

No. 6, 1963.]

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

ACT

To amend the law relating to income tax, to provide for payments in respect of normal tax, the taxes levied by the provinces on persons and the incomes of persons and interest in respect of overdue payments to be made of amounts to be deducted or withheld by employers from the remuneration of employees and by way of provisional payments, to provide for the method of payment and recovery of certain taxes and interest, to provide for certain provisions of the law relating to income tax to be applied for the purposes of any ordinance of a provincial council imposing a tax on persons or on the incomes of persons, to provide for the loan portions of the normal and super taxes levied in respect of the years of assessment ended the thirtieth day of June, 1953, 1957, 1958 and 1959 to be discharged in certain cases, to provide for the payment into the Consolidated Revenue Fund and the various provincial revenue funds of portions of the amounts collected in respect of normal tax and the aforesaid taxes levied by the provinces (excluding the normal tax imposed on companies) and interest and other charges in respect of such taxes, and to amend the Insolvency Act, 1936, the Financial Relations Consolidation and Amendment Act, 1945, and the Exchequer and Audit Act, 1956.

*(English text signed by the State President.)
(Assented to 16th February, 1963.)*

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

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962.

1. Section *one* of the Income Tax Act, 1962, hereinafter referred to as the principal Act, is hereby amended—

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

“‘financial year’ means—

(a) in relation to any company which during the year of assessment ended the thirtieth day of June, 1962, carried on any trade or derived gross income—

(i) the period, whether of twelve months or not, commencing immediately after the specified date of such company in respect of that year of assessment and ending upon the first anniversary of such specified date or upon such other date as the Commissioner having regard to the circumstances of the case may approve; or

(ii) any period subsequent to the period referred to in sub-paragraph (i), whether of twelve months or not, commencing immediately after the specified date of that company in respect of the immediately preceding year of assessment of that company and ending upon the first anniversary of the last-mentioned specified date or upon such other date as the Commissioner having regard to the circumstances of the case may approve; or

(b) in relation to any company incorporated or created on or before the thirtieth day of June, 1962, which during the year of assessment ended upon that date neither carried on any trade nor derived any gross income—

(i) the period, whether of twelve months or not, commencing the first day of July, 1962, and ending the twenty-eighth day of February, 1963, or upon such other date as the Commissioner having regard to the circumstances of the case may approve; or

- (ii) any period subsequent to the period referred to in sub-paragraph (i), whether of twelve months or not, commencing immediately after the specified date of that company in respect of the immediately preceding year of assessment of that company, and ending upon the first anniversary of the last-mentioned specified date or upon such other date as the Commissioner having regard to the circumstances of the case may approve; or
- (c) in relation to any company incorporated or created after the thirtieth day of June, 1962—
- (i) the period, whether of twelve months or not, commencing upon the date of incorporation or creation of such company and ending upon the last day of February immediately succeeding such date or upon such other date as the Commissioner having regard to the circumstances of the case may approve; or
- (ii) any period subsequent to the period referred to in sub-paragraph (i), whether of twelve months or not, commencing immediately after the specified date of that company in respect of the immediately preceding year of assessment of that company and ending upon the first anniversary of the last-mentioned specified date or upon such other date as the Commissioner having regard to the circumstances of the case may approve;”;
- (b) by the substitution for the definition of “specified date” of the following definition:
- “‘specified date’, in relation to any company, means—
- (a) in respect of the year of assessment ending the thirtieth day of June, 1962, that date or, if such company’s return is under the proviso to sub-section (13) of section *sixty-six* accepted in respect of a period ending upon some other date, such other date; or
- (b) in respect of any other year of assessment, the last day of such other year of assessment;”;
- (c) by the addition to the definition of “tax”, or “the tax” or “taxation” of the words “and for the purposes of Part IV of Chapter III includes any levy or tax leviable under any previous Income Tax Act or any tax on persons or the incomes of persons leviable under any ordinance of a provincial council”;
- (d) by the addition to the definition of “taxpayer” of the words “and for the purposes of Part IV of Chapter III includes any person chargeable with any tax leviable under any previous Income Tax Act or any tax on persons or the incomes of persons leviable under any ordinance of a provincial council”; and
- (e) by the substitution for the definition of “year of assessment” of the following definition:
- “‘year of assessment’ means any year or other period in respect of which any tax or duty leviable under this Act is chargeable and any reference in this Act or any other Income Tax Act to any year of assessment ending the last or the twenty-eighth or the twenty-ninth day of February shall, unless the context otherwise indicates, be construed—
- (a) in the case of a company as a reference to any financial year of that company ending during the calendar year in question; and

- (b) in the case of any person who has under the provisions of sub-paragraph (2) of paragraph 18 of the Fourth Schedule elected not to be a provisional taxpayer, as a reference to the year of assessment ending the thirtieth day of June of the calendar year in question.”.

Substitution of section 5 of Act 58 of 1962.

2. The following section is hereby substituted for section *five* of the principal Act:

“Levy of normal tax and rates thereof.

5. (1) Subject to the provisions of the Fourth Schedule there shall be paid annually for the benefit of the Consolidated Revenue Fund, an income tax (in this Act referred to as the normal tax) in respect of the taxable income received by or accrued to or in favour of—

- (a) any person during the year of assessment ended the thirtieth day of June, 1962;
- (b) any person who on the twenty-eighth day of February, 1963, carries on farming, fishing or diamond digging operations and who has under the provisions of sub-paragraph (2) of paragraph 18 of the Fourth Schedule elected not to be a provisional taxpayer, during the year of assessment ending the thirtieth day of June, 1963, and each succeeding year of assessment;
- (c) any person (other than a person referred to in paragraph (b) or a company) in respect of—
- (i) the period of eight months ending the twenty-eighth day of February, 1963;
- (ii) the year of assessment ending the last day of February, 1964, and each succeeding year of assessment; and
- (d) any company during every financial year of such company.

