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GOVERNMENT GAZETTE

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[No. 6084

DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 1345.

28 June 1978.

No. 1345.

28 Junie 1978.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 101 of 1978: Income Tax Act, 1978.

No. 101 van 1978: Inkomstebelastingwet, 1978.

INCOME TAX ACT, 1978.

Act No. 101, 1978

GENERAL EXPLANATORY NOTE:

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

Words underlined with solid line indicate insertions in existing enactments.

ACT

To fix the rates of normal tax payable by persons other than companies in respect of taxable incomes for the years of assessment ending on 28 February 1979 and 30 June 1979; and by companies in respect of taxable incomes for years of assessment ending during the period of twelve months ending on 31 March 1979; to provide for the repayment to taxpayers concerned of a certain portion of normal tax paid; to amend the Income Tax Act, 1962; to amend the Income Tax Act, 1977; and to provide for incidental matters.

*(English text signed by the State President.)
(Assented to 20 June 1978.)*

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. The rates of normal tax to be levied in terms of section 5 (2) Rates of
5 of the Income Tax Act, 1962 (Act No. 58 of 1962), hereinafter normal tax.
referred to as the principal Act, in respect of—
 - (a) the taxable income of any person other than a company for the year of assessment ending 28 February 1979 or 30 June 1979; and
 - 10 (b) the taxable income of any company determined under the principal Act to have been derived elsewhere than in the territory of South West Africa for any year of assessment ending during the period of twelve months ending on 31 March 1979,
- 15 shall be as set forth in the Schedule to this Act.
2. The portion of the normal tax determined in accordance with Certain portion
the provisions of paragraph 1 (h) or (i) of the Schedule to this Act of normal tax
shall be a loan portion of that tax. repayable to
taxpayers.
3. (1) Section 1 of the principal Act is hereby amended— Amendment of
20 (a) by the substitution for paragraphs (a) and (b) of the section 1 of
definition of "benefit fund" of the following para- Act 58 of 1962,
graphs: as amended by
25 "(a) any friendly society registered under the Friendly section 3 of
Societies Act, 1956 (Act No. 25 of 1956), or **[(b)]** Act 90 of 1962,
any fund which is not so registered solely because section 1 of
of the provisions of section 2 (2) (a) of **[(the said)]** Act 6 of 1963,
that Act; or section 4 of
25 **[(the said)]** Act 72 of 1963,
section 4 of
30 **[(the said)]** 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,
- (b) any medical scheme registered under the provisions of the Medical Schemes Act, 1967 (Act No. 72 of 1967); or'';

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- (b) by the addition at the end of the definition of "dividend" of the following further proviso:
 "Provided further that a reserve of any company which consists of or includes any amount transferred from the share premium account of the company shall, except to the extent to which the Secretary is satisfied that such reserve consists of any other amount, be deemed for the purposes of this definition to be a share premium account of, or share premium received by, such company."; and
- (c) by the substitution for subparagraph (v) of paragraph (b) of the proviso to the definition of "pension fund" of the following subparagraph:
 "(v) for the administration of the fund in such a manner as to preclude the employer, except in the case of a local authority, from controlling the management or assets of the fund and from deriving any monetary advantage from moneys paid into or out of the fund, except that where the employer is a partnership, a member of the partnership may be permitted to derive such monetary advantage if he was previously an employee and, on becoming a partner, was permitted to retain his membership of the fund as though he had not ceased to be an employee, his contributions being based upon his pensionable emoluments during the twelve months which ended on the day on which he ceased to be an employee and his benefits from the fund being calculated accordingly; and"
- (2) For the purposes of assessments under the principal Act—
 (a) the amendment effected by paragraph (a) of subsection (1) shall be deemed to have taken effect as from the commencement of years of assessment ended or ending on or after 1 January 1976; and
 (b) the amendment effected by paragraph (b) of subsection (1) shall be deemed to have taken effect in respect of any amount distributed by a company on or after 13 June 1978.
4. (1) Section 10 of the principal Act is hereby amended—
 (a) by the insertion after subparagraph (xiC) of paragraph (i) of subsection (1) of the following subparagraphs:
 "(xiD) so much of the interest on Republic of South Africa 8 per cent Treasury Bonds as in the case of any taxpayer does not in the year of assessment exceed the sum of three thousand two hundred rand;
 (xiE) interest on Defence Bonus Bonds issued by the Treasury and the amount of any prize paid to holders of such bonds designated for the allocation of prizes"; and
 (b) by the substitution in subparagraph (xiv) of paragraph (i) of subsection (1) for the words "Bantu Investment Corporation of South Africa Limited" of the words "Corporation for Economic Development, Limited".
- (2) (a) The amendment effected by paragraph (a) of subsection (1) shall, for the purposes of assessments under the principal Act, be deemed to have taken effect from the commencement of years of assessment ended or ending on or after 1 January 1978.
 (b) The amendment effected by paragraph (b) of subsection (1) shall be deemed to have taken effect on 15 June 1977.
- section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976 and section 4 of Act 113 of 1977.
- 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 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 and section 8 of Act 113 of 1977.

