

DRAFT

The draft Revenue Laws Amendment Bill, 2007, is hereby published for comment. This legislation, together with the Taxation Laws Amendment Act, 2007 (already promulgated on 8 August 2007) give effect to the tax proposals presented by the Minister of Finance in the 2007 National Budget as tabled in Parliament on 21 February 2007.

The National Treasury is scheduled to brief Parliament's Portfolio Committee on Finance on the draft legislation on 18 September, 2007. Parliament will through its own processes request public comments on the draft Bill, and thereafter hold public hearings in October 2007. Whilst all comments should be submitted to Parliament's Portfolio Committee of Finance, members of the public are also invited to send the same comments to the National Treasury and the South African Revenue Service directly, preferably before 8 October 2007 (and hence before the hearings), to:

Pearl Malumane:

or

Adele Collins

pearl.malumane@treasury.gov.za

acollins@sars.gov.za

National Treasury will consider all such comments submitted to it, SARS and to the Portfolio Committee of Finance, as well as any recommendations arising from the Parliamentary hearings, when finalising the legislation for tabling in Parliament in mid-October 2007, for formal consideration and adoption by Parliament.

DRAFT

REPUBLIC OF SOUTH AFRICA

REVENUE LAWS
AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75/77))

(The English text is the official text of the Bill)

(Minister of Finance)

DRAFT

GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Transfer Duty Act, 1949, so as to further regulate the payment of duty; to further regulate exemptions from duty; to further regulate the furnishing of declarations and to effect a consequential amendment; to amend the Pension Funds Act, 1956, so as to delete an obsolete word; to amend the Income Tax Act, 1962, so as to amend certain definitions; to insert certain definitions; to provide for further definitions; to further regulate the payment of normal tax; to further regulate certain inclusions in income; to further regulate exemptions; to further regulate deductions; to further regulate assessed losses; to further regulate a withholding tax; to further regulate certain company transactions and company liquidation distributions; to determine certain rates; to further regulate the determination of capital gains and capital losses; to further regulate the payment of normal tax; to repeal obsolete provisions and to effect textual and consequential amendments; to amend the Customs and Excise Act, 1964, so as to amend definition of customs duty and excise duty to include certain duties on imported goods in the definition of excise duty; to insert a definition of person and to state procedures applicable to the movement of goods for the purposes of the SACU Agreement; to effect textual amendments to the prohibitions in respect of the direct financial interest of an officer; to amend certain references in the exclusions applicable to the disclosure of information; to amend provisions in respect of the detention of goods; to amend provisions relating to a place outside the Republic which is deemed to be a place of entry for goods consigned to the Republic; to effect a textual amendment to the provisions for industrial development zones; to effect amendments to provisions regulating the disposal of goods, on failure to make due entry, goods imported in contravention of any law and seized and abandoned goods, consequential to the introduction of provisions for the administration of counterfeit goods

in Chapter XB; to effect consequential amendments in respect of the amended definition of excise duty; to substitute obsolete references to provisions in respect of customs union agreements; to amend requirements in respect of declarations of origin in respect of certain imported goods; to amend provisions relating to tariff determinations; to insert provisions regarding the collection of air passenger tax by the operator or his or her agent; to remove substitute obsolete references to provisions in respect of customs union agreements; to amend provisions regarding the value for duty purposes of imported goods; to effect amendments to the provisions regarding the value for excise duty purposes of goods manufactured in the Republic, to effect consequential amendments in respect of the amendment of the definition of “excise duty” and certain contextual amendments to the provisions authorising rebates and refunds of duty in terms of the Schedules of the Act; to effect certain textual and consequential amendments to provisions relating to appeals and other procedures for which Chapter XA provide; to insert a new Chapter XB providing for powers, duties and procedures in connection with counterfeit goods, and to effect consequential amendments; to delete references to a fine in certain provisions; to amend provisions relating to the registration of vehicles re-imported to the Republic; to delete a section dealing with counterfeit goods; to effect textual and consequential amendments regarding the making of rules and to effect certain textual and consequential amendments; to amend the Stamp Duties Act, 1968, so as to amend certain definitions; to insert a definition and to delete certain obsolete provisions; to amend the value-Added Tax Act, 1991, so as to amend certain definitions; to further regulate zero rated supplies; to further regulate the deduction of input tax; to further regulate the payment of tax; to effect certain textual and consequential amendments; to amend the Uncertificated Securities Tax Act, 1998, so as effect a consequential amendment; to amend the Skills Development Levy Act, 1999, so as to delete an obsolete provision and to effect a consequential amendment; to amend the Collective Investment Schemes Control Act, 2002, so as to effect a consequential amendment; to amend the Small Business tax Amnesty and Amendment of Taxation Laws Act, 2006, so as to delete an obsolete provisions; to amend the Taxation Laws Amendment Act, 2007, so as to effect textual amendments; to provide for the zero rating of certain supplies; to provide for special rules for the assessment of normal tax of certain bodies and to provide for matters connected therewith.

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

Amendment of section 3 of Act 49 of 1949 as amended by section 4 of Act 88 of 1974, section 1 of Act 99 of 1981, section 4 of Act 97 of 1993,

section 10 of Act 37 of 1996, section 6 of Act 60 of 2001 and section 3 of Act 74 of 2002

1. Section 3 of the Transfer Duty Act, 1949, is hereby amended—
 - (a) by the substitution for subsection (2) of the following subsection:

“(2) Pending the completion of the declarations referred to in section fourteen, or the determination of the amount of duty payable under this Act, a deposit on account of the duty payable may be made, manually or electronically, to the office of the South African Revenue Service to whom the duty is payable in terms of subsection (3).”; and
 - (b) by the substitution for subsection (3) of the following subsection:

“(3) The duty and any penalty payable under section 4 and any transfer duty and interest payable under any law repealed by this Act shall be paid, manually or electronically, to the office of the South African Revenue Service where payments are accepted, for the area in which the property in question is situated or, if the property is situated in the area of more than one office of the South African Revenue Service where payments are accepted, to any one of those offices, or, in either case, to the office of the South African Revenue Service or the area where the deeds registry in which the property is registered is situated.”.

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 1994, 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 and section 1 of Act 20 of 2006

2. Section 9 of the Transfer Duty Act, 1949, is hereby amended—

(a) by the substitution in subsection (15A) for the words preceding paragraph (a) of the following words:

“No duty shall be payable in respect of the acquisition of any property under **[a company formation]** an asset-for-share transaction as contemplated in section 42 of the Income tax Act, 1962 (Act No. 58 of 1962), where—“; and

(b) by the insertion of the following subsection after subsection 15A:

“(15B)No duty shall be payable in respect of the acquisition of property operated and managed by a person on behalf of a rental pool scheme as contemplated in section 52(2) of the Value-Added Tax Act, 1991, where the person acquiring that property elects in writing that that property must continue to be operated and managed by that person on behalf of a rental pool scheme.”.

Amendment of section 14 of Act 49 of 1949 as amended by section 6 of Act 88 of 1974 and section 34 of 2004

3. Section 14 of the Transfer Duty Act, 1949, is hereby amended—

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

“14. Declarations to be furnished to Commissioner.—(1)

Declarations appropriate to the manner of the acquisition of property in any particular case shall, in substance as near as possible to the wording of the forms prescribed by the Commissioner, be completed and submitted in such manner (including electronically) and at such place as may be prescribed by the Commissioner, by the parties to the

DRAFT

transaction whereby the property has been acquired and, if the Commissioner so directs, also by the agent, auctioneer, broker or other person who acted for or on behalf of either party to the transaction or, if the property has been acquired otherwise than by way of a transaction, by the person who acquired the property.”; and

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

“(1A) The Commissioner may direct that any declaration referred to in subsection (1), falling within any category which he may determine, shall be used for the purpose of acknowledging[, **by the use of a machine,**] the receipt of duty, and in such case he may prescribe the number of copies of such declaration to be completed, the shape, size and lay-out of such declaration or of any copy thereof, and the manner in which such declaration and copies shall be completed.”.

Amendment of section 4C of Act 24 of 1956, as inserted by section 2 of Act 119 of 1991

4. Section 4C of the Pension Funds Act, 1956, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) No **[stamp duty,]** registration fee or costs shall be payable in respect of any transfer or endorsement referred to in subsection (1).”.

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 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 2000, 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 and section 3 of Act 8 of 2007

5. (1) Section 1 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the definition of “**depreciable asset**” of the following definition:
- “**depreciable asset**” means an asset as defined in paragraph 1 of the Eighth Schedule (other than any trading stock and any debt), in respect of which a **[capital]** deduction or allowance determined wholly or partly with reference to the cost or value of that asset to the person holding that asset or to any person that is a connected person in relation to that person is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;”;
- (b) by the substitution in the definition of “**dividend**” for the words preceding paragraph (a) of the following words:
- “**dividend**” means any amount distributed by a company (not being an institution to which section 10(1)(d) applies) to its shareholders **[or any amount distributed out of the assets pertaining to any portfolio referred to in paragraph (e) of the definition of “company” in this section to shareholders in relation to such portfolio (including, in the case of any co-operative society or**

company referred to in section 27, any amount distributed on or after 1 April 1977 to its members, whether divided among the members in accordance with their rights as shareholders or according to the value of business transactions between individual members and such society or company or on some other basis)], and in this definition the expression “amount distributed” includes—“;

- (c) by the substitution in the definition of “**dividend**” for the words in paragraph (a) preceding the proviso of the following words:

“in relation to a company that is being wound up, liquidated or deregistered or the corporate existence of which is finally terminated, any profits [(other than those of a capital nature earned before or during the winding-up, liquidation, deregistration or final termination from the disposal of any asset before 1 October 2001) which are] distributed[, whether in cash or otherwise,] in the course [or in anticipation] of the winding-up, liquidation, deregistration or final termination of that company”;

- (d) by the substitution in the definition of “**dividend**” for the proviso to paragraph (a) of the following proviso:

“: Provided that any profits distributed by the liquidator of the company are deemed for purposes of this definition to have been distributed by the company;”;

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

“(b) in relation to a company that is not being wound up, liquidated or deregistered or where the corporate existence of that company is not finally terminated, any profits distributed, [whether in cash or

otherwise, and whether of a capital nature or not,]
including an amount equal to the nominal value, at the time of issue thereof, of any capitalisation shares awarded to shareholders and the nominal value of any bonus debentures or securities awarded to shareholders;”;

- (f) by the substitution in the definition of “**dividend**” for the words in paragraph (c) preceding subparagraph (i) of the following words:

“in the event of any reduction or redemption (other than as contemplated in paragraph (cA) of this definition) of the capital of a company (other than a portfolio, arrangement or scheme contemplated in paragraph (e) of the definition of “company”), including the acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973), **[so much of the sum of any cash and the value of any asset given to a shareholder as exceeds the cash equivalent of—]** any profits distributed;“;

- (g) by the deletion in the definition of “**dividend**” of subparagraphs (i) and (ii) of paragraph (c) and of the words following paragraph (c)(ii) of that definition;

- (h) by the deletion in the definition of “**dividend**” of paragraph (d);

- (i) by the substitution in the definition of “**dividend**” for paragraph (f) of the following paragraph:

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

DRAFT

- (j) by the deletion in the definition of **“dividend”** of subparagraph (i) of paragraph (i);
- (k) by the substitution in the definition of **“dividend”** for subparagraph (ii) of paragraph (i) of the following words:

“**[(ii)]** any amount distributed by **[such society or company]** a co-operative by way of a bonus, to the extent that such amount is allowable as a deduction from the income of such **[society or company]** co-operative under the provisions of section 27[; and]”;
- (l) by the deletion in the definition of **“dividend”** of subparagraph (iii) of paragraph (i);
- (m) by the insertion after paragraph (iii) of the proviso to the definition of **“dividend”** of the following paragraph:

“(iiiA) in the event of the reduction of the share capital or share premium of a company, the share capital or share premium that must be apportioned to any share shall be deemed to be an amount which bears to the total shares in the company the same ratio as the value of that share bears to the total value of all shares in the company.”;
- (n) by the deletion of the semi-colon at the end of the definition of **“dividend”**; and
- (o) by the addition to the definition of **“dividend”** of the following proviso:

“: Provided further that for the purposes of this definition **“profits”** means realised and unrealised profits of a company whether or not those unrealised profits have been recognised in the accounts of the company.”.

DRAFT

- (2) Subsection (1)(c) to (e) shall come into operation on 1 January 2009 and shall apply in respect of any dividend declared on or after that date.
- (3) Subsection (1)(b) and (f) to (o) shall be deemed to have come into operation on 1 October 2007 and shall apply in respect of any dividend declared on or after that date.

Amendment of section 5 of Act 58 of 1962, as amended by section 2 of Act 6 of 1963, 5 of Act 40 of 1964, section 6 of Act 88 of 1965, section 7 of Act 55 of 1966, section 6 of Act 95 of 1967, section 6 of Act 70 of 1968, section 7 of Act 89 of 1969, section 7 of Act 52 of 1970, section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 5 of Act 113 of 1977, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 3 of Act 65 of 1986, section 3 of Act 90 of 1988, section 3 of Act 129 of 1991, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 5 of Act 19 of 2001, section 10 of Act 30 of 2002, section 15 of Act 45 of 2003, section 4 of Act 20 of 2006 and section 4 of Act 8 of 2007

- 6. Section 5 of the Income Tax Act, 1962, is hereby amended 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) for the said year;”.

Amendment of section 6quat of Act 58 of 1962, as inserted by section 9 of Act 89 of 1969, amended by section 5 of Act 94 of 1983, section 5 of Act 85 of 1987, section 5 of Act 28 of 1997, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000, section 4 of Act 59 of 2000, section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002, section 16 of Act 45 of 2003, section 4 of Act 32 of 2004 and section 8 of Act 31 of 2005

- 7. Section 6quat of the Income Tax Act, 1962, is hereby amended—
 - (a) by the substitution for the heading of the following heading:

“Rebate and deduction in respect of foreign taxes on income.—“;

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

(c) by the insertion after subsection (1B) of the following subsections:

“(1C) For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as a deduction from the income of such person so derived (other than any retirement fund lump sum benefit) who is a resident the sum of any taxes on the income (other than taxes contemplated in subsection (1A)) proved to be payable by that taxpayer to any sphere of government of any country other than the Republic, without any right of recovery by any person, other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment.

(1D) Notwithstanding the provisions of subsection (1C), the deduction of any tax proved to be payable as contemplated in that subsection, shall not in aggregate exceed the total taxable income (before taking into account any such deduction) attributable to income which is subject to taxes as contemplated in that subsection, provided that in determining the amount of the taxable income that is attributable to that income, any allowable deductions contemplated in sections 11(n), 18 and 18A must be deemed to have been incurred proportionately in the ratio that that income bears to total income.”;

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

“(2) The rebate under subsection (1) and the deduction under subsection (1C) shall not be granted in addition to any relief to which the resident is entitled under any agreement

between the governments of the Republic and the said other country for the prevention of or relief from double taxation, but may be granted in substitution for the relief to which the resident would be so entitled.”; and

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

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

(5) Where a rebate or deduction was allowed or should have been allowed in terms of this section against the normal tax payable by, or the income of, any resident in any previous year of assessment in respect of any amount of tax which was proved to be payable to the government of any other country, and—

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

(b) the Commissioner is satisfied that the amount of the tax actually payable to such government is less than the amount of tax in respect of which the rebate or deduction was so allowed,

the Commissioner may, notwithstanding the provisions of section 79 or section 81(5), but subject to **[subsection]** subsections (1B)(a) and (1D) issue a reduced or additional

assessment, as the case may be, reflecting the amount of the rebate or deduction in respect of that amount of tax actually payable in that other currency translated to the currency of the Republic at the average exchange rate applicable for that previous year of assessment, which shall be allowed against normal tax or as a deduction: Provided that the Commissioner shall not issue any such reduced or additional assessment after the expiration of six years from the date of the assessment in terms of which the rebate or deduction of the amount of tax proved to be payable was so allowed, unless the Commissioner is satisfied that the fact that the amount of tax proved to be payable to such other government was incorrectly reflected was due to fraud or misrepresentation or non-disclosure of material facts.”.

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 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 and section 6 of Act 8 of 2007

8. Section 8 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (4) for paragraph (eB) of the following paragraph:
 - (eB) Where a replacement asset in relation to an asset of a person as contemplated in paragraph (e) constitutes a

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

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 and section 6 of Act 20 of 2006

9. The Income Tax Act, 1962, is hereby amended by the substitution in section 8B for the words in subsection (1) preceding paragraph (a) of the following words:

“Notwithstanding section 9C, [There] there must be included in the income of a person for a year of assessment any gain made by that person during that year from the disposal of any qualifying equity share or any right or interest in a qualifying equity share, which is disposed of by that person within five years from the date of grant of that qualifying equity share, otherwise than—“.

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 and section 7 of Act 20 of 2006

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

DRAFT

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

“Notwithstanding **[section]** sections 9B, 9C and **[section]** 23(m), a taxpayer must include in or deduct from his or her income for a year of assessment any gain or loss determined in terms of subsection (2) in respect of the vesting during that year of any equity instrument, if that equity instrument was acquired by that taxpayer—“;
- (b) by the deletion in subsection (3)(b) of the word “and” at the end of subparagraph (iii);
- (c) by the substitution in subsection (3)(b) for subparagraph (iv) of the following subparagraph:

“(iv) immediately before that taxpayer dies, if all the restrictions relating to that equity instrument are or may be lifted on or after death~~[.]~~; and”;
- (d) by the addition to subsection (3)(b) of the following subparagraph:

“(v) the time a disposal contemplated in subsection (2)(a)(i) or (b)(i) occurs.”;
- (e) by the substitution in subsection (7) for paragraphs (b) and (c) of the definition of “**consideration**” of the following paragraphs:
 - “(b) by the taxpayer in respect of any other restricted equity instrument which had been disposed of by that taxpayer in exchange for that equity instrument, reduced by any amount attributable to the gain or loss determined in terms of subsection (4)(b); ~~[and];~~ or
 - (c) by any person contemplated in subsection (5)~~(a)~~ (b) in respect of that restricted equity instrument **[or other equity instrument contemplated in paragraph (b), which would have been taken into**

account had it been given by the taxpayer in respect of that equity instrument or other equity instrument] to the extent the amount does not exceed the amount the taxpayer would have had to give to acquire that equity instrument had it not been disposed of or deemed to have been disposed of by him or her, but does not include any amount given or to be given by that person to the taxpayer to acquire that restricted equity instrument **[or to any other person contemplated in subsection (5)]**”;

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

“(b) any other financial instrument that **[is convertible]** derives its value with reference to such a share, part of a share or member’s interest; and”;

- (g) by the substitution in subsection (7) for paragraph (g) of the definition of “**restricted equity instrument**” of the following paragraph:

“(g) which is not deliverable to the taxpayer until the happening of an event, whether fixed or contingent[, **other than the requirement to pay the consideration in respect of the acquisition of that equity instrument]**; and”.

- (2) Subsection (1) shall be deemed to have come into operation on the date of introduction of this Bill and shall apply in respect of any equity instrument held or acquired on or after that date.

Amendment of section 9B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1990 and amended by section 11 of Act 129 of 1991, section 9 of Act 141 of 1992, section 6 of Act 113 of 1993, section 7 of Act 36 of 1996, section 26 of Act 30 of 1998, section 16 of Act 53 of 1999, section 21 of Act

45 of 2003, section 12 of Act 32 of 2004, section 22 of Act 9 of 2005 and section 8 of Act 8 of 2007

11. Section 9B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:

“For the purposes of this section **“affected share”**, in relation to a taxpayer, means a listed share in a company as contemplated in paragraph (a) of the definition of “listed company”, which has been disposed of by the taxpayer before 1 October 2007 who immediately prior to such disposal had been the owner of such share as a listed share for a continuous period of at least five years”.

Amendment of section 9C of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997, amended by section 27 of Act 30 of 1998, section 18 of Act 30 of 2000 and section 9 of Act 59 of 2000

12. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 9B of the following section:

“9C. Circumstances in which certain amounts received or accrued from disposal of shares are deemed to be of a capital nature.—(1) For the purposes of this section—

“connected person” means a connected person as defined in section 1, provided that the expression “and no shareholder holds the majority voting rights of such company” in paragraph (d)(v) of that definition must be disregarded; and

“qualifying share” in relation to any taxpayer, means an equity share as defined in section 44, which has been disposed of by the taxpayer who immediately prior to such disposal had been the owner of that share for a continuous period of at least three years: Provided that the share—

- (a) is not a share in a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
- (b) is not a share in a company which, at any time during that three year period, was not a resident, unless it was at that time a company as contemplated in paragraph (a) of the definition of “**listed company**”;
- (c) was not deemed to be trading stock of the taxpayer in terms of section 24A(2)(a); or
- (d) is not a hybrid equity instrument as defined in section 8E.
- (2) Any qualifying share shall for purposes of this Act be deemed not to be trading stock.
- (3) The provisions of this section shall not apply to any qualifying share if at the time of the disposal of that share the taxpayer was a connected person in relation to the company that issued that share and—

 - (a) more than 50 per cent of the market value of that company, other than market value directly or indirectly attributable to any financial instrument that was acquired during the three year period contemplated in the definition of “**qualifying share**” in subsection (1) in exchange for a share, is attributable directly or indirectly to immovable property acquired by that company during that period; or
 - (b) that company acquired any other property during the three year period contemplated in paragraph (a) and amounts were paid or payable during that period to any person other than that company for the use of that property during that period.
- (4) For purposes of this section, where—

DRAFT

- (a) any share has been lent by a lender to a borrower in terms of a securities lending arrangement, such share shall for the purposes of the lender be deemed not to have been disposed of by the lender; and
 - (b) any other share of the same kind and of the same or equivalent quantity and quality has been returned by the borrower to the lender, such share and such other share shall be deemed to be one and the same share in the hands of the lender.
 - (5) There shall in the year of assessment in which any qualifying share is disposed of by the taxpayer, be included in the taxpayer's income any expenditure or losses incurred in respect of such qualifying share and allowed as a deduction from the income of the taxpayer during that or any previous year of assessment in terms of section 11 or 22.
 - (6) Where the taxpayer holds shares which were acquired by the taxpayer on different dates and the taxpayer has disposed of any of those shares, the taxpayer shall for the purposes of this section be deemed to have disposed of the shares held by the taxpayer for the longest period of time.
 - (7) The provisions of section 22(8) shall not apply as a result of the disposal of any qualifying share."
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2007 and shall apply in respect of the disposal on or after that date of any qualifying share.