(2) The rates of tax chargeable shall be fixed annually by Parliament, but the rates fixed by any Act of Parliament in respect of any year of assessment or financial year shall, subject to the provisions of the Fourth Schedule, be deemed to continue in force until the next such determination of rates and shall, subject to the said provisions, be applied for the purposes of calculating the tax payable in respect of any taxable income received by or accrued to or in favour of any person during the next succeeding year of assessment or financial year, as the case may be, if in the opinion of the Commissioner the calculation and collection of the tax chargeable in respect of such taxable income cannot without risk of loss of revenue be postponed until after the rates for that year have been determined: Provided that after the next such determination of rates any tax paid in pursuance of such interim application shall, subject to the provisions of the Fourth Schedule, be adjusted in accordance with such subsequent rates, any amounts paid in excess being refundable to and amounts shortpaid being recoverable from the taxpayer concerned.”.

Amendment of section 6 of Act 58 of 1962, as amended by section 4 of Act 90 of 1962.

3. Section *six* of the principal Act is hereby amended by the addition of the following sub-section:

“(3) For the purposes of any assessment in respect of the period referred to in sub-paragraph (i) of paragraph (c) of sub-section (1) of section *five* the provisions of sub-section (2) shall not apply and any reference in paragraph (a), (b), (c), (e) or (f) of sub-section (1) to any sum shall, where a deduction has been made from the taxpayer's income in terms of sub-section (2) of section *twenty-one bis*, be construed as a reference to one-third of such sum.”.

Amendment of section 12 of Act 58 of 1962, as amended by section 11 of Act 90 of 1962.

4. Section *twelve* of the principal Act is hereby amended by the insertion in sub-section (2) after the word “trade” of the words “not later than the thirtieth day of June, 1965”, and by the deletion in that sub-section of the words “(not being later than that ending on the thirtieth day of June, 1965)”.

Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962.

5. Section *thirteen* of the principal Act is hereby amended by the deletion in sub-section (6) of the words "(but not later than that ending on the thirtieth day of June, 1966)" and the addition to that sub-section of the following proviso:

"Provided further that the provisions of this sub-section shall not apply in respect of the cost of any building which was first used by the taxpayer after the thirtieth day of June, 1966, or the cost of any improvements which were completed after that date."

Amendment of section 19 of Act 58 of 1962, as amended by section 15 of Act 90 of 1962.

6. Section *nineteen* of the principal Act is hereby amended by the insertion in the heading to the table in sub-section (3) after the word "taxpayer" of the words "(as determined before the deduction of any amount under section *twenty-one bis*)".

Insertion of section 21 *bis* in Act 58 of 1962.

7. The following section is hereby inserted in the principal Act after section *twenty-one*:

"Special deduction in respect of period of assessment immediately following year of assessment ending 30th June, 1962.

21bis. (1) For the purposes of this section—
'taxable amount' means the amount at which the taxable income of any taxpayer in respect of the relevant transition period or any year of assessment under this Act or any previous Income Tax Act would have been determined if—

- (a) in respect of such period or year the taxpayer had not been entitled to deduct any amount from his income under sub-section (2) of this section or to set off any balance of assessed loss under paragraph (a) of sub-section (1) of section *twenty*; and
- (b) in the case of any person (other than a company) not ordinarily resident in the Republic or any company not registered, managed or controlled in the Republic, any amount derived by such person or company in respect of any service rendered or to be rendered or work or labour done or to be done by such person or company in the Republic or any concert, performance, display, exhibition, contest or competition which has been or is to be given, managed, sponsored, promoted or participated in by such person or company, had not been derived by such person or company as income, unless such person or such company, as the case may be, has during the year of assessment ended the thirtieth day of June, 1962, derived income of a nature substantially similar to such amount:

Provided that if the Commissioner having regard to any circumstances which he deems relevant (whether occurring before, during or after the relevant transition period or year of assessment) is of the opinion that the taxable amount (as so determined) in respect of the relevant transition period or year of assessment is greater than might be expected normally to have been derived by the taxpayer in respect of such period or year, the Commissioner shall for the purposes of this section determine the taxable amount at such lesser figure as to him appears fair and reasonable, and the amount so determined by the Commissioner shall be deemed to be the taxable amount derived by the taxpayer in respect of such period or year;

'transition period'—

- (a) in relation to any person other than a company, means the period of eight months

ending the twenty-eighth day of February, 1963, or if such person dies, or his estate is voluntarily or compulsorily sequestrated before that date, so much of such period as falls prior to his death or sequestration, whichever event occurs earlier;

- (b) in relation to any company referred to in paragraph (a) of the definition of 'financial year' in section *one*, the period referred to in sub-paragraph (i) of that paragraph;
- (c) in relation to any company referred to in paragraph (b) of that definition, the period referred to in sub-paragraph (i) of that paragraph;
- (d) in relation to any company referred to in paragraph (c) of that definition, any period referred to in sub-paragraph (i) of that paragraph commencing before the twenty-eighth day of February, 1963, or, in the case of any such company which is before that date placed in liquidation and ceases to carry on any trade or to derive income, so much of any such period as falls prior to the date on which the company ceases to carry on trade or to derive income.

(2) For the purpose of determining the taxable income of any taxpayer (other than a company which derives income from mining for gold or any person to whom the provisions of section *thirty-three* or sub-section (1) of section *thirty-five* apply or any person who has under the provisions of sub-paragraph (2) of paragraph 18 of the Fourth Schedule elected not to be a provisional taxpayer) in respect of any transition period in relation to that taxpayer commencing before the first day of March, 1963, there shall, subject to the provisions of sub-sections (3) to (6), inclusive, be allowed as a deduction from the taxpayer's income in respect of that period an amount (not exceeding the taxable amount derived by him in respect of that period) determined as follows, namely—

