGISTRATION****REGISTRATION**

- 8.** (1) A person that meets the requirements set out in Part II may elect to be registered as a micro business—
- (a) before the beginning of a year of assessment or such later date during that year of assessment as the Commissioner may prescribe by notice in the *Gazette*; or
  - (b) in the case of a person that commenced business activities during a year of assessment, within two months from the date of commencement of business activities.
- (2) A person that elected to be registered in terms of subparagraph (1) must be registered by the Commissioner with effect from the beginning of that year of assessment.
- (3) A person that is deregistered in terms of—
- (a) paragraph 9 may not again be registered as a micro business for a period of three years commencing from the beginning of the year of assessment during which it is deregistered; or
  - (b) paragraph 10, may not again be registered as a micro business for a period of three years commencing from the beginning of the year of assessment following upon the year of assessment during which it is deregistered.

**VOLUNTARY DEREGISTRATION**

- 9.** (1) A registered micro business may elect to be deregistered before the beginning of a year of assessment or such later date during that year of assessment as the Commissioner may prescribe by notice in the *Gazette*.
- (2) A registered micro business that elects to be deregistered under subparagraph (1) must be deregistered by the Commissioner with effect from the beginning of that year of assessment.
- (3) A registered micro business must not be deregistered in terms of subparagraph (2) unless it has been a registered micro business for a period of at least three years.

**COMPULSORY DEREGISTRATION**

- 10.** (1) A registered micro business must notify the Commissioner within 21 days from the date on which—
- (a) the qualifying turnover of that registered micro business for a year of assessment exceeds the amount described in paragraph 2, or there are reasonable grounds for believing that the qualifying turnover will exceed that amount; or
  - (b) that registered micro business is disqualified in terms of paragraph 3.
- (2) The Commissioner must, subject to subparagraph (3), deregister a registered micro business with effect from the beginning of the month following the month during which the event as described in subparagraph (1)(a), (1)(b) or (4) occurred.

(3) The Commissioner may direct that a person remains a registered micro business if the Commissioner is satisfied that the increase in the qualifying turnover of that person to an amount greater than the amount described in paragraph 2 is of a nominal and temporary nature.

(4) The Commissioner must deregister a registered micro business if the Commissioner is satisfied, having regard to its taxable turnover for any period of 12 months and after consultation with it, that it meets the criteria for registration in terms of section 23(1) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

## Part V

### ADMINISTRATION

#### INTERIM PAYMENTS

**11.** (1) A registered micro business must, within six calendar months from the first day of the year of assessment—

- (a) estimate the taxable turnover for the year of assessment;
- (b) calculate the amount of tax payable on the estimated taxable turnover; and
- (c) pay an amount equal to 50 per cent of the amount of tax so calculated.

(2) The estimate described in paragraph (1)(a) may not be less than the taxable turnover of the previous year of assessment unless the Commissioner, having regard to the circumstances, agrees to accept the lower estimate.

(3) Where full payment of the amount described in subparagraph (1)(c) is not received by the Commissioner within six calendar months from the first day of the year of assessment, interest at the prescribed rate is payable from the first day after the six calendar months to the earlier of the date on which the shortfall is received and the last day of the year of assessment.

(4) A registered micro business must, by the last day of the year of assessment—

- (a) estimate the taxable turnover for the year of assessment;
- (b) calculate the amount of tax payable on the estimated taxable turnover; and
- (c) pay an amount equal to the amount of tax so calculated less the amount paid in terms of subparagraph (1).

(5) Where full payment of the amount described in subparagraph (4)(c) is not received by the Commissioner by the last day of the year of assessment, interest at the prescribed rate is payable from the day following the last day of the year of assessment to the earlier of the date on which the shortfall is received and the due date of the assessment for that year of assessment.

(6) Where the estimate described in subparagraph 4(a) is less than 80 per cent of the taxable turnover for the year of assessment, additional tax equal to 20 per cent of the difference between the tax payable on 80 per cent of the taxable turnover for the year of assessment and the tax payable on that estimate must be charged.

(7) Where the Commissioner is satisfied that the estimate described in subparagraph (4)(a) was not deliberately or negligently understated and was seriously made based on the information available, or is partly so satisfied, the Commissioner must waive the additional tax charged in terms of subparagraph (6) in full or in part.

(8) Any decision by the Commissioner in terms of subparagraph (7) is subject to objection and appeal.

**ESTIMATED INTERIM PAYMENTS****12. (1) Where—**

- (a) a registered micro business fails to make a payment as required by paragraph 11; or
- (b) the Commissioner is not satisfied with a payment made in terms of paragraph 11,
- the Commissioner may estimate the taxable turnover upon which turnover tax is payable and issue an assessment of the amount of turnover tax so payable by that registered micro business.
- (2) The Commissioner must give the registered micro business written notice of such assessment, stating the estimated taxable turnover upon which turnover tax is payable and the amount of turnover tax payable.
- (3) The amount of turnover tax payable in subparagraph (1) is deemed to be due on the date on which the payment in terms of paragraph 11 is due.
- (4) Where the Commissioner has issued an assessment in respect of the payment required in terms of paragraph 11(4), additional tax must not be imposed in terms of paragraph 11(6).

**PART VI****MISCELLANEOUS****AMOUNTS RECEIVED BY A CONNECTED PERSON MAY BE INCLUDED IN QUALIFYING TURNOVER**

- 13.** The total amount received from carrying on business activities by a connected person in relation to a person described in paragraph 2(1)(a) or (b) must be included in the qualifying turnover of that person for purposes of applying paragraph 2, where the Commissioner is satisfied that—
- (a) the connected person carries on business activities that should properly be regarded as forming part of the business activities carried on by that person; and
- (b) the main reason or one of the main reasons for the connected person carrying on business activities in the way that the connected person does is to ensure that the qualifying turnover of that person does not exceed the amount as described in that paragraph.

**RECORD KEEPING**

- 14.** A registered micro business must retain a record of—
- (a) amounts received by that registered micro business during a year of assessment;
- (b) dividends declared by that registered micro business during a year of assessment;
- (c) each asset of that registered micro business as at the end of a year of assessment with a cost price of more than R10 000; and
- (d) each liability of that registered micro business as at the end of a year of assessment that exceeded R10 000.

**PROVISIONS OF INCOME TAX ACT TO APPLY**

- 15.** Save as otherwise provided for in this Schedule, the provisions of Chapter III of this Act apply, with the necessary changes required by the context, in respect of turnover tax.”

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of a year of assessment commencing on or after that date.

**Amendment of paragraph 6 of Seventh Schedule to Act 58 of 1962, as amended by section 29 of Act 96 of 1985**

72. Paragraph 6 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (4) of the word “or” at the end of item (b); and 5
- (b) by the insertion in subparagraph (4) after item (b) of the following item:
  - “(bA) the asset consists of telephone or computer equipment which the employee uses mainly for the purposes of the employer’s business; or”.

**Amendment of paragraph 10 of Seventh Schedule to Act 58 of 1962, as amended by section 36 of Act 30 of 2002, section 58 of Act 31 of 2005, section 30 of Act 9 of 2006, section 102 of Act 20 of 2006 and section 69 of Act 35 of 2007** 10

73. Paragraph 10 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the insertion in subparagraph (2) after item (b) of the following item:

- “(bA) any communication service provided to an employee if the service is used mainly for the purposes of the employer’s business;” 15

**Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as amended by section 71 of Act 60 of 2001, section 67 of Act 74 of 2002, section 92 of Act 45 of 2003, section 55 of Act 32 of 2004, section 66 of Act 31 of 2005 and section 44 of Act 20 of 2006** 20

74. Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in subparagraph (2) of item (e).

**Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as amended by section 72 of Act 60 of 2001, section 68 of Act 74 of 2002, section 93 of Act 45 of 2003, section 56 of Act 32 of 2004, section 67 of Act 31 of 2005, section 71 of Act 35 of 2007 and section 50 of Act 3 of 2008** 25

75. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (4) of the following subparagraph:

- “(4) In the event of a person ceasing to be a controlled foreign company as a result of becoming a resident that person must, subject to paragraph 24, be treated for the purposes of this Schedule as having— 30
  - (a) disposed of each of that person’s assets, other than—
    - (i) assets in the Republic listed in paragraph 2(1)(b)(i) and (ii); and
    - (ii) assets held by that person if any amount received or accrued from the disposal of those assets would have been taken into account for purposes of determining the net income as contemplated in section 9D of that person; and 35
  - (b) immediately reacquired each of those assets at an expenditure equal to the market value of those assets immediately before the disposal, which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).” 40

(2) Subsection (1) is deemed to have come into operation on 21 February 2008 and applies in respect of an asset disposed of on or after that date, unless that disposal is the subject of an application for an advance tax ruling accepted by the Commissioner before that date. 45

**Amendment of paragraph 13 of Eighth Schedule to Act 58 of 1962, as amended by section 69 of Act 74 of 2002, section 57 of Act 32 of 2004 and section 51 of Act 3 of 2008**

76. Paragraph 13 of the Eighth Schedule is hereby amended—

- (a) by the insertion in subparagraph (1)(a) after subitem (ii) of the following subitem: 50
  - “(iiA) the distribution of an asset of a trust by a trustee to a beneficiary to the extent that the beneficiary has a vested interest in the asset, the date on which the interest vests;”;
- (b) by the deletion in subparagraph (1) of item (d).

**Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as amended by section 26 of Act 19 of 2001, section 75 of Act 60 of 2001, section 71 of Act 74 of 2002, section 95 of Act 45 of 2003, section 58 of Act 32 of 2004, section 68 of Act 31 of 2005, section 45 of Act 20 of 2006, section 60 of Act 8 of 2007, section 73 of Act 35 of 2007 and section 52 of Act 3 of 2008**

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

(a) by the substitution in subparagraph (1)(h)(iii) for subsubitem (aa) of the following subsubitem:

“(aa) a right in a controlled foreign company held directly by a resident, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) of that company and of any other controlled foreign company in which that controlled foreign company and that resident directly or indirectly have an interest, which was included in the income of that resident in terms of section 9D during any year of assessment, less the amount of any foreign dividend distributed by that company to that resident during any year of assessment which was exempt from tax in terms of section 10(1)(k)(ii)(cc); or”;

(b) by the substitution in subparagraph (1)(h) for the colon at the end of the proviso to subitem (v) of a semi-colon; and

(c) by the insertion in subparagraph (1)(h) after the proviso to subitem (v) of the following item:

“(vi) subject to paragraph 12(5), an asset which was acquired on or after the valuation date by a person from a person who at the time of that acquisition was not a resident by way of a disposal contemplated in paragraph 38(1), the market value of that asset on the date of its acquisition:”;

(d) by the substitution in subparagraph (3) for item (a) of the following item: 30

(a) is or was allowable or is deemed to have been allowed as a deduction in determining the taxable income of that person before the inclusion of any taxable capital gain; or”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 22 July 2008. 35

**Amendment of paragraph 24 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, amended by section 76 of Act 60 of 2001, section 72 of Act 74 of 2002, section 69 of Act 31 of 2005, section 46 of Act 20 of 2006 and section 53 of Act 3 of 2008**

78. (1) Paragraph 24 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 40

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

“(1) The base cost of an asset, other than an asset situated in the Republic listed in paragraph 2(1)(b)(i) and (ii) or an asset held by a person if any amount received or accrued from the disposal of the asset would be taken into account for purposes of determining the net income as contemplated in section 9D of that person, acquired by a person before the date on which that person became a resident is the sum of the value of that asset determined in terms of subparagraphs (2) or (3) and the expenditure allowable in terms of paragraph 20 incurred on or after that date in respect of that asset.”;

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

“Where an asset contemplated in paragraph 12(2) or (4) has been disposed of by a person on or after the date on which that person commenced to be a resident and the proceeds from that disposal and the expenditure allowable in terms of paragraph 20 incurred prior to that date (determined without regard to paragraph 12(2) or (4)) in respect of that asset are each lower than the market value of that asset as contemplated 55

in paragraph 12(2) or (4), that person must be treated as having acquired that asset at a cost equal to the higher of—”; and

- (c) by the substitution in subparagraph (3) for the words preceding item (a) of the following words:

“Where an asset contemplated in paragraph 12(2) or (4) has been disposed of by a person on or after the date on which that person commenced to be a resident and the proceeds from the disposal of that asset and the market value of that asset as contemplated in paragraph 12(2) or (4) are each lower than the expenditure allowable in terms of paragraph 20 incurred prior to that date (determined without regard to paragraph 12(2) or (4)) in respect of that asset, that person must be treated as having acquired that asset at a cost equal to the higher of—”.

(2) Subsection (1) is deemed to have come into operation on 21 February 2008 and applies in respect of an asset disposed of on or after that date, unless that disposal is the subject of an application for an advance tax ruling accepted by the Commissioner before that date.

**Amendment of paragraph 40 of Eighth Schedule to Act 58 of 1962, as amended by section 89 of Act 60 of 2001, section 82 of Act 74 of 2002, section 50 of Act 20 of 2006 and section 54 of Act 3 of 2008**

79. (1) Paragraph 40 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (1) of item (b);  
 (b) by the substitution in subparagraph (1) for the words after item (d) of the following words:

“to his or her deceased estate for **[proceeds]** an amount received or accrued equal to the market value of those assets at the date of that person’s death, and the deceased estate must be treated as having acquired those assets at a cost equal to that market value, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”; and

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

“Subject to paragraph 12(5), where an asset is disposed of by a deceased estate to an heir or legatee (other than the surviving spouse of the deceased person as contemplated in paragraph 67(2)(a) **[or an approved public benefit organisation as contemplated in paragraph 62) or a trustee of a trust]**)—”.

(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 1 March 2006.

**Insertion of paragraph 57A in Eighth Schedule to Act 58 of 1962**

80. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 57:

**“Disposal of micro business assets**

**57A.** A registered micro business as defined in terms of the Sixth Schedule must disregard any capital gain or capital loss in respect of the disposal by that business of—

- (a) any asset which constitutes immovable property, to the extent that it was used for business purposes; and  
 (b) any asset (other than immovable property) used mainly for business purposes.”.

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of years of assessment commencing on or after that date.



**Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 45 of 2003 and amended by section 79 of Act of Act 31 of 2005, section 35 of Act 9 of 2006, section 65 of Act 8 of 2007, section 77 of Act 35 of 2007 and section 58 of Act 3 of 2008**

**81.** Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (5) for the words preceding the proviso of the following words:

“A person must disregard any capital gain or capital loss determined in respect of any capital distribution contemplated in paragraph 67A, 76, 76A or 77 received by or accrued to that person from a ‘foreign company’ as defined in section 9D (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2(2)) where that person (whether alone or together with any other person forming part of the same group of companies as that person) holds at least 20 per cent of the total equity share capital and voting rights in that company”.