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5. Section 11 of the principal Act is hereby amended—

(a) by the substitution for subparagraph (i) of paragraph (k) of the following subparagraph:

“(i) any sum contributed during the year of assessment to any pension fund by way of current contribution by any person **[holding]** who holds any office or employment, where the making of such a contribution is a condition of the holding of such office or employment, or by any person who is a partner referred to in subparagraph (v) of paragraph (b) of the proviso to the definition of ‘pension fund’: Provided that the total deduction to be allowed in respect of contributions by such person to **[a]** any pension fund or funds not established by law or for the benefit of employees of a local authority shall not in the year of assessment exceed the sum of one thousand seven hundred and fifty rand;”;

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 11 of Act 69 of 1975 and section 9 of Act 113 of 1977.

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

“(m) any amount paid by way of annuity during the year of assessment by any taxpayer—

(i) to a former employee who has retired from the taxpayer's employ on grounds of old age, ill health or infirmity; or

(ii) to a person who was for a period of at least five years a partner in an undertaking carried on by the taxpayer and who retired from the partnership in respect of that undertaking on grounds of old age, ill health or infirmity, provided the Secretary is satisfied that the amount so paid to such person is reasonable, having regard to the services rendered by such person as a partner in such undertaking prior to his retirement and the profits made in such undertaking, and that the said amount does not represent consideration payable to such person in respect of his interest in the partnership; or

[(ii)] (iii) to any person who is dependent for his maintenance upon a former employee or a former partner in an undertaking carried on by the taxpayer or (where such former employee or former partner is deceased) was so dependent immediately prior to his death:

Provided that the deduction under subparagraph **[(ii)]** (iii) shall not exceed in respect of the persons so dependent on any one retired or deceased employee or former partner, the sum of one thousand rand;”;

(c) by the substitution in subparagraph (aa) of paragraph (n) for the words preceding the proviso of the following words:

“(aa) so much of the total current contributions to any retirement annuity fund or funds made by any person as a member of such fund or funds during a year of assessment during which such person has carried on any trade as does not in the year of assessment exceed three thousand five hundred rand in the case of the taxpayer or, where the taxpayer is entitled to a deduction under paragraph (k) (i), the amount by which the amount of the deduction under the said paragraph is less than three thousand five hundred rand;”;

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(d) by the substitution for subparagraph (bb) of paragraph (n) of the following subparagraph:

5 “(bb) so much of the total of any contributions **[not exceeding one thousand rand in the case of the taxpayer]** to any retirement annuity fund or funds made by any person as a member of such fund or funds during a year of assessment during which such person has carried on any trade as does not exceed one thousand rand in the case of the taxpayer, where such contributions are made under conditions prescribed in the rules of **[such]** the fund whereby a member who has discontinued his contributions prematurely is entitled to be reinstated as a full member thereof and the current contributions to the fund have been paid in full. Provided that no deduction shall be made under this subparagraph in respect of any contribution relating to any year of assessment which, if such contribution had been made during that year, would not have qualified for deduction under this paragraph, as applicable in relation to the said year;”.

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6. (1) Section 12 of the principal Act is hereby amended—

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

25 “(1) In respect of **[new or unused machinery or plant]**—

(a) **new or unused machinery or plant** which is brought into use by any taxpayer for the purposes of his trade (other than mining or farming) and is used by him directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Secretary is of a similar nature; or

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(b) **new or unused machinery or plant**, which was or is first let by any taxpayer on or after 17 August 1966 and is brought into use by the lessee for the purposes of the lessee's trade (other than mining or farming) and is used by the lessee directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Secretary is of a similar nature; or

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(c) **used machinery or plant**, other than used machinery or plant referred to in subsection (3) (b) (i), which was or is on or after 1 April 1978 brought into use by any taxpayer for the purposes of his trade, other than mining or farming, and is used by him directly in a process of manufacture carried on by him or in any other process carried on by him which in the opinion of the Secretary is of a similar nature; or

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(d) **used machinery or plant**, other than used machinery or plant referred to in subsection (3) (b) (i), which was or is let by any taxpayer for the first time on or after 1 April 1978 and is brought into use by the lessee for the purposes of the lessee's trade, other than mining or farming, and is used by the lessee directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Secretary is of a similar nature,

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60 there shall be allowed to be deducted from the income of such taxpayer for the year of assessment during

Amendment of section 12 of Act 58 of 1962, as substituted by section 15 of Act 55 of 1966 and amended by section 12 of Act 52 of 1970, section 11 of Act 88 of 1971, section 11 of Act 90 of 1972, section 12 of Act 65 of 1973, section 15 of Act 85 of 1974, section 11 of Act 69 of 1975 and section 13 of Act 113 of 1977.

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which such machinery or plant is so brought into use an allowance, to be known as the 'machinery initial allowance'.