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 and section 9 of Act 8 of 2007

13. (1) Section 9D of the Income Tax Act, 1962, is hereby amended—
- (a) by the addition of the word “and” to paragraph (b) of the definition of “**controlled foreign company**” in subsection (1);
 - (b) by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph:
 - “(ii) the proportional amount determined in the manner contemplated in paragraph (a)(i) (as if the day that foreign company ceased to be a controlled foreign company was the last day of its foreign tax year), of the net income of that company determined for the period commencing on the first day of that foreign tax year and ending on the **[date]** the day before that the company so ceased to be a controlled foreign company”;
 - (c) by the substitution in the proviso to subsection (2) for paragraph (B) of the following paragraph:
 - “(B) to the extent that the participation rights are held by that resident indirectly through any company which is a resident~~[.]~~ or”;
 - (d) by the addition to the proviso to subsection (2)(b) of the following paragraph:
 - “(C) to the extent that—
 - (i) the participation rights are held by an insurer in any policyholder fund as defined in terms of section 29A, in terms of a linked policy or a market-related policy, as defined in section 1 the Long-term Insurance Act, 1998 (Act No. 52 of 1998); and
 - (ii) the holding of the participation rights by the insurer does not form part of any transaction,

operation or scheme entered into or effected solely or mainly for purposes of utilising the provisions of this paragraph in order to avoid the inclusion of an amount in the income of a resident as contemplated in this subsection.”;

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

“(e) where a foreign company becomes a controlled foreign company after 1 October 2001, the valuation date for purposes of the determination of any taxable capital gain or assessed capital loss in terms of the Eighth Schedule, shall be the **[date]** the day before [that] such company becomes a controlled foreign company;”;

- (f) by the substitution in subsection (9) for the words in paragraph (fA) that precede the proviso of the following words:

“is attributable to any interest, royalties, rental or income of a similar nature, which is paid or payable or deemed to be paid or payable to that company by any other controlled foreign company (including any similar amount adjusted in terms of section 31), or any exchange difference determined in terms of section 24I in respect of any exchange item to which that company and that other controlled foreign company are parties, where that controlled foreign company and that other controlled foreign company form part of the same group of companies, or any exchange difference in respect of any forward exchange contract or foreign currency option contract entered into to hedge that exchange item”.

- (2) Subsection (1) shall be deemed to have come into operation on the date of introduction of this Act and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 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 and section 2 of Act 9 of 2007

14. Section 10 of the Income Tax Act, 1962, is hereby amended—

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

“any institution, board or body (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), any co-operative, close corporation, trust[,] or water services provider, and any Black tribal authority, community authority, Black regional authority [**and**] or Black territorial authority contemplated in section 2 of the Black Authorities Act, 1951 (Act No. 68 of 1951)) established by or under any law and which, in the furtherance of its sole or principal object—“;

DRAFT

- (b) by the deletion in subsection (1)(gB) of the word “or” at the end of subparagraph (i);
- (c) by the addition in subsection (1)(gB) of the word “or” to subparagraph (ii);
- (d) by the addition to subsection (1)(gB) of the following subparagraph:

“(iii) so much of any compensation as does not exceed R300 000 paid in respect of the death of any person where that death arises out of and in the course of the employment of that person, if that compensation was paid in addition to any compensation contemplated in subparagraph (i) paid in that respect;”;
- (e) by the substitution in subsection (1)(o) for the words preceding subparagraph (i) of the following words:

“any form of remuneration [as defined in paragraph 1 of the Fourth Schedule]—“;
- (f) by the substitution in subsection (1)(o) for the words in subparagraph (i) preceding item (aa) of the following words:

“as defined in paragraph 1 of the Fourth Schedule, derived by any person as an officer or crew member of a ship engaged—“;
- (g) by the substitution in subsection (1)(o) for the words in subparagraph (ii) preceding item (aa) of the following words:

“received by or accrued to any person during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, including an amount referred to in paragraph (i) of the definition of gross income, section 8B and section 8C in respect of services rendered outside the Republic by that person for or on behalf of any employer, if that person was outside the Republic—“
- (h) by the substitution in subsection (1)(o)(ii) for item (aa) of the following item:

- “(aa) for a period or periods exceeding 183 full days in aggregate during any 12 months period commencing or ending during **[that] any** year of assessment; and”;
- (i) by the deletion of the word “and” at the end of paragraph (B) of the proviso to subsection(1)(o)(ii);
- (j) by the addition to the proviso to subsection (1)(o)(ii) of the following paragraph:
- “(C) for the purposes of this subparagraph where remuneration is received by or accrues to any person during any year of assessment in respect of services rendered by that person in more than one year of assessment, the remuneration is deemed to have accrued evenly over the period that those services were rendered;”; and
- (k) by the deletion of subsection (1)(tA).

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 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 and section 11 of Act 8 of 2007

- 15. (1)** Section 11 of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in paragraph (e) of subparagraph (viii);

- (b) by the substitution for paragraph (gB) of the following paragraph:

“(gB) expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section) actually incurred by the taxpayer during the year of assessment in obtaining the grant of any **[payment]** patent or the restoration of any patent, or the extension of the **[terms]** term of any patent under the Patents Act, 1978 (Act No. 57 of 1978), or the registration of any design, or extension of the registration period of any design under the Designs Act, 1993 (Act No. 195 of 1993), or the registration of any trade mark, or the renewal of the registration of any trade mark under the Trade Marks Act, 1993 (Act No. 194 of 1993), or under similar laws of any other country, if such patent, design or trade mark is used by the taxpayer in the production of his or her income;”;

- (c) by the deletion in paragraph (gC) of paragraph (bb) of the proviso;

- (d) by the substitution in paragraph (o) for subparagraph (i) of the following subparagraph:

“(i) which qualified for a **[capital]** allowance or deduction in terms of section 11(e), 11B, 11D, 12B, 12C, 12DA, 12E, 14 or 14*bis*; and”;

- (e) by the substitution in paragraph (o) for the words after subparagraph (ii) that precede the proviso of the following words:

“exceeds the sum of the amount received or accrued from the alienation, loss or destruction, of that asset and the

DRAFT

amount of any such **[capital]** allowance or deduction allowed in respect of that asset in that year or any previous year of assessment or which was deemed to have been allowed in terms of section 12B(4B), **[or]** 12C(4A), 12D(3A), 12DA(4), 13(1A), 13bis(3A), 13ter(6A) or 13quin(3) or taken into account in terms of section 11(e)(ix), as the case may be”;

(f) by the deletion of the semi-colon at the end of paragraph (dd) of the proviso; and

(g) by the addition to paragraph (o) of the following proviso:

“: Provided further that no election may be made in terms of this paragraph by the taxpayer if the amount received or accrued from the alienation, loss or destruction of the asset was received or accrued from a person that is a connected person in relation to the taxpayer;”.

(2) Subsection (1)(b) shall be deemed to have come into effect on 2 November 2006 and shall apply in respect of any expenditure incurred on or after that date.

Amendment of section 11C of Act 58 of 1962, as inserted by section 18 of Act 32 of 2004

16. Section 11C of the Income Tax Act, 1962, is hereby amended by the deletion of subsections (4) and (5).

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 and section 3 of Act 9 of 2007

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

(a) by the addition to subsection (3)(b) of the word “or”;

(b) by the deletion of subsection (3)(c); and

- (c) by the deletion of subsection (5B).
- (2) Subsection (1)(c) shall be deemed to have come into operation on 2 November 2006.

Insertion of section 11E into Act 58 of 1962

18. The Income Tax Act, 1962, is hereby amended by the insertion after section 11D of the following section:

“11E. Deduction of certain expenditure incurred by sporting bodies.—(1) For the purpose of determining the taxable income derived by—

(i) any company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973); or

(ii) an association of persons that has been incorporated, formed or established in the Republic,

from carrying on any sporting activities falling under a code of sport administered and controlled by a national federation as contemplated in section 1 of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998), there shall be allowed as a deduction from the income of that company or association expenditure, not of a capital nature, incurred by that company or association on the development and promotion, directly by that company or association, of sporting activities contemplated in paragraph 9 of Part I of the Ninth Schedule falling under that code of sport.”.

Amendment of section 12B of Act 58 of 1962, as inserted by section 11 of Act 90 of 1988 and amended by section 13 of Act 101 of 1990, section 10 of Act 113 of 1993, section 6 of Act 140 of 1993, section 13 of Act 28 of 1997, section 17 of Act 59 of 2000, section 11 of Act 16 of 2004, section 7 of Act 9 of 2005 and section 19 of Act 31 of 2005

19. Section 12B of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (4A).

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 and section 14 of Act 8 of 2007

20. Section 12C of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (4).

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 and section 16 of Act 30 of 2002

21. (1) Section 12D of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in subsection (1) of the definition of **“effective date”**;
 - (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“There shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of any new and unused affected asset, or the improvement of any affected asset, which—“;
 - (c) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
“(a) is owned by the taxpayer and is brought into use for the first time by such taxpayer **[on or after the effective date]**; or”;
 - (d) by the deletion in subsection (2) of the proviso; and

- (e) by the substitution in subsection (4)(b) for subparagraphs (i) and (ii) of the following subparagraphs:
 - “(i) the actual cost **[of acquisition]** of the asset incurred by the taxpayer; or
 - (ii) the cost which **[a person]** the taxpayer would, if **[he]** the taxpayer had acquired or improved the said asset under a cash transaction concluded at arm’s length on the date on which the transaction for the acquisition or improvement of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition or improvement of the asset (including the direct cost of the installation or erection thereof).”.
- (2) Subsection (1) shall come into effect on 1 January 2008 and shall apply in respect of any asset brought into use on or after that date.

Insertion of section 12DA into Act 58 of 1962

- 22.** (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 12D of the following section:
- “12DA. Deduction in respect of rolling stock.—**(1) There shall be allowed to be deducted from the income of the taxpayer an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition or improvement of any rolling stock which is owned by the taxpayer, or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of an ‘instalment credit agreement’ as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and is used directly by the taxpayer wholly or mainly for the transportation of persons,

goods or things to the extent that such rolling stock is used in the production of his income.

(2) The allowance contemplated in subsection (1) shall, in respect of any one year of assessment, be 20 per cent of the cost incurred in respect of any rolling stock.

(3) For the purposes of this section the cost to a taxpayer of any rolling stock shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he had acquired or improved the rolling stock under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition or improvement of the rolling stock was in fact concluded, have incurred in respect of the direct cost of the acquisition or improvement of the rolling stock or, where the rolling stock has been acquired to replace rolling stock which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed rolling stock and has been excluded from the taxpayer's income in terms of section 8(4)(e), whether in the current or any previous year of assessment.

(4) Where any rolling stock in respect of which any deduction is claimed in terms of this section was during any previous year of assessment brought into use for the first time 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.

(5) No deduction shall be allowed under this section in respect of any rolling stock that has been disposed of by the taxpayer during any previous year of assessment.

(6) 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 affected asset shall not in the aggregate exceed the amount of such cost.”.

(2) Subsection (1) shall come into operation on 1 January 2008 and shall apply in respect of any rolling stock brought into use on or after that date.

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 and section 15 of Act 8 of 2007

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

(a) by the substitution in subsection (4)(a)(ii) for the words preceding item (aa) of the following words:

“none of the shareholders or members at any time during the year of assessment of the company, **[or]** close corporation or co-operative holds any shares or has any interest in the equity of any other company as defined in section 1, other than—”;

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

“(dd) 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; **[or]**”;

- (c) by the addition to item (ee) of subsection (4)(a)(ii) of the word “or”;
- (d) by the addition to subsection (4)(a)(ii) of the following item:
 - “(ff) 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-operatives Banks Act, 2007, that may provide, participate in or undertake only the following—
 - (A) in the case of a primary savings co-operative bank, banking services contemplated in section 14(1)(a) to (d) of that Act; and
 - (B) in the case of a primary savings and loans co-operative bank, banking services contemplated in section 14(2)(a) or (b) of that Act;”;
- (e) by the substitution in subsection (4)(a) for subparagraph (iii) of the following subparagraph:
 - “(iii) not more than 20 per cent of the total of all receipts and accruals (other than those of a capital nature) and all the capital gains of the company, **[or]** close corporation or co-operative consists collectively of investment income and income from the rendering of a personal service; and”;
- (f) by the substitution in subsection (4)(c) for subparagraph (ii) of the following subparagraph:
 - “(ii) any interest as contemplated in section 24J (other than any interest received by or accrued to any co-operative bank as contemplated in paragraph (a)(ii)(ff)), any amount contemplated in section 24K and any other income which, by the laws of the Republic administered by the Commissioner, is subject to the same treatment as income from money lent; and”.

Amendment of section 12F of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001

24. (1) Section 12F of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the heading of the following heading:
“**Deduction in respect of [certain aircraft hangars, aprons, runways and taxiways] airport assets and port assets.**—“;
 - (b) by the substitution in subsection (1) for the definition of “**affected asset**” of the following definition:
“”**[affected] airport asset**” means any new and unused aircraft hangar, apron, runway or taxiway on any designated airport, **[contracted for on or after the effective date, and the construction, erection or installation of which commenced on or after such date,]** and includes any earthworks or supporting structures forming part of such hangar, apron, runway or taxiway; and”;
 - (c) by the deletion in subsection (1) of the definition of “**effective date**”;
 - (d) by the addition to subsection (1) of the following definition:
”**port asset**” means any new and unused port terminal, breakwater, berth, quay wall or wharf, and includes any earthworks or supporting structures forming part of such terminal, breakwater, berth, quay wall or wharf.”;
 - (e) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“In respect of any **[affected] airport asset or port asset** which—“;
 - (f) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:
“(a) is brought into use for the first time by such taxpayer **[on or after the effective date]**; and

DRAFT

- (b) is used directly by such taxpayer in carrying on his sole business as airport operator or port operator.”;
- (g) by the substitution in subsection (2) for the words following paragraph (b) of the following words:
- “there shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition (including the construction, erection or installation) of such asset to the extent that such **[affected]** asset is used in the production of the taxpayer’s income.”;
- (h) by the substitution for subsection (3) of the following subsection:
- “(3) The allowance contemplated in subsection (2) in respect of an **[affected]** asset shall, in respect of any one year of assessment, be five per cent of the cost incurred in respect of that asset.”;
- (i) by the insertion after subsection (3) 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 year of assessment brought into use for the first time 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.”; and

- (j) by the substitution for subsections (5) and (6) of the following subsections:
 - “(5) No deduction shall be allowed under this section in respect of any **[affected]** asset which has been disposed of by the taxpayer during any previous year of assessment.
 - (6) 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 **[affected]** asset shall not in the aggregate exceed the amount of such cost.”.
- (2) Subsection (1) shall come into operation on 1 January 2008 and shall apply in respect of any asset that was contracted for on or after that date and the construction, erection or installation of which commenced on or after that date.

Amendment of section 12G of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 29 of Act 60 of 2001 and section 22 of Act 74 of 2002

- 25.** Section 12G of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “**cost of an industrial asset**” of the following paragraph:

“(a) so much of the expenditure as exceeds the fair market value of that asset;”.

Insertion of section 13quin into Act 58 of 1962

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

“13quin. Deduction in respect of commercial buildings. (1)

There shall be allowed to be deducted from the income of the taxpayer an allowance equal to five per cent of the cost to the taxpayer of any new and unused building owned by the taxpayer, or any improvement thereto, which is wholly or mainly used by the taxpayer during the year of assessment for purposes of producing income in the course of the taxpayer’s trade, other than the provision of residential accommodation.

(2) For the purposes of this section the cost to a taxpayer of any building shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he had acquired, erected or improved the building under a cash transaction concluded at arm’s length on the date on which the transaction for the acquisition, erection or improvement of the building was in fact concluded, have incurred in respect of the direct cost of the acquisition, erection or improvement of the building.

(3) Where any building in respect of which any deduction is claimed in terms of this section was during any previous year of assessment brought into use for the first time 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.

(4) No deduction shall be allowed under this section in respect of any building that has been disposed of by the taxpayer during any previous year of assessment.

(5) No deduction shall be allowed under this section in respect of the cost of a building if any of that cost has qualified or will qualify for deduction from the taxpayer's income by way of a deduction of expenditure or an allowance in respect of expenditure under any other section of this Act.

(6) 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 affected asset shall not in the aggregate exceed the amount of such cost."

(2) Subsection (1) shall come into operation on 1 January 2008 and shall apply in respect of any building that was contracted for on or after that date and the construction, erection or installation of which commenced on or after that date.

Amendment of section 15 of Act 58 of 1962, as amended by section 20 of Act 55 of 1966, section 18 of Act 129 of 1991, section 16 of Act 141 of 1992, section 24 of Act 31 of 2005 and section 15 of Act 20 of 2006

27. Section 15 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) an amount to be ascertained under the provisions of section 36, in lieu of the allowances in **[section]** sections 11(e), (f), (gA), (gC), **[and]** (o), 12DA and 13quin”.

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 and sections 2 and 17 of Act 8 of 2007

28. Section 18 of the Income Tax Act, 1962, is hereby amended—

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

“(i) medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopedist for professional services rendered or medicines supplied to the taxpayer, his or her spouse or his or her children, or any dependant of the taxpayer if the taxpayer was a member of a scheme or fund contemplated in paragraph (a) and that dependant was, at the time such amounts were paid, admitted as a dependant of the taxpayer in terms of that scheme or fund; or

(ii) nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency in respect of the services of such a nurse, midwife or nursing assistant) in respect of the illness or confinement of the taxpayer, his or her spouse or his or her children, or any dependant of the taxpayer contemplated in subparagraph (i); or

(iii) pharmacist for medicines supplied on the prescription of any person mentioned in subparagraph (i) for the taxpayer, his or her spouse or his or her children, or any dependant of the taxpayer contemplated in subparagraph (i);”;

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

DRAFT

- “(c) any amounts (other than amounts recoverable by the taxpayer or his or her spouse) which were paid by the taxpayer during the year of assessment in respect of expenditure incurred outside the Republic on services rendered or medicines supplied to the taxpayer or his or her spouse or children, or any dependant of the taxpayer contemplated in paragraph (b)(i), and which are substantially similar to the services and medicines in respect of which a deduction may be made under paragraph (b) of this subsection; and
- (d) any expenditure (other than expenditure recoverable by the taxpayer or his or her spouse) necessarily incurred and paid by the taxpayer in consequence of any physical disability suffered by the taxpayer, his or her spouse or any child, and any dependant of the taxpayer contemplated in paragraph (b)(i).”; and
- (c) by the substitution in subsection (2)(c) for the words in subparagraph (ii) following item (bb) of the following words:

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

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 and section 19 of Act 8 of 2007

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

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

“(ii) the balance of assessed loss shall be reduced by the amount or value of any benefit received by or accruing to a person resulting from a concession granted by or a compromise made with **[his creditors]** any creditor of such person whereby **[his liabilities]** any liability owed by such person to **[them have]** such creditor has been reduced or extinguished, **[provided]** to the extent that—

(aa) the amount advanced by such **[liabilities arose in the ordinary course of trade]** creditor was used, directly or indirectly, to fund expenditure or an asset; and

(bb) a deduction was allowed, in terms of section 11, in respect of such expenditure or asset;”; and

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

“(2) For the purposes of this section **“assessed loss”** means any amount by which the deductions admissible under **[sections]** section 11 **[to 19, inclusive,]** exceeded the income in respect of which they are so admissible.”.

Amendment of section 23A of Act 58 of 1962, as inserted by section 21 of Act 121 of 1984, amended by section 13 of Act 96 of 1985, section 15 of Act 65 of 1986, section 12 of Act 70 of 1989, section 22 of Act 101 of 1990, section 24 of Act 129 of 1991, section 34 of Act 30 of 1998 and section 32 of Act 60 of 2001

30. Section 23A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (b) of the definition of **“affected asset”** of the following paragraph:

“(b) any machinery, plant, implement, utensil, article, aircraft or ship which has been let and in respect of which the lessor is or was entitled to an allowance under section 11(e), 12B, **[or]** 12C or

12DA, whether in the current or a previous year of assessment, other than any such machinery, plant, implement, utensil, article, aircraft or ship let by him under an agreement of lease formally and finally signed by every party to the agreement before 19 November 1988.”.