**Amendment of paragraph 67A of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 60 of 2001, substituted by section 93 of Act 74 of 2002 and amended by section 109 of Act 45 of 2003 and section 81 of Act 35 of 2007**

**82.** (1) Paragraph 67A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (3) of the following subparagraph:

“(3) Subject to subparagraph (3A), where an amount of cash or an asset is received by or accrues to a holder of a participatory interest contemplated in subparagraph (1) in respect of that interest from the collective investment scheme in which that interest is held and that amount and that market value do not constitute gross income in the hands of that holder, that holder must where the date of receipt or accrual of that cash or asset occurs—

(a) on or after valuation date but before 1 October 2007—

(i) if that interest is disposed of on or before 1 July 2011, treat the amount of that cash or the market value of that asset as proceeds when that interest is disposed of; or

(ii) if that interest is not disposed of on or before 1 July 2011, treat the amount of that cash or the market value of that asset as proceeds when that interest is partly disposed of in terms of paragraph 67AB(1)(a); and

(b) on or after 1 October 2007, treat the amount of that cash or the market value of that asset as proceeds when that interest is partly disposed of in terms of paragraph 67AB(1)(b):

Provided that for the purposes of this subparagraph the market value of any asset so acquired must be determined on the date of receipt or accrual of that asset.”; and

(b) by the addition of the following subparagraph:

“(3A) (a) This subparagraph applies where—

(i) a holder of a participatory interest contemplated in subparagraph (1) has adopted the weighted average method under paragraph 32(3A) in respect of such participatory interests held and not disposed of on 30 September 2007, and

(ii) an amount contemplated in subparagraph (3) had been received by or accrued to that holder before 1 October 2007 in respect of those participatory interests.

(b) Where item (a) applies, the weighted average base cost of those interests at the end of the day on 30 September 2007 must be determined by—

(i) deducting the amount of that cash or that market value from the base cost of those interests at the end of the day on 30 September 2007; and

(ii) dividing the result by the number of those interests held at the end of the day on 30 September 2007.”.

(2) Subsection (1) is deemed to have come into operation on 1 October 2007.

**Amendment of paragraph 67AB of Eighth Schedule to Act 58 of 1962, as inserted by section 82 of Act 35 of 2007**

**83.** (1) Paragraph 67AB 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: 5  
 “(a) except where paragraph 67A(3A) applies, on 1 July 2011 if any cash has been received or assets have been acquired by that holder in the manner contemplated in [subparagraph (3) of that paragraph] paragraph 67A(3)(a)(ii) before 1 October 2007 and that participatory interest has not been disposed of on or before 1 July 2011 by that holder; and”;
- (b) by the insertion after subparagraph (1) of the following subparagraph:  
 “(1A) If paragraph 67A(3A) applies and the base cost of those participatory interests is a negative amount at the end of 30 June 2011—  
 (a) that holder must be treated as having a capital gain on 30 June 2011 equal to that negative amount; and  
 (b) the base cost of those participatory interests at the end of 30 June 2011 must be treated as nil.”.

(2) Subsection (1) is deemed to have come into operation on 1 October 2007.

**Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962, as amended by section 107 of Act 60 of 2001, section 96 of Act 74 of 2002, section 115 of Act 45 of 2003, section 30 of Act 16 of 2004, section 81 of Act 31 of 2005, section 84 of Act 35 of 2007 and section 60 of Act 3 of 2008**

**84.** (1) Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph: 25

- “(4) Every company that makes a distribution to any other person and every person that pays a distribution to any other person on behalf of a company must by the time of the distribution or payment notify that other person in writing of the extent to which the distribution or payment constitutes a capital distribution.”.

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

**Amendment of paragraph 78 of Eighth Schedule to Act 58 of 1962, as amended by section 97 of Act 74 of 2002, section 116 of Act 45 of 2003 and section 31 of Act 16 of 2004**

**85.** (1) Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 35

- (a) by the deletion of subparagraph (1); and  
 (b) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:  
 “Subject to paragraphs 11(1)(g), 23 and 35(2), where a company issues 40  
 shares in substitution of previously held shares in that company by reason of a subdivision[, ] or consolidation[, or similar arrangement] or a conversion contemplated in section 40A or 40B—”.

(2) Paragraph (a) of subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation. 45

**Amendment of paragraph 80 of Eighth Schedule to Act 58 of 1962, as amended by section 108 of Act 60 of 2001, section 58 of Act 20 of 2006 and section 62 of Act 3 of 2008**

**86.** Paragraph 80 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 50

- (a) by the substitution in subparagraph (1) for the words preceding item (a) of the following words:  
 “Subject to paragraphs 68, 69, 71 and 72, where a capital gain is determined in respect of the vesting by a trust of an asset in a trust beneficiary (other than the Government, a provincial administration, 55

organisation, person or club contemplated in paragraph 62(a) to (e)) who is a resident, that gain—”;

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

“Subject to paragraphs 68, 69, 71 and 72, where a capital gain [**arises in a trust**] is determined in respect of the disposal of an asset by a trust in a year of assessment during which a trust beneficiary (other than a person, organisation, entity or club contemplated in paragraph 62(a) to (e)) who is a resident has a vested interest or acquires a vested interest (including an interest caused by the exercise of a discretion) in that capital gain but not in the asset, the disposal of which gave rise to the capital gain, the whole or the portion of the capital gain so vested—”;

- (c) by the substitution in subparagraph (3) for item (a) of the following item:

“(a) that capital arose from—

- (i) a capital gain of that trust; or
- (ii) any amount which would have constituted a capital gain of that trust had that trust been a resident, determined in any previous year of assessment during which that resident had a contingent right to that capital; and”.

**Amendment of paragraph 4 of Part I of Ninth Schedule to Act 58 of 1962, as amended by section 82 of Act 31 of 2005 and section 63 of Act 3 of 2008**

87. Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in paragraph 4 for subparagraph (o) of the following subparagraph:

“(o) The provision of scholarships, bursaries [**and**], awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.”.

**Amendment of paragraph 11 of Part I of Ninth Schedule to Act 58 of 1962, as amended by section 126 of Act 45 of 2003**

88. Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to paragraph 11 of the following subparagraphs:

“(c) The promotion, monitoring or reporting of development assistance for the poor and needy.

(d) The provision of funds to an organisation—

- (i) which is incorporated, formed or established in any country other than the Republic;
- (ii) which is exempt from tax on income in that other country;
- (iii) the sole or principal object of which is the carrying on of one or more activities that would qualify as public benefit activities listed in Part I of this Schedule if carried on in the Republic; and
- (iv) that carries on each of its activities—
  - (aa) in a non-profit manner;
  - (bb) with altruistic or philanthropic intent;
  - (cc) in a manner which does not directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation other than by way of reasonable remuneration; and
  - (dd) for the benefit of, or is widely accessible to the general public of that country including any sector thereof (other than small and exclusive groups).”.

**Amendment of paragraph 3 of Part II of Ninth Schedule to Act 58 of 1962, as amended by section 129 of Act 45 of 2003, section 84 of Act 31 of 2005 and section 64 of Act 3 of 2008**

89. Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in paragraph 3 for subparagraph (o) of the following subparagraph:

“(o) The provision of scholarships, bursaries [**and**], awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.”.