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

“(1A) The machinery initial allowance under subsection (1) shall be calculated on the cost (as determined in accordance with the provisions of subsection (1B)) to the taxpayer concerned of the machinery or plant which qualifies for the allowance and the rate of the allowance shall be—

(i) in respect of new or unused machinery or plant brought into use on or before 14 August 1974, fifteen per cent of such cost: Provided that if such machinery or plant has been brought into use in an economic development area, the Minister of Finance may, having due regard to the circumstances of the case, direct that the allowance be increased to a sum not exceeding thirty per cent of such cost; or

(ii) in respect of new or unused machinery or plant brought into use on or after 15 August 1974, twenty-five per cent of such cost: Provided that if such machinery or plant has been brought into use in an economic development area, the Minister of Finance may, having due regard to the circumstances of the case, direct that the allowance be increased to a sum not exceeding forty per cent of such cost; or

(iii) in respect of used machinery or plant brought into use on or after 1 April 1978, twenty-five per cent of such cost.”;

(c) by the substitution in subsection (2) for the words preceding subparagraph (i) of the following words:

“(2) Where any new or unused machinery or plant—

(a) is brought into use not later than 30 June 1979 by any taxpayer for the purposes of his trade (other than mining or farming) and is used by him directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Secretary is of a similar nature; or

(b) was or is first let by any taxpayer on or after 17 August 1966 and on or before 30 June 1979 and is brought into use by the lessee for the purposes of the lessee's trade (other than mining or farming) and is used by the lessee directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Secretary is of a similar nature: Provided that the provisions of this paragraph shall not apply if the lessee does not in carrying on the said trade derive amounts constituting income for the purposes of this Act, unless the machinery or plant in question is specified in a written agreement of lease between the taxpayer and the lessee concluded before the date of promulgation of the Income Tax Act, 1978, and the lessee binds himself in such agreement to pay a rental for such machinery or plant which is fixed in the agreement; or

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- (c) is brought into use on or after 1 July 1979 by any taxpayer for the purposes of his trade (other than mining or farming) and is used by him directly in a process of manufacture carried on by him; or
- 5 (d) is first let by any taxpayer on or after 1 July 1979 and is brought into use by the lessee for the purposes of the lessee's trade (other than mining or farming) and is used by the lessee directly in a process of manufacture carried on by him: Provided that the provisions of this paragraph shall not apply if the lessee does not in carrying on the said trade derive amounts constituting income for the purposes of this Act, unless the machinery or plant in question is specified in a written agreement of lease
- 10 between the taxpayer and the lessee concluded before the date of promulgation of the Income Tax Act, 1978, and the lessee binds himself in such agreement to pay a rental for such machinery or plant which is fixed in the agreement,
- 15 there shall further be allowed to be deducted from the income of such taxpayer for the year of assessment during which such machinery or plant is so brought into use an allowance, to be known as the 'machinery investment allowance', if—
- 20 (d) by the substitution in the Afrikaans text for the word "en" at the end of subparagraph (iii) of subsection (2) of the word "of";
- (e) by the substitution in subparagraph (iv) of subsection (2) for the expression "1979" of the expression "1982";
- 25 (f) by the substitution in subparagraph (iiB) of paragraph (c) of subsection (2A) for the expression "1979" of the expression "1982";
- (g) by the substitution in subparagraph (iii) of paragraph (c) of subsection (2A) for the expression "1979" of the expression "1982";
- 30 (h) by the substitution in subparagraph (iv) of paragraph (d) of subsection (2A) for the expression "1979" of the expression "1982"; and
- (i) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
- 35 " (3) The provisions of subsections (1), (1A), (1B), (2) and (2A) shall *mutatis mutandis* apply—"
- 40

(2) The amendments effected by subsection (1) shall, for the purposes of assessments under the principal Act, be deemed to

45 have taken effect in respect of years of assessment ending on or after 1 April 1978.

7. Section 13 of the principal Act is hereby amended—

- (a) by the substitution in subsection (5) (e) for the expression "1979", wherever it occurs, of the expression "1982";
- 50 (b) by the substitution for the proviso to subsection (5) of the following proviso:
- "Provided that—
- (i) no allowance shall be made under this subsection in respect of any building or improvements on any premises not owned by the taxpayer unless the taxpayer at the date on which the erection of such building or the introduction of such improvements is commenced is entitled to the occupation of such premises for a period ending not less than ten years
- 55 after such date;
- 60

Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962, section 5 of Act 6 of 1963, section 11 of Act 72 of 1963, section 12 of Act 90 of 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971,

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- 5 (ii) the references in this subsection to any process which in the opinion of the Secretary is of a nature similar to a process of manufacture, shall not apply in respect of any building the erection of which is commenced after 30 June 1979 or in respect of any building improvements commenced after that date, nor in respect of any building brought into use after 30 June 1980 or any improvements completed after that date;
- 10 (iii) no allowance shall be made under this subsection in respect of any building let by the taxpayer or in respect of any improvements thereto unless—
 - 15 (aa) the receipts and accruals derived by the lessee in carrying on his aforementioned trade constitute income for the purposes of this Act; or
 - 20 (bb) the erection of the building is, or the improvements are, commenced on or before 30 June 1979, the building is erected or the improvements are effected in pursuance of a written agreement concluded by the taxpayer and a building contractor before the date of promulgation of the Income Tax Act, 1978, the building is or such improvements are specified in such agreement, the taxpayer binds himself to pay a price, stipulated in the agreement, for the building or improvements, and such building is brought into use or such improvements are completed, as the case may be, not later than 30 June 1980.”;
 - 30 (c) by the substitution in paragraph (ii) of the proviso to subsection (6) for the expression “1980” of the expression “1983”;
 - 35 (d) by the substitution in subparagraph (i) of paragraph (a) of subsection (6A) for the expression “1979” of the expression “1982”;
 - (e) by the substitution in subparagraph (ii) of paragraph (a) of subsection (6A) for the expression “1980” of the expression “1983”; and
 - 40 (f) by the substitution in subparagraph (iiA) of paragraph (a) of subsection (6A) for the expression “1979”, wherever it occurs, of the expression “1982”, and by the substitution in that subparagraph for the expression “1980” of the expression “1983”.

section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974 and section 13 of Act 69 of 1975.