Amendment of section 23D of Act 58 of 1962, as inserted by section 19 of Act 113 of 1993 and amended by section 10 of Act 140 of 1993, section 20 of Act 21 of 1995, section 29 of Act 31 of 2005 and section 21 of Act 8 of 2007

31. Section 23D of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of subsection (1);
- (b) by the substitution for subsection (2) of the following subsection:

“Where any depreciable asset which has been let or licensed by a taxpayer to a lessee or licensee was **[acquired]** disposed of **[by]** to the taxpayer, whether directly or indirectly **[from]** by—

 - (a) such lessee or licensee;
 - (b) a person who is a connected person in relation to such lessee or licensee;
 - (c) a sublessee or sublicensee in relation to such asset (being a person to whom the right of use of such asset has been granted by a lessee or licensee or by any person to whom the right of use of such asset has previously been granted);

or

 - (d) a person who is a connected person in relation to such sublessee or sublicensee,

[and a deduction was previously granted to such lessee, such connected person or such sublessee under section 11(e), 11B, 11D, 11(gA), 11(gC), 12B, 12C, 13, 14 or 14bis or section 12 prior to the repeal thereof by section 16 of the Income Tax Act, 1991 (Act No. 129 of 1991), or section 27(2)(d) prior to the

deletion thereof by section 28(b) of that Act, whether in the current or any previous year of assessment] any deduction or allowance claimed by [such lessor] the taxpayer in respect of such asset [in terms of section 11(e), 11B, 11D, (gA), (gC) or (o), 12C, 13, 14 or 14bis] shall be calculated on an amount not exceeding [the lesser of the cost or adjustable cost, as the case may be, of such asset to such lessee, such connected person or such sublessee or the market value thereof as determined on the date upon which the asset was acquired by the taxpayer] the amount determined in accordance with subsection (2A).”;

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

“(2A) The amount to be determined for purposes of subsection (2) shall be the sum of—

(a) the cost [or adjustable cost, as the case may be,] of such asset to such lessee or licensee, such connected person or such sublessee or sublicensee, less the sum of—

(i) all deductions which have been allowed to the lessee, licensee, connected person, sublessee or sublicensee in respect of that asset; and

(ii) all deductions that are deemed to have been allowed to the lessee, licensee, connected person, sublessee or sublicensee in respect of that asset in terms of sections 11(e)(ix), 12B(4B), 12C(4A), 12D(3A), 12DA(4), 13(1A), 13bis(3A), 13ter(6A) or 13quin(6) [or the market value thereof as determined on the date upon which the asset was acquired by the taxpayer];

(b) any amount contemplated in paragraph (n) of the definition of “gross income” in section 1 that is

required to be included in the income of the lessee, licensee, connected person, sublessee or sublicensee which arises as a result of the disposal; and

(c) the applicable percentage in paragraph 10 of the Eighth Schedule, of the capital gain of the lessor, licensee, connected person, sublessor or sublicensee that arises as a result of the disposal.”; and

(d) by the deletion of subsection (3).

Amendment of section 23G of Act 58 of 1962, as inserted by section 16 of Act 28 of 1997 and amended by section 30 of Act 31 of 2005

32. Section 23G of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) such lessor shall, notwithstanding the provisions of this Act, not be entitled to any deduction in terms of section 11(e), (f) or (gA), (gC), 12B, 12C, 12DA, **[or]** 13 or 13quin in respect of an asset which is the subject matter of such sale and leaseback arrangement.”.

Amendment of section 23H of Act 58 of 1962, as inserted by section 31 of Act 30 of 2000 and amended by section 29 of Act 59 of 2000 and section 34 of Act 60 of 2001

33. Section 23H of the Income Tax Act, 1962, is hereby amended—

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

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

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

“the amount of the expenditure in respect of which a deduction shall be allowable **[as a deduction]** in terms of such section in the said year and any subsequent year of assessment, shall be limited to, in the case of expenditure incurred in respect of—“;

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

(ii) services to be rendered, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such services are rendered bears to the total number of months during which such services will be rendered or where the period during which such services will be rendered is not determinable, such period during which the services are likely to be rendered; or”; and

(d) by the substitution for paragraph (aa) of the proviso of the following paragraph:

“(aa) where all the goods or services are to be supplied or rendered within six months after the end of the year of assessment during which the expenditure was incurred, or such person will have the full enjoyment of such benefit in respect of which the expenditure was incurred within such period, unless the expenditure is allowable as a deduction in terms of section 11D(1); or”.

Insertion of section 23I into Act 58 of 1962

34. The Income Tax Act, 1962, is hereby amended by the insertion after section 23H of the following section:

“23I. Prohibition of deductions in respect of certain intellectual property.—(1) For the purposes of this section—
“intellectual property” means any—

- (a) patent as defined in the Patents Act, 1978 (Act No. 57 of 1978);
 - (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) invention, patent, design, trade mark or copyright defined or described in any similar law to that in paragraph (a), (b), (c) or (d) of any country other than the Republic;
 - (f) property or right of a similar nature to that in paragraph (a), (b), (c), (d) or (e); and
 - (g) any knowledge connected to the use of such patent, design, trade mark, copyright, property or right; and
- “affected intellectual property”** means in relation to a taxpayer, intellectual property—
- (a) which was during the current or any preceding year of assessment wholly or partly the property of the taxpayer or a resident;
 - (b) which was wholly or partly discovered, devised, developed, created or produced during the current or any previous year of assessment by the taxpayer or by a resident who was, at the time the intellectual property, invention or work was discovered, devised, developed, created or produced, or at the time the expenditure contemplated in subsection (2) was incurred, a connected person, as defined in section 31, in relation to the taxpayer; or
 - (c) in respect of which the taxpayer, or a resident who was at the time the deductions contemplated in this paragraph were granted, or at the time the expenditure contemplated in

subsection (2) was incurred, a connected person, as defined in section 31, in relation to the taxpayer, was during the current or any previous year of assessment granted a deduction in terms of section 11(a), 11(gA), 11B or 11D in respect of expenditure incurred in discovering, devising, developing, creating or producing that intellectual property, invention or work.

(2) Notwithstanding any other provision of this Act to the contrary, no deduction shall be allowed in respect of any amount of expenditure incurred by the taxpayer—

(a) for the use, right of use or permission to use any affected intellectual property (or underlying invention or work); or

(b) in terms of any contractual obligation the value of which is determined directly or indirectly with reference to expenditure incurred for the use, right of use or permission to use any affected intellectual property (or underlying invention or work),

if that amount of expenditure does not constitute an amount of income received by or accrued to any other person.

(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 by the taxpayer if any person by whom that amount is received or to whom that amount accrues is subject to tax in terms of section 35 in respect of that amount.”.

Insertion of section 23J into Act 58 of 1962

35. The Income Tax Act, 1962, is hereby amended by the insertion after section 23I of the following section:

“23J. Limitation of allowances granted in respect of assets held by

certain persons.—(1) Where a depreciable asset held by a taxpayer was previously held by any other person who was at the time that other person held that depreciable asset, or at the time that the taxpayer claimed any deduction contemplated in this section in respect of that asset, a connected person in relation to the taxpayer, any capital deduction or allowance claimed by the taxpayer in respect of such asset shall be calculated on an amount not exceeding the sum of—

- (a) the cost of such asset to the other person less the sum of—
 - (i) all deductions which have been allowed to such other person in respect of that asset; and
 - (ii) all deductions that are deemed to have been allowed to that other person in respect of that asset in terms of section 11(e)(ix), 12B(4B), 12C(4A), 12D(3A), 12DA(4), 13(1A), 13bis(3A), 13ter(6A) or 13quin(6);
- (b) any amount contemplated in paragraph (n) of the definition of “gross income” in section 1 that is required to be included in the income of the other person which arises as a result of the disposal of that asset to the taxpayer by the other person; and
- (c) the applicable percentage in paragraph 10 of the Eighth Schedule, of the capital gain of the other person that arises as a result of any disposal contemplated in paragraph (b).”.

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 and section 32 of Act 30 of 2000

36. Section 24B of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (2) of the following subsections:

“(2A) Notwithstanding any provision of subsection (2) to the contrary, if—

- (a) a preference share is issued to a company in exchange for ordinary shares (or preference shares which are convertible into ordinary shares) issued by that company;
 - (b) the preference share is redeemed; and
 - (c) the period during which that preference share was held by that company is not less than five years,
- the expenditure incurred by that company in respect of the acquisition of the preference share is deemed for the purposes of this Act to be an amount equal to the market value determined on the date of acquisition or the amount received or accrued in respect of the redemption, whichever is the lesser.
- (2B) Where that preference share is disposed of by that company to any other company in terms of an “intra-group transaction” as defined in section 45, that company and that other company must, for so long as that company and that other company form part of the same group of companies, be deemed to be one and the same person for purposes of subsection (2A)(c).”

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 90 of 1988 and amended by section 21 of Act 113 of 1993, section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998, section 26 of Act 53 of 1999, section 31 of Act 59 of 2000, section 36 of Act 60 of 2001, section 27 of Act 74 of 2002, section 42 of Act 45 of 2003, section 23 of Act 32 of 2004, section 33 of Act 31 of 2005, section 26 of Act 9 of 2006, section 19 of Act 20 of 2006 and section 23 of Act 8 of 2007

- 37. Section 24I of the Income Tax Act, 1962, is hereby amended—**
- (a) by the substitution in subsection (10) for paragraph (c) of the following paragraph:**
 - “(c) any controlled foreign company in relation to a resident in respect of any exchange difference determined on the translation of an exchange item to which that controlled foreign company and any other controlled foreign company**

in relation to either that resident or to any other resident company and which forms part of the same group of companies as that resident are party; or”;

- (b) by the addition to subsection (10) of the following paragraph:

“(d) any forward exchange contract or foreign currency option contract entered into to hedge any exchange item contemplated in paragraph (a), (b) or (c)”;

- (c) by the deletion of the full stop at the end of subsection (10); and

- (d) by the addition to subsection (10) of the following proviso:

“: Provided further that any exchange difference in respect of any forward exchange contract or foreign currency option contract contemplated in paragraph (d) shall be deemed to arise when the relevant exchange item contemplated in paragraph (a), (b) or (c) is realised.”.

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 and section 33 of Act 30 of 2000

- 38. Section 28 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:

“[Subject to the provisions of this Act] In determining the taxable income derived by any [taxpayer] person from the carrying on [in the Republic] of short-term insurance business as defined in the Short-term Insurance Act, 1998 (Act No. 53 of 1998) [(whether on mutual principles or otherwise) shall be determined by charging] there will be deducted from the sum of all premiums (including [premiums on] reinsurance premiums) received by or

accrued to **[such taxpayer]** that person in respect of the insurance or reinsurance of any risk[,] and other amounts derived from the carrying on of **[such business of insurance in the Republic]** that business, the sum of—“;

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

“(b) the actual amount of the liability incurred in respect of any claims during the year of assessment in respect of that business **[of insurance]**, less the value of any claims recovered or recoverable under any contract of insurance, reinsurance, guarantee, security or indemnity; and”;

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

- (d) by the insertion in subsection (2) after paragraph (c) of the following paragraph:

“(cA) the sum of the liabilities contemplated in section 32(1)(a) 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.”;

- (e) by the deletion in subsection (2) of paragraphs (d), (e) and (f);

- (f) by the deletion of subsections (3) and (4); and

- (g) by the addition of the following subsections:

“(5) The sum of all amounts deducted from the sum of all premiums and other amounts received by or accrued to a person in respect of any year of assessment in terms of subsection (2)(cA) shall be included in the income of that person in the following year of assessment.

(6) In determining the taxable income derived by any person from the carrying on of short-term insurance business as contemplated in subsection (2)—

- (a) no deduction shall be allowed in terms of section 11(a) in respect of any liability incurred in respect of reinsurance premiums and any claims in respect of that business; and
- (b) the provision of section 23(e) shall not apply in respect of the liabilities contemplated in subsection (2)(cA)."

Amendment of section 30 of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001, section 39 of Act 60 of 2001, section 30 of Act 74 of 2002, section 16 of Act 16 of 2004, section 24 of Act 20 of 2006 and section 25 of Act 8 of 2007

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

- (a) by the substitution in subsection (3)(b)(iii) for items (bb) and (cc) of the following items:
 - “(bb) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity similar to the public benefit activity carried on by that public benefit organisation in terms of its sole or principal object; and
 - (cc) any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b), to be used for activities that are similar to the activities carried on by that organisation;”;
- (b) by the deletion in subsection (3)(b) of subparagraph (iiiA);
- (c) by the deletion of the word “and” at the end of subsection (3)(f); and
- (d) by the insertion in subsection (3) after paragraph (f) of the following paragraph:

“(g) in the case of a branch of a public benefit organisation contemplated in paragraph (a)(ii) of the definition of “public benefit organisation” in subsection (1), a person responsible in a fiduciary capacity for the funds and assets of such organisation furnishes the Commissioner with a written undertaking that such organisation will, if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding any such termination are derived from a source within the Republic, upon termination of its activities in the Republic transfer the funds and assets in accordance with subsection (3)(b)(iii); and”.

Amendment of section 31 of Act 58 of 1962, as amended section 23 of Act 21 of 1995, by 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 and section 46 of Act 45 of 2003

40. Section 31 of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion in subsection (1) before the definition of **“goods”** of the following definition:

“**connected person**” means a connected person as defined in section 1, provided that the expression “and no shareholder holds the majority voting rights of such company” in paragraph (d)(v) of that definition must be disregarded;”; and

(b) by the deletion in subsection (1) of the definition of **“international agreement”**; and

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

“(2) Where any supply of goods or services has been effected—

(a) between—

(i) (aa) a resident; and

DRAFT

- (bb) any other person who is not a resident;
or
 - (ii) (aa) a person who is not a resident; and
(bb) a permanent establishment in the
Republic of any other person who is not
a resident, or
 - (iii) (aa) a person who is a resident; and
(bb) a permanent establishment outside the
Republic of any other person who is a
resident;
 - (b) between persons who are connected persons in
relation to one another; and
 - (c) at a price which is either—
 - (i) less than the price which such goods or
services might have been expected to fetch if
the parties to the transaction had been
independent persons dealing at arm's length
(such price being the arm's length price); or
 - (ii) greater than the arm's length price.
- then, for the purposes of this Act in relation to either the
acquiror or supplier, the Commissioner may, in the
determination of the taxable income of either the acquiror or
supplier, adjust the consideration in respect of the
transaction to reflect an arm's length price for the goods or
services.”.

Amendment of section 35 of Act 58 of 1962, as amended by section 20 of Act 90 of 1962, section 20 of Act 65 of 1973, section 27 of Act 85 of 1974, section 24 of Act 94 of 1983, section 21 of Act 21 of 1994, section 39 of Act 59 of 2000, section 32 of Act 74 of 2002, section 48 of Act 45 of 2003 and section 4 of Act 32 of 2005

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

- (a) by the substitution in the proviso to subsection (1) for paragraph (i) of the following paragraph:
 - “(i) **[company which]** person who is not a resident, if such amount is **[derived by such company from any trade carried on through a branch or agency]** effectively connected with a permanent establishment of that person in the Republic **[and such amount is subject to tax in the Republic];**” and
- (b) by the deletion in the proviso to subsection (1) of paragraph (ii).

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 25 of Act 94 of 1983, section 20 of Act 104 of 1980, 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 and section 26 of Act 20 of 2006

42. Section 36 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (11)(c) for the words preceding subparagraph (i) of the following words:

“in the case of any post-1973 gold mine, any other deep level gold mine or any post-1990 gold mine, **[a capital]** an allowance calculated at the rate of 10 per cent per annum in the case of a post-1973 gold mine or any other deep level gold mine or 12 per cent per annum in the case of any post-1990 gold mine on the amount of the aggregate of—”; and
- (b) by the substitution in subsection (11)(c) for subparagraph (A) of paragraph (aa) of the following subparagraph:

“(A) calculating the **[capital]** allowance provided for in section 25(2) of the Mining Rights Act, 1967;”.

Amendment of section 37A of Act 58 of 1962, as inserted by section 27 of Act 89 of 1969, amended by section 18 of Act 52 of 1970, section 22 of Act 88 of 1971, section 30 of Act 85 of 1974, section 26 of Act 94 of 1983, section 27 of Act 20 of 2006 and section 28 of Act 8 of 2007

43. Section 37A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) If the company or trust contemplated in this section contravenes any provision of subsection (1)(a) during any year of assessment by distributing property from that company or trust for a purpose other than—

- (a) rehabilitation upon premature closure;
- (b) decommissioning and final closure;
- (c) post closure coverage of any latent or residual environmental impacts; or

(d) transfer to another company, trust, or account established for the purposes contemplated in subsection (1)(a),
an amount equal to the market value of property that was so distributed must for purposes of this Act be deemed to be an amount of taxable income which accrued to such company or trust during the year of assessment in which that distribution occurred.”.

Amendment of section 37B of Act 58 of 1962, as inserted by section 12 of Act 101 of 1978 and section 22 of Act 21 of 1994

44. The Income Tax Act, 1962, is hereby amended by the insertion after section 37A of the following section:

“37B. Deductions in respect of environmental expenditure.—(1) For purposes of this section—

“environmental production asset” means any new and unused air, water, and solid waste treatment and recycling facility or pollution control and monitoring equipment, or any improvement thereto, if the facility or equipment is—

- (a) of a permanent nature;
- (b) ancillary to any process of manufacture in the course of a taxpayer's trade or any other process which, in the opinion of the Commissioner, is of a similar nature; and
- (c) required by any law of the Republic for purposes of complying with measures that protect the environment; and

“environmental post-production asset” means any new and unused air, water, and solid waste disposal site, dam, dump, reservoir, or other structure of a similar nature, or any improvement thereto, if the structure is—

- (a) of a permanent nature;
- (b) ancillary to any process of manufacture in the course of a taxpayer's trade or any other process which, in the opinion of the Commissioner, is of a similar nature; and
- (c) required by any law of the Republic for purposes of complying with measures that protect the environment.

(2) There shall be allowed to be deducted from the income of the taxpayer, in respect of any year of assessment, an allowance equal to—

- (a) in the case of an environmental production asset, 40 per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and 20 per cent in each succeeding year of assessment; and
- (b) in the case of an environmental post-production asset, five per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by the taxpayer, and five percent in each succeeding year of assessment,

notwithstanding that such post-production asset is not used for purposes of the taxpayer's trade.

- (3) For the purposes of this section, the cost to a taxpayer of any environmental production asset or post-production asset 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, erected or improved such asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition, erection or improvement of such asset was in fact concluded, have incurred in respect of the direct cost of the acquisition, erection or improvement of such asset.
- (4) Where any environmental production asset or post-production asset in respect of which any deduction is claimed in terms of this section was during any previous year of assessment brought into use for the first time 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.
- (5) No deduction shall be allowed under this section in respect of any environmental production asset or post-production asset that has been disposed of by the taxpayer during any previous year of assessment.
- (6) For purposes of determining the taxable income derived during any year of assessment by a taxpayer, there shall be allowed as a deduction from the income so derived, any expenditure or losses from decommissioning, remediation or restoration that—
- (a) are incurred for purposes of complying with any law of the Republic that provides for the protection of the environment;

- (b) would have been otherwise allowed as a deduction in terms of section 11 (other than section 11(x)) had those expenditure or losses been incurred for purposes of any trade; and
- (c) are not otherwise allowed as a deduction.
- (7) Any assessed loss of a taxpayer as defined in section 20(2) that is attributable to any expenditure or loss contemplated in subsection (6) may be set off against income derived by that taxpayer during a year of assessment notwithstanding the fact that the taxpayer is not carrying on any trade during that year.
- (8) No deduction shall be allowed under section 12C or 13 in respect of the cost of an environmental production asset or an environmental post-production asset.
- (9) The deductions which may be allowed in terms of this section in respect of any asset shall not in the aggregate exceed the cost to the taxpayer of such asset.”.

Repeal of section 37C of Act 58 of 1962, as inserted by section 3 of Act 30 of 1984

45. Section 37C of the Income Tax Act, 1962, is hereby repealed.

Repeal of section 37D of Act 58 of 1962, as inserted by section 27 of Act 101 of 1990

46. Section 37D of the Income Tax Act, 1962, is hereby repealed.

Amendment of the heading to Part III 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

47. The Income Tax Act, 1962, is hereby amended by the substitution for the heading to Part III of the following heading:

“Special rules relating to [company formations] asset-for-share transactions, [share-for-share transactions,] amalgamation transactions,

intra-group [transaction] transactions, unbundling transactions and liquidation distributions”.

Amendment of section 41 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 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 and section 32 of Act 8 of 2007

- 48.** (1) Section 41 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the proviso to the definition of **“base cost”** of the following proviso:

“: Provided that where the base cost of an asset as at a specific date is to be determined as contemplated in paragraph 26 or 27 of the Eighth Schedule, the amount thereof must, for purposes of section 42[, 43] or 44, be determined as if that asset had been disposed of on that date for **[proceeds]** an amount received or accrued equal to the market value of that asset as at that date;”;
 - (b) by the deletion in subsection (1) of the definition of **“domestic financial instrument holding company”**;
 - (c) by the insertion in subsection (1) after the definition of **“foreign financial instrument holding company”** of the following definition:

“group of companies” means a group of companies as defined in section 1: Provided that for the purposes of this definition—

 - (i) any company that would, but for the provisions of this definition, form part of a group of companies shall not form part of that group of companies if—
 - (aa) that company is a company contemplated in paragraph (c), (d) or (e)(i) of the definition of “company”:

DRAFT

- (bb) that company is a company contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973);
 - (cc) that company is a company contemplated in paragraph (b) or (e)(ii) of the definition of “company” in section 1 and does not have its place of effective management in the Republic;
 - (dd) all the receipts and accruals of that company are exempt from tax in terms of section 10; or
 - (ee) that company is a public benefit organisation or recreational club that has been approved by the Commissioner in terms of section 30 or 30A; and
 - (ii) any share that would, but for the provisions of this definition, be an equity share shall be deemed not to be an equity share if—
 - (aa) that share is held as trading stock; or
 - (bb) any person has an option to sell, is under a contractual obligation to sell, has made (and not closed) a short sale of that share or is the grantor of an option to buy that share;”;
- (d) by the substitution in subsection (1) for paragraph (b) of the definition of “trading stock” of the following paragraph:
 - “(b) for purposes of sections 42(7)(b)(i), **[43(6)(b),]** 44(5)(b)(i), 45(5)(b)(i) and 47(4)(b)(i), means trading stock that is neither of the same kind nor of the same or equivalent quality as trading stock regularly and continuously disposed of by that person;”;
- (e) by the substitution for subsection (2) of the following subsection:

- “(2) The provisions of this Part must, subject to subsection ~~[(5)] (3)~~, apply in respect of **[a company formation]** an asset-for-share transaction, **[a share-for-share transaction,]** an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, **[43,]** 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections 24B(2) and (3) and 103 and Part IIA of Chapter III.”;
- (f) “(3) The provisions of this Part shall not apply in respect of any transaction in terms of which any asset is disposed of to an insurer as defined in section 29A if the asset is to be held in the insurer’s untaxed policyholder fund as contemplated in subsection (4)(a) of that section.”;
- (g) by the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph:
- “(ii) that company has disposed of all assets and has settled all liabilities (other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the **[administration]** liquidation or winding-up); and”;
- (h) by the deletion of subsection (5);
- (i) by the substitution in subsection (8) for paragraph (a) of the following paragraph:
- “(a) This subsection applies where a capital distribution in respect of any share as contemplated in paragraph 76(1)(b) of the Eighth Schedule has been received by or has accrued to any person, and that person has

DRAFT

disposed of that share, after that receipt or accrual, in terms of a disposal or distribution in respect of which the provisions of section 42, **[43,]** 44, 45 or 47 apply.”; and

- (j) by the substitution in subsection (8)(b) for subparagraph (i) of the following subparagraph:
 - “(i) the person to whom that share is so disposed of or distributed **[(other than an acquiring company contemplated in section 43(2)(b))]** in respect of that share; and”.
- (2) Subject to subsection (3), subsection (1) shall come into operation on 1 January 2008 and shall apply in respect of any transaction entered into on or after that date.
- (3) Subsection (1)(c) shall come into operation on 1 July 2008.