- (a) if the taxpayer derived a taxable amount in respect of the year of assessment ended the thirtieth day of June, 1962, an amount equal to the lesser of—
 - (i) an amount which bears to the taxable amount derived by him in respect of the relevant transition period the same ratio as the portion of such period falling before the first day of March, 1963, bears to the whole of such period, or, if in terms of sub-section (13)*ter* of section *sixty-six* the Commissioner has in respect of that period accepted accounts in respect of the whole of the taxpayer's income, drawn to a date other than the twenty-eighth day of February, 1963, to the period covered by such accounts; and
 - (ii) an amount which bears to the taxable amount derived by the taxpayer in respect of the year of assessment ended the thirtieth day of June, 1962, the same ratio as the period reckoned from the commencement of the relevant transition period to the twenty-eighth day of February, 1963, bears to twelve months; or
- (b) in the case of a taxpayer who did not derive a taxable amount in respect of the year of assessment ended the thirtieth day of June, 1962, or any year of assessment under any

previous Income Tax Act, an amount determined as provided in sub-paragraph (i) of paragraph (a); or

- (c) in the case of a taxpayer who did not derive a taxable amount in respect of the year of assessment ended the thirtieth day of June, 1962, and who derived a taxable amount in respect of any year of assessment under any previous Income Tax Act, such amount as to the Commissioner appears fair and reasonable; or
- (d) in the case of a taxpayer in relation to whom the transition period is less than twelve months and who proves to the satisfaction of the Commissioner that the income derived by him in respect of that period was substantially the same amount as he could reasonably be expected to have derived during a period of twelve months, but that the expenditure incurred by him during the transition period was substantially less than he could reasonably be expected to have incurred during a period of twelve months, such amount in lieu of any other deduction under this sub-section as to the Commissioner appears fair and reasonable; or
- (e) in any case which the Commissioner is satisfied cannot reasonably be dealt with under paragraph (a), (b), (c) or (d) by reason of the existence of special circumstances, such amount in lieu of any other deduction under this sub-section as to the Commissioner appears fair and reasonable.

(3) If the taxpayer has during the year of assessment ended the thirtieth day of June, 1962, or during the relevant transition period become married, widowed, divorced, judicially separated or separated under a written agreement entered into not later than the twenty-first day of March, 1962, the Commissioner having regard to any income derived by the taxpayer or his spouse or former spouse in respect of such year of assessment or transition period, shall make such adjustment in the amount of any deduction determined under sub-section (2) as to the Commissioner appears fair and reasonable.

(4) In the case of a taxpayer other than a company the amount of the deduction under sub-section (2) shall not be less than the lesser of an amount equal to the taxable amount derived by the taxpayer in respect of the transition period or two thousand four hundred rand, or, where the period assessed is less than eight months, the lesser of an amount equal to such taxable amount or an amount which bears to two thousand four hundred rand the same ratio as the period assessed bears to eight months: Provided that in the case of spouses who are in terms of sub-section (6) of section *seventy-seven* separately assessed to tax the aggregate of the amounts of the deductions made from the income of the spouses by virtue of the provisions of this sub-section shall not exceed the amount of the deduction to which the husband would have been entitled under sub-section (2) if the income of both spouses had been assessed as the income of the husband alone.

(5) If in the case of a private company the Commissioner is satisfied that but for the formation of such private company, or but for 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) the taxable amount derived by such private company in respect of the relevant transition period would have been derived in whole or in part by a shareholder of such private company or by a relative of such shareholder or by a company in which such private company has been a shareholder or by a company

having substantially the same shareholders as such private company, the Commissioner shall having regard *inter alia* to the amount of the deduction allowed under sub-section (2) to such shareholder, relative or company, as the case may be, reduce the amount of the deduction to be allowed to such private company under the said sub-section by such amount as to the Commissioner appears fair and reasonable.

(6) Where—

- (a) it is proved to the satisfaction of the Commissioner that the taxable amount derived by the taxpayer in respect of the year of assessment ended the thirtieth day of June, 1962, was as a result of the inclusion of non-recurrent deductions or because of other circumstances abnormally low, the Commissioner may increase the amount of the deduction under paragraph (a) of sub-section (2) to such amount (not exceeding the taxable amount derived by the taxpayer in respect of the relevant transition period) as to the Commissioner appears fair and reasonable;
- (b) in the case of a taxpayer other than a company the Commissioner has under the proviso to sub-section (13) of section *sixty-six* accepted accounts drawn to a date other than the thirtieth day of June, 1962, in respect of the whole of the taxpayer's income in respect of the year of assessment ended the thirtieth day of June, 1962, the transition period in relation to such taxpayer shall for the purposes of calculating the amount of any deduction under paragraph (a) of sub-section (2) be deemed to have commenced immediately after such other date;
- (c) in the case of a taxpayer other than a company the Commissioner has under the proviso to sub-section (13) of section *sixty-six* accepted accounts drawn to a date other than the thirtieth day of June, 1962, in respect of a portion but not the whole of the taxpayer's income in respect of the year of assessment ended the thirtieth day of June, 1962, such case shall be deemed to be a case to which the provisions of paragraph (e) of sub-section (2) apply.

(7) Any decision of the Commissioner in the exercise of his discretion under this section shall be subject to objection and appeal.”.

Amendment of section 22 of Act 58 of 1962.

8. Section *twenty-two* of the principal Act is hereby amended by the deletion at the end of paragraph (i) of sub-section (6) of the word “and”, and the addition to the said sub-section of the following paragraph:

“(iii) where accounts are accepted under sub-section (13) *ter* of the said section to a date agreed to by the Commissioner, a reference to the beginning or end, as the case may be, of the period covered by the accounts.”.

Amendment of section 49 of Act 58 of 1962, as amended by section 22 of Act 90 of 1962.

9. Section *forty-nine* of the principal Act is hereby amended—

(a) by the addition at the end of paragraph (i) of the definition of “distributable income” of the words “for which purpose the normal tax payable by the company shall be deemed to be the amount which would have been payable in respect thereof if the provisions of section *twenty-one bis* had not applied;”;

(b) by the substitution for the definition of “specified period” of the following definition:
“‘specified period’ means—

- (a) in respect of the year of assessment ending the thirtieth day of June, 1962, the period of twelve months ending six months after the specified date in respect of that year; and
- (b) in respect of any subsequent year of assessment, the period commencing the day after the end of the specified period in respect of the immediately preceding year of assessment, or, in the case of a company incorporated during the year of assessment in question, the date of incorporation, and ending six months after the specified date in respect of the year of assessment in question;"; and
- (c) by the insertion in the definition of "total net profits" after the word "twenty" of the words "or section *twenty-one bis*".