8. (1) Section 20 of the principal Act is hereby amended by the addition to subsection (5) of the following proviso:

“Provided that so much of any balance of assessed loss incurred by a company in carrying on any trade in the port or settlement of Walvis Bay prior to 1 September 1977 as has not been set off against income derived by the company in the territory, shall be deemed to be an assessed loss incurred in carrying on a trade elsewhere than in the territory.”

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 and section 15 of Act 65 of 1973.

(2) The amendment effected by subsection (1) shall, for the purposes of assessments under the principal Act, be deemed to have taken effect as from the commencement of years of assessment ended or ending on or after 1 September 1977.

9. (1) The following section is hereby inserted in the principal Act after section 24A:

Insertion of section 24B in Act 58 of 1962.

“Gains or losses on foreign exchange transactions.”

24B. (1) Where any taxpayer has on or after 29 March 1978 repaid any credit in a foreign currency which was utilized by the taxpayer for the purpose of incurring expenditure designed to produce income derived by the taxpayer from carrying on in the Republic any commercial, industrial or mining under-

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taking and in repaying such credit has realized a gain or sustained a loss, such gain shall in the determination of the taxpayer's taxable income be included in the taxpayer's income or such loss shall in the said determination be deducted from the taxpayer's income, unless, when such credit was so utilized, a forward exchange contract was available to the taxpayer in respect of the repayment of the credit.

(2) Such gain or loss shall be deemed to be the difference between the equivalent in the currency of the Republic of the amount of the credit, when it was utilized by the taxpayer as aforesaid, and the equivalent amount in the currency of the Republic actually required to repay the credit, and such gain or loss shall be deemed to have been realized or sustained at the time when the credit was repaid: Provided that where, subsequent to the date on which the credit was utilized, any change in foreign currency exchange rates occurred in consequence of which the taxpayer's income or taxable income was adjusted for normal tax purposes, such adjustment shall be taken into account for the purposes of determining the said gain or loss.

(3) For the purposes of this section 'forward exchange contract' means any agreement with an authorized dealer in foreign currencies in the Republic, whereby currency of the Republic is exchanged for a foreign currency at some future date at a specified rate of exchange."

(2) The amendment effected by subsection (1) shall, for the purposes of assessments under the principal Act, be deemed to apply in respect of years of assessment ended or ending on or after 29 March 1978.

10. The following section is hereby substituted for section 26 of the principal Act:

Amendment of section 26 of Act 58 of 1962.

35 "Determination of taxable income derived from farming. 26. (1) The taxable income of any person carrying on pastoral, agricultural or other farming operations shall, in so far as it is derived from such operations, be determined in accordance with the provisions of this Act but subject to the provisions of the First Schedule.

40 (2) In the case of any person who has discontinued carrying on pastoral, agricultural or other farming operations and is still in possession of any livestock or produce, or has entered into a 'sheep lease' or similar agreement relating to livestock or produce, which has been taken into account and in respect of which expenditure under the provisions of this Act or any previous Income Tax Act has been allowed in the determination of the taxable income derived by such person when such operations were carried on, the provisions of this Act, but subject to the provisions of paragraphs 1, 2, 3, 4, 5, 6, 7, 9 or 11 of the First Schedule, shall continue to be applicable to that person in respect of such livestock or produce, as the case may be, until the year of assessment during which he disposes of the last of such livestock or produce, notwithstanding the fact that such operations have been discontinued."

11. Section 27 of the principal Act is hereby amended—
 60 (a) by the substitution in subparagraphs (i) and (ii) of paragraph (c) of subsection (2) for the expression "1979" of the expression "1982";
 (b) by the substitution in paragraph (e) of subsection (2) for the expression "1979" of the expression "1982";

Amendment of section 27 of Act 58 of 1962, as amended by section 17 of Act 113 of 1977.

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- (c) by the substitution in the proviso to subsection (6) for the expression "1980" of the expression "1983"; and
- (d) by the substitution in paragraph (c) of subsection (7) for the expression "1979", wherever it occurs, of the expression "1982".

12. (1) The following section is hereby inserted in the principal Act after section 37A:

Insertion of section 37B in Act 58 of 1962.

10 "Determination of taxable income derived by persons (other than companies) in port or settlement of Walvis Bay. 37B. For the purposes of the determination of the taxable income of any taxpayer (other than a company) ordinarily resident or carrying on business in the port or settlement of Walvis Bay for any year of assessment, where any rule provided in this Act as to the inclusion in the income of such taxpayer for such year or as to the deduction or set-off of any amount from or against his income for such year, in effect requires that regard shall be had to anything that has been done or has occurred in or in relation to a previous year of assessment, anything that has in fact been done or has in fact occurred in or in relation to a year of assessment in respect of which the taxpayer was assessable for taxation purposes under the Income Tax Ordinance, 1974 (Ordinance No. 5 of 1974), of the territory (including a year of assessment in which falls the first day of September 1977), shall for the purposes of applying such rule, but subject to such adjustments as the Secretary may make, be taken into account."