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 and section and section 33 of Act 8 of 2007

- 49.** (1) Section 42 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“For the purposes of this section—
“[company formation] asset-for-share transaction”
means any transaction—“;

DRAFT

- (b) by the substitution for the full stop at the end of subsection (1) of a semi-colon;
- (c) by the addition to subsection (1) of the following definitions:
“**equity share**” means an equity share as defined in section 44; and
“**qualifying interest**” of any person means—
 - (a) a qualifying interest as defined in section 41; or
 - (b) any equity share held by that person in a company if that person and that company form part of the same group of companies.”;
- (d) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“Subject to subsections (4) and (8), where a person disposes of an asset to a company in terms of [**a company formation transaction**] an asset-for-share transaction—“;
- (e) by the substitution in subsection (2)(a) for subparagraph (i) of the following subparagraph:
“(i) disposed of that asset for an amount equal to the amount contemplated in subparagraphs (i) or (ii) of paragraph (a) of the definition of [**“company formation transaction”**] “asset-for-share transaction”, as the case may be; and”;
- (f) by the substitution in subsection (2)(a) for the words in subparagraph (ii) 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 a share is a “qualifying share” as defined in section 9C) and for a cost equal to—“;
- (g) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

- “(c) any valuation of that asset effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule must be deemed to have been effected in respect of the equity shares in that company acquired in terms of that **[company formation transaction]** asset-for-share transaction.”;
- (h) by the substitution in subsection (3) for the words in paragraph (a) preceding subparagraph (i) of the following words:
- “an asset that constitutes an allowance asset in that person’s hands to a company as part of **[a company formation transaction]** an asset-for-share transaction and that company acquires that asset as an allowance asset—”;
- (i) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
- “(b) an asset that constitutes an allowance asset in that person’s hands to a company as part of **[a company formation transaction]** an asset-for-share transaction and that company acquires that asset as trading stock, no allowance allowed to that person in respect of that asset must be recovered or recouped by that person or included in that person’s income for the year of that transfer; or”;
- (j) by the substitution in subsection (3) for the words in paragraph (c) preceding subparagraph (i) of the following words:
- “a contract to a company as part of a disposal of a business as a going concern in terms of **[a company formation transaction]** an asset-for-share transaction and that contract imposes an obligation on that person in respect of which an allowance in terms of section 24C was allowable to

that person for the year preceding that in which that contract is transferred or would have been allowable to that person for the year of that transfer had that contract not been so transferred—“;

- (k) 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 **[a company formation]** an asset-for-share transaction; and”;

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

“the disposal of that asset to that company contemplated in paragraph (a) must, to the extent that any equity shares are issued by the company to that person, be deemed to be a disposal in terms of **[a company formation]** an asset-for-share transaction for purposes of this section, and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b), be deemed to be a disposal of part of that asset other than in terms of **[a company formation]** an asset-for-share transaction, in which case the amount to be determined in respect of—“;

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

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

- (n) by the substitution in subsection (5) for paragraph (a) of the following paragraph:
 - “(a) acquired any equity share in a company in terms of **[a company formation]** an asset-for-share transaction; and”;
- (o) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

“Where a person disposed of any asset in terms of **[a company formation]** an asset-for-share transaction and that person ceases to hold a qualifying interest in that company, as contemplated in paragraph (b) of the definition of “qualifying interest”, within a period of 18 months after the date of the disposal of that asset (whether or not by way of the disposal of any shares in that company), or ceases within that period to be engaged on a full-time basis in the business of the company of rendering the service contemplated in subsection (1)(a)(ii)(bb), that person must for purposes of subsection (5), section 22 or the Eighth Schedule be deemed to have—”;
- (p) by the substitution in subsection (6) for paragraph (a) of the following paragraph:
 - “(a) disposed of all the equity shares acquired in terms of that **[company formation]** asset-for-share transaction that are still held immediately after that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and”;
- (q) the substitution in subsection (7) for the words preceding paragraph (a) of the following words:

“Where a company disposes of an asset within a period of 18 months after acquiring that asset in terms of **[a company formation]** an asset-for-share transaction, and—“;

- (r) by the substitution in subsection (8) for the words in paragraph (a) preceding subparagraph (ii) of the following words:

“any asset which secures any debt to a company in terms of **[a company formation]** an asset-for-share transaction and that debt was incurred by that person—“;

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

“(b) any business undertaking as a going concern to a company in terms of **[a company formation]** an asset-for-share transaction and that disposal includes any amount of debt that is attributable to, and arose in the normal course of that business undertaking,”;

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

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

- (u) by the deletion of subsection (9).

- (2) Subsection (1) shall come into operation on 1 January 2008 and shall apply in respect of any transaction entered into on or after that date.

Repeal of section 43 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 51 of Act 45 of 2003, section 34 of Act 32 of 2004, section 39 of Act 31 of 2005 and section 30 of Act 20 of 2006

50. (1) Section 43 of the Income Tax Act, 1962, is hereby repealed.

- (2) Subsection (1) shall come into operation on 1 January 2008 and shall apply in respect of any transaction entered into on or after that date.

Amendment of section 44 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001, amended by section 34 of Act 70 of 2002, section 52 of Act 45 of 2003, section 40 of Act 31 of 2005 and section 34 of Act 8 of 2007

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

- (a) by the deletion of subsection (12); and
(b) by the substitution for subsection (14) of the following subsection:

“(14) The provisions of this section do not apply in respect of any transaction if—

(a) the resultant company holds at least 70 per cent of the equity shares in the amalgamated company immediately before the amalgamation, conversion or merger;

(b) all the receipts and accruals of the resultant company are exempt from tax in terms of section 10(1)(cA), (cM), (d) and (t); or

(c) the resultant company is a public benefit organisation or recreational club contemplated in section 30 or 30A which has been approved by the Commissioner; or.”.

- (2) Subsection (1) shall come into operation on 1 January 2008 and shall apply in respect of any transaction entered into on or after that date.

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 and section 41 of Act 8 of 2007

- 52.** (1) Section 45 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (4)(b) for the words preceding subparagraph (i) of the following words:
- “Where a transferee company which has acquired an asset as contemplated in paragraph (a) ceases within a period of six years after that acquisition to form part of any group of companies in relation to the transferor company contemplated in paragraph (a)(i) at any time before the disposal by the transferee company of that asset, that transferee company must—“;
- (b) by the substitution in subsection (4)(b) for subparagraphs (i) and (ii) of the following subparagraphs:
- “(i) except as provided for in subparagraph (ii), be deemed to have disposed of that asset on the day immediately before the date on which the transferee company ceased to form part of that group of companies to a person that was a connected person in relation to the transferee company immediately

before the disposal for an amount equal to the market value of the asset as at the date of acquisition of that asset by that transferee company as contemplated in paragraph (a) and as having immediately reacquired that asset for an amount equal to the market value of that asset as at that date; **[and]**

- (ii) for purposes of determining a deduction or allowance to which that transferee company may be entitled **[as contemplated in the definition of “allowance asset” in section 41]** in respect of that asset, be deemed as having immediately reacquired that asset for an amount equal to the sum of—

(aa) the cost of that asset to the transferee company as at the date of disposal of that asset as contemplated in paragraph (a), less the sum of—

(A) all deductions which have been allowed to the transferee company in respect of that asset in terms of section 11; and

(B) all deductions that are deemed to have been allowed to the transferee company in respect of that asset in terms of sections 11(e)(ix), 12B(4B), 12C(4A), 12D(3A), 12DA(4), 13(1A), 13bis(3A), 13ter(6A) or 13quin(6);

(bb) any amount contemplated in paragraph (n) of the definition of “gross income” in section 1 that is required to be included in the income of the transferee company which arises as a result of that disposal; and

- (cc) the applicable percentage in paragraph 10 of the Eighth Schedule, of the capital gain of the transferee company that arises as a result of that disposal**[equal to the lower of the market value of that asset as at that date or the base cost of that asset immediately prior to that disposal]; and**
 - (iii) not be allowed the deduction contemplated in section 11(o) in respect of the disposal contemplated in paragraph (i);”;
 - (c) by the substitution in subsection (6) for the words preceding paragraph (a) of the following subsection:
 - “(6) No election may be made in terms of paragraph (c) of the definition of “intra-group transaction” in subsection (1) in respect of the disposal of any asset where—
 - (a) the transaction in terms of which the asset was disposed of would have constituted an asset-for-share transaction as defined in section 42 had the transferor company and the transferee company jointly elected that that section applies in respect of the transaction;
 - (b) the transaction in terms of which the asset was disposed of constitutes an unbundling transaction as defined in section 46; or
 - (c) the distribution in terms of which the asset was disposed of would have constituted a liquidation distribution as defined in section 47 had the transferor company and the transferee company jointly elected that that section applies in respect of the asset so disposed of.”;
- and

- (d) by the deletion in subsection (6) of paragraphs (a) and (b).
- (2) Subsection (1) shall come into operation on 1 January 2008 and shall apply in respect of any transaction entered into 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 23 of Act 30 of 2002, 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 and section 36 of Act 8 of 2007

53. (1) Section 46 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 - “(a) where that unbundling company is a listed company and the shares of the unbundled company are listed or will be listed within 12 months after that disposal, to the shareholders of that unbundling company;”;
 - (b) by the substitution for the full stop at the end of subsection (1) of a semi-colon;
 - (c) by the addition to subsection (1) of the following definition:
 - “**equity share**” means an equity share as defined in section 44.”;
 - (d) by the substitution in subsection (3) for subparagraph (ii) of the following subparagraph:
 - “(ii) the unbundled shares must, other than for purposes of determining whether a share is a “qualifying share” as defined in section 9C, be deemed to have been acquired on the same date as the unbundling shares;”;
 - (e) by the deletion of subsection (7)(a).

- (2) Subsection (1) shall come into operation on 1 January 2008 and shall apply in respect of any transaction entered into 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 and section 37 of Act 8 of 2007

54. (1) Section 47 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:
 - “(ii) on the date of that disposal **[holds at least 70 per cent of the equity shares and voting rights of that liquidating company]** forms part of the same group of companies as the liquidating company; and”;
 - (b) by the addition to subsection (6)(a) of the word “or”; and
 - (c) by the deletion in subsection (6) of paragraph (b).
- (2) Subsection (1) shall come into operation on 1 January 2008 and shall apply in respect of any distribution made on or after that date.

Amendment of section 64B of Act 58 of 1962, as added 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 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001, section 25 of Act 30 of 2002, section 36 of Act 74 of 2002, section 58 of Act 45 of 2003, section 40 of Act 32 of 2004, section 47 of Act 31 of 2005, section 32 of Act 20 of 2006 and section 39 of Act 8 of 2007

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

- (a) by the substitution in subsection (1) for subparagraph (i) of paragraph (aA) of the definition of “**dividend cycle**” of the following subparagraph:
 - “(i) **[the day falling six months prior to the declaration of the said dividend]** 1 July 1993; and”;
- (b) by the substitution in subsection (1) for the words in paragraph (aA) of the definition of “**dividend cycle**” following subparagraph (ii) of the following words:

“and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section **[64C(2)]** 64C(6); and”;
- (c) by the substitution in subsection (1) for paragraph (b) of the definition of “**dividend cycle**” of the following paragraph:

“(b) in relation to any subsequent dividend declared by that company, the period commencing immediately after the previous dividend cycle of the company and ending on the date on which such dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section **[64C(2).]** 64C(6); and”;
- (d) by the insertion in subsection (1) after the definition of “**dividend cycle**” of the following definition:

“group of companies” means “group of companies” as defined in section 41.”;
- (e) by the substitution for subsection (2) of the following subsection:

“(2) There shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the secondary tax on companies, which is calculated at the rate of **[12,5]** 10 per cent of the net amount, as

DRAFT

determined in terms of subsection (3), of any dividend declared **[on or after 14 March 1996]** by any company which is a resident.”;

- (f) by the substitution in subsection (3) of the words in the proviso preceding paragraph (a) of the following words:

“: Provided that~~[-]~~”;

- (g) by the substitution in subsection (3) for paragraph (a) of the proviso of the following words:

“(a) where the sum of such dividends accrued exceeds such dividend declared, the excess shall be carried forward and be deemed to be a dividend which accrued to the company during the succeeding dividend cycle of the company~~[-]~~ **and]**”;

- (h) by the deletion in subsection (3) of paragraph (b) of the proviso:

- (i) by the deletion in subsection (5)(c) of subparagraphs (i) and (ii);

- (j) by the substitution in subsection (5)(f) for the words preceding subparagraph (i) of the following words:

“any dividend declared by a controlled group company as contemplated in the definition of “group of companies” which accrues to a shareholder (as defined in Part III) of that company if—“;

- (k) by the substitution in subsection (5)(f) for subparagraph (i) of the following subparagraph:

“(i) that shareholder is a company forming part of the same group of companies as the company declaring the dividend and that dividend is included in the profits available for distribution of that shareholder;”;

- (l) by the deletion in subsection (5)(f) of subparagraph (iii); and

- (m) by the deletion in subsection (5)(f) of the proviso and paragraph (aa) of the further proviso.
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2007 and shall apply in respect of any dividend declared on or after that date.

Amendment of section 64C of Act 58 of 1962, as added by section 20 of Act 95 of 1967; amended by section 15 of Act 76 of 1968, section 36 of Act 89 of 1969, section 21 of Act 52 of 1970, section 26 of Act 88 of 1971, section 20 of Act 90 of 1972, section 42 of Act 85 of 1974, section 22 of Act 113 of 1977; section 14 of Act 104 of 1979, section 22 of Act 104 of 1980, section 24 of Act 96 of 1981, section 21 of Act 91 of 1982, section 34 of Act 94 of 1983, section 29 of Act 121 of 1984, section 18 of Act 65 of 1986, section 8 of Act 108 of 1996, section 22 of Act 85 of 1987, section 33 of Act 90 of 1988, section 34 of Act 113 of 1993, section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000, section 37 of Act 74 of 2002, section 59 of Act 45 of 2003, section 41 of Act 32 of 2004, section 48 of Act 31 of 2005

- 56. (1) Section 64C(4)(k)(ii) of the Income Tax Act, 1962, is hereby deleted.
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 2007 and shall apply in respect of any amount distributed on or after that date.

Amendment of paragraph 2 of the Second Schedule to Act 58 of 1962, as amended by section 42 of Act 28 of 1997, section 48 of Act 30 of 1998 and section and section 47 of Act 8 of 2007

- 57. Paragraph 2 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—
 - (a) by the deletion of the word “and” at the end of subparagraph (a);
and

- (b) by the addition of the following subparagraphs:
- “(c) the aggregate of any amounts paid on behalf of such person during that year by way of lump sum benefits in terms of any maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998);
 - (d) the aggregate of any amounts paid on behalf of such person during that year by way of lump sum benefits, if the amounts are paid in terms of any order of any court in the Republic towards any amount owing by that person under security of a mortgage bond given by him in respect of his property; and
 - (e) the aggregate of any amounts paid on behalf of such person in terms of any divorce order of any court in the Republic.”.

Amendment of paragraph 1 of the 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 and section 54 of Act 8 of 2007

- 58.** (1) Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—
- (a) by the addition to paragraph (b) of the definition of **“personal service company”** of the word “or”; and
 - (b) by the addition to paragraph (b) of the definition of **“personal service trust”** of the word “or”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 March 2007.

Amendment of paragraph 11A of the Fourth Schedule to Act 58 of 1962, as inserted by section 45 of Act 89 of 1969 and by section 47 of Act 28 of 1997, section 19 of Act 34 of 2004 and amended by section 51 of Act 31 of 2005

59. Paragraph 11A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“the amount of that gain must for the purposes of this Schedule be deemed to be an amount of remuneration which is payable to that employee by the **[employer] person** by whom that right was granted or from whom that equity instrument or qualifying equity share was acquired, as the case may be.”;

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

“(2) Employees’ tax in respect of the amount of remuneration contemplated in subparagraph (1) must, unless the Commissioner has granted authority to the contrary, be deducted or withheld by that **[employer] person** from any consideration paid or payable by him or her to that employee in respect of the cession, or release of that right or the disposal of that equity instrument or qualifying equity share, as the case may be, or from any cash remuneration paid or payable by that **[employer] person** to that employee after that right has to the knowledge of that **[employer] person** been exercised, ceded or released or that equity instrument has to the knowledge of that **[employer] person** vested or that qualifying equity share has to the knowledge of that **[employer] person** been disposed of[.]”;

- (c) by the insertion of the following proviso to subparagraph (2):
“: Provided that where that person—

- (i) is an “associated institution”, as defined in paragraph 1 of the Seventh schedule, in relation to any employer who pays or is liable to pay to that employee any amount by way of remuneration during the year of assessment during which the gain contemplated in subparagraph (1) arises; and
- (ii) is or will be unable, for the reason described in subparagraph (5), to deduct or withhold the amount of employees’ tax or part of it in respect of that gain during that year of assessment,

that person and that employer must deduct or withhold from the remuneration payable by them to that employee during that year of assessment, an amount equal to the employees’ tax payable in respect of that gain and shall be jointly and severally liable for that employees’ tax.”; and
- (d) by the substitution for subparagraphs (4), (5) and (6) of the following subparagraphs:

 - “(4) Before deducting or withholding employees’ tax under subparagraph (2) in respect of remuneration contemplated in subparagraph (1)(a) or (c), that person and [the] that employer must ascertain from the Commissioner the amount to be so deducted or withheld.
 - (5) If that person and that employer **[is] are**, by reason of the fact that the amount to be deducted or withheld by way of employees’ tax exceeds the amount from which the deduction or withholding is to be made, unable to deduct or withhold the full amount of employees’ tax during the year of assessment during which the gain arises, **[he or she] they** must immediately notify the Commissioner of the fact.
 - (6) Where an employee has under any transaction to which neither [the] that person nor [the] that employer is **[not]** a party made any gain or an employee has disposed of any

qualifying equity share as contemplated in subparagraph (1), that employee must immediately inform **[the]** that person and that employee thereof and of the amount of that gain.”.

Amendment of paragraph 9 of the Seventh Schedule to Act 58 of 1962, as amended by section 31 of Act 96 of 1985, section 34 of Act 65 of 1986, section 29 of Act 85 of 1987, section 59 of Act 101 of 1990, section 53 of Act 113 of 1993, section 33 of Act 21 of 1994, section 51 of Act 28 of 1997, section 55 of Act 30 of 1998, section 55 of Act 30 of 2000, section 57 of Act 31 of 2005 and section 29 of Act 9 of 2006

60. Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended

(a) by the substitution for the words preceding the proviso in subparagraph (7) of the following words:

“(7) No rental value shall be placed under this paragraph on any accommodation away from an employee’s usual place of residence in the Republic provided by his employer while such employee is absent from his usual place of residence in the Republic for the purposes of performing the duties of his or her employment”; and

(b) by the insertion after subparagraph (7) of the following subparagraph:

“(7A) No rental value shall be placed under this paragraph on any accommodation provided by an employer to an employee away from such employee’s usual place of residence which is outside the Republic, while such employee is stationed in the Republic for the purpose of performing the duties of his or her employment for a period not exceeding 183 days.”.

Amendment paragraph 10 of the Seventh Schedule to Act 58 of 1962, as amended by section 36 of Act 30 of 2002 and section 30 of Act 9 of 2006

61. Paragraph 10 of the Seventh Schedule to Act 58 of 1962 is hereby amended by the substitution for item (d) of subparagraph (2) of the following item:

- “(d) any travel facility granted by an employer to the spouse or any minor child of an employee if—
- (i) that employee is for the duration of the term of his or her employment stationed for purposes of the business of that employer at a specific place in the Republic further than 250 kilometers away from his or her **[main] usual place of residence in the Republic [where he or she ordinarily resides]**;
 - (ii) that employee is required to spend more than 183 days during the relevant year of assessment at that specific place for purposes of the business of that employer; and
 - (iii) that facility is granted in respect of travel between that employee’s **[main] usual place of residence in the Republic [where he or she ordinarily resides]** and that specific place where the employee is so stationed.”.