**Amendment of paragraph 2 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 71 of Act 8 of 2007**

**90.** (1) Paragraph 2 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph: 5

“(1) The rate of tax on taxable income derived from oil or gas income of any oil and gas company that—

(a) is a resident will not exceed [29] 28 cents on each rand of taxable income; and

(b) is not a resident and carries on a trade within the Republic will not exceed [32] 31 cents on each [Rand] rand of taxable income.”; and 10

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

“(2) Notwithstanding subparagraph (1)(b), the rate of tax on taxable income derived from oil and gas income of an oil and gas company that is not a resident and carries on trade within the Republic will not exceed [29] 28 per cent in respect of any oil and gas income solely derived (directly or indirectly) by virtue of an OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), previously held by that company.”. 15

(2) Subsection (1) is deemed to have come into operation on 1 April 2008 and applies in respect of years of assessment ending on or after that date. 20

**Amendment of section 38 of Act 91 of 1964, as amended by section 13 of Act 105 of 1969, section 5 of Act 71 of 1975, section 4 of Act 105 of 1976, section 2 of Act 89 of 1983, section 18 of Act 59 of 1990, section 28 of Act 45 of 1995, section 42 of Act 19 of 2001, section 123 of Act 60 of 2001 and section 21 of Act 21 of 2006** 25

**91.** (1) Section 38 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the addition of the following subsection:

“(5) (a) Notwithstanding anything to the contrary contained in this Act, the Commissioner may by rule permit the removal of any dutiable imported goods from a licensed customs and excise storage warehouse on the issuing by the licensee of such warehouse of a certificate, an invoice or such other document as the Commissioner may prescribe or approve by rule, if— 30

(i) both the licensee of the customs and excise storage warehouse and the importer of the goods are accredited in terms of section 64E; 35

(ii) the licensee of the storage warehouse and the importer of the goods both comply with such conditions as the Commissioner may prescribe generally by rule or determine in a specific instance; 40

(iii) the licensee of the warehouse keeps such accounts or records of such receipts and removals as the Commissioner may require;

(iv) the goods are removed from the warehouse for home consumption or such other purpose as the Commissioner may allow; and

(v) the duty on such goods is paid at the time and in a manner specified by rule. 45

(b) Any document referred to in paragraph (a) and issued by a licensee contemplated in that paragraph shall, for the purposes of section 20(4), and subject to the provisions of section 39(2A), be deemed to be a due entry from the time of removal of those goods from the customs and excise storage warehouse.”; and 50

(b) by the addition of the following subsection:

“(6) (a) Notwithstanding anything to the contrary contained in this Act, if liquid bulk goods, as may be prescribed by rule, are stored in a special customs and excise storage warehouse licensed as contemplated in section 21(3), the licensee of that warehouse may, subject to compliance with such conditions and procedures as the Commissioner may prescribe by rule, deduct from the quantity received in the warehouse, the actual losses arising from the storage in or removal of goods from that warehouse. 55 60

(b) Notwithstanding paragraph (a), the Minister may determine a maximum percentage loss in respect of any class or kind of such goods by notice in the Gazette.”

(2) Subsection (1) or any part thereof comes into operation on the date or dates fixed by the President by proclamation in the *Gazette*.

**Amendment of section 43 of Act 91 of 1964, as amended by section 6 of Act 105 of 1976, section 7 of Act 112 of 1977, section 6 of Act 86 of 1982, section 32 of Act 45 of 1995, section 34 of Act 34 of 1997, section 124 of Act 60 of 2001, section 45 of Act 30 of 2002 and section 23 of Act 34 of 2004**

92. (1) Section 43 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the deletion in subsection (1) of the word “or” at the end of paragraph (a) and the addition of the word “or” at the end of paragraph (b);
- (b) by the renumbering in subsection (1) of paragraph (c) as (d) and by the insertion in subsection (1), after paragraph (b), of the following paragraph:  
“(c) on expiry of any extended period allowed in terms of subsection (1)(a)(iii) of the said section.”;
- (c) by the substitution in subsection (2)(b) for subparagraph (iii) of the following subparagraph:  
“(iii) be entitled to payment of [State warehouse rent as prescribed in the rules for section 17 to the extent that any amount becomes payable from the proceeds of sale as charges due to the Commissioner] the outstanding amount due in respect of the storage of those goods at the time of sale from the proceeds of the sale of those goods as charges according to the order contemplated in subsection (3) [or, if the goods are entered and delivery granted by the Controller before such sale, 50 per cent of any such rent paid on entry of the goods].”;
- (d) by the insertion in subsection (2) of the following paragraph:  
“(bA) (i) Where any person who has control of premises as contemplated in paragraph (b) is entitled to payment in terms of that paragraph, that person may not, whether or not he or she receives any amount from the proceeds of sale as contemplated in that paragraph, collect any storage charges from the purchaser of the goods on a sale.  
(ii) Where the goods are cleared and delivery granted by the Controller before the time of sale of the goods as contemplated in paragraph (b), the person having control thereof is entitled to collect his or her storage charges in respect of the goods and no State warehouse rent is payable for the time the goods remained under control of that person.”;
- (e) by the substitution in subsection (3) for the words preceding the proviso of the following words:  
“If after the expiration of 60 days from the date of removal to the State warehouse or other place indicated by the Controller or, where no such removal has taken place, from the date of expiry of the period prescribed in section 38(1), any goods remain unentered the Commissioner may cause them, except if they have been imported in contravention of any law, to be sold, and if so sold the proceeds thereof shall be applied in discharge of any duty, expenses incurred by the Commissioner, charges due to the Commissioner (including any State warehouse rent [referred to in subsection (2)]), a port or railway authority, the Department of Transport, a container operator or a depot operator, or any person other than a container operator or depot operator who had control over premises where the goods were so stored as contemplated in subsection (2), freight and salvage as provided for in section 16 of the Wreck and Salvage Act, 1996 (Act No. 94 of 1996), in that order, and the surplus if any, shall, upon application be paid to the owner of the said goods”; and
- (f) by the substitution in subsection (6) for paragraph (a) of the following paragraph:  
“(a) Where any goods are seized and detained under the Counterfeit Goods Act, 1997, as contemplated in section 113A of this Act and the importer is not known or cannot despite reasonable efforts be located and no criminal or civil proceedings are instituted or no instruction is



received for the release of the goods as contemplated in section 9(2) of the Counterfeit Goods Act, 1997, such goods shall, notwithstanding anything to the contrary in this Act or the said Counterfeit Goods Act, 1997, contained, be subject to this section.”.