(2) The amendment effected by subsection (1) shall, for the purposes of assessments under the principal Act, be deemed to have taken effect from the commencement of the year of assessment which ended on 28 February 1978.

13. (1) Section 56 of the principal Act is hereby amended by the substitution in subsection (2) (b) for the word "ten" of the word "fifteen".

Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974 and section 21 of Act 113 of 1977.

(2) The amendment effected by subsection (1) shall be deemed to apply in respect of donations made on or after 1 April 1978.

14. (1) Section 103 of the principal Act is hereby amended—

Amendment of section 103 of Act 58 of 1962.

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

40 "(1) **[Where]** Whenever the Secretary is satisfied that any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act, and including a transaction, operation or scheme involving the alienation of property)—

45 (a) has been entered into or carried out which has the effect of avoiding or postponing liability for the payment of any tax, duty or levy **[on income (including any such tax, duty or levy imposed by a previous Act)] imposed by this Act or any**

50 **previous Income Tax Act**, or of reducing the amount thereof; and **[which in the opinion of the Secretary,]**

(b) having regard to the circumstances under which the transaction, operation or scheme was entered into or carried out—

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- 5 (i) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; or
- 10 (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length under a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; and
- 15 **[the Secretary is of the opinion that the avoidance or the postponement of such liability, or the reduction of the amount of such liability was the sole or one of the main purposes of the transaction, operation or scheme,]**
- 20 (c) was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of liability for the payment of any tax, duty or levy (whether imposed by this Act or any previous Income Tax Act or any other law administered by the Secretary) or the reduction of the amount of such liability,

25 the Secretary shall determine the liability for any tax, duty or levy **[on income]** imposed by this Act, and the amount thereof, as if the transaction, operation or scheme had not been entered into or carried out, or in such manner as in the circumstances of the case he

30 deems appropriate for the prevention or diminution of such avoidance, postponement or reduction.

(2) Whenever the Secretary is satisfied that any agreement affecting any company or any change in the shareholding in any company, as a direct or indirect result of which income has been received by or has accrued to that company during any year of assessment, has at any time before or after the commencement of the Income Tax Act, 1946, been entered into or effected by any person solely or mainly for the purpose of utilizing any assessed loss or any balance of assessed loss incurred by the company, in order to avoid liability on the part of that company or any other person for the payment of any tax, duty or levy on income, or to reduce the amount thereof, the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed.”; and

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

50 “(4) Any decision of the Secretary under subsection (1), (2) or (3) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the transaction, operation, scheme, agreement or change in shareholding in question would result in the avoidance or the postponement of liability for payment of any tax, duty or levy **[on income]** imposed by this

55 Act or any previous Income Tax Act or any other law administered by the Secretary, or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved—

60 (a) in the case of any such transaction, operation or scheme, that **[its sole or one of its main]** it was entered into or carried out solely or mainly for the purposes **[was]** of the avoidance or the postpone-

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ment of such liability or the reduction of the amount of such liability; or

(b) in the case of any such agreement or change in shareholding, that it has been entered into or effected solely or mainly for the purpose of utilizing the assessed loss or balance of assessed loss in question in order to avoid or postpone such liability or to reduce the amount thereof."

15. (1) Section 108 of the principal Act is hereby amended—

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

Amendment of section 108 of Act 58 of 1962.

"(1) The State President may enter into an agreement with the government of any other country or territory, whereby arrangements are made with such government with a view to the prevention, mitigation or discontinuance of the levying, under the laws of the Republic and of such other country or territory, of **[income]** tax in respect of the same income, profits or gains, or tax imposed in respect of the same donation, or to the rendering of reciprocal assistance in the administration of and the collection of taxes under the **[income tax]** said laws of the Republic and of such other country or territory.

(2) As soon as may be after the conclusion of any such agreement the arrangements thereby made shall be notified by proclamation by the State President in the *Gazette*, whereupon until such proclamation is revoked by the State President, the arrangements notified therein shall, so far as they relate to immunity, exemption or relief in respect of **[income]** such tax in the Republic, have effect as if enacted in this Act, but only if and for so long as such arrangements, in so far as they relate to immunity, exemption or relief in respect of **[income]** such tax levied or leviable in such other country or territory, have the effect of law in such country or territory."; and

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

"(5) The duty imposed by any law to preserve secrecy with regard to **[income]** such tax shall not prevent the disclosure to any authorized officer of the country or territory mentioned in any proclamation issued in terms of subsection (2), of the facts, knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose in order to render or receive assistance in accordance with the arrangements notified in such proclamation."

(2) The amendments effected by subsection (1) shall be deemed to have come into operation on 1 April 1978.

16. Paragraph 3 of the First Schedule to the principal Act is hereby amended by the substitution for subparagraphs (2) and (3) of the following subparagraphs:

Amendment of paragraph 3 of First Schedule to Act 58 of 1962, as amended by section 16 of Act 72 of 1963.