Amendment of
section 66 of
Act 58 of 1962.

10. Section *sixty-six* of the principal Act is hereby amended—

- (a) by the substitution in sub-section (13) for the words "any year of assessment chargeable under this Act" of the words "the year of assessment ended the thirtieth day of June, 1962, or by any person referred to in paragraph (b) of sub-section (1) of section *five* in respect of any succeeding year of assessment"; and
- (b) by the insertion after sub-section (13) of the following sub-sections:

"(13)*bis* The return of income to be made by any person (other than a person referred to in paragraph (b) of sub-section (1) of section *five* or a company)—

- (a) in respect of the period (hereinafter referred to as the transition period) referred to in sub-paragraph (i) of paragraph (c) of sub-section (1) of section *five*, shall be a full and true return for the whole period under charge and where in terms of the proviso to sub-section (13) a return in respect of the year of assessment ended the thirtieth day of June, 1962, has in respect of the whole or any portion of the taxpayer's income been accepted to a date other than the said date the taxpayer's return for the transition period shall, subject to the provisions of sub-section (13)*ter*—

- (i) where the date to which the return in respect of the said year of assessment is made falls before the thirtieth day of June, 1962, include any income received by or accrued to the taxpayer during the period commencing immediately after the date to which the taxpayer's return in respect of the said year of assessment was accepted as aforesaid and ending upon the thirtieth day of June, 1962, and such income shall be deemed to be income of the taxpayer in respect of the transition period; and

- (ii) where the date to which the return in respect of the said year of assessment is made falls after the thirtieth day of June, 1962, not include any income received by or accrued to the taxpayer during the period from the first day of July, 1962, to the date to which the taxpayer's return in respect of the said year of assessment was accepted as aforesaid if such income has been included in the last-mentioned return;

- (b) in respect of the year of assessment ending the last day of February, 1964, and each subsequent year of assessment, shall be a full and true return for the whole period of twelve months ending upon the last day of the year of assessment under charge.

(13)ter Where—

- (a) it is established to the satisfaction of the Commissioner that the whole or some portion of the income of any person to whom the provisions of sub-section (13)bis apply cannot be conveniently returned for the transition period or any year of assessment referred to in that sub-section the Commissioner may, subject to such conditions as he may impose, accept accounts in respect of the whole or a portion of the taxpayer's income drawn to a date agreed to by the Commissioner, whether for a longer or shorter period than the transition period or the year of assessment under charge, and the income disclosed in any such accounts shall be deemed to be income of the person concerned in respect of such period or year under charge, as the case may be;
- (b) any such accounts are drawn to a date later than the last day of the transition period or year of assessment, as the case may be, no further regard shall be had to the income disclosed by such accounts for purposes of any subsequent year of assessment;
- (c) any such accounts are drawn to a date falling within the transition period or year of assessment and the person concerned dies or his estate is sequestrated during the interim period between that date and the last day of the transition period or year of assessment, as the case may be, any income received by or accrued to such person during such interim period shall be deemed to be part of such person's income for the transition period or the year of assessment, as the case may be.

(13)quat The return of income to be made by any company in respect of any year of assessment (other than the year of assessment ended the thirtieth day of June, 1962) shall be a full and true return for the whole period of the relevant financial year of such company comprising the year of assessment.”.

Amendment of section 70 of Act 58 of 1962.

11. Section *seventy* of the principal Act is hereby amended with effect from the first day of March, 1963, by the substitution for the words “thirtieth day of June” wherever they occur of the words “last day of February”.

Amendment of section 88 of Act 58 of 1962.

12. Section *eighty-eight* of the principal Act is hereby amended—

- (a) by the insertion after the word “Act” of the words “(including any additional charge levied under section *seventy-six* as applied by section *one hundred and ten bis*) or any tax on persons or the incomes of persons levied by any provincial council”; and
- (b) by the substitution for the words “of receipt” of the words “proved to the satisfaction of the Commissioner to be the date on which such excess was received”.

Substitution of section 89 of Act 58 of 1962.

13. The following section is hereby substituted for section *eighty-nine* of the principal Act:

“Appointment of day for payment of tax and interest on overdue payments. 89. (1) Subject to the provisions of section *eighty-nine bis* any tax chargeable shall be paid on such days and at such places as may be notified by the Commissioner or as specified in this Act, and may be paid in one sum or in instalments of equal or varying amounts as may be determined by the Commissioner having regard to the circumstances of the case.

(2) If the taxpayer fails to pay any tax in full within the period for payment notified by the Commissioner in the notice of assessment or any extension of such period which the Commissioner may grant having regard to the circumstances of the case, or within the period for payment prescribed by this Act, as the case may be, interest shall be paid by the taxpayer at the rate of seven and a half per cent per annum on the outstanding balance of such

tax in respect of each completed month (reckoned from the date for payment specified in the notice of assessment or the date on which the tax has become payable in terms of this Act, as the case may be) during which any portion of the tax has remained unpaid: Provided that if the date for payment or the date on which the tax has become payable, as the case may be, falls before the first day of April, 1963, the amount which shall be paid by the taxpayer by way of interest shall be an amount equal to the sum of—

- (i) the amount of interest or penalty which would have been payable by the taxpayer in respect of the unpaid amount of such tax in terms of this sub-section before its amendment by the Income Tax Amendment Act, 1963, or the corresponding provisions of any previous Income Tax Act or any ordinance of a provincial council imposing any tax on persons or the incomes of persons, whichever is applicable, if the unpaid amount of such tax had been paid on the thirty-first day of March, 1963; and
- (ii) an amount of interest calculated at the rate of seven and a half per cent per annum on the outstanding balance of such tax in respect of each completed month (reckoned from the first day of April, 1963) during which any portion of the tax has remained unpaid.