(2) Paragraphs (a) and (b) of subsection (1) come into operation on the date to be fixed by the President by proclamation in the *Gazette*. 5

**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, section 125 of Act 60 of 2001, section 136 of Act 45 of 2003, section 67 of Act 32 of 2004, section 12 of Act 9 of 2005 and section 64 of Act 20 of 2006** 10

93. Section 44 of the Customs and Excise Act, 1964, is hereby amended by the insertion of the following subsection: 15

“(11A) Notwithstanding anything to the contrary contained in this Act, there shall be no liability for any underpayment on any goods if the duty which should have been paid was, in accordance with the practice generally prevailing at the time of entry for home consumption, not paid or the full amount of duty which should have been paid at the time of entry for home consumption was, in accordance with such practice, not paid, unless the Commissioner is satisfied that the amount of duty which should have been paid was not paid, or that the full amount of duty was not paid due to fraud or misrepresentation or non-disclosure of material facts or any false declaration for purposes of this Act.”. 20

**Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 9 of Act 98 of 1980, section 8 of Act 86 of 1982, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 63 of Act 30 of 1998, section 53 of Act 53 of 1999, section 126 of Act 60 of 2001, section 104 of Act 74 of 2002, section 138 of Act 45 of 2003, section 3 of Act 10 of 2005, section 90 of Act 31 of 2005 and section 11 of Act 36 of 2007** 25 30

94. Section 47 of the Customs and Excise Act, 1964, is hereby amended by the deletion of subsection (2).

**Insertion of section 54EA in Act 91 of 1964** 35

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

**“Exemption from licensing and payment of environmental levy**

**54EA.** (1) Notwithstanding anything to the contrary contained in this Chapter or any other provision of this Act, the Commissioner may by rule— 40

- (a) exempt a person or category of persons from—
  - (i) all or any of the requirements of section 54E; and
  - (ii) the payment of environmental levy, for any period in respect of any quantity or class or any quantity of any class of environmental levy goods manufactured by such person or category of persons; 45
- (b) prescribe conditions and other requirements in respect of such exemption; and
- (c) prescribe circumstances under which such exemption may be cancelled.”. 50

(2) Subsection (1) is deemed to have come into operation on 21 October 2008.



**Amendment of section 65 of Act 91 of 1964, as substituted by section 13 of Act 86 of 1982 and amended by section 8 of Act 101 of 1985, section 8 of Act 52 of 1989, section 9 of Act 68 of 1989, section 48 of Act 45 of 1995, section 5 of Act 44 of 1996, section 59 of Act 53 of 1999, section 128 of Act 60 of 2001, section 144 of Act 45 of 2003 and section 70 of Act 32 of 2004**

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96. Section 65 of the Customs and Excise Act, 1964, is hereby amended—

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

“(i) The Commissioner may in writing determine the transaction value of any imported goods, which is required to be ascertained **[and] or** may be determined as provided in section 66.”; and

(b) by the substitution in subsection (9) for the definition of “buying commission” of the following definition:

“**‘buying commission’, [in relation to imported goods,]** means any fee paid by an importer to **[his] the importer’s agent for the service of** representing **[him] the importer** abroad in the purchase of **[and the payment for] the goods being valued;**”.

**Amendment of section 66 of Act 91 of 1964, as substituted by section 14 of Act 86 of 1982 and amended by section 5 of Act 69 of 1988, section 10 of Act 68 of 1989, section 26 of Act 59 of 1990, section 49 of Act 45 of 1995 and section 60 of Act 53 of 1999**

97. (1) Section 66 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (11) for paragraph (a) of the following paragraph:

“(a) are **[packed in a container as defined in section 1(2) or, if not so packed in a container,]** placed on board ship or on any vehicle which conveys them from or across the border of that country; or”.

(2) Subsection (1) comes into operation on the date to be fixed by the President by proclamation in the *Gazette*.

**Amendment of section 67 of Act 91 of 1964, as substituted by section 6 of Act 85 of 1968 and amended by section 22 of Act 112 of 1977, section 15 of Act 86 of 1982, section 6 of Act 69 of 1988, section 11 of Act 68 of 1989, section 27 of Act 59 of 1990 and section 50 of Act 45 of 1995**

98. (1) Section 67 of the Customs and Excise Act, 1964, is hereby amended—

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

“(e) to the extent that they are not included in the price actually paid or payable for the goods, the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to delivery of the goods at the port or place of export in the country of exportation and placing those goods on board ship or on any vehicle **[, or in a container as defined in section 1(2),]** at that port or place.”;

(b) by the deletion in subsection (2)(b) of subparagraph (v); and

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

“(a) are **[packed in a container as defined in section 1(2) or, if not so packed in a container,]** placed on board ship or on any vehicle which conveys them from or across the border of that country; or”.

(2) Paragraphs (a) and (c) of subsection (1) come into operation on the date to be fixed by the President by proclamation in the *Gazette*.

**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 112 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, section 109 of Act 74 of 2002, section 146 of Act 45 of 2003, section 27 of Act 34 of 2004, section 92 of Act 31 of 2005 and section 70 of Act 20 of 2006**

**99.** Section 75 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution in subsection (14) for paragraphs (a) and (b) of the following paragraphs: 15
- “(a) in respect of any refund referred to in subsection (1A) within the period contemplated in subsection (4A)(b)(ii); or  
(b) in any other case, within any of the relevant periods specified in section 76B:”;
- (b) by the addition to paragraph (a) of subsection (15) of the following subparagraph: 20
- “(iii) amend Schedule No. 4 or 5 in order to give effect to any agreement contemplated in section 49.”; and
- (c) by the addition of the following subsection: 25
- “(22) (a) Where any item provides for a rebate of duty in respect of imported goods destroyed and any waste or scrap remaining after destruction of such goods enter home consumption, the extent of rebate shall be reduced by the duty payable on such waste or scrap.  
(b) Such waste or scrap shall be deemed to have been imported at the time it is entered for home consumption and shall be liable to duty in that state.”. 30

**Amendment of section 76B of Act 91 of 1964, as substituted by section 67 of Act 34 of 2004 and amended by section 20 of Act 32 of 2005**

**100.** Section 76B of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph: 35
- “(ii) any application for such refund which is received by the Controller within a period of 12 months from the date of—  
(aa) such determination, new determination or amendment of a determination; or 40  
(bb) any amendment by court or by the Commissioner as contemplated in the proviso to subparagraph (i); or”; and
- (b) by the addition of the following subsection: 45
- “(3) Notwithstanding anything to the contrary in this section or any other provision of this Act, the Commissioner shall not authorise—  
(a) a refund of any amount paid under this Act where that amount was paid in accordance with the practice generally prevailing at the time of entry for home consumption of the goods in respect of which such payment was made; or  
(b) a drawback of duty that was not claimed or allowed in accordance with the practice generally prevailing at the time the goods in respect of which the drawback could have been claimed or allowed were entered for export.”. 50

**Continuation of certain amendments of Schedules to Act 91 of 1964**

**101.** (a) Subject to paragraph (b), every amendment or withdrawal of or insertion in Schedule Nos. 1 to 6 and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56, 56A, 57, 60 or 75(15) of that Act up to and including 31 July 2008, shall not lapse by virtue of section 48(6), 49, 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act. 55

(b) Paragraph (a) shall not include amendments made under sections 48 and 75(15) of the Customs and Excise Act, 1964, by Government Notices R.4, R.5 and R.6 of 1 January 2008.

**Date of implementation of Free Trade Agreement between EFTA States and SACU States in Schedules No. 1 and 10 to Act 91 of 1964**

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**102.** (1) The amendment of Schedule No. 1 and Schedule No. 10 to the Customs and Excise Act, 1964, made respectively under sections 48(1), 48(1A), 49(1)(a) and (b) and 49(5) of that Act by Government Notices R.1254 and R.1255 of 15 December 2006, shall be deemed to have come into operation on 1 May 2008.

(2) Government Notices R.1228 and R.1231 published in Government Gazette No. 30601 of 21 December 2007, respectively stating that Government Notices R.1254 and R.1255, referred to in subsection (1), will come into effect on 1 January 2008, shall be deemed not to have come into operation and are withdrawn with effect from 21 December 2007.

(3) The rates of duty in the EFTA column of the amendment of Schedule No. 1 to the Customs and Excise Act, 1964, made under section 48 of that Act by Government Notice R.1230 of 21 December 2007, shall be deemed to have come into operation on 1 May 2008.