"(2) For the purposes of subparagraph (1), the value of livestock or produce held and not disposed of at the end of any year of assessment by any person who discontinued farming operations during such year, shall be included in his income for such year and for all subsequent years of assessment so long as such livestock or produce, or any portion thereof, is so held and not disposed of.

"(3) Any livestock which is the subject of any 'sheep lease' or similar agreement concerning livestock, and any

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produce which is the subject of a similar agreement, shall be deemed to be held and not disposed of by the grantor of such lease or agreement."

17. (1) Paragraph 13 of the First Schedule to the principal Act 5 is hereby amended by the substitution for item (a) (i) of subparagraph (1) of the following item:

10 "(i) has in any year of assessment [(other than a year of assessment in respect of which the normal tax chargeable in the case of such farmer is required to be determined under paragraph 19)] sold livestock on account of drought, [or] stock disease or damage to grazing by fire or plague; and"

Amendment of paragraph 13 of First Schedule to Act 58 of 1962, as substituted by section 21 of Act 90 of 1972.

(2) The amendment effected by subsection (1) shall, for the purposes of assessments under the principal Act, be deemed to 15 have taken effect as from the commencement of the year of assessment which ended on 28 February 1978.

18. (1) Paragraph 6 of the Fifth Schedule to the principal Act is hereby amended by the addition of the following subparagraph, the existing paragraph becoming subparagraph (1):

20 "(2) Any moneys repaid under the provisions of subparagraph (1) shall be deemed to have been appropriated by law."

Amendment of paragraph 6 of Fifth Schedule to Act 58 of 1962, as inserted by section 26 of Act 52 of 1970 and amended by section 26 of Act 90 of 1972 and section 60 of Act 85 of 1974.

(2) The amendment effected by subsection (1) shall be deemed to have taken effect on 1 March 1965.

25 19. Paragraph 8 of the Sixth Schedule to the principal Act is hereby amended by the substitution in subparagraph (6) for the word "six" of the word "twelve".

Amendment of paragraph 8 of Sixth Schedule to Act 58 of 1962, as substituted by section 33 of Act 65 of 1973.

20. Section 10 of the Income Tax Act, 1977, is hereby amended by the addition of the following subsection:

30 "(3) The amendment effected by paragraph (i) of subsection (1) shall, for the purposes of assessments under the principal Act, be deemed to have taken effect as from the commencement of years of assessment ending on or after 1 January 1979."

Amendment of section 10 of Act 113 of 1977.

35 21. Save in so far as is otherwise provided therein, or the context otherwise indicates, the amendments effected to the principal Act by this Act, shall, for the purposes of assessments in respect of normal tax and undistributed profits tax under the principal Act, be deemed to have taken effect as from the 40 commencement of years of assessment ending on or after 1 January 1979.

Commencement of certain amendments.

22. This Act shall be called the Income Tax Act, 1978.

Short title.

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Schedule

RATES OF NORMAL TAX PAYABLE BY PERSONS OTHER THAN COMPANIES IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 28 FEBRUARY 1979 AND 30 JUNE 1979, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF TWELVE MONTHS ENDING 31 MARCH 1979.

(Section 1 of this Act)

1. The rates of normal tax referred to in section 1 of this Act are as follows:—

(a) in respect of the taxable income of any person other than a company, an amount of tax calculated in accordance with the tables below on the taxable amount of such person:

Tables

Taxable Amount	Rates of tax in respect of married persons
Where the taxable amount—	
does not exceed R1 000	9 per cent of each R1 of the taxable amount;
exceeds R 1 000 but does not exceed R 2 000	R90 plus 10 per cent of the amount by which the taxable amount exceeds R1 000;
" R 2 000 " " " " R 3 000	R190 plus 10 per cent of the amount by which the taxable amount exceeds R2 000;
" R 3 000 " " " " R 4 000	R290 plus 11 per cent of the amount by which the taxable amount exceeds R3 000;
" R 4 000 " " " " R 5 000	R400 plus 12 per cent of the amount by which the taxable amount exceeds R4 000;
" R 5 000 " " " " R 6 000	R520 plus 14 per cent of the amount by which the taxable amount exceeds R5 000;
" R 6 000 " " " " R 7 000	R660 plus 16 per cent of the amount by which the taxable amount exceeds R6 000;
" R 7 000 " " " " R 8 000	R820 plus 18 per cent of the amount by which the taxable amount exceeds R7 000;
" R 8 000 " " " " R 9 000	R1 000 plus 20 per cent of the amount by which the taxable amount exceeds R8 000;
" R 9 000 " " " " R10 000	R1 200 plus 22 per cent of the amount by which the taxable amount exceeds R9 000;
" R10 000 " " " " R11 000	R1 420 plus 24 per cent of the amount by which the taxable amount exceeds R10 000;
" R11 000 " " " " R12 000	R1 660 plus 26 per cent of the amount by which the taxable amount exceeds R11 000;
" R12 000 " " " " R13 000	R1 920 plus 28 per cent of the amount by which the taxable amount exceeds R12 000;
" R13 000 " " " " R14 000	R2 200 plus 30 per cent of the amount by which the taxable amount exceeds R13 000;
" R14 000 " " " " R15 000	R2 500 plus 32 per cent of the amount by which the taxable amount exceeds R14 000;
" R15 000 " " " " R16 000	R2 820 plus 34 per cent of the amount by which the taxable amount exceeds R15 000;