(3) Any interest payable in terms of the proviso to sub-section (2) in respect of any amount of tax levied on persons or the incomes of persons by any provincial council shall be charged and paid in lieu of any penalty chargeable or payable in respect of the late payment of such amount in terms of any ordinance of such council.”.

Insertion of sections 89bis and 89ter in Act 58 of 1962.

14. The following sections are hereby inserted in the principal Act after section *eighty-nine*:

“Pay-ments of employees’ tax and provisional tax and interest on overdue payments of such taxes.

89bis. (1) Payments in respect of the liability (whether or not such liability has been ascertained or determined at the date of any payment) of every employee and every provisional taxpayer as defined in paragraph 1 of the Fourth Schedule, for any tax (other than non-resident shareholders’ tax, undistributed profits tax, excess profits duty and donations tax), shall be made in accordance with the provisions of that Schedule, and any such payment shall be made at such place as may be notified by the Commissioner.

(2) If any amount of employees’ tax is not paid in full within the period of seven days prescribed for payment of such amount by sub-paragraph (1) of paragraph 2 of the Fourth Schedule, or if any amount of provisional tax is not paid in full within the relevant period prescribed for payment of such amount by paragraph 21, 22 or 23 or by sub-paragraph (1) of paragraph 25 of that Schedule, interest shall, unless the Commissioner having regard to the circumstances of the case otherwise directs, be paid by the person liable to pay the amount in question at the rate of seven and a half per cent per annum on so much of such amount as remains unpaid in respect of the period (reckoned from the end of the relevant period prescribed as aforesaid for payment of such amount) during which the amount underpaid remains unpaid.

Accounts and recovery proceedings in respect of taxes other than

89ter. (1) Where taxes (other than non-resident shareholders’ tax, undistributed profits tax, excess profits duty and donations tax and other than any tax on persons levied by any provincial council and payable by any person who is not an income tax payer in terms of section *one hundred and ten bis*)

non-resident share-holders' tax, undistributed profits tax, excess profits duty and donations tax and other than personal tax payable by any person who is not an income tax payer.

are owing by the taxpayer in respect of more than one year of assessment or more than one of such taxes is owing by the taxpayer, whether for one or more years of assessment, the Commissioner shall not be required to maintain a separate account in respect of each year of assessment or each of such taxes, but may maintain one tax account for the taxpayer recording details of the assessed amounts of the said taxes and the interest payable in respect of such taxes in terms of sub-section (2) of section *eighty-nine* for which the taxpayer has from time to time become liable, the amounts of the payments made in respect of such taxes or interest, including payments made by way of provisional tax in terms of the Fourth Schedule, any credit in respect of employees' tax to which the taxpayer has become entitled under the said Schedule and such other details as may be required to establish the total amount owing by the taxpayer from time to time in respect of such taxes or interest, and any such payment or credit shall be deemed to have been made or to have accrued in respect of the total amount reflected in such tax account as owing by the taxpayer at the time such payment is made or such credit is passed.

(2) The total amount owing by the taxpayer after the deduction of the relevant payments or other credits in respect of any taxes (other than non-resident shareholders' tax, undistributed profits tax, excess profits duty and donations tax and other than any tax on persons levied by any provincial council and payable by any person who is not an income tax payer in terms of section *one hundred and ten bis*) and of interest payable by the taxpayer in terms of section *eighty-nine* shall for the purposes of any proceedings for recovery (including proceedings under section *ninety-one*) be deemed to be a debt due to the State, and in any such proceedings the Commissioner shall not be required to furnish particulars of the amount claimed: Provided that the Commissioner shall at the request of the taxpayer furnish the taxpayer with copies of any notices of assessments relating to the taxpayer as the taxpayer may require."

Amendment of section 90 of Act 58 of 1962.

15. Section *ninety* of the principal Act is hereby amended—

- (a) by the substitution for the words "normal tax leviable thereunder" of the words "any tax (other than non-resident shareholders' tax, undistributed profits tax, excess profits duty and donations tax) and any interest payable in terms of section *eighty-nine*";
- (b) by the substitution in paragraph (a) for the words following the word "taxpayer" of the words "liable to assessment or for the payment of such tax or interest under this Act or under any previous Income Tax Act or any ordinance of a provincial council imposing taxes on persons or the incomes of persons"; and
- (c) by the addition of the following proviso:

"Provided further that nothing herein contained shall be construed as relieving any person required to make any payment by way of employees' tax under the provisions of the Fourth Schedule from any liability, responsibility or duty imposed upon him by this Act."

Amendment of section 91 of Act 58 of 1962.

16. Section *ninety-one* of the principal Act is hereby amended—

- (a) by the substitution in paragraph (a) of sub-section (1) for the words "shall, when it" of the words "or any interest payable in terms of section *eighty-nine* shall, when such tax or interest" and for the word "Government" of the word "State";

- (b) by the substitution in paragraph (b) of the said sub-section for the words "when it" of the words "or any interest payable in terms of section *eighty-nine* when such tax or interest" and the insertion in that paragraph after the word "tax" where it occurs for the second time of the words "or interest";
- (c) by the addition at the end of paragraph (c) of the said sub-section of the words "or any interest payable by him in terms of section *eighty-nine*";
- (d) by the insertion in sub-section (3) after the word "payable" where it occurs for the first time of the words "or any interest payable in terms of section *eighty-nine*";
- (e) by the addition to the said sub-section of the words "or the interest is payable in respect of such portion of the tax as is so payable in respect of the income of his wife, as the case may be";
- (f) by the deletion in sub-section (4) of the words "under this Act"; and
- (g) by the addition of the following sub-section:
 "(5) So much of any interest payable in terms of section *eighty-nine* as relates to such portion of any tax as is in terms of sub-section (4) recoverable from the assets referred to in that sub-section may also be recovered from such assets."

Insertion of section *93bis* in Act 58 of 1962.