**Repeal of Act 77 of 1968**

**103.** (1) The Stamp Duties Act, 1968 (Act No. 77 of 1968), is hereby repealed. 20

(2) Subsection (1) comes into operation on 1 April 2009.

(3) Notwithstanding subsection (2), the provisions of the Stamp Duties Act, 1968 (Act No. 77 of 1968), other than those contained in paragraph (i) of the proviso to item 14(1) of Schedule 1 to that Act, continue to apply in respect of any instrument described in Schedule 1 of that Act executed before the date of the repeal of that Act as if that Act had not been so repealed. 25

**Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006, section 81 of Act 8 of 2007, section 104 of Act 35 of 2007 and section 68 of Act 3 of 2008**

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

(a) by the substitution in the definition of “designated entity” for paragraph (iii) of the following paragraph: 40

“(iii) which is a [**Public Private Partnership**] party to a ‘Public Partnership Agreement’ 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), to the extent that that party supplies goods or services in terms of that Agreement to the ‘institution’ defined in that Regulation;”;

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(b) by the deletion in the definition of “enterprise” of paragraph (vii) of the proviso;

(c) by the substitution in the definition of “goods” for the words preceding paragraph (a) of the following words: 50

“**goods** means corporeal movable things, fixed property [**and**], any real right in any such thing or fixed property, and electricity, but excluding—”;

(d) by the insertion after the definition of “imported services” of the following definition: 55

“**inbound duty and tax free shop** means an inbound duty and tax free shop as contemplated in the Customs and Excise Act;”;

- (e) by the deletion in the definition of “second-hand goods” of the word “and” at the end of paragraph (ii); and
- (f) by the addition to the exclusion in the definition of “second-hand goods” of the following paragraphs:
- “(iv) any fixed property acquired in terms of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993); and 5
- any fixed property acquired in terms of section 42E of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);”.

(2) Subsection (1)(f) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette* and applies in respect of fixed property acquired on or after that date. 10

**Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, paragraph 2 of Government Notice 2695 of 8 November 1991, section 13 of Act 136 of 1992, section 10 of Act 20 of 1994, section 19 of Act 37 of 1996, section 24 of Act 27 of 1997, section 87 of Act 30 of 1998, section 82 of Act 53 of 1999, section 149 of Act 60 of 2001, section 115 of Act 74 of 2002, section 44 of Act 16 of 2004, section 93 of Act 32 of 2004, section 41 of Act 9 of 2006, and section 78 of Act 20 of 2006** 15

**105.** (1) Section 2 of the Value-Added Tax Act, 1991, is hereby amended by the deletion in subsection (4) of paragraph (b). 20

(2) Subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of agreements entered into on or after that date.

**Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001, section 151 of Act 60 of 2001, section 166 of Act 45 of 2003, section 95 of Act 32 of 2004, section 102 of Act 31 of 2005, section 172 of Act 34 of 2005, section 42 of Act 9 of 2006, section 79 of Act 20 of 2006 and section 27 of Act 36 of 2007** 25

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

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

“(2C) Where a supply is deemed to have been made by a vendor in terms of subsection (2) and that vendor ceases to be a vendor for the sole reason that the vendor has registered as a ‘micro business’ as defined in the Sixth Schedule of the Income Tax Act, the tax payable in respect of that deemed supply shall be paid in six equal monthly instalments or in so many monthly instalments as the Commissioner may allow. 35

“(2D) Where a supply is deemed to have been made by a vendor in terms of subsection (2) and that vendor ceases to be a vendor on or before 30 June 2009 for the sole reason that the total value of taxable supplies made by that vendor in the preceding period of 12 months has not exceeded R1 million, the tax payable in respect of that deemed supply shall be paid in six equal monthly instalments or in so many monthly instalments as the Commissioner may allow.”; 40

- (b) by the substitution for subsection (5) of the following subsection: 45

“(5) For the purposes of this Act a designated entity shall be deemed to supply services to any public authority or municipality to the extent of any payment made by the public authority or municipality concerned to or on behalf of that designated entity in [respect of the taxable supply of goods or services] the course or furtherance of an enterprise carried on by that designated entity.”; 50

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

“(5A) For the purposes of section 11(2)(t), a vendor (excluding a designated entity) shall be deemed to supply services to any public authority, municipality or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), to the extent of any grant paid to or on behalf of that vendor in [respect of the 55

taxable supply of goods or services] the course or furtherance of an enterprise carried on by that vendor.”; and

(d) by the addition to subsection (24) of the following proviso:

“: Provided that this subsection shall not apply where those movable goods are supplied by the customs controlled area enterprise or IDZ operator, prior to the expiry of the relevant prescribed time period”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2009.

**Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, paragraph 5 of Government Notice 2695 of 8 November 1991, section 16 of Act 136 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994, section 21 of Act 37 of 1996, section 22 of Act 46 of 1996, section 27 of Act 27 of 1997, section 84 of Act 53 of 1999, section 68 of Act 19 of 2001, section 152 of Act 60 of 2001, section 168 of Act 45 of 2003, section 97 of Act 32 of 2004, section 104 of Act 31 of 2005, section 43 of Act 9 of 2006, section 80 of Act 20 of 2006 and section 82 of Act 8 of 2007**

107. (1) Section 10 of the Value-Added Tax Act, 1991, is hereby amended by the insertion of the following subsection:

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

(2) Subsection (1) comes into operation on 1 March 2009.

**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, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003, section 46 of Act 16 of 2004, section 98 of Act 32 of 2004, section 21 of Act 9 of 2005, section 105 of Act 31 of 2005, section 44 of Act 9 of 2006, section 81 of Act 20 of 2006, section 105 of Act 35 of 2007 and section 29 of Act 36 of 2007**

108. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition to subsection (1) of the following paragraphs:

“(s) the goods (being fixed property) are supplied to the Minister of

Land Affairs who acquired those goods in terms of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993), or section 42E of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); or

(t) the goods (being fixed property) are supplied to a person to the extent that the consideration for those goods is an advance or subsidy granted in terms of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993); or

(u) the supply of goods, other than the supply of goods by an inbound duty and tax free shop, which have been imported and entered for storage in a licensed Customs and Excise storage warehouse but have not been entered for home consumption; or

(v) the supply of goods by an inbound duty and tax free shop.”; and

(b) 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 those provisions as is acceptable to the Commissioner.”.

(2) Subsection (1)(a) (insofar as it amends paragraphs (s) and (t) of section 11(1) of the Value-Added Tax Act, 1991) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette* and applies in respect of fixed property acquired on or after that date.



**Amendment of section 12 of Act 89 of 1991, as amended by section 18 of Act 136 of 1992, section 14 of Act 20 of 1994, section 22 of Act 37 of 1996, section 69 of Act 19 of 2001 section 154 of Act 60 of 2001, section 117 of Act 74 of 2002, section 99 of Act 32 of 2004, section 45 of Act 9 of 2006 and section 82 of Act 20 of 2006**

**109.** Section 12 of the Value-Added Tax Act, 1991, is hereby amended— 5

(a) by the substitution in paragraph (h)(i) for item (aa) of the following item:

“(aa) provided by the State or a school registered under the South African Schools Act, 1996 (Act No. 84 of 1996), or a [further education and training institution established by the State or such institution registered under the Further Education and Training Act, 1998 (Act No. 98 of 1998)] public college or private college established, declared or registered as such under the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006).”; and 10

(b) by the insertion of the following paragraph: 15

“(k) the supply of goods by any person that is not a resident of the Republic, other than the supply of goods by an inbound duty and tax free shop, which have been imported and entered for storage in a licensed Customs and Excise storage warehouse but have not been entered for home consumption: Provided that this paragraph shall not apply where such person applies in writing to the Commissioner, and the Commissioner, having regard to the circumstances of the case, directs that the provisions of this paragraph shall not apply to such person.”. 20

**Amendment of section 13 of Act of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 34 of Act 34 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001, section 155 of Act 60 of 2001, section 170 of Act 45 of 2003, section 100 of Act 32 of 2004 and section 106 of Act 31 of 2005** 25

**110.** Section 13 of the Value-Added Tax Act, 1991, is hereby amended by the deletion 30  
in subsection (1) of paragraph (ii) of the proviso.

**Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007 and section 30 of Act 36 of 2007** 35

**111.** Section 16 of the Value-Added Tax Act, 1991, is hereby amended by the insertion 40  
in subsection (3), before the proviso, of the following paragraph:

“(n) an amount equal to the tax fraction of the lesser of the amount contemplated 40  
in section 10(25) or the open market value of the movable goods on the date—  
(i) those goods are returned to the customs controlled area enterprise or IDZ operator; or  
(ii) those goods are supplied by the customs controlled area enterprise or IDZ operator where those goods are supplied after the relevant 45  
prescribed time period contemplated in section 8(24):”.

**Amendment of section 18 of Act 89 of 1991 as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998, section 89 of Act 53 of 1999, section 174 of Act 45 of 2003, section 103 of Act 32 of 2004, section 109 of Act 31 of 2005, section 49 of Act 9 of 2006 and section 85 of Act 20 of 2006** 50

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



“: Provided that where that person or partnership has previously deregistered as a vendor in terms of section 8(2) and where section 8(2C) is applicable, the amount determined in paragraph (i) or (ii) must be reduced by R100 000.”.

(2) Subsection (1) comes into operation on 1 March 2009.

**Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005, section 14 of Act 10 of 2006 and section 24 of Act 4 of 2008**

**113.** (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(a) at the end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying on all enterprises has exceeded **[R300 000] R1 million;**”;

(b) by the substitution in subsection (2) for subitem (bb) of item (ii) of the proviso of the following subitem:

“(bb) opened a banking account with any bank, mutual bank or other similar institution, registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), for the purposes of his enterprise carried on in the Republic and furnished the Commissioner with the particulars of such banking account.”; and

(c) by the addition of the following subsections:

“(8) Notwithstanding subsections (1) and (2), where any person is registered as a micro business in terms of the Sixth Schedule to the Income Tax Act, that registered micro business may not register as a vendor.

(9) Where any registered micro business is deregistered in terms of paragraph 10 of the Sixth Schedule to the Income Tax Act, other than by reason of its disqualification in terms of paragraph 3(a) to 3(g)(ii) of that Schedule, the person shall be a vendor from the date the deregistration takes effect.”.

(2) Paragraphs (a) and (c) of subsection (1) come into operation on 1 March 2009.

**Amendment of section 39 of Act 89 of 1991 and amended by section 37 of Act 136 of 1991, section 30 of Act 136 of 1992, section 3 of Act 61 of 1993, section 23 of Act 20 of 1994, section 40 of Act 27 of 1997, section 166 of Act 60 of 2001, section 184 of Act 45 of 2003, section 50 of Act 16 of 2004, section 105 of Act 32 of 2004, section 22 of Act 9 of 2005**

**114.** (1) Section 39 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(3) If any person who is liable for the payment of tax in accordance with the provisions of section 8(2C) or 8(2D) fails to pay any amount of such tax within the period allowed for the payment of such tax in terms of that section, the person shall, in addition to such amount of tax, pay 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 substitution in subsection (7) for the words preceding paragraph (a) of the following words:

“To the extent that the Commissioner is satisfied that the failure on the part of the person concerned or any other person under the control or acting on behalf of that person to make payment of the tax within the period for payment contemplated in subsection (1)(a), (2), (3), (4), (6) or (6A) or on the date referred to in subsection (5), as the case may be—”.

(2) Subsection (1) comes into operation on 1 March 2009.

**Insertion of section 78A in Act 89 of 1991**

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

**“Transitional matters: Turnover Tax**

**78A.** (1) For the purposes of this section—

**‘taxable turnover’** has the meaning assigned thereto in the Sixth Schedule to the Income Tax Act;

**‘turnover tax’** means the turnover tax payable by a registered micro business in terms of section 48A of the Income Tax Act; and

**‘registered micro business’** has the meaning assigned thereto in the Sixth Schedule to the Income Tax Act.

(2) Where a person is deregistered in terms of the Sixth Schedule to the Income Tax Act and registers as a vendor, any supplies of goods or services—

(a) made by that person before it became a vendor;

(b) in respect of which the time of supply would have been deemed to have taken place while that person was a registered micro business had it been registered as a vendor during that time;

(c) which were not included in the taxable turnover of that person while it was a registered micro business; and

(d) the receipts for which are received after it became a vendor, must be deemed to be made in the course or furtherance of that vendor’s enterprise in the tax period in which those receipts are received.

(3) Subject to section 18(4)(b), where a person is deregistered in terms of the Sixth Schedule to the Income Tax Act and registers as a vendor, any value-added tax paid on expenditure it incurred while it was a registered micro business may not be deducted by that vendor as input tax.”.

(2) Subsection (1) comes into operation on 1 March 2009.

**Amendment of section 85 of Act 89 of 1991**

**116.** Section 85 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (2).

**Repeal of section 60 of Act 113 of 1993**

**117.** Section 60 of the Income Tax Act, 1993, is hereby repealed.

**Repeal of section 41 of Act 21 of 1994**

**118.** Section 41 of the Income Tax Act, 1994, is hereby repealed.

**Amendment of section 42 of Act 22 of 1994**

**119.** (1) Section 42 of the Restitution of Land Rights Act, 1994, is hereby amended by the substitution for subsection (2) of the following subsection—

“(2) The Minister may, in consultation with the Minister of Finance, direct that no [transfer duty, stamp duty or other] fees contemplated in subsection (1) shall be paid in respect of a particular transfer under this Act.”.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette* and applies in respect of property acquired on or after that date.

**Amendment of section 42A of Act 22 of 1994, as inserted by section 30 of Act 63 of 1997 and amended by section 2 of Act 48 of 2003**

**120.** (1) Section 42A of the Restitution of Land Rights Act, 1994, is hereby amended by the substitution for subsection (2) of the following subsection—

“(2) No [duty,] fee or other charge is payable in respect of any registration in terms of subsection (1).”

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette* and applies in respect of property acquired on or after that date.