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Taxable Amount	Rates of tax in respect of married persons
Where the taxable amount— exceeds R16 000 but does not exceed R17 000	R3 160 plus 36 per cent of the amount by which the taxable amount exceeds R16 000;
" R17 000 " " " " R18 000	R3 520 plus 38 per cent of the amount by which the taxable amount exceeds R17 000;
" R18 000 " " " " R19 000	R3 900 plus 40 per cent of the amount by which the taxable amount exceeds R18 000;
" R19 000 " " " " R20 000	R4 300 plus 42 per cent of the amount by which the taxable amount exceeds R19 000;
" R20 000 " " " " R21 000	R4 720 plus 44 per cent of the amount by which the taxable amount exceeds R20 000;
" R21 000 " " " " R22 000	R5 160 plus 46 per cent of the amount by which the taxable amount exceeds R21 000;
" R22 000 " " " " R23 000	R5 620 plus 48 per cent of the amount by which the taxable amount exceeds R22 000;
" R23 000 " " " " R24 000	R6 100 plus 50 per cent of the amount by which the taxable amount exceeds R23 000;
" R24 000 " " " " R25 000	R6 600 plus 52 per cent of the amount by which the taxable amount exceeds R24 000;
" R25 000 " " " " R26 000	R7 120 plus 54 per cent of the amount by which the taxable amount exceeds R25 000;
" R26 000 " " " " R27 000	R7 660 plus 56 per cent of the amount by which the taxable amount exceeds R26 000;
" R27 000 " " " " R28 000	R8 220 plus 58 per cent of the amount by which the taxable amount exceeds R27 000;
" R28 000	R8 800 plus 60 per cent of the amount by which the taxable amount exceeds R28 000;

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Taxable Amount	Rates of tax in respect of persons who are not married persons
Where the taxable amount— does not exceed R1 000	12 per cent of each R1 of the taxable amount;
exceeds R 1 000 but does not exceed R 2 000	R120 plus 12 per cent of the amount by which the amount exceeds R1 000;
" R 2 000 " " " " R 3 000	R240 plus 13 per cent of the amount by which the amount exceeds R2 000;
" R 3 000 " " " " R 4 000	R370 plus 14 per cent of the amount by which the amount exceeds R3 000;
" R 4 000 " " " " R 5 000	R510 plus 17 per cent of the amount by which the amount exceeds R4 000;
" R 5 000 " " " " R 6 000	R680 plus 20 per cent of the amount by which the amount exceeds R5 000;
" R 6 000 " " " " R 7 000	R880 plus 23 per cent of the amount by which the amount exceeds R6 000;
" R 7 000 " " " " R 8 000	R1 110 plus 26 per cent of the amount by which the amount exceeds R7 000;
" R 8 000 " " " " R 9 000	R1 370 plus 28 per cent of the amount by which the amount exceeds R8 000;
" R 9 000 " " " " R10 000	R1 650 plus 30 per cent of the amount by which the amount exceeds R9 000;
" R10 000 " " " " R11 000	R1 950 plus 32 per cent of the amount by which the amount exceeds R10 000;
" R11 000 " " " " R12 000	R2 270 plus 34 per cent of the amount by which the amount exceeds R11 000;
" R12 000 " " " " R13 000	R2 610 plus 36 per cent of the amount by which the amount exceeds R12 000;
" R13 000 " " " " R14 000	R2 970 plus 38 per cent of the amount by which the amount exceeds R13 000;
" R14 000 " " " " R15 000	R3 350 plus 40 per cent of the amount by which the amount exceeds R14 000;
" R15 000 " " " " R16 000	R3 750 plus 42 per cent of the amount by which the amount exceeds R15 000;
" R16 000 " " " " R17 000	R4 170 plus 44 per cent of the amount by which the amount exceeds R16 000;
" R17 000 " " " " R18 000	R4 610 plus 46 per cent of the amount by which the amount exceeds R17 000;
" R18 000 " " " " R19 000	R5 070 plus 48 per cent of the amount by which the amount exceeds R18 000;
" R19 000 " " " " R20 000	R5 550 plus 50 per cent of the amount by which the amount exceeds R19 000;

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Taxable Amount	Rates of tax in respect of persons who are not married persons
Where the taxable amount— exceeds R20 000 but does not exceed R21 000	R6 050 plus 52 per cent of the amount by which the taxable amount exceeds R20 000;
„ R21 000 „ „ „ „ R22 000	R6 570 plus 54 per cent of the amount by which the taxable amount exceeds R21 000;
„ R22 000 „ „ „ „ R23 000	R7 110 plus 56 per cent of the amount by which the taxable amount exceeds R22 000;
„ R23 000 „ „ „ „ R24 000	R7 670 plus 58 per cent of the amount by which the taxable amount exceeds R23 000;
„ R24 000	R8 250 plus 60 per cent of the amount by which the taxable amount exceeds R24 000;