17. The following section is hereby inserted in the principal Act after section *ninety-three*:

"Priority of taxes deducted or withheld by employers and others.

93bis. Any amount which any person (hereinafter referred to as the debtor)—

- (a) has under the provisions of sub-section (2) of section *thirty-five* deducted or withheld from any amount referred to in paragraph (b) of sub-section (1) of section *nine* in respect of any other person's obligation to pay normal tax; or
- (b) is under the provisions of section *ninety-nine* required to pay in respect of any tax due by any other person and has deducted or withheld from any moneys, including pensions, salary, wages or any other remuneration held by him for or due by him to such person; or
- (c) has under the provisions of paragraph 2 of the Fourth Schedule deducted or withheld by way of employees' tax from remuneration paid or payable by him to any other person,

but not paid to the Commissioner at the date of the sequestration or assignment of the debtor's estate under the law relating to insolvency, or if the debtor is a company, at the date of commencement of the winding-up of the debtor under the law relating to companies, and any interest payable under this Act in respect of such amount in respect of any period prior to the date of the sequestration or assignment of the debtor's estate or the date on which the winding-up of the debtor commenced, as the case may be, shall, notwithstanding anything to the contrary in any other law contained, have priority over all debts whatsoever other than debts secured by special mortgage, tacit hypothec, pledge or right of retention and the expenses, costs, fees and charges referred to in the Insolvency Act, 1936 (Act No. 24 of 1936), and in the case of the winding-up of a company, all expenditure properly incurred in the winding-up, including the remuneration of the liquidator."

Insertion of section *110bis* in Act 58 of 1962.

18. The following section is hereby inserted in the principal Act after section *one hundred and ten*:

"Applica-tion of certain provisions for purposes of provin-cial ordinances imposing personal and income taxes.

110bis. (1) For the purposes of this section—
 'income tax payer' means any person who for the purposes of sub-section (1) of section *sixty-six* is a person liable to taxation under the provisions of this Act, and any person, whether or not liable to such taxation, whom the Commissioner has, on or before the final date prescribed in the relevant ordinance of the provincial council for the payment of personal

tax by a person who is not liable for normal tax called upon to furnish a return of income under this Act, and includes any person in respect of whose income a return is in terms of this Act called for through an agent or representative taxpayer;

'year of assessment', in relation to any personal tax or income tax leviable under any ordinance of a provincial council, means any period, whether of twelve months or not, in respect of which such tax is chargeable.

(2) Subject to sub-section (3) of this section the provisions of section *three*, sub-sections (1) and (3) of section *four*, sections *sixty-five*, *sixty-six*, *sixty-eight*, *seventy-three*, *seventy-four*, *seventy-five*, *seventy-six* and *seventy-seven*, sub-section (1) of section *seventy-eight* and sections *seventy-nine*, *eighty*, *eighty-nine* to *ninety-two*, inclusive, *ninety-four* to *ninety-seven*, inclusive, *ninety-nine*, *one hundred*, *one hundred and two*, *one hundred and four*, *one hundred and five* and *one hundred and six*, shall *mutatis mutandis* apply for the purposes of any ordinance of a provincial council imposing any tax on persons or the incomes of persons other than companies as though such provisions had been enacted as part of such ordinance.

(3) For the purposes of sub-section (2)—

- (a) any reference in the provisions referred to in that sub-section—
- (i) to this Act shall be construed as a reference to the relevant ordinance;
 - (ii) to tax, taxation or normal tax shall be construed as a reference to the personal tax or income tax leviable under the relevant ordinance;
 - (iii) to a taxpayer shall be construed as a reference to any person chargeable with any personal or income tax leviable under the relevant ordinance;
 - (iv) to any officer engaged in carrying out the provisions of this Act shall be construed as a reference to any officer engaged in carrying out the provisions of the relevant ordinance;
 - (v) to any return in respect of any year of assessment required to be furnished under this Act shall, in the case of any person who is not an income tax payer, be construed as a reference to any declaration in respect of any year of assessment required to be furnished by such person under the relevant Ordinance;
- (b) any return required to be furnished under this Act by any person who for the purposes of this section is an income tax payer shall be deemed to be a return required to be furnished for the purposes of the relevant ordinance;
- (c) the provisions of sub-sections (1) to (5), inclusive, of section *sixty-six* and sections *seventy-seven* and *seventy-nine* shall, in the case of any person who in respect of the year of assessment under charge is not an income tax payer, not apply for the purposes of the relevant ordinance;
- (d) the provisions of section *seventy-six* shall not apply in respect of any tax on persons contemplated in sub-paragraph (a) of paragraph 8 of the First Schedule to the Financial Relations Consolidation and Amendment Act, 1945 (Act No. 38 of 1945);
- (e) if any objection or appeal is lodged under the provisions of paragraph (b) of sub-section (2) of section *seventy-six*, as applied by this section, the provisions of this Act relating to any objection and appeal under the said paragraph (b) shall *mutatis mutandis* apply;
- (f) notwithstanding the provisions of sub-section (1) of section *eighty-nine*, as applied by this section, the personal tax payable by any person

who is not an income tax payer shall be payable within such period as the relevant ordinance may prescribe, and any reference in sub-section (2) of the said section to the date on which tax has become payable shall in relation to such person be construed as a reference to the day immediately succeeding the period for payment prescribed as aforesaid;

- (g) the additional charge imposed under section *seventy-six*, as applied by this section, any interest payable in terms of section *eighty-nine*, as applied by this section, or section *eighty-nine bis*, as applied by this section, shall be deemed to have been imposed under or to be payable in terms of the relevant ordinance, and shall, subject to the provisions of paragraph 33 of the Fourth Schedule, accrue for the benefit of the provincial revenue fund of the province concerned.”.

Addition of Fourth Schedule to Act 58 of 1962.

19. The Schedule to this Act is hereby added to the principal Act as the Fourth Schedule thereto, and shall be deemed to be and shall be construed and applied as one with the principal Act.

Amendment of long title of Act 58 of 1962.