Amendment of paragraph 12B of the Seventh Schedule to Act 58 of 1962, as inserted by section 60 of Act 31 of 2005 and amended by section 31 of Act 9 of 2006

62. Paragraph 12B of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the insertion in subparagraph (3) after item (a) of the following item:

- “(aA) where the services are rendered or the medicines are supplied for purposes of complying with any law of the Republic;”.

Amendment of paragraph 19 of the Eighth Schedule to Act 58 of 1962, as amended by section 94 of Act 45 of 2003

63. (1) Paragraph 19 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) Where a person disposes of a share in a company **[within two years after the acquisition by that person of that share, that person must disregard any capital loss resulting from the disposal], any extraordinary dividends received by or accrued to that person in respect of that share within a period of two years prior to the disposal must be added to proceeds in respect of that disposal to the extent that those dividends do not exceed expenditure incurred by that person in respect of that share [to the extent of any extraordinary dividends received by or accrued to that person in respect of that share within that period].”;** and

(b) by the deletion of subparagraph (2).

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2007 and shall apply in respect of any share disposed of on or after that date.

Amendment of paragraph 20 of the Eighth Schedule to the Income Tax Act, 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 and section 60 of Act 8 of 2007

64. Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1)(h)(ii) for subitem (bb) of the following subitem:

- “(bb) where an amount has been included in **[that]** any person’s gross income in terms of paragraph (i) of the definition of “gross income” in section 1, the value placed on the asset under the Seventh Schedule for purposes of determining the amount so included in that person’s gross income;” and
- (b) by the substitution in subparagraph (1)(h) for subitem (iii) of the following subitem:
- “(iii) (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**
- (bb) a right in a controlled foreign company held directly by another controlled foreign company, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) 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 was during any year of assessment included in the income of a resident in relation to both companies in terms of section 9D, 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 was exempt from tax in terms of section 10(1)(k)(ii)(cc);]

- (iii) (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
- (bb) a right in a controlled foreign company held directly by another controlled foreign company, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) 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 was during any year of assessment included in the income of a resident in relation to both companies in terms of section 9D,

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 was exempt from tax in terms of section 10(1)(k)(ii)(cc);”.

Amendment of paragraph 42 of the Eighth Schedule to the Income Tax Act, 1962 as amended by section 90 of Act 60 of 2001 and section 74 of Act 31 of 2005

65. Paragraph 42 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)(b) for the words preceding subitem (i) of the following words:

“the person who acquired the financial instrument of the same kind and of the same or equivalent quality must be treated as having acquired that financial instrument on the date that person acquired the financial instrument that was disposed of at a cost equal to the total of—“.

Insertion of paragraph 42A into the Eighth Schedule to Act 58 of 1962

66. The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 42 of the following paragraph:

“42A. Short term disposals and acquisitions of listed shares.—If a capital gain is determined in respect of the disposal by a person of a listed share in terms of an arrangement between a company and its shareholders, or any class of them, which has been sanctioned by the Court in terms of section 311 of the Companies Act, 1973 (Act No. 61 of 1973), and within a period of 90 days after the disposal that person acquires or has entered into a contract to acquire a share of the same kind and of the same or equivalent quality (hereinafter referred to as the “replacement share”)—

- (a) the share that was disposed of must be treated as having been disposed of for proceeds equal to the base cost thereof;**

- (b) where the amount of expenditure incurred to acquire the replacement share is equal to or exceeds the amount of the capital gain which would have arisen were it not for the operation of item (a), the replacement share must be treated as having been acquired for a cost equal to the amount of that expenditure less the amount of that capital gain, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a);
- (c) where the amount of the capital gain that would have arisen were it not for the operation of item (a) exceeds the expenditure incurred to acquire the replacement share, that replacement share must be treated as having been acquired at no cost for purposes of paragraph 20 and the excess must, notwithstanding the provisions of item (a), be treated as a capital gain determined in respect of the disposal of the share contemplated in that item; and
- (d) that person must be treated as having acquired the replacement share on the date that person acquired the share that was disposed of.”.

Amendment of paragraph 43 of the Eighth Schedule to Act 58 of 1962, as amended by section 91 of Act 60 of 2001, section 84 of Act 74 of 2002 section 101 of Act 45 of 2003, section 75 of Act 31 of 2005 and section 51 of Act 33 of 2006

67. Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) Subject to subparagraph (4), where a person during any year of assessment disposes of an asset for proceeds in a currency other than currency of the Republic after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or

capital loss on the disposal in that currency and that capital gain or capital loss must be translated **[in accordance with the provisions of section 25D]** to the currency of the Republic by applying the average exchange rate for the year of assessment in which that asset was disposed of or by applying the spot rate on the date of disposal of that asset.”;

- (b) by the substitution in subparagraph (2)(c) for subitem (ii) of the following subitem:

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

- (c) by the substitution in subparagraph (4) for the words preceding item (i) of the following words:

“which was acquired or disposed of in any currency other than currency of the Republic, that person must for purposes of determining the capital gain or capital loss on the disposal of that asset, translate~~[-]~~”; and

- (d) by the substitution in subparagraph (4) for items (i) and (ii) of the following items:

“(i) the proceeds into the currency of the Republic **[in accordance with the provisions of section 25D]** at the average exchange rate for the year of assessment in which that asset was disposed of or at the spot rate on the date of disposal of that asset; and”;

(ii) the expenditure incurred in respect of that foreign equity instrument or that asset, as the case may be, into the

currency of the Republic **[in accordance with section 25D]** at the average exchange rate for the year of assessment during which that expenditure was incurred or at the spot rate **[or the average exchange rate, as the case may be, for the year of assessment during which]** on the date that expenditure was incurred”.

Amendment of paragraph 65 of the Eighth Schedule to Act 58 of 1962, as amended by section 103 of Act 60 of 2001, section 106 of Act 45 of 2003 and section 27 of Act 16 of 2004

68. Paragraph 65 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (4) of the following subparagraph:

“(4) Where a replacement asset contemplated in subparagraph (1) constitutes a depreciable asset, the person must treat as a capital gain for a year of assessment, so much of the disregarded capital gain contemplated in subparagraph (3), as bears to the total amount of that disregarded gain apportioned to that replacement asset as contemplated in subparagraph (3) the same ratio as the amount of any **[capital]** deduction or allowance allowed in that year in respect of the replacement asset bears to the total amount of the capital deduction or allowance (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable for all years of assessment in respect of that replacement asset.”.

Amendment of paragraph 66 of the Eighth Schedule to Act 58 of 1962, as amended by section 33 of Act 9 of 2001, section 107 of Act 45 of 2003 and section 67 of Act 8 of 2007

69. Paragraph 66 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

DRAFT

- (a) by the substitution in subparagraph (1) for item (a) of the following item:
 - “(a) that asset qualified for a **[capital]** deduction or allowance in terms of section 11(e), 11D(2), 12B, 12C, 12DA, 12E, 14 or 14*bis*.”;
- (b) by the substitution in subparagraph (1) for item (c) of the following item:
 - “(c) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more assets (hereinafter referred to as the “replacement asset or assets”), all of which will qualify for a capital deduction or allowance in terms of section 11(e), 11D(2), 12B, 12C, **[or]** 12DA or 12E.”; and
- (c) by the substitution for subparagraph (4) of the following subparagraph:
 - “(4) A person must treat as a capital gain for a year of assessment so much of the disregarded capital gain contemplated in subparagraph (2), as bears to the total amount of that disregarded capital gain apportioned to that replacement asset as contemplated in subparagraph (3) the same ratio as the amount of any deduction or allowance allowed in that year in terms of section 11(e), 11D(2), 12B, 12C, **[or]** 12DA or 12E in respect of the replacement asset bears to the total amount of the deduction or allowance in terms of that section (determined with reference to the cost of value of that asset at the time of acquisition thereof) which is allowable for all years of assessment in respect of that replacement asset.”.

Amendment of paragraph 76 of the 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 and section 81 of Act 31 of 2005

70. (1) Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(b) on or after valuation date but before 1 July 2008, treat the amount of that cash or the market value of that asset *in specie* as proceeds when that share is disposed of.”; and

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

“Where a shareholder uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32(3A)(a) and a capital distribution of cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to that shareholder in respect of those shares on or after valuation date but before 1 July 2008, the weighted average base cost of those shares must be determined by—“.

(2) Subsection (1) shall come into operation on 1 July 2008.

Insertion of paragraph 76A into the Eighth Schedule to Act 58 of 1962

71. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 76 of the following paragraph:

“76A. Disposal and part-disposal of shares.—(1) A shareholder must be treated as having disposed of part of a share—

- (a) except where paragraph 76(2) applies, on 1 July 2008 if a capital distribution contemplated in paragraph 76(1)(b) has been received by or accrued to that shareholder on or after valuation date but before 1 July 2008 in respect of a share not disposed of on or before 1 July 2008; and
- (b) in any other case, on the date of receipt or accrual of a capital distribution of cash or an asset *in specie* received by or accrued to that shareholder on or after 1 July 2008.
- (2) If paragraph 76(2) applies and the base cost of those shares is a negative amount on 30 June 2008—
 - (a) that shareholder must be treated as having a capital gain equal to that negative amount on 1 July 2008; and
 - (b) the base cost of those shares on 30 June 2008 must be treated as nil.
- (3) For purposes of paragraph 33(1) the market value of the part disposed of must be treated as being equal to the amount of the cash or the market value of the asset *in specie* received or accrued by way of a capital distribution.”.

- (2) Subsection (1) shall come into operation on 1 July 2008.

Repeal of paragraph 79 of the Eighth Schedule to Act 58 of 1962, as amended by section 89 of Act 74 of 2002

- 72. (1) Paragraph 79 of the Eighth Schedule to the Income Tax Act, 1962, is hereby repealed.

- (2) Subsection (1) shall come into operation on 1 July 2008.

Amendment of paragraph 1 of the Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 70 of Act 8 of 2007

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

(a) by the substitution for the definition of **“oil and gas right”** of the following definition:

“oil and gas right” means any reconnaissance permit, technical co-operation permit, exploration right, or production right as defined in section 1 of [as contemplated in Schedule I and as of] the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or any right or interest therein;”;

(b) by the substitution in the definition of **“refining”** for subparagraph (iii) of paragraph (a) of the following subparagraph:

“(iii) the removal of non-hydrocarbon constituents[, as a process integral to the production of oil and gas from a well and preliminary to the further refining of such separated condensates, oil, gas or dry gas, as the case may be, at another facility; or] ”;

(c) by the addition to paragraph (a) in the definition of **“refining”** of the following words:

“as a process integral to the production of oil and gas from a well and preliminary to the further refining of such separated condensates, oil, gas or dry gas, as the case may be, at another facility; or”.

(2) Subsection (1) shall be deemed to have come into operation on 2 November 2006 and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of paragraph 8 of the Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006

74. (1) The Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 8 of the following paragraph:

“8.(1) (a) The Minister may enter into a binding agreement with any oil and gas company in respect of each oil and gas right held by that company, and that agreement will guarantee that the provisions of this Schedule (as at the date on which the agreement was concluded) will apply in respect of that right as long as that right is held by the company.

(b) In lieu of subparagraph (a), the Minister may enter into a binding agreement with any company in anticipation of each oil and gas right to be held by that company, and that agreement will guarantee that the provisions of this Schedule (as at the date on which the oil and gas right is granted) will apply in respect of that right as long as that right is held by the company: Provided that this agreement will have no force and effect if the right is not granted within six months after the agreement is concluded.

(2) (a) In the case of a disposal of an exploration right, as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), an oil and gas company that has concluded an agreement as contemplated in subparagraph (1) in respect of that right may, as part of that disposal, assign all of its fiscal stability rights in terms of that agreement relating to the exploration right disposed of to any other oil and gas company.

- (b) In the case of a disposal of a production right, as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), an oil and gas company that has concluded an agreement as contemplated in subparagraph (1) in respect of that right disposed of may, as part of that disposal, assign all its fiscal stability rights in terms of that agreement relating to the production right disposed of to another oil and gas company if that other company is a company within the same group of companies as the oil and gas company transferring the fiscal stability right.
- (3) If an oil and gas company with a percentage interest in a oil and gas right has concluded an agreement contemplated in subparagraph (1), the terms and conditions of that agreement fully apply to all interests subsequently held by that company in that right regardless of whether those interests change over time.
- (4) An oil and gas company that has concluded an agreement contemplated in subparagraph (1) in respect of an oil and gas right may at any time unilaterally terminate the agreement in respect of that oil and gas right so held with effect from the commencement of the year of assessment immediately following the notification date of the termination.
- (5) Notwithstanding subparagraph (1), legislation may be effected after the date the agreement contemplated in subparagraph (1) was entered into, which may provide that an oil and gas company must:

- (a) determine its oil and gas income (including related profits from which dividends are declared) governed by this version of the Schedule, separately from the determination of its oil and gas income (including related profits from which dividends are declared) governed by any other legislation; and
 - (b) allocate related expenditures and losses so incurred between both determinations in proportion to the oil and gas income governed by each determination.
- (6) If noncompliance occurs after an agreement contemplated in paragraph (1) is concluded and that change has a material adverse economic impact on the taxation of income or profits as modified by this version of the Schedule, the oil and gas company holding the agreement is entitled to compensation for the noncompliance or to legislation remedying the noncompliance.
- (7) For purposes of this paragraph,
 - (a) an “oil and gas right” means an exploration right or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or any right or interest therein; and
 - (b) an exploration right, a renewal of that exploration right, and an initial production right converted from any exploration right or renewal thereof held by a company will all be deemed to be one and the same oil and gas right in the hands of that company to the extent those rights relate to the same geographical area.”.

- (2) Subsection (1) shall be deemed to have come into operation on the date of introduction of this Bill and shall apply in respect of any agreement entered into on or after that date.

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1996, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001, section 131 of Act 45 of 2003, section 1 of Act 32 of 2004, section 85 of Act 31 of 2005 and section 7 of Act 21 of 2006

75. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended by –

- (a) the substitution for the definition of “customs duty” of the following definition:

“customs duty” means any duty leviable under Part 1 of Schedule No. 1 **[(except Parts 3, 4 and 5 thereof)]** or Schedule No. 2 on goods imported into the Republic;”;

- (b) the substitution for the definition of “excisable goods” of the following definition:

“excisable goods” means any goods specified in Part 2 of Schedule No. 1 **[which have been]** imported into or manufactured in the Republic;”;

- (c) the substitution for the definition of “excise duty” of the following definition:

“excise duty” means any duty leviable under Part 2 of Schedule No. 1 on any goods imported into or manufactured in the Republic;”;

- (d) the substitution for the definition of “manufacture” of the following definition:

“manufacture”, when used as a noun, includes, in the discretion of the Commissioner, any process -

- (a) in the manufacture or assembly of any excisable goods, **[or]** environmental levy goods, fuel levy goods or Road Accident Fund levy goods;
- (b) in the conversion of any goods into excisable goods, environmental levy goods, **[or]** fuel levy goods or Road Accident Fund levy goods;
- (c) whereby the dutiable quantity or value of any **[imported]** excisable goods, **[specified in Section B of Part 2 of Schedule No. 1 excisable goods]** environmental levy goods, **[or]** fuel levy goods or Road Accident Fund levy goods is increased in any manner;
- (d) in the recovery of excisable goods, environmental levy goods, **[or]** fuel levy goods or Road Accident Fund levy goods from excisable goods or any other goods; or
- (e) in the packing or measuring off of any **[imported]** excisable goods specified in **[Section B of]** Part 2 of Schedule No. 1 **[excisable goods]** environmental levy goods, **[or]** fuel levy goods, or Road Accident Fund levy goods,
and, when used as a verb, has a corresponding meaning; and
“**manufacturer**” has a corresponding meaning;”;
- (e) the insertion after the definition of “package” of the following definition:
“**person**” includes an insolvent estate, the estate of a deceased person and any trust;” and
- (f) the substitution for subsection (3) of the following subsection:
“(3) For the purposes of the SACU Agreement, the movement between the Republic and Member States of any goods on which a duty is leviable under Part 3, Part 5A or Part 5B of Schedule No. 1, shall, in addition to any provision generally regulating the movement of goods between the Republic and Member States, be subject to compliance with the procedures prescribed in any provision of this Act relating to the movement of such goods.”.

(2) (a) Subsection (1)(a) to (d) and (f) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*; and

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

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002, section 39 of Act 12 of 2003, section 133 of Act 45 of 2003, section 10 of Act 10 of 2006 and section 9 of Act 21 of 2006

76. (1) Section 4 of the Customs and Excise Act, 1964, is hereby amended by

—

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

“(2) No officer shall be directly financially interested in —

(a) the importation or exportation of goods;

(b) the manufacture of excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods; or

(c) the trade in imported goods, goods for export, excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods.”;

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

“(i) disclosing such information in relation to any person as may be required by the **[Chief of the Central Statistical Services]** Statistician General in connection with the collection of statistics in complying with the provisions of the Statistics Act, **[1976 (Act No. 66 of 1976)]** 1999 (Act No. 6 of 1999), or any regulation thereunder;”;

(c) the substitution in subsection (3)(b) for the words in subparagraph (iii) preceding item (a) of the following words:

“(iii) applying *ex parte* to a judge in chambers for an order allowing the Commissioner to disclose to the National Commissioner of the South African Police Service, contemplated in section 6(1) of the South African Police Service Act, **[1955] 1995** (Act No. 68 of 1995), or the National Director of Public Prosecutions, contemplated in section 5(2)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), such information the disclosure of which may reveal evidence –
“,

(d) the substitution for subsection (3A) of the following subsection:

“(3A) The **[Chief of the Central Statistical Services]** Statistician General or the **[Director General]** Director-General of the Department of Trade and Industry or the National Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank or the National Commissioner of the South African Police Service or the National Director of Public Prosecutions or the Director-General of the National Treasury or any person acting under the direction and control of such **[Chief of the Central Statistical Services]** Statistician General or Director-General of the Department of Trade and Industry or Governor of the South African Reserve Bank or National Commissioner of the South African Police Service or National Director of Public Prosecutions or the Director-General of the National Treasury, shall not disclose any information supplied under the proviso to subsection (3) to any person or permit any person to have access thereto, except in the exercise of his powers or the carrying out of his duties under any Act from which such powers or duties are derived.”; and

(e) the insertion in subsection (8A) after paragraph (d) of the following paragraph:

“(e) An officer or a Controller may upon examination of any goods detained under this subsection substitute the detention or part thereof by

detaining any or all of such goods in accordance with the provisions of Chapter XB.”.

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

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

Amendment of section 10 of Act 91 of 1964 as amended by section 2 of Act 57 of 1966 and section 2 of Act 52 of 1986

77. Section 10 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of subsection (1), a place outside the Republic deemed by the Commissioner under section 6(1A) or 50A to be a place of entry for goods consigned to the Republic, shall be deemed to be a place in the Republic in respect of goods consigned to or entered at such place for removal to the Republic overland.”

Amendment of section 21A of Act 91 of 1964, as inserted by section 121 of Act 60 of 2001, amended by section 2 of Act 10 of 2005 and section 18 of Act 21 of 2006

78. Section 21A of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for the definition of “IDZ operator”, “CCA enterprise”, “Service enterprise” of the following definition:

“**“IDZ operator”, “CCA enterprise [, “Service enterprise”]** or any other expression as may be necessary, relating to any activity inside or outside an IDZ or a CCA shall have the meaning assigned thereto in any Schedule or rule.”

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

79. (1) Section 43 of the Customs and Excise Act, 1964, is hereby amended by -

(a) the substitution in subsection (5)(a) for the words preceding subparagraph (i) of the following words:

“Where the Commissioner on reasonable grounds determines that any goods to which this section relates or any goods which are detained as contemplated in section 113(8), have been imported or exported in contravention of any law other than this Act, the Commissioner may, except in the case of goods **[detained under section 113A for the purposes of the Counterfeit Goods Act, 1997 (Act No. 87 of 1997)]** contemplated in Chapter XB request the South African Police Service or the authority administering such law –“;

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

“(6) (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 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,]** deemed to be abandoned as contemplated in section 78F(3), such goods shall, notwithstanding anything to the contrary in this Act or any other law **[the said Counterfeit Goods Act, 1997,]** contained, be subject to this section.

(b) If no person gives any notice of the intention to claim those goods within 60 days after inclusion in the list referred to in subsection (2)(c), such goods shall be disposed of in terms of this section.”;

(c) the substitution in subsection (7) for paragraph (a) of the following paragraph:

- “(a) Any goods appropriated to the State as contemplated in subsection (3)(a), any goods condemned and forfeited as contemplated in subsection~~[s]~~ (5) and any goods contemplated in subsection (6)(b), any goods condemned and forfeited as contemplated in sections 89 and 90 and any goods referred to in subsection (10)(a), may be disposed of as provided in paragraph (b) by the Commissioner in consultation with the Directors-General of the National Treasury and of Trade and Industry or, where appropriate, with a Director-General of any other department.”;
- (d) the substitution for subsection (8) of the following subsection:
- “(8) The provisions of subsections (5), ~~[(6)]~~ and (7) shall, subject to the provisions of sections 89 and 90, *mutatis mutandis* apply to any goods detained or seized under this Act that were imported, exported, manufactured or used, or otherwise dealt with in contravention of the provisions of this Act and any other law: Provided that where the Commissioner is satisfied on reasonable grounds that the owner did not know that the goods were imported in contravention of this Act and such other law and the Commissioner is satisfied that the goods do not constitute a danger to public health or the public and complies with any compulsory specification contemplated in the Standards Act, 1993, the Commissioner may, instead of disposing of the goods as contemplated in subsection (7), deliver the goods to the owner in accordance with the provisions of section 93.”; and
- (e) the substitution for subsection (9) of the following subsection:
- “(9) The provisions of subsection (7)(b)(iv) shall apply to any goods donated to the Commissioner by the **[owner of any intellectual property right]** right-holder after an appropriate order of court as contemplated in section 78E **[10 of the Counterfeit Goods Act, 1997]**.”.