(b) on each rand of the taxable income of any company (excluding taxable income derived from mining operations and taxable income referred to in subparagraph (e)), forty cents: Provided that there shall be added to the amount of tax calculated in accordance with the preceding provisions of this subparagraph a surcharge equal to five per cent of such amount;

(c) on each rand of the taxable income derived by any company from mining for gold otherwise than on any post-1966 gold mine (but with the exclusion of so much of the taxable income as the Secretary determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the principal Act), a percentage determined in accordance with the formula:

$$y = 60 - \frac{360}{x}$$

in which formula (and in the formulae set out in the first and second provisos hereto) *y* represents such percentage and *x* the ratio expressed as a percentage which the taxable income so derived (with the said exclusion) bears to the income so derived (with the said exclusion); Provided that if the taxable income so derived (with the said exclusion) does not exceed forty thousand rand, the rate of tax shall not exceed a percentage determined in accordance with the formula:

$$y = 20 \left(1 - \frac{6}{x}\right),$$

and if such taxable income exceeds forty thousand rand, the rate of tax shall not exceed a percentage determined in accordance with a formula arrived at by increasing the number 20 in the formula $y = 20 \left(1 - \frac{6}{x}\right)$ by one for each completed amount of two thousand five hundred rand by which the said taxable income exceeds forty thousand rand: Provided further that where a certificate is given by the Government Mining Engineer to the effect that prescribed conditions have been complied with, the rate of tax in respect of taxable income derived from mining for gold on an assisted gold mine shall not exceed a percentage determined in accordance with the formula $y = 68 - \frac{601}{x}$: Provided further that there shall be added to the amount of tax calculated in accordance with the preceding provisions of this subparagraph, excluding the second proviso, a surcharge equal to seven and a half per cent of such amount;

(d) on each rand of the taxable income derived by any company from mining for gold on any post-1966 gold mine (but with the exclusion of so much of the taxable income as the Secretary determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the principal Act), a percentage determined in accordance with the formula:

$$y = 60 - \frac{480}{x}$$

in which formula (and in the formulae set out in the first proviso hereto) *y* represents such percentage and *x* the ratio expressed as a percentage which the taxable income so derived (with the said exclusion) bears to the income so derived (with the said exclusion): Provided that if the taxable income so derived (with the said exclusion) does not exceed forty thousand rand, the rate of tax shall not exceed a percentage determined in accordance with the formula:

$$y = 20 \left(1 - \frac{8}{x}\right),$$

and if such taxable income exceeds forty thousand rand, the rate of tax shall not exceed a percentage determined in accordance with a formula arrived at by increasing the number 20 in

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the formula $y = 20 \left(1 - \frac{8}{x}\right)$ by one for each completed amount of two thousand five hundred rand by which the said taxable income exceeds forty thousand rand: Provided further that there shall be added to the amount of tax calculated in accordance with the preceding provisions of this subparagraph a surcharge equal to seven and a half per cent of such amount;

- (e) on each rand of the taxable income of any company, the sole or principal business of which in the Republic is or has been mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Secretary determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the principal Act, a rate equal to the average rate of normal tax or thirty-five cents, whichever is the higher;
- (f) on each rand of the taxable income derived by any company from mining for diamonds, forty-five cents: Provided that there shall be added to the amount of tax calculated in accordance with the preceding provisions of this subparagraph a surcharge equal to seven and a half per cent of such amount;
- (g) on each rand of the taxable income derived by any company from mining operations (other than mining for gold or diamonds), forty cents: Provided that there shall be added to the amount of tax calculated in accordance with the preceding provisions of this subparagraph a surcharge equal to five per cent of such amount;
- (h) in respect of the taxable income of any person other than a company, a sum equal to ten per cent of the amount of tax determined in accordance with subparagraph (a), if such tax is not less than one hundred and fifty rand: Provided that any fraction of a rand of the tax calculated under this subparagraph shall be disregarded;
- (i) in respect of the taxable income of any company, a sum equal to fifteen per cent of the aggregate of the amounts of tax determined under subparagraphs (b), (c), (d), (f) and (g), before the addition of the surcharges referred to in the proviso to subparagraph (b), the third proviso to subparagraph (c), the second proviso to subparagraph (d), the proviso to subparagraph (f) and the proviso to subparagraph (g): Provided that any fraction of a rand of the tax calculated under this subparagraph shall be disregarded: Provided further that the tax calculated in terms of this subparagraph shall not be payable by any company whose liability under this subparagraph would, but for this proviso, be less than five rand.

2. (1) For the purposes of paragraph 1 income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of the mining for gold, and any income which, in the opinion of the Secretary, results directly from mining for gold.

(2) For the purposes of subparagraph (e) of paragraph 1 the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with the said subparagraph for the period assessed) paid by the company concerned in respect of its aggregate taxable income from gold mining for the period from 1 July 1916 to the end of the period assessed, by the number of rands contained in the said aggregate taxable income.

(3) The tax payable in accordance with any of the subparagraphs of paragraph 1 shall be payable in addition to the tax determined in accordance with any other of the said subparagraphs.

3. In this Schedule, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the principal Act, bears the meaning so assigned thereto.