#### Repeal of Decree 2 of 1994 (of former Republic of Ciskei)

121. The Company Tax Amendment Decree, 1994, of the former Republic of Ciskei is hereby repealed. 5

#### Repeal of Act 19 of 1995

122. The Tax Amnesty Act, 1995 (Act No. 19 of 1995), is hereby repealed.

#### Repeal of Act 101 of 1996

123. The Final Relief on Tax, Interest, Penalty and Additional Tax Act, 1996 (Act No. 101 of 1996), is hereby repealed. 10

#### Amendment of Schedule 1 to Act 20 of 2006, as amended by section 112 of Act 8 of 2007 and section 70 of Act 3 of 2008

124. (1) Schedule 1 to the Revenue Laws Amendment Act, 2006, is hereby amended— 15

(a) by the substitution in paragraph 7(1)(b) for subitem (iii) of the following subitem:

“(iii) paid for by [an individual] a member of the general public or by FIFA, a FIFA subsidiary or the Local Organising Committee.”;

(b) by the substitution for paragraph 8 of the following paragraph: 20

#### “Value-added tax treatment of supply of goods or services

8. Notwithstanding anything to the contrary contained in the *Value-Added Tax Act, 1991*—

(a) an entity contemplated in paragraph 6 must levy *value-added tax* at the zero rate on all supplies by that entity of goods or services as contemplated in paragraph 7(1)(a) or (b) at a *Championship site*; 25

(b) the supply of goods or services by a national supporter, referred to in subparagraph (c) of the definition of *commercial affiliate*, to FIFA in respect of which such national supporter receives consideration in the form of a supply of services from FIFA, shall be charged with value-added tax at the zero rate.” 30

(c) by the deletion in paragraph 9(1) of the word “or” at the end of item (h) and the addition of the word “or” at the end of item (i); and

(d) by the addition to paragraph 9(1) of the following item: 35

“(j) a staff member of the Hospitality Service Provider.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2008 and applies in respect of receipts and accruals and supplies of goods and services on or after that date.

#### Amendment of Appendix I of Act 8 of 2007

125. (1) Appendix I of the Taxation Laws Amendment Act, 2007, is hereby amended 40 by the substitution in Part I for the words preceding the table in paragraph 1 of the following words:

“The rate of tax referred to in section 2(1) of this Act to be levied in respect of the taxable income (excluding any retirement fund lump sum benefit) of any natural person, deceased estate, insolvent estate or special trust (other than a public benefit 45 organisation or recreational club referred to in paragraph 5) in respect of any year of assessment ending on 29 February 2008 is set out in the table below:”.

(2) Subsection (1) is deemed to have come into operation on 8 August 2007.

**Amendment of section 5 of Act 25 of 2007**

**126.** (1) Section 5 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Tax payable in terms of subsection (2) must be paid through the member or participant holding the listed security in custody or, in the case where the listed security is not held in custody by either a member or participant, through the company that issued the listed security.” 5

(2) Subsection (1) is deemed to have come into operation on 1 July 2008 and applies in respect of the transfer of a listed security on or after that date.

**Amendment of section 8 of Act 25 of 2007**

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**127.** (1) Section 8 of the Securities Transfer Tax Act, 2007, is hereby amended—

(a) by the substitution in subsection (1)(a)(vi) for item B of the following item:

“(B)in subparagraph (i) or [(iii)] (ii) regardless of the market value of the asset disposed of in exchange for that security; or”;

(b) by the deletion in subsection (1) of the word “or” at the end of paragraph (p); 15

(c) by the addition of the word “or” at the end of paragraph (q); and

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

“(r) if that security was transferred during a month in respect of which—

(i) in the case of an unlisted security, the company which issued that security; or

(ii) in the case of a listed security, the relevant member, relevant participant or the company that issued that security where that security is not held in custody by either a member or a participant, would have had to pay tax of less than R100 to the Commissioner.”. 20

(2) Subsection (1) comes into operation on 1 January 2009 and applies in respect of the transfer of a security on or after that date. 25

**Amendment of section 52 of Act 35 of 2007, as amended by section 74 of Act 3 of 2008**

**128.** (1) Section 52 of the Revenue Laws Amendment Act, 2007, is hereby amended 30 by the insertion in subsection (4), after paragraph (b), of the following paragraph:

“(bA) section 45 of that Act, comes into operation on 1 January 2009, if the disposal contemplated in that section was the subject of an application for an advance tax ruling regarding the interpretation or application of the definition of ‘group of companies’ that was accepted by the Commissioner before 21 February 2008;”. 35

(2) Subsection (1) is deemed to have come into operation on 8 January 2008.

**Amendment of section 55 of Act 35 of 2007**

**129.** (1) Section 55 of the Revenue Laws Amendment Act, 2007, is hereby amended 40 by the substitution for subsections (2) and (3) of the following subsection:

“(2) Subsection (1) is deemed to have come into operation on 1 January 2008 and applies in respect of years of assessment ending on or after that date.”. 40

(2) Subsection (1) is deemed to have come into operation on 8 January 2008.

**Amendment of section 56 of Act 35 of 2007**

**130.**(1) Section 56 of the Revenue Laws Amendment Act, 2007, is hereby amended 45 by the substitution for subsection (5) of the following subsection:

“(5) Subsection (1)(d) is deemed to have come into operation on 30 October 2007 and shall apply in respect of any transaction entered into [during any year of assessment ending] on or after that date.”. 50

(2) Subsection (1) is deemed to have come into operation on 8 January 2008. 50

**Amendment of section 59 of Act 35 of 2007**

**131.** (1) Section 59 of the Revenue Laws Amendment Act, 2007, is hereby amended by the repeal in subsection (1) of paragraph (f).

(2) Subsection (1) comes into operation on 1 January 2009 and applies in respect of a dividend declared on or after that date. 5

**Amendment of section 125 of Act 35 of 2007, as substituted by section 76 of Act 3 of 2008**

**132.** (1) Section 125 of the Revenue Laws Amendment Act, 2007, is hereby amended by the insertion after subsection (5) of the following paragraph:

“(5A) The provisions of paragraph 12(5) of the Eighth Schedule to the Income Tax Act will not apply where a debt owing—  
 (a) by a transferor to a transferee; or  
 (b) by a transferee to a transferor,  
 is reduced or discharged as part of a transaction contemplated in subsection (2).” 10

(2) Subsection (1) is deemed to have come into operation on 1 January 2008. 15

**Amendment of section 8 of Act 3 of 2008**

**133.** (1) Section 8 of the Taxation Laws Amendment Act, 2008, is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) Subsection (1)(a), to the extent that it applies for purposes of section 9D(fA)(iv) of the Income Tax Act, 1962, is deemed to have come into operation on 1 October 2007 and applies in respect of a reduction or discharge on or after that date.” 20

(2) Subsection (1) is deemed to have come into operation on 1 October 2007 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 38 of Act 3 of 2008**

**134.** (1) The Taxation Laws Amendment Act, 2008, is hereby amended by the insertion in section 38 of the following subsection, the existing section becoming subsection (1):

“(2) Subsection (1) is deemed to have come into operation on 13 September, 2007.” 30

(2) Subsection (1) is deemed to have come into operation on 22 July 2008.

**Amendment of Appendix I of Act 3 of 2008**

**135.** (1) The Appendix I of the Taxation Laws Amendment Act, 2008, is hereby amended by the substitution in Part I for the words preceding the table in paragraph 1 of the following words: 35

“The rate of tax referred to in section 1(1) of this Act to be levied in respect of the taxable income (excluding any retirement fund lump sum benefit) of any natural person, deceased estate, insolvent estate or special trust (other than a public benefit organisation or recreational club referred to in paragraph 5) in respect of any year of assessment ending on 28 February 2009 is set out in the table below:” 40

(2) Subsection (1) is deemed to have come into operation on 22 July 2008.

**Short title and commencement**

**136.** (1) This Act is called the Revenue Laws Amendment Act, 2008.

(2) The amendments effected to the Income Tax Act, 1962, by this Act shall for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, except insofar as is otherwise provided for in this Act or the context indicates otherwise, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009. 45