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

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

80. (1) Section 44 of the Customs and Excise Act, 1964, is hereby amended by –

(a) the substitution for subsection (7) of the following subsection:

“(7) Notwithstanding anything to the contrary in this section contained, no importer shall be granted a refund of customs duty, excise duty, surcharge or fuel levy paid in respect of any goods missing from any individual imported package, if such customs duty, excise duty, surcharge or fuel levy, each taken separately, does not exceed twenty-five rand.”; and

(b) the substitution of subsection (8A):

“(8A) Notwithstanding anything to the contrary in this Act contained, any person who owns, purchases, removes, receives, takes, delivers or deals with or in any imported goods or excisable goods **[or fuel levy goods]** which should have been duly entered, **[in terms of any agreement]** in **[any territory with the government of which such an agreement has been concluded under section 51,]** any other Member State of SACU, shall be liable for the duty on such goods brought into the Republic from such **[territory]** State, and if the question arises whether such goods have been duly entered, it shall be presumed, unless the contrary is proved, that such goods have not been so entered, and such goods shall be subject to the

provisions of this Act as if they were goods which have, contrary to the provisions of subsection 47A(1), not been duly entered in the Republic.”.

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

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

Amendment of section 46 of Act 91 of 1964 as amended by section 5 of Act 68 of 1989, section 2 of Act 61 of 1992, substituted by section 36 of Act 45 of 1995 and amended by section 52 of Act 53 of 1999 and section 137 of Act 45 of 2003

81. Section 46 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) (a) Any person entering any imported goods **[for which a general rate of duty is prescribed in any column of Part 1 of Schedule No. 1 and]** which are –

- (i) liable to any provisional payment[s] as contemplated in section 57A or to anti-dumping duty imposed under section 56 or countervailing duty imposed under section 56A or safeguard **[duty]** measure imposed under section 57; or
- (ii) subject to any restriction in terms of any other law when imported from a specified country or specified countries;
and
- (iii) imported from a country or countries other than the country or countries or a supplier in respect of which such payment, duty or restriction is prescribed,

shall produce to the Controller at the time of presenting the bill of entry a declaration of origin in respect of such goods **[in the form prescribed by the Commissioner by rule]**.

(b) The Commissioner may by rule prescribe for the purposes of the subsection -

- (i) a declaration or other forms; and
- (ii) any other matter which the Commissioner may consider reasonably necessary and useful to achieve the efficient and effective administration of the subsection.”.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1096, section 17 of Act 105 of 1069, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, section 9 and 15 of Act 98 of 1980, section 8 of Act 86 of 1982, section 6 of Act 52 of 1986, section 15 of Act 84 of 1987, section 4 of Act 69 of 1998, section 6 of Act 68 of 1989, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 4 of Act 44 of 1996, 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 68 of Act 32 of 2004, section 3 of Act 10 of 2005 and section 90 of Act 31 of 2005

82. Section 47 of the Customs and Excise Act, 1964, is hereby amended by –

(a) the substitution in subsection (9)(b) for subparagraph (i) of the following subparagraph:

“(i) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under paragraph (d), any amount due in terms thereof shall, notwithstanding that **[an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or]** such determination is being dealt with in terms of any procedure contemplated in Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown, suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.”;

(b) the substitution in subsection (9)(b)(ii) for item (cc) of the following item:

- “(cc) any amendment of a determination or new determination is made effective under paragraph (d) or **[as contemplated in section 77F]** as a result of the finalization of any procedure contemplated in Chapter XA.”;
- (c) the substitution in subsection (9) for paragraph (c) of the following paragraph:
- “(c) Whenever a court amends or orders the Commissioner to amend any determination made under subsection (9)(a) or (d) or any determination is amended or a new determination is made under paragraph (d) or **[section 77E or 77F]** as a result of the finalization of any procedure contemplated in Chapter XA, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (b)(i) for any period during which such determination remained in force.”;
- (d) the substitution in subsection (9)(d)(i) for item (bb) of the following item:
- “(bb) **[except when an internal administrative appeal has been lodged in terms of the provisions of Part A of Chapter XA, or if lodged, before it has been considered,]** except where a determination is being dealt with in terms of any procedure contemplated in Chapter XA, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”.

Amendment of section 47B of Act 91 of 1964 as inserted by section 17 of Act 84 of 1987, substituted by section 5 of Act 98 of 1993, repealed by section 11 of Act 27 of 1997, re-inserted by section 59 of Act 30 of 2000, amended by section 40 of Act 12 of 2003 and section 13 of Act 9 of 2005

83. Section 47B of the Customs and Excise Act, 1964, is hereby amended by –
(a) the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) (i) The chargeable passenger shall be liable for the tax which shall be collected by the operator or his agent.

(ii) The operator or his or her agent shall be entitled to collect the tax from a chargeable passenger -

(aa) at the time of the acquisition by that chargeable passenger of a ticket for the flight; or

(bb) prior to the embarkation of that chargeable passenger on a flight; and

(iii) Where the tax has not been collected at the time contemplated in subparagraph (ii), an operator or his or her agent shall be liable for the tax and may recover the uncollected tax from the chargeable passenger.”; and

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

“(e) Subject to the provisions of this section and except for the purposes of any customs union agreement **[concluded under]** contemplated in section **[51]** 49, the tax shall be deemed to be a duty leviable under this Act.”

Amendment of section 52 of Act 91 of 1964, repealed by section 4 of Act 7 of 1974, inserted by section 24 of Act 59 of 1990 and amended by section 41 of Act 45 of 1995

84. Section 52 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) Notwithstanding anything to the contrary in this Act contained, any fuel levy goods which are removed to the territory of a party to any customs union agreement concluded in terms of section **[51]** 49 or brought into the Republic from any such territory, shall, if a fuel levy has not been

imposed by such party, be deemed to be goods exported from and goods imported into the Republic, respectively, and the provisions of this Act relating to the exportation from and importation of goods into the Republic shall, subject to such arrangements as the Commissioner may determine, apply to those goods until such time as such fuel levy is imposed by that party as provided in this Act.”.

Amendment of section 54B of Act 91 of 1964, inserted by section 139 of Act 45 of 2003 and amended by section 32 of Act 16 of 2004

85. Section 54B of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Notwithstanding anything to the contrary contained in this Act, the environmental levy shall, subject to the provisions of this Chapter and except for the purposes of any customs union agreement contemplated in section [51] 49 or any other law, be deemed to be a duty leviable under this Act.”.

Amendment of section 65 of Act 91 of 1964 as amended by section 5 of Act 85 of 1968, section 21 of Act 105 of 1969, section 20 of Act 112 of 1977, section 5 of Act 93 of 1978, section 7 of Act 110 of 1979, section 13 of Act 86 of 1982, section 8 of Act 101 of 1985, section 8 of Act 52 of 1986, 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

86. (1) Section 65 of the Customs and Excise Act, 1964, is hereby amended by -

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

“Value for [customs] duty purposes on any goods imported into the Republic.”;

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

“(3) [Unless the context otherwise indicates,] Subject to subsection (8),
any reference in this Act to customs value or to value for duty

purposes, in relation to imported goods, shall be deemed to be a reference to value for customs duty purposes contemplated in subsection (1).";

(c) the substitution in subsection (4)(c) for subparagraph (i) of the following subparagraph:

"(i) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under subsection (5), any amount due in terms thereof shall, notwithstanding that **[an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or]** such determination is being dealt with in terms of any procedure contemplated in Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner on good cause shown may suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.";

(d) the substitution in subsection (4)(c)(ii) for item (cc) of the following item:

"(cc) any amendment of a determination or new determination is made effective under subsection (5) or **[as contemplated in section 77F]** as a result of the finalization of any procedure contemplated in Chapter XA.";

(e) the substitution in subsection (4)(c) for subparagraph (iii) of the following subparagraph:

"(iii) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (5) or any determination is amended or a new determination is made under subsection (5) **[or sections 77E or 77F]** or as a result of the finalization of any procedure contemplated in Chapter XA, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of

paragraph (c)(i) for any period during which such determination remained in force.”;

(f) the substitution in subsection (5)(a) for subparagraph (ii) of the following subparagraph:

“(ii) **[except when an internal administrative appeal has been lodged in terms of the provisions of Part A of Chapter XA, or if lodged before it has been considered]** except where a determination is being dealt with in terms of any procedure contemplated in Chapter XA, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”;

(g) the substitution in subsection (7) for the wording following paragraph (b) of the following wording:

“there shall be no liability for any underpayment of customs duty or excise duty on any goods imported into the Republic, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect **[customs value]** value for duty purposes, after a period of two years from the date of entry of such goods.”;

(h) the substitution in subsection (8) for paragraph (a) of the following paragraph:

“(a) Notwithstanding the provisions of subsections (1) and (4), the value for the purposes of the duty specified in Section B of Part 2 of Schedule No. 1 shall, in respect of imported goods **[(other than goods entered in terms of item 412.18 of Schedule No. 4),]** be the transaction value thereof plus 15 per cent of such value, plus any non-rebated customs duty payable in terms of Part 1 and any excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods, but excluding the

duty specified in the said Section B of Part 2 of Schedule No. 1 on such goods.”; and

(i) the deletion in subsection (8) of paragraph (b).

(2) (a) Subsection (1)(c) to (f); shall come into operation on the date of promulgation of this Act; and

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

Amendment of section 69 of Act 91 of 1964 as amended by section 22 of Act 105 of 1969, section 6 of Act 93 of 1978, section 9 of Act 101 of 1985, section 7 of Act 69 of 1988, section 12 of Act 68 of 1989, section 1 of Act 111 of 1991, section 3 of Act 105 of 1992, section 6 of Act 98 of 1993, section 6 of Act 44 of 1996, section 61 of Act 53 of 1999, section 49 of Act 19 of 2001, section 129 of Act 60 of 2001, section 145 of Act 45 of 2003 and section 71 of Act 32 of 2004

87. (1) Section 69 of the Customs and Excise Act, 1964, is hereby amended by -

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

“Value for excise duty purposes on any goods manufactured in the Republic.”;

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

“(b) Unless the context otherwise indicates, any reference in this Act to value for excise duty purposes in relation to goods manufactured in the Republic, shall be deemed to be a reference to the value for excise duty purposes contemplated in this section.”;

(c) the substitution in subsection (2)(a) for subparagraph (i) of the following subparagraph:

“(i) For the purpose of assessing the excise duty on any goods manufactured in the Republic and specified in Section A of Part 2 of Schedule No. 1 [(other than goods specified in items 117.01.10 and

117.05 to 117.30)], the value thereof shall be the price paid or payable for such goods when sold for home consumption in the ordinary course of trade, in the usual trade packing, where applicable, to any buyers not deemed to be related as specified in section 66(2)(a), plus any non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1, but excluding the non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1, fuel levy or any value-added tax payable on such goods.”;

(d) the deletion in subsection (2)(a) of subparagraph (ii);

(e) the substitution in subsection (3) for paragraph (c) of the following paragraph:

“(c) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under subsection (4), any amount due in terms thereof shall, notwithstanding that **[an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or]** such determination is being dealt with in terms of any procedure contemplated in Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.”;

(f) the substitution in subsection (3)(d) for subparagraph (iii) of the following subparagraph:

“(iii) any amendment of a determination or new determination is made effective under subsection (4) or **[as contemplated in section 77F]** as a result of the finalization of any procedure contemplated in Chapter XA.”;

(g) the substitution in subsection (3) for paragraph (e) of the following paragraph:

- “(e) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (4) or any determination is amended or a new determination is made under subsection (4) or **[section 77E or 77F]** as a result of the finalization of any procedure contemplated in Chapter XA the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (c) for any period during which such determination remained in force.”; and
- (h) the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph:
- “(ii) **[except when an internal administrative appeal has been lodged in terms of Part A of Chapter XA or if lodged, before it has been considered]** except where a determination is being dealt with in terms of any procedure contemplated in Chapter XA, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”
- (2) (a) Subsection (1)(a) to (d) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*; and
- (b) Subsection (1)(e) to (h) shall come into operation on the date of promulgation of this Act.

Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 25 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act of 1977, section 28 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section

53 of Act 45 of 1995, section 61 of Act 30 of 2000, section 50 of Act 19 of 2001, section 130 of Act 60 of 2001, 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

88. Section 75 of the Customs and Excise Act, 1964, is hereby amended by -

(a) the substitution in subsection (1) for paragraphs (a) to (d) of the following paragraphs:

- “(a) any imported goods described in Schedule No. 3 shall be admitted under rebate of any customs duties or excise duty applicable in respect of such goods at the time of entry for home consumption thereof, to the extent and for the purpose or use stated in the item of Schedule No. 3 in which they are specified;
- (b) any imported goods described in Schedule No. 4 shall be admitted under rebate of any customs duties, excise duty, fuel levy or Road Accident Fund levy applicable in respect of such goods at the time of entry for home consumption thereof, or if duly entered for export and exported in accordance with such entry, to the extent stated in, and subject to compliance with the provisions of the item of Schedule No. 4 in which such goods are specified;
- (c) a drawback or a refund of the customs duty, excise duty, surcharge, fuel levy and Road Accident Fund levy actually paid on entry for home consumption on any imported goods described in Schedule No. 5 shall be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified; and
- (d) in respect of any excisable goods or fuel levy goods manufactured in the Republic described in Schedule No. 6, a rebate of the excise duty specified in Part 2 of Schedule No. 1 or of the fuel levy and of the Road Accident Fund levy specified respectively in Part 5A and Part 5B of Schedule No. 1 in respect of such goods at the time of entry for home

consumption thereof, or if duly entered for export and exported in accordance with such entry, or a refund of the excise duty, fuel levy or Road Accident Fund levy actually paid at the item of entry for home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule No. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6:

Provided that any rebate, drawback or refund of Road Accident Fund levy as contemplated in paragraph (b), (c) or (d), shall only be granted as expressly provided in Schedule No. 4, 5 or 6 in respect of any item of such Schedule.”;

- (b) the substitution in subsection (1A)(a) for the words following subparagraph (iii) of the following words:

“shall be granted in accordance with the provisions of this section and of item 670.04 of Schedule No. 6 to the extent stated in **[those items]** that item.”;

- (c) the substitution in subsection (1A)(b) for subparagraph (i) of the following subparagraph:

“(i) has purchased and used such fuel in accordance with the provisions of this section and the said **[items]** item of Schedule No. **[5 or]** 6; and”;

- (d) the substitution in subsection (1A) for paragraph (c) of the following paragraph:

“(c) the Commissioner may withdraw money from the National Revenue Fund for refunding the amount of such Road Accident Fund levy as if it were a fuel levy leviable and paid under this Act and refundable in terms of the said **[items]** item of Schedule No. **[5 or]** 6.”;

- (e) the substitution in subsection (1A)(d) for subparagraph (i) of the following subparagraph:

- “(i) pay any such refund upon receipt of a duly completed return from any person who has purchased distillate fuel for use as contemplated in the said item of Schedule No. **[5 or] 6**;”;
- (f) the substitution in subsection (1A) for paragraph (e) of the following paragraph:
- “(e) any such payment or set-off by the Commissioner shall be deemed to be a provisional refund for the purpose of this section and the said **[items] item** of Schedule No. **[5 or] 6** subject to the production of proof by the user referred to in subsection (1C)(b) at such time and in such form as the Commissioner may determine that the distillate fuel has been -
- (i) purchased as claimed on the application for a diesel refund; and
- (ii) used in accordance with the provisions of this section and the said **[items] item** of Schedule No. **[5 or] 6**;”;
- (g) the substitution in subsection (1C)(a) for subparagraph (iii) of the following subparagraph:
- “(iii) delivered to the premises of the user and is being stored and used or has been used in accordance with the purpose declared on the application for registration and the said **[items] item** of Schedule No. **[5 or] 6**;”;
- (h) the substitution in subsection (1C)(b) for the words preceding subparagraph (i) of the following words:
- “For the purposes of this section and the said **[items] item** of Schedule No. **[5 or] 6** –“;
- (i) the substitution in subsection (1C)(b) for subparagraph (i) of the following subparagraph:
- “(i) “**user**” shall mean, according to the context and subject to any note in the said Schedule No. **[5 or] 6**, the person registered for a diesel refund as contemplated in subsection (1A);”;
- (j) the substitution in subsection (1C)(c) for subparagraphs (i), (iii) and (iv) of the following subparagraphs:

- “(i) The refunds specified in the said **[items]** item of Schedule No. **[5 or] 6** shall apply to fuel purchased on or after the date the amendment contemplated in section 75(15) comes into operation.
- (iii) The extent of the refund referred to in subparagraph (i) shall be the rate of such refund specified in such item of Schedule No. **[5 or] 6** in operation on the date of issue of the invoice concerned, referred to in subsection (4A)(c).
- (iv) If the extent of such refund is amended and for any reason any liability to repay any refund of such levies in respect of any quantity of fuel which the user may incur in respect of the use of such fuel cannot be assessed or the amount of the levies refundable to such user in terms of any item of Schedule No. **[5 or] 6** cannot be calculated on any quantity of such fuel purchased by such user before such amendment, the quantity of such fuel in respect of any refund which the user is liable to repay, or the quantity used in accordance with any such item for the calculation of the amount refundable to such user, shall be determined by the Commissioner according to the information at his disposal.”;
- (k) the substitution in subsection (1C)(d) for subparagraph (i) of the following subparagraph:
 - “(i) Any user who has been granted such a provisional refund shall, in relation to the purchase and use by him of the fuel concerned, furnish the Commissioner at such times as may be prescribed in the notes to item **[640.03]** 670.04, with a declaration in such form and supported by such documents as may be prescribed in such notes.”;
- (l) the substitution in subsection (1C)(d) for subparagraph (ii) of the following subparagraph:
 - “(ii) Any user who fails to comply with the provisions of paragraph (d)(i) shall be deemed to have used such fuel for a purpose or use other than the purpose or use stated in the said **[items]** item of Schedule No. **[5 or] 6** and the amount of such refund shall be deemed to be a

DRAFT

refund not duly payable to such user and shall be recoverable in terms of section 76A.”;

- (m) the substitution in subsection (1C)(e) for subparagraph (i) of the following subparagraph:

“(i) If the amount of the provisional refund paid to the user concerned was not duly refundable or exceeds the amount refundable in terms of the said **[items]** item of Schedule No. **[5 or]** 6, any such amount or the excess shall be paid by that user upon demand by the Commissioner.”;

- (n) the substitution in subsection (4A)(e)(i) for the words following item (cc) of the following words:

“shall, in addition to any other liability incurred in terms of this Act in respect of the fuel to which such failure relates, be liable, as the Commissioner may determine, for payment of an amount not exceeding the levies refunded on such fuel, unless it is shown by the user within 30 days of the date of any demand for payment of such amount in terms of this section that the fuel has been used in accordance with the provisions of the said **[items]** item of Schedule No. **[5 or]** 6.”; and

- (o) the substitution in subsection (4A)(f)(ii) for item (cc) of the following item:

“(cc) fraudulently claims or receives any payment in respect of any refund provided for in this subsection and the said **[items]** item of Schedule No. **[5 or]** 6.”;

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

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

Amendment of section 77C of Act 91 of 1964, as inserted by section 147 of Act 45 of 2003 and amended by section 21 of Act 32 of 2005

89. Section 77C of the Customs and Excise Act, 1964, is hereby amended by –

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

“(1) Any person who submits an appeal provided for in this Part must submit such appeal in accordance with the requirements prescribed by rule.”; and

(b) the deletion of subsection (3).

Amendment of section 77G of Act 91 of 1964 as inserted by section 147 of Act 45 of 2003

90. Section 77G of the Customs and Excise Act, 1964, is hereby amended by the substitution for the following section:

“77G. Obligation to pay amount demanded. – Notwithstanding anything to the contrary contained in this Act, the obligation to pay to the Commissioner and right of the Commissioner to receive and recover any amount demanded in terms of any provision of this Act, shall not, unless the Commissioner so directs, be suspended **[by an appeal in terms of this section]** pending finalization of any procedure contemplated in this Chapter or pending a decision by court.”.

Insertion of Chapter XB in Act 91 of 1964

91. Chapter XB is hereby inserted after Chapter XA and before Chapter XI in the Customs and Excise Act, 1964, as follows:

“CHAPTER XB
POWERS, DUTIES AND PROCEDURES IN CONNECTION WITH
COUNTERFEIT GOODS”

78A. Definitions

(1) (a) In this Chapter and the rules made thereunder, unless otherwise specified in this section or those rules or the context otherwise indicates, the following words and

phrases, and their grammatical variations where applicable, shall have the following meanings:

“counterfeiting”, “counterfeit goods”, “counterfeit goods depot”, “intellectual property right”, “protected goods” shall have the meaning assigned thereto in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997), except that any reference to “owner” in the definition of “counterfeiting” and “protected goods” shall be deemed to refer to a right-holder as defined in this section;

(b) “affected party” includes the consignee, the consignor, the importer, the exporter, the owner, manufacturer or the person having control of the goods suspected of infringing an intellectual property right and any person who acts on his or her behalf;

(c) “goods for transshipment” and any cognate expression means goods which are transferred, or should have been transferred, under customs control in terms of any procedure regulated by this Act from the importing ship or vehicle to the exporting ship or vehicle within the area of one customs office which is the office of both importation and exportation;

(d) “goods under customs control” and any cognate expression shall be deemed to include any goods to which this Act relates that are imported goods, locally manufactured goods, goods for export, goods under customs transit or goods for transshipment if such goods are -

(i) on any ship or vehicle or in any container contemplated in section 1(2) that is entering or leaving the Republic;

(ii) in, on or at any premises licensed, registered or approved, or which should have been so licensed,

registered or approved, for any purpose in terms of this Act;

(iii) in, on or at any premises or at any place appointed, prescribed or designated in terms of section 6;

(iv) in, on or at the premises of a State warehouse or any place deemed in terms of section 43(2) to be a State warehouse;

(v) in, on or at any place where those goods are kept after having been detained or seized under the provisions of this Act;

(vi) in transit within or through the Republic or conveyed for transshipment to any place outside the Republic as may be specified by rule; or

(vii) deemed in terms of any provision of this Act to be under customs control,

whether or not declared in terms of any provision of this Act or if so declared, whether or not release thereof has been granted;

(e) “goods under customs transit” and any cognate expression means goods which are or should have been transported under any procedure regulated by this Act within or through the Republic;

(f) “imported goods”, “goods for export”, “goods under customs transit” or “goods for transshipment” includes goods removed from or to any other country in the common customs area;

(g) “right-holder” means a person who is the holder of the intellectual property right, a successor in title or duly authorised exclusive licensee of the right-holder or any person authorised by such right-holder, successor or licensee to protect such right.