20. The long title of the principal Act is hereby amended by the addition of the words “to provide for the recovery of taxes on persons and the incomes of persons levied by the provinces on income tax payers, to provide for interest to be paid on late payments of such provincial taxes, to provide for certain provisions to be applied for the purposes of any ordinance of a provincial council imposing a tax on persons or on the incomes of persons, to provide for the deduction by employers of amounts from the remuneration of employees in respect of certain tax liabilities of employees, and to provide for the making of provisional tax payments and for the payment into the Consolidated Revenue Fund and the various provincial revenue funds of portions of the normal tax and the said provincial taxes (excluding the normal tax imposed on companies) and interest and other charges in respect of such taxes”.

Amendment of section 49 of Act 24 of 1936.

21. Section *forty-nine* of the Insolvency Act, 1936, is hereby amended with effect from the first day of March, 1963, by the addition of the following sub-section, the existing section becoming sub-section (1):

“(2) Nothing in this section shall be construed as preventing the Commissioner for Inland Revenue from proving in the manner provided in this Act a claim against the estate of a partnership in respect of any sum referred to in paragraph (b) of section *one hundred and one*, or any interest due on such sum.”.

Amendment of section 101 of Act 24 of 1936, as substituted by section 32 of Act 80 of 1961.

22. Section *one hundred and one* of the Insolvency Act, 1936, is hereby amended with effect from the first day of March, 1963, by the insertion after paragraph (a) of the following paragraph:

“(a)*bis* any amount payable by the insolvent under any Act of Parliament by way of interest in respect of any period prior to the date of sequestration of his estate in respect of any tax referred to in paragraph (a);”.

Amendment of section 1 of Act 38 of 1945.

23. Section *one* of the Financial Relations Consolidation and Amendment Act, 1945, is hereby amended by the insertion in the definition of “year of assessment” after the word “period” of the words “whether or not”.

Amendment of section 8 of Act 38 of 1945, as amended by section 1 of Act 45 of 1954 and section 11 of Act 64 of 1960.

24. Section *eight* of the Financial Relations Consolidation and Amendment Act, 1945, is hereby amended by the substitution for sub-paragraph (ii) of paragraph (b) of sub-section (4) of the following sub-paragraph:

“(ii) The percentage referred to in sub-paragraph (i) shall be fixed by the provincial council of each province in respect of each year of assessment, but the percentage fixed by any province in respect of any year of assessment ending during any calendar year shall not vary from the percentage fixed by that province in respect of any other year of assessment ending during that calendar year.”.

Amendment of section 9 of Act 38 of 1945

25. Section *nine* of the Financial Relations Consolidation and Amendment Act, 1945, is hereby amended with effect from the first day of April, 1963—

- (a) by the deletion in sub-section (1) of the words “at a rate exceeding”;
- (b) by the substitution in paragraph (a) of the said sub-section for the words following the word “of” where it occurs for the first time of the words “any tax referred to in sub-section (4) of section *eight*”;
- (c) by the substitution in paragraph (b) of the said sub-section for the words “the personal tax” of the words “a tax referred to in sub-section (4) of section *eight* at a rate exceeding” and by the addition to that paragraph of the following proviso:
“Provided that any such penalty shall not exceed the total amount of the tax payable.”; and
- (d) by the deletion of sub-section (2).

Amendment of First Schedule to Act 38 of 1945, as amended by section 1 of Act 22 of 1946 and section 2 of Act 70 of 1956.

26. The First Schedule to the Financial Relations Consolidation and Amendment Act, 1945, is hereby amended by the substitution in item (b) of paragraph 8 for the words “persons other than companies” of the words “persons (other than companies) including any person as defined in the Income Tax Act, 1962 (Act No. 58 of 1962).”.

Amendment of section 21 of Act 23 of 1956, as amended by section 18 of Act 77 of 1962.

27. Section *twenty-one* of the Exchequer and Audit Act, 1956, is hereby amended with effect from the first day of April, 1963—

- (a) by the substitution for paragraph (a) of sub-section (4) of the following paragraph:

“(a) Nothing in this section contained shall be construed as preventing the Commissioner for Inland Revenue from paying monthly into the Exchequer Account and the various provincial revenue funds such portions of the normal, super, employees’ and provisional taxes collected under the income tax laws of the Republic, the taxes imposed by the provinces on persons and the incomes of persons and the interest, penalties and amounts by way of additional tax collected in respect of such taxes, as in terms of the income tax laws of the Republic accrue for the benefit respectively of the Consolidated Revenue Fund and the said provincial revenue funds.”; and

- (b) by the deletion of paragraphs (a)*bis* to (e), inclusive, of the said sub-section.

Amendment of section 6 of Act 90 of 1962.

28. Section *six* of the Income Tax Amendment Act, 1962, is hereby amended by the substitution in sub-section (2) for the expression “thirtieth day of June” of the expression “twenty-eighth day of February”.

Amendment of section 10 of Act 90 of 1962.

29. Section *ten* of the Income Tax Amendment Act, 1962, is hereby amended by the substitution in sub-section (2) for the expression “thirtieth day of June” of the expression “twenty-eighth day of February”.

Repeal of section 36 of Act 90 of 1962.

30. Section *thirty-six* of the Income Tax Amendment Act, 1962, is hereby repealed with effect from the first day of March, 1963.

Discharge of loan portion of normal or super tax in respect of year of assessment ended 30th June, 1953, 1957, 1958 or 1959 due by persons who have not paid such tax in full.

31. (1) If any person has not prior to the first day of April, 1963, paid in full the amount of normal or super tax for which he has been assessed under the Income Tax Act, 1941 (Act No. 31 of 1941), in respect of any of the years of assessment ended the thirtieth day of June, 1953, 1957, 1958 or 1959 his liability for such tax shall be reduced by such portion of such amount as in terms of the provisions of section *two* of the Income Tax Act, 1953 (Act No. 34 of 1953), section *three* of the Income Tax Act, 1957 (Act No. 61 of 1957), section *three* of the Income Tax Act, 1958 (Act No. 36 of 1958) or section *three* of the Income Tax Act, 1959 (Act No. 78 of 1959), is a loan portion, and in such case the person concerned shall not be entitled under the said provisions to repayment of any portion of the normal or super tax paid by him in respect of the year of assessment in question.