- (2) (a) Where any notice or other documents must be delivered to the Commissioner such notice or document must be in such form and shall be delivered in such manner at such places and to such persons as may be prescribed by rule.
- (b) No such notice or other document shall be valid unless it complies with the requirements prescribed in this Chapter and such rules.

78B. Application by right-holder to the Commissioner to detain goods and granting of application by the Commissioner

- (1) (a) A right-holder may apply to the Commissioner to detain goods under customs control suspected of infringing the holder's intellectual property right.
- (b) Every application shall be in the form prescribed by rule -
- (i) containing full particulars of the matters specified therein;
and
- (ii) supported by any further particulars as may be prescribed by rule or required by the Commissioner;
- (c) In every case the right-holder must furnish with the application -
- (i) an indemnity indemnifying the Commissioner against any liability arising from all actions, proceedings, claims and demands whatsoever which may be made or taken against the Commissioner;
- (ii) an undertaking to pay any costs, expenses incurred by, and charges due, to the Commissioner; and
- (iii) payment of an administration fee,
as the Commissioner may prescribe by rule.
- (2) (a) The Commissioner must consider and deal with the application without delay, and must grant the application if satisfied on reasonable grounds that -

- (i) the goods claimed to be protected goods are *prima facie* protected goods;
 - (ii) the intellectual property right, the subject matter of which relates to the protected goods, *prima facie* subsists; and
 - (iii) the applicant *prima facie* is the holder of that intellectual property right.
- (b) When granting the application, the Commissioner shall specify the period during which the application shall remain valid and such a period shall not extend beyond the last day of the period for which the intellectual property right subsists.
- (c) The right-holder shall notify the Commissioner when the intellectual property right concerned ceases to be validly registered or expires.

78C. Examination and detention of goods

- (1)
 - (a) An officer may stop and examine any goods under customs control to determine for the purposes of the procedures contemplated in this section whether the goods are counterfeit goods.
 - (b) Where an officer upon examination of any goods under customs control has reasonable cause to believe that the goods are *prima facie* counterfeit goods an officer -
 - (i) must, where an application has been granted as contemplated in section 78B, detain the goods for the purposes of this Chapter; and
 - (ii) must inform the right-holder and any of the affected parties whose address details are available by electronic message or facsimile transmission of the detention of the goods.
- (2)
 - (a) Where an officer has examined goods in respect of which no application has been granted as contemplated in section 78B and has reasonable cause to believe that the goods are *prima facie*

counterfeit goods, the officer must inform the right-holder and affected party by electronic communication or facsimile transmission.

(b) The right-holder must, if requiring the goods to be detained, for the purposes of this Chapter deliver an application and an indemnity as contemplated in section 78B within a period of three days after the date he or she was so informed by such officer.

(c) The Commissioner must consider and deal with the application without delay as contemplated in section 78B.

(d) If the application is granted the goods must be detained for the purposes of this Chapter.

(3) (a) Notwithstanding anything to the contrary contained in this Act, an officer must, for the purposes of this section, furnish the right-holder with samples of the goods detained and with the name and address of any affected party according to the information available to such officer.

(b) The right-holder -

(i) must acknowledge receipt of the sample;

(ii) undertake to -

(aa) return the sample before detention is ended;

(bb) use the sample and name and address only for the purposes of this section; and

(cc) comply with such other requirements as may be determined by the Commissioner or may be prescribed by rule.

(c) The right-holder may not be present at the examination of the goods.

(d) An officer must make an inventory of the goods examined as may be prescribed by rule.

(4) Any detention under this section is not subject to the provisions of section 93.

78D. Action by right-holder and the Commissioner where the right-holder is of opinion that the goods infringe or do not infringe an intellectual property right

(1) Where the right-holder wishes to institute criminal proceedings in respect of goods detained as contemplated in section 78C, he or she may lay a charge with the South African Police Service and request that a criminal investigation be undertaken for an offence as contemplated in section 2(2) the Counterfeit Goods Act, 1997.

(2) Notwithstanding subsection (1), if the right-holder wishes to institute civil proceedings, he or she must -

(a) within a period of 10 days after he or she was informed of the detention of the goods, deliver to the Commissioner and to the affected party a written notice that he or she intends -

(i) to apply to court for a determination that the goods detained are counterfeit goods;

(ii) not to apply to court for such a determination or order;

(b) within a period of 10 days after delivery of such notice, apply to court for a determination and order as contemplated in section 78E(1).

(3) Where the right-holder-

(a) does not deliver a notice as contemplated in subsection (2)(a); or

(b) delivers a notice stating that an application to court will not be made,

the goods must be released to the affected party if the goods otherwise comply with the requirements of this Act.

(4) (a) The goods detained must be removed to a counterfeit goods depot by arrangement and at the expense of the right-holder not later than the day following the date of a notice contemplated in subsection (2)(a)(i).

(b) The goods must be removed under supervision of an officer who must obtain an acknowledgement of receipt thereof on the

inventory made in terms of section 78C(2)(c) from the person in charge of the counterfeit goods depot.

(c) If the right-holder fails to remove the goods to a counterfeit goods depot within the time specified in paragraph (a), an officer may arrange for the removal of the goods at the risk and expense of the right-holder.

(5) Notwithstanding anything to the contrary contained in any other law, where the right-holder fails to apply to court within the period of 10 days contemplated in subsection (2)(b), the person in charge of the counterfeit goods depot must, at the request of the Commissioner, release the goods to the affected party.

78E. Orders of court

(1) Notwithstanding the provisions of any other law relating to counterfeit goods, a court may order -

(a) where it is determined that the goods are counterfeit, that the goods must, subject to compliance with the provisions of this Act and any conditions the Commissioner may impose, be released from the counterfeit goods depot to the right-holder; or

(b) where it is determined that the goods are not counterfeit, that the goods must, subject to compliance with the provisions of this Act or any other law, be released to the affected party.

(2) The court may also order -

(a) the right-holder to pay the affected party damages in an amount determined by the court;

(b) the affected party to disclose the source from which those goods , if found to be counterfeit , have been obtained, as well as the identity of the persons involved or ostensibly involved in the importation, exportation, manufacture, production or making and the distribution of the counterfeit goods and in the channels of distribution of those goods.

78F. Application to court by an affected party and abandonment of goods to the Commissioner

- (1) Any affected party prejudiced by a detention of goods in terms of section 78C, may apply to court for a determination that the detained goods are not counterfeit goods and for an order that they be returned to him or her.
- (2) No process by which legal proceedings are instituted may be served by the affected party before expiry of a period of 10 days after delivery of a notice as required in terms of section 96 and the rules made thereunder.
- (3) (a) Where goods have been detained in terms of this section and -
 - (i) the affected party -
 - (aa) has provided false information;
 - (bb) is not known; or
 - (cc) cannot be found; and
 - (ii) the right-holder has not obtained a declaration by court that the goods are counterfeit,
the goods shall be deemed to be abandoned to the Commissioner and may be disposed of in terms of section 43.
- (b) The provisions of section 43(2)(c) shall apply *mutatis mutandis* to goods contemplated in this section.
- (c) Such goods must be removed to the State warehouse at such time and in such circumstances as the Commissioner may determine.

78G. Actions by officers regarding detention of goods, indemnity and release of goods from counterfeit goods depot

- (1) An officer -
 - (a) may refuse to detain any goods in the circumstances where the Commissioner has not received and granted an application as contemplated in section 78B.

- (b) shall not detain any goods for the purposes of this Chapter where the Commissioner is not indemnified by the right-holder as contemplated in section 78B(1)(c) or 78C(2)(b).
- (2) Notwithstanding anything to the contrary contained in any other law, an officer acting in good faith shall not be liable for -
 - (a) any failure to detect counterfeit goods;
 - (b) the inadvertent release of such goods; or
 - (c) any other action in respect of such goods.
- (3) (a) Notwithstanding anything to the contrary contained in any other law, imported goods shall not be released from the counterfeit goods depot by the person in charge thereof unless release is authorised by an officer.
 - (b) The person in charge of the depot shall be liable for the duty and value-added tax leviable in terms of the Value-Added Tax Act, 1991, (Act No. 89 of 1991) on any goods removed from the depot where release is not authorised by an officer.

78H. Rules

- (1) The Commissioner may make rules -
 - (a) prescribing the procedures to be followed by an officer when exercising any power or performing any duty in connection with the detention of goods;
 - (b) prescribing such forms as may be required to be completed for the purposes of this Chapter;
 - (c) prescribing the class or kind of goods not subject to the provisions of this Chapter;
 - (d) prescribing any indemnity or undertaking to be furnished by a right-holder and any condition or procedure relating to the detention or release of goods;
 - (e) regarding all matters which are required or permitted in terms of this Chapter to be prescribed by rule; and

(f) concerning any other matter which the Commissioner may consider reasonably necessary and useful for the purpose of administering the provisions of this Chapter.”

Amendment of section 78 of Act 91 of 1964, as amended by section 10 of Act 52 of 1986 and section 6 of Act 105 of 1992

92. (1) Section 78 of the Customs and Excise Act, 1964, is hereby amended by the renumbering of the section to section 79A.

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

Amendment of section 79 of Act 91 of 1964 as amended by section 2 of Act 64 of 1974, section 11 of Act 52 of 1986, section 7 of Act 105 of 1992 and section 56 of Act 45 of 1995

93. (1) Section 79 of the Customs and Excise Act, 1964, is hereby amended by the renumbering of the section to section 79B.

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

Amendment of section 86A of Act 91 of 1964 as amended by section 69 of Act 30 of 1998 and section 65 of Act 53 of 1999

94. (1) Section 86A of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) sections **[78]** 79A to 86, inclusive, or the rules;”

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

Amendment of section 92 of Act 91 of 1964 as amended by section 11 of Act 98 of 1993, section 61 of Act 45 of 1995 and section 70 of Act 30 of 1998

95. Section 92 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any **[fine or]** penalty recovered under this Act shall be paid to the Controller in the area where such **[fine or]** penalty is recovered, and shall be paid by him into the national Revenue Fund, and the proceeds of sale of anything forfeited, or seized and condemned under this Act shall also be paid into the said fund[: **Provided that the Commissioner may withhold a sum not exceeding one third of any such fine, penalty or proceeds which he may then award to any person, excluding any officer or person employed by the South African Revenue Service, by whose means or information the fine or penalty or forfeiture was imposed or the seizure made].**”

Amendment of section 94 of Act 91 of 1964

96. Section 94 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) Without derogation from any powers conferred upon the Commissioner any penalty **[, fine]** or forfeiture incurred under this Act may be recovered either by civil action or upon criminal prosecution in any court of competent jurisdiction, and in the case of a criminal prosecution the court passing sentence may also make an order regarding any unpaid duty or charge and impose civil penalties or enforce forfeiture.”.

Amendment of section 95 of Act 91 of 1964 as amended by section 16 of Act 85 of 1968, section 10 of Act 93 of 1978 and section 18 of Act 52 of 1986

97. Section 95 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (1A) of the following subsection:

“(1A) Any person who at any place deemed under section 6(1A) or 50A to be a place of entry for the Republic or in any territory with the government of which an agreement has been concluded under section 51, performs any act which constitutes an offence under this Act, shall be guilty of such offence, which shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed at any place where the accused happens to be.”

Amendment of section 111 of Act 91 of 1964 as amended by section 11 of Act 71 of 1975 and section 19 of Act 52 of 1986

98. Section 111 of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of subsection (1) the expression “**imported motor vehicle**” **[does not include]** includes any motor vehicle manufactured in the Republic which **[enters the Republic from any territory with the government of which an agreement has been concluded under section 51]** is re-imported into the Republic.”

Repeal of section 113A of Act 91 of 1964 as inserted by section 52 of Act 30 of 2002

99. (1) Section 113A of the Customs and Excise Act, 1964, is hereby repealed.

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

Amendment of section 114 of Act 91 of 1964, as substituted by section 33 of Act 105 of 1969, section 12 of Act 71 of 1975, as inserted by section 36 of

Act 112 of 1977, as substituted by section 13 of Act 101 of 1985, section 32 of Act 84 of 1987, section 37 of Act 59 of 1990, section 34 of Act 34 of 1997, section 71 of Act 53 of 1999, section 140 of Act 60 of 2001, section 112 of Act 74 of 2002, section 94 of Act 31 of 2005 and section 73 of Act 20 of 2006

100. Section 114 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1)(b)(iv) for the words preceding item (aa) of the following words:

“Where, in addition to any amount of duty which is due or is payable by any person in terms of this Act, any **[fine,]** penalty, forfeiture or interest is incurred under this Act and is payable by such person, any payment made by that person or any amount recovered pursuant to any sale of such goods as contemplated in this section shall be utilised by the Commissioner to discharge such payment or amount in the order of –“.

Amendment of section 114A of Act 91 of 1964 as inserted by section 154 of Act 45 of 2003

101. Section 114A of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) shall for the purposes of this Act be the agent of such other person in respect of the payment of any amount of duty, interest, **[fine,]** penalty or forfeiture payable by such other person under this Act, and”.

Amendment of section 114B of Act 91 of 1964 as inserted by section 154 of Act 45 of 2003

102. Section 114B of the Customs and Excise Act, 1964, is hereby amended by the substitution of the following section:

“The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or person acting in a fiduciary capacity to pay any duty, interest, **[fine,]** penalty or forfeiture payable under this Act and in as full and ample a manner.”.

Amendment of section 120 of Act 91 of 1964, as amended by section 36 of Act 105 of 1969, section 15 of Act 98 of 1980, section 35 of Act 84 of 1987, section 39 of Act 59 of 1990, section 11 of Act 19 of 1994, section 73 of Act 45 of 1995, section 74 of Act 30 of 1998 and section 35 of Act 21 of 2006

103. (1) Section 120 of the Customs and Excise Act, 1964, is hereby amended by –

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

“(e) as to the importation, exportation, transit or coastwise carriage of goods, the entry of goods, the payment of duties and other charges and fees, the costs which shall, for the purposes of section **[forty-six]** 46 be included in or excluded from the production cost of goods in general or of goods of any class or kind, and the movement of goods to and from any territory with the government of which an agreement has been concluded under section **[fifty-one]** 49 or 51,”;

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

“(mB) as to matters relating to electronic payment of any amount required to be paid in terms of this Act;”;

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

“(3) The rules made under this section may provide penalties for any contravention thereof or failure to comply therewith not exceeding the penalties mentioned in subsection (2) of section **[78]** 79A.”.

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

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

Amendment of section 1 of Act 77 of 1968, as amended by section 16 of Act 103 of 1969, section 5 of Act 66 of 1973, section 7 of Act 88 of 1974, section 19 of Act 106 of 1980, section 3 of Act 118 of 1984, section 17 of Act 87 of

1988, section 36 of Act 9 of 1989, section 3 of Act 69 of 1989, section 5 of Act 136 of 1991, section 4 of Act 20 of 1994, section 16 of Act 27 of 1997, section 34 of Act 34 of 1997, section 77 of Act 30 of 1998, section 74 of Act 53 of 1999, section 40 of Act 5 of 2001, section 54 of Act 19 of 2001, section 141 of Act 60 of 2001, section 42 of Act 12 of 2003, section 37 of Act 16 of 2004, section 73 of Act 32 of 2004, section 4 of Act 10 of 2005, section 29 of Act 32 of 2005 and section 12 of Act 10 of 2006

104. (1) Section 1 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion of the following definitions:

“banker”, “marketable security”, “material”, “public officer” and “public revenue”; and

(b) by the insertion of the following definition after the definition of **“regulation”**:

“Republic” means the ‘Republic’ as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1996);”.

(2) Subsection (1)(a) shall be deemed to come into operation on 1 July 2008.

Amendment of section 7 of Act 77 of 1968, as amended by section 18 of Act 103 of 1969, section 10 of Act 89 of 1972, section 8 of Act 66 of 1973, section 3 of Act 70 of 1975, section 5 of Act 87 of 1982, section 7 of Act 118 of 1984, section 5 of Act 69 of 1989, section 55 of Act 19 of 2001, section 43 of Act 12 of 2003, section 156 of Act 45 of 2003, section 38 of Act 16 of 2004, section 76 of Act 32 of 2004, section 6 of Act 10 of 2005 and section 96 of 31 of 2005

105. (1) Section 7 of the Stamp Duties Act, 1968, is hereby amended by the deletion in subsection (1) of paragraphs *(h)*, *(hA)* and *(hB)*.

(2) Subsection (1) shall be deemed to come into operation on 1 July 2008.

Amendment of section 8 of Act 77 of 1968, as amended by section 77 of Act 32 of 2004

106. (1) Section 8 of the Stamp Duties Act, 1968, is hereby amended by the deletion in subsection (1) of paragraphs (c) and (d).

(2) Subsection (1) shall be deemed to come into operation on 1 July 2008.

Amendment of section 23 of Act 77 of 1968, as amended by section 20 of Act 103 of 1969, section 13 of Act 92 of 1971, section 11 of Act 89 of 1972, section 10 of Act 66 of 1973, section 10 of Act 88 of 1974, section 20 of Act 106 of 1980, section 6 of Act 87 of 1982, section 5 of Act 92 of 1983, section 25 of Act 87 of 1988, section 8 of Act 69 of 1989, section 7 of Act 136 of 1991, section 13 of Act 37 of 1996, section 19 of Act 27 of 1997, section 80 of Act 30 of 1998, section 76 of Act 53 of 1999, section 157 of Act 45 of 2003, section 40 of Act 16 of 2004, section 89 of Act 32 of 2004 and section 98 of Act 31 of 2005

107. (1) Section 23 of the Stamp Duties Act, 1968, is hereby deleted.

(2) Subsection (1) shall be deemed to come into operation on 1 July 2008.

Amendment of section 28C of Act 77 of 1968, as amended by section 35 of Act 34 of 2004

108. (1) Section 28C of the Stamp Duties Act, 1968, is hereby deleted.

(2) Subsection (1) shall be deemed to come into operation on 1 July 2008.

Amendment of item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act

136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994, section 19 of Act 46 of 1996, section 21 of Act 27 of 1997, section 86 of Act 30 of 1998, section 18 of Act 31 of 1998, section 79 of Act 53 of 1999, section 72 of Act 30 of 2000, section 63 of Act 59 of 2000, section 42 of Act 5 of 2001, section 147 of Act 60 of 2001, section 56 of Act 30 of 2002, section 113 of Act 74 of 2002, section 163 of Act 45 of 2003, section 91 of Act 32 of 2004, section 18 of Act 9 of 2005, section 100 of Act 31 of 2005, section 39 of Act 9 of 2006 and section 75 of Act 20 of 2006

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

(a) by the substitution in subparagraph (x) for item (i) of the following item:

“(i) in terms of **[a company formation]** an asset-for-share transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);”;

(b) by the deletion in subparagraph (x) of item (ii); and

(2) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby deleted.

(3) Subsection (2) shall come into operation on 1 July 2008.

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 and section 81 of Act 8 of 2007

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

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

“(a) consigned or delivered by the vendor to the recipient at an address in an export country [**as evidenced by documentary proof acceptable to the Commissioner**]; or”;

(b) by the substitution for the following words in the definition of “**exported**” following paragraph (c) of the following words:

“(d) removed from the Republic by the recipient for conveyance to an export country [**in accordance with the provisions of an export incentive scheme approved by the Minister**],in accordance with any regulation made in terms of this Act.”; and

(c) by the substitution for the definition of “**foreign donor funded project**” of the following definition:

“‘**foreign donor funded project**’ means a project established in terms of an international donor funding agreement to supply goods or services to beneficiaries, to which the Government of the Republic is a party, and which agreement—

- (i) is binding on the Republic in terms of section 231(3) of the Constitution of the Republic of South Africa, 1996; and
- (ii) to the extent that the Minister has approved by notice in the *Gazette* [provides] that the international donor funding must not be subject to tax;” and

(d) by the substitution in the definition of “**input tax**” for paragraph (b) of the following paragraph:

“(b) an amount equal to the tax fraction (being the tax fraction applicable at the time the supply is deemed to have taken place) of the lesser of any consideration in money given by the vendor for or the open market value of the supply (not being a taxable supply) to him by way of a sale on or after the commencement date by a resident of the Republic (other than a person or diplomatic or consular mission of a foreign country established in the Republic that was granted relief, by way of a refund

of tax as contemplated in section 68) of any second-hand goods situated in the Republic: Provided that where such second-hand goods consist of—”.

(2) Subsection (1)(c) shall be deemed to come into operation on 7 February 2007 and will apply to all international donor funding agreements to which the Government of the Republic is a party to and which was entered into on or after 7 February 2007.

Amendment of section 6 of Act 89 of 1991, as amended by section 20 of Act 37 of 1996, section 34 of Act 34 of 1997, section 88 of Act 30 of 1998, section 66 of Act 19 of 2001, section 150 of Act 60 of 2001, section 116 of Act 74 of 2002, section 48 of Act 12 of 2003, section 45 of Act 16 of 2004, section 13 of Act 10 of 2006 and section 36 of Act 21 of 2006

111. Section 6 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) disclosing to the **[Chief of the Central Statistical Services]** Statistician-General such information in relation to any person as may be required by **[such Chief]** that Statistician-General in connection with the collection of statistics in carrying out the provisions of the Statistics Act, 1999 (Act No. 6 of 1999), or any regulation thereunder;”.

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 42 of Act 9 of 2006 and section 79 of Act 20 of 2006

112. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—
(a) by the substitution for subsection (3) of the following subsection:

“(3) For the purposes of this Act, a credit agreement to which section 121 of the National Credit Act, 2005 (Act No. 34 of 2005) applies, will be deemed not to be a supply of goods or services if the consumer has exercised the right to rescind that agreement in the manner and within the time permitted by that section.”; and

(b) by the substitution for subsection (27) of the following subsection:

“(27) For the purposes of this Act, where any amount received in respect of a taxable supply of goods or services at the rate of 14 per cent exceeds the consideration charged for that supply, and such excess amount has not been refunded within four months of receipt thereof, that excess amount shall be deemed to be consideration for a supply of services performed by the vendor in the course or furtherance of that vendor’s enterprise on the last day of the tax period during which that four month period ends.”.

(2) Subsection (1)(a) shall be deemed to have come into operation on 1 June 2007; and

(3) Subsection (1)(b) shall be deemed to have come into operation on 7 February 2007.

Amendment of section 9 of Act 89 of 1991, as amended by section 25 of Act 136 of 1991, section 167 of Act 45 of 2003, section 96 of Act 32 of 2004, 103 of 31 of 2005 and 172 of 34 of 2005

113. (1) Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) where that supply is a supply to which section 8(3) refers, on the day after the last day of the period during which the recipient may exercise the right under section 121 of the National Credit Act, 2005 (Act No. 34 of 2005) to rescind the agreement;”.

(2) Subsection (1) shall be deemed to have come into operation on 1 June 2007.

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 and section 81 of Act 20 of 2006

114. Section 11 to the Value-Added Tax Act, 1991, is hereby amended—

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

“(a) the supplier has supplied the goods (being movable goods) in terms of a sale or installment credit agreement and the goods have been exported —”

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

“(i) **[the supplier has exported the goods in the circumstances contemplated in paragraph (a), (b) or (c) of the definition of “exported” in section 1]** as contemplated in the regulation referred to in the definition of ‘exported’ in section 1; or”;

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

“(ii) **[the goods have been exported]** by the recipient and the supplier has elected to supply the goods at the zero rate as contemplated in **[Part 2 of an]** the regulation [export incentive scheme] referred to in **[paragraph (d) of]** the definition of ‘exported’ in section 1: Provided that—”;

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

“(q) the services are deemed to be supplied in terms of section 8(5B) **[to the extent that the Minister after consultation with the Minister of**

Foreign Affairs announces that that funding is zero-rated by notice in the *Gazette*];”.

(e) by the insertion in subsection (2) after paragraph (w) of the following paragraph:

“(x) the services are supplied by a vendor, being the owner of a horse, to the operator of a horse racing event to the extent of any consideration paid as a result of the successful participation of that horse in that event.”.

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 and section 83 of Act 20 of 2006

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

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

“(2) No deduction of input tax [shall be made in terms of this Act] in respect of a supply or the importation of any goods into the Republic, or any other deduction shall be made in terms of this Act, unless—”;

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

“(e) a tax invoice or debit or credit note has been provided as contemplated in section 54(2), and a statement as contemplated in section 54(3)(a) is held by the vendor at the time a return in respect of the supply to the vendor is furnished[:]; or”;

(c) by the insertion in subsection (2) of the following paragraph after paragraph (e):

“(f) the vendor, in any other case, is in possession of documentary proof, as is acceptable to the Commissioner, substantiating the

vendor's entitlement to the deduction, at the time a return in respect of the deduction is furnished.”;

(d) by the deletion of the second proviso in subsection (2):

(e) by the substitution in subsection (3) for paragraph (g) of the following paragraph:

“(g) any amount of input tax in relation to any supply or other deduction in respect of which **[paragraph (a) of, or the proviso to,]** subsection (2) of this section has operated to deny a deduction **[of input tax]** and the vendor has obtained, during the tax period, **[a tax invoice]** the prescribed documents or records in relation to that supply;” and

(f) by the substitution in subsection (3) for the first proviso of the following proviso:

“Provided that –

(i) where any vendor is entitled under the preceding provisions of this subsection to deduct any amount in respect of any tax period from the said sum, the vendor may deduct that amount from the amount of output tax attributable to a later tax period which ends no later than five years after the end of the tax period during which—

[(i)] (aa) the tax invoice for that supply should have been issued as contemplated in section 20(1);

[(ii)] (bb) goods were entered for home consumption in terms of the Customs and Excise Act;

[(iii)](cc) second-hand goods were acquired or goods as contemplated in section 8 (10) were repossessed;

[(iv)](dd) the agent should have notified the principal as contemplated in section 54 (3); or

[(v)](ee) in any other case, the vendor for the first time became entitled to such deduction **[and for which a tax invoice is not required for the claiming of such deduction]**, notwithstanding the documentary proof that the vendor must

be in possession of in terms of subsection (2) of this section,
and

- (ii) the said period of five years contemplated in proviso (i) of this section shall be limited to six months prior to the tax period in which the deduction is made, where the Commissioner is satisfied that the deduction was not permissible in accordance with the practice generally prevailing;

and to the extent that it has not previously been deducted by the vendor under this subsection:”.

Amendment of section 17 of Act 89 of 1991, as amended by section 31 of Act 136 of 1991, paragraph 9 of Government Notice 2695 of 8 November 1991, section 22 of Act 136 of 1992, section 31 of Act 97 of 1993, section 17 of Act 20 of 1994, section 33 of Act 27 of 1997, section 92 of Act 30 of 1998, section 88 of Act 53 of 1999, section 173 of Act 45 of 2003, section 102 of Act 32 of 2004, section 108 of Act 31 of 2005 and section 48 of Act 9 of 2006

116. Section 17 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (2A) of the following subsection:

“(2A) Subsection (2) shall not apply to input tax in respect of goods or services that are applied in the course or furtherance of a foreign donor funded project **[to the extent that the Minister announces that the funding of that foreign donor funded project is zero-rated in terms of section 11(2)(g) by notice in the *Gazette*].”.**

Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992, section 79 of Act 30 of 2000, section 44 of Act 5 of 2001, section 158 of Act 60 of 2001, section 118 of Act 74 of 2002, section 179 of Act 45 of 2003

117. Section 28 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subparagraphs (ii) and (iii) of the proviso to subsection (1) of the following subparagraphs:

“(ii) where payment of the full amount of the tax is effected by means of **[an] a [electronic transfer] debit order** and the requirements for the

transfer of the tax have been met by the vendor, such **[electronic transfer]** debit order shall not be effected prior to the last business day of the month during which the said twenty-fifth day falls and the period within which the tax is required to be paid shall be deemed to end on the last business day of such month;

- (iii) a vendor registered with the Commissioner to submit returns and payments electronically (other than by means of a debit order), must furnish the return within the period ending on the last business day of the month during which that twenty-fifth day falls;”.

Amendment of section 33 of Act 89 of 1991,

118. Section 33 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(1) Subject to the provisions of section 33A, an appeal against any decision, direction or supplementary direction or assessment of the Commissioner, as notified in terms of section 32(4), shall lie to the tax court constituted under the provisions of section 83 of the Income Tax Act within the period prescribed and the rules issued in terms of section 107A of the Income Tax Act for the area in which the appellant resides or carries on business or, if the appellant and the Commissioner agree for any other area.”; and

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

“(3) At the hearing by the tax court of any appeal to that court, the tax court may inquire into and consider the matter before it and may confirm, cancel or vary any decision, direction or supplementary direction of the Commissioner under appeal or make any other decision, direction or supplementary direction which the Commissioner was empowered to make at the time the Commissioner made the decision, direction or supplementary direction under appeal or, in the case of any assessment order that assessment to be altered or confirm the assessment or, if it

thinks fit, refer such matter back to the Commissioner for further investigation and reconsideration in the light of principles laid down by the court.”.

Amendment of section 33A of Act 89 of 1991, as amended by section 36 of Act 136 of 1991, section 96 of Act 53 of 1999 and section 65 of Act 59 of 2000 and section 161 of Act 60 of 2001

119. Section 33A of the Value-Added Tax Act, 1991, is hereby amended—

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

“(b) the appeal is lodged against the Commissioner’s disallowance of an objection against a decision, direction or supplementary direction of the Commissioner referred to in section 32(1)(a), (b) or (c) of this Act; or”; and

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

“(b) the reference in section 83A(10) (e) to an assessment in respect of which an appeal has been lodged shall be construed as including a reference to a decision, direction or supplementary direction of the Commissioner in respect of which an appeal has been lodged under this Act.”.

Amendment of section 55 of Act 89 of 1991, Amendment of section 55 of Act 89 of 1991, as amended by section 35 of Act 136 of 1992, section 38 of Act 97 of 1993, section 102 of Act 30 of 1998, section 17 of Act 10 of 2006 and section 18 of Act 9 of 2007

120. Section 55 of the Value-Added Tax Act, 1991, is hereby amended by the insertion in subsection (1) after paragraph (aA) of the following paragraph:

“(aB) any documentary proof required to be obtained and retained in accordance with section 16(2)(f).”.

Amendment of Schedule 1 of Act 89 of 1991, as amended by section 48 of Act 136 of 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996 and section 53 of Act 27 of 1997, as substituted by section 177 of Act 60 of 2001, as amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice R111 in *Government Gazette* 24274 of 2003, section 189 of Act 45 of 2003, sections 52–55 of Act 16 of 2004, section 108 of Act 32 of 2004, sections 111–113 of Act 31 of 2005, by sections 52-53 of Act 9 of 2006 and by section 89 of Act 20 of 2006.

121. Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph 7 for subparagraph (a) of the following subparagraph:

“(a) goods and foodstuffs set forth in Part A and Part B of Schedule 2 to this Act, but subject to such conditions as may be prescribed in the said Part; or”.

Amendment of Schedule 2 of Act 89 of 1991, as amended by section 49 of Act 136 of 1991, paragraph 25 of Government Notice 2695 of 8 November 1991, section 44 of Act 136 of 1992, section 45 of Act 97 of 1993, section 33 of Act 20 of 1994, section 104 of Act 30 of 1998, section 73 of Act 19 of 2001 and section 56 of Act 16 of 2004

122. Schedule 2 to the Value-Added Tax Act, 1991, is hereby amended by the substitution in Part B for Item 5 of the following Item:

“Item 5 Dried silo screened mealies or dried mealies **[for human consumption]** not further prepared or processed or packaged as seed, but excluding pop corn (zea mays everta).”.

Amendment of section 6 of Act 31 of 1998, as amended by section 15 of Act 32 of 1999, section 87 of Act 30 of 2000, section 75 of Act 19 of 2001, section 180 of Act 60 of 2001, section 60 of Act 30 of 2002, section 122 of Act 74 of 2002, section 191 of Act 45 of 2003, section 111 of Act 32 of 2004, section 132 of Act 31 of 2005 and section 58 of Act 9 of 2006

123. Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended—

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

- “(aa) in terms of **[a company formation]** an asset-for-share transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);”
- (b) by the deletion of subsection (1)(b)(ix)(bb); and
- (c) by the substitution in subsection (1)(b)(ix)(gg) for item (B) of the following item:
- “(B) in subparagraph (aa), **[(bb)]** or (cc) regardless of the market value of the asset disposed of in exchange for those securities; or”.

Amendment of section 4 of Act 9 of 1999 as amended by section 112 of Act 53 of 1999, section 91 of Act 30 of 2000, section 62 of Act 30 of 2002, section 196 of Act 45 of 2003 and section 24 of Act 9 of 2005

- 124.** Section 4 of the Skills Development Levy Act, 1999, is hereby amended by—
- (a) the addition of the word “or” after paragraph (a);
- (b) the deletion of paragraph (c).`

Amendment of section 99 of Act 45 of 2002

- 125.** Section 99 of the Collective Investment Schemes Control Act, 2002, is hereby amended by the substitution for subsection (7) of the following subsection:
- “(7) No **[transfer or stamp duty or]** registration or other fees are payable in respect of any endorsement or entry made in terms of subsection (5)[, and no stamp duty or other fees are payable in respect of the issue of a substituting participatory interest or the transfer of assets as a result of any amalgamation, cession, transfer or take-over in terms of this section].”.

Repeal of the Third Schedule to Act 9 of 2006

- 126.** (1) Schedule 3 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby repealed.
- (2) Subsection (1) shall be deemed to have come into operation on the date of introduction of this Act and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of section 3 of Act 8 of 2007

- 127.** Section 3 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution for subsection (3) of the following subsection:
- “(3) Subsection (1)(e), (f), (g), (h), (i) and (j) shall come into operation on 1 October 2007 and shall apply in respect of any lump sum benefit accrued on or after that date.”.

Amendment of section 15 of Act 8 of 2007

- 128.** (1) Section 15 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution for the words in subsection (1) preceding the amendment of the following words:
- “Section 12E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4)(a) for paragraph (i) of the following paragraph:”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 March 2007.

Amendment of section 54 of Act 8 of 2007

- 129.** (1) Section 54 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution in subsection (1)(c) for the words preceding the amendment of the following words:

DRAFT

“by the substitution in paragraph (a) of the definition of “**provisional taxpayer**” for the words following subparagraph (ii) and preceding item (aa) of the following words:”.

- (2) Subsection (1) shall be deemed to have come into operation on 7 February 2007.

Amendment of section 56 of Act 8 of 2007

- 130.** (1) Section 56 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution for the words preceding the amendment of the following words:

“Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:”.

- (2) Subsection (1) shall be deemed to have come into operation on 8 August 2007.

Amendment of section 64 of Act 8 of 2007

- 131.** (1) Section 64 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution in subsection (1)(b) for the words preceding the amendment of the following words:

“by the substitution in **[subparagraph (b)]** paragraph 63A(b) for the words preceding item (i) of the following words:”.

- (2) Subsection (1) shall be deemed to have come into operation on 1 April 2006.

Amendment of section 67 of Act 8 of 2007

- 132.** (1) Section 67 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) shall be deemed to have come into operation on 2 November 2006 and shall apply in respect of any disposal on or after that date.”.

- (2) Subsection (1) shall be deemed to have come into operation on 8 August 2007.

Amendment of section 112 of Act 8 of 2007

- 133.** (1) Section 112 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution in paragraph (a) for the words preceding the amendment of the following words:

“by the substitution for paragraph (c) of the definition of “**Championship site**” in paragraph 1(1) of the following paragraph:”.

- (2) Subsection (1) shall be deemed to have come into operation on 7 February 2007.

Amendment of section 115 of Act 8 of 2007

- 134.** (1) Section 115 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Section 63 of the Diamonds Act, 1986 (Act No. 56 of 1986), **[and section 31 of the Diamonds Amendment Act, 2005 (Act No. 29 of 2005), are]** is hereby amended as set out in paragraph 2 of Appendix III to this Act.”.

- (2) Subsection (1) shall be deemed to have come into operation on 1 July 2007.

Amendment of paragraph 4 of Appendix I to Act 8 of 2007

- 135.** Appendix I to the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution in paragraph 4 for the words that precede subparagraph (a) of the following words:

“The rate of tax referred to in section 2(1) of this Act, in respect of the taxable income of companies (other than a public benefit organisation or recreational club referred to in paragraph 5 or a small business corporation referred to in paragraph 6) in respect of any year of assessment ending during the twelve month period ending on 31 March 2008, is, subject to the provisions of paragraph [8] 9, as follows:—”.

Amendment of paragraph 1 of Appendix III to Act 8 of 2007

- 136.** (1) Appendix III to the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution for paragraph 1 of the following paragraph:

“1. For purposes of paragraph 2 of this **[Schedule]** Appendix, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Diamonds Act, 1986 (Act No. 56 of 1986), **[or the Diamonds Amendment Act, 2005 (Act No. 29 of 2005),]** bears the meaning so assigned.”.

- (2) Subsection (1) shall be deemed to have come into operation on 1 July 2007.

Insertion of paragraph 1A into Appendix III to Act 8 of 2007

- 137.** (1) Appendix III to the Taxation Laws Amendment Act, 2007, is hereby amended by the insertion after paragraph 1 of the following paragraph:

“1A. For purposes of paragraph 3 of this Appendix, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in Diamonds Amendment Act, 2005 (Act No. 29 of 2005), bears the meaning so assigned.”.

- (2) Subsection (1) shall be deemed to have come into operation on 1 July 2007.

Special zero-rating in respect of goods or services supplied by 2007 ICC 20 20 WC (South Africa)

138. (1) The supply of goods or services by 2007 ICC 20 20 WC (South Africa) in respect of the staging of the International Cricket Council’s 2007 Twenty 20 over World Championship in the Republic, shall be subject to value-added tax imposed in terms of section 7(1) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) at the zero rate to the extent that consideration for that supply is received from the International Cricket Council.”.

Special rules relating to the amalgamation of professional and amateur sporting bodies

- 139.** (1) For the purposes of this section, any word or expression to which a meaning has been assigned in the Income Tax Act, must, unless the context otherwise indicates, bear the meaning so assigned, and—

“Income Tax Act” means the Income Tax Act, 1962 (Act No. 58 of 1962);

“transferor” means any person who carries on any professional sporting activities falling under a code of sport administered and

controlled by a national federation as contemplated in section 1 of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998); and

“transferee” means any company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973) or any association of persons incorporated, formed or established in the Republic—

- (a) approved by the Commissioner in terms of section 30 of the Income Tax Act;
 - (b) engaged in the activities contemplated in paragraph 9 of Part I of the Ninth Schedule to the Income Tax Act, which activities fall under the same code of sport as the sporting activities carried on by the transferor; and
 - (c) which holds all the equity share capital in the transferor.
- (2) This section applies, notwithstanding any provision to the contrary in the Income Tax Act, other than section 103 and Part IIA of Chapter III, in respect of a transaction, as approved by the Commissioner and subject to such conditions as he or she may impose, in terms of which a transferor disposes of all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to a transferee and as a result of which the transferor’s existence will be terminated.
- (3) Where the transferor disposes of—
 - (a) a capital asset to the transferee which acquires it as a capital asset—
 - (i) that transferor must be deemed to have disposed of that asset for an amount equal to base cost of that asset on the date of the disposal thereof; and
 - (ii) that transferor and that transferee must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that transferee,

DRAFT

be deemed to be one and the same person with respect to—

(aa) the date of acquisition of that asset by that transferor and the amount and date of incurral by that transferor of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule to the Income Tax Act; and

(bb) any valuation of that asset effected by that transferor as contemplated in paragraph 29 (4) of the Eighth Schedule to the Income Tax Act; or

(b) an asset held by it as trading stock to the transferee which acquires it as trading stock—

(i) that transferor must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that transferor in respect of that asset in terms of section 11(a) or 22(1) or (2) of the Income Tax Act; and

(ii) that transferor and that transferee must, for purposes of determining any taxable income derived by that transferee from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that transferor and the amount and date of incurral by that transferor of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2) of the Income Tax Act.

(4) Where a transferor disposes of an asset that constitutes an allowance asset in that transferor's hands to the transferee and that transferee acquires that asset as an allowance asset—

- (a) no allowance allowed to that transferor in respect of that asset must be recovered or recouped by that transferor or included in that transferor's income for the year of that transfer; and
 - (b) that transferor and that transferee must be deemed to be one and the same person for purposes of determining the amount of any allowance—
 - (i) to which that transferee may be entitled in respect of that asset; or
 - (ii) that is to be recovered or recouped by or included in the income of that transferee in respect of that asset.
- (5) Where the transferee disposes of any share in the transferor as a result of the liquidation, winding up or deregistration of that transferor, that transferee must disregard that disposal for purposes of determining its taxable income, assessed loss, aggregate capital gain or aggregate capital loss.
- (6) The provisions of section 10(1)(cN) of the Income Tax Act will not apply in respect of the receipts and accruals derived by the transferee during the year of assessment in which the transaction contemplated in subsection (2) was concluded.
- (7) The transferee and the Commissioner may agree, subject to such adjustments as may be necessary and subject to such conditions as the Commissioner may impose, that the transferee be deemed to have received all receipts and accruals and be deemed to have incurred all expenditure and losses received or incurred by the transferor during the year of assessment in which the transaction contemplated in subsection (2) was concluded.
- (8) The provisions of section 30 of the Income Tax Act will not apply in respect of the transferee as from the date the transaction contemplated in subsection (2) was concluded.

- (9) No transfer duty is payable in terms of the Transfer Duty Act, 1949, in respect of the acquisition of an asset by the transferee in terms of a transaction as contemplated in subsection (2) if the public officer of the company has made a sworn affidavit or solemn declaration that the transaction complies with the provisions of this section.
- (10) Subsections (1) to (9) shall be deemed to have come into operation on 1 January 2008 and shall apply to any disposal on or before 31 December 2009.

Short title and commencement

- 140.** (1) This Act is called the Revenue Laws Amendment Act, 2007.
- (2) Except in so far as is otherwise provided for in this Act or the context indicates otherwise, the amendments effected to the Income Tax Act, 1962, shall for the purposes of assessments of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2008.