(2) If the liability of any person for any tax referred to in sub-section (1) has in terms of that sub-section been reduced by an amount which exceeds the balance of that tax owing by him in respect of the year of assessment in question the Commissioner may, having regard to the circumstances of the case, refund without interest the excess to such person or retain it as a set-off against the liability of such person for any other tax, or interest in respect of such tax, for which he is or may become liable under the provisions of any Income Tax Act or the ordinance of any provincial council imposing any tax on persons or the incomes of persons.

Commencement of certain amendments. 32. The amendments effected to the principal Act by sections *thirteen to sixteen*, inclusive, shall come into operation on the first day of April, 1963.

Short title. 33. This Act shall be called the Income Tax Amendment Act, 1963.

Schedule.

(Fourth Schedule to Act No. 58 of 1962.)

AMOUNTS TO BE DEDUCTED OR WITHHELD BY EMPLOYERS AND PROVISIONAL PAYMENTS IN RESPECT OF NORMAL TAX AND PROVINCIAL TAXES.

(Section *eighty-nine bis* of this Act.)

PART I.

DEFINITIONS.

1. For the purposes of this Schedule, unless the context otherwise indicates—

- (i) "Bantu person" means a native as defined in section *nineteen* of the Natives Taxation and Development Act, 1925 (Act No. 41 of 1925); (i)
- (ii) "employee" means any person (other than a company) who receives any remuneration or to whom any remuneration accrues; (ix)
- (iii) "employees' tax" means the tax required to be deducted or withheld by an employer in terms of paragraph 2 from remuneration paid or payable to an employee; (x)
- (iv) "employees' tax certificate" means a certificate required to be issued by an employer in terms of paragraph 13; (xi)
- (v) "employer" means any person (excluding any person not acting as a principal, but including any person acting in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund) who pays or is liable to pay to any person other than a company any amount by way of remuneration, and any company; (viii)
- (vi) "provincial income tax" means any tax on the incomes of persons levied by any provincial council; (iv)
- (vii) "provincial taxes" means the taxes on persons and on the incomes of persons levied by any provincial council; (iii)
- (viii) "provisional tax" means any payment required to be made in terms of paragraph 17; (vi)
- (ix) "provisional taxpayer" means—
 - (a) any person (other than a company or a person referred to in sub-paragraph (1) of paragraph 18) who derives by way of income any amount which does not constitute remuneration in terms of the definition of that expression in this paragraph;
 - (b) any director of a private company unless the Commissioner in the particular case otherwise directs;
 - (c) any company which does not derive income from mining for gold; and
 - (d) any person (other than a person referred to in item (c) of sub-paragraph (1) of paragraph 18 or a company which derives income from mining for gold) who is notified by the Commissioner that he is a provisional taxpayer; (vii)
- (x) "remuneration" means any amount of income which is paid or is payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including—
 - (a) any amount referred to in paragraph (a), (c), (d), (e) or (f) of the definition of "gross income" in section *one* of this Act;
 - (b) the value of any benefit or advantage referred to in paragraph (i) of that definition, but not including—

- (i) any amount paid or payable to any person in respect of services rendered or to be rendered by him as a domestic or private servant or farm labourer if such amount is calculated at a rate not exceeding four hundred and eighty rand per annum;
- (ii) any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person who is not ordinarily resident in the Republic) in the course of any trade conducted by him independently of the person by whom such amount is paid or payable;
- (iii) any pension or additional pension under the Old Age Pensions Act, 1962 (Act No. 38 of 1962), or the Blind Persons Act, 1962 (Act No. 39 of 1962), any disability grant or grant or additional grant under the Disability Grants Act, 1962 (Act No. 41 of 1962), or any grant or contribution under the provisions of section *eighty-nine* of the Children's Act, 1960 (Act No. 33 of 1960);
- (iv) any amount paid or payable to any director of any private company in respect of services rendered or to be rendered by such director to such company, unless the Commissioner in the particular case otherwise directs;
- (v) any amount paid or payable to any Bantu person in respect of services rendered or to be rendered by such Bantu person, if such amount is calculated at a rate not exceeding six hundred rand per annum;
- (vi) any amount paid or payable to any employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment including such payments made to meet expenditure as are referred to in section *twenty-nine* of this Act;
- (vii) any amount of director's fees paid or payable by a public company to any person who is ordinarily resident in the Republic, if no other amounts constituting remuneration in terms of this definition have been paid or become payable to such person by such company;
- (viii) any annuity under an order of divorce or decree of judicial separation or under any agreement of separation; (ii)
- (xi) "representative employer" means—
 - (a) in the case of any company, the public officer of that company, or, in the event of such company being placed in liquidation or under judicial management, the liquidator or judicial manager, as the case may be;
 - (b) in the case of any divisional council, municipal council, village management board or like authority or any body corporate or unincorporate (other than a company or a partnership) any manager, secretary, officer or other person responsible for paying remuneration on behalf of such council, board, authority or body;
 - (c) in the case of a person under legal disability, any guardian, curator, administrator or other person having the management or control of the affairs of the person under legal disability; or
 - (d) in the case of any employer who is not ordinarily resident in the Republic, any agent of such employer having authority to pay remuneration, but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Schedule. (v)

PART II.

EMPLOYEES' TAX.

EMPLOYERS TO DEDUCT TAX.

2. (1) Every person (whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee on or after the first day of March, 1963, shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount by way of employees' tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal and provincial taxes of that employee, or, in the case of an employee who is a married woman and is not separately assessed from her husband in terms of subsection (6) of section *seventy-seven* of this Act, in respect of such liability of her husband, and shall pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer, within seven days after the day on which he ceases to be an employer, or in either case within such further period as the Commissioner may approve.

(2) Any employer may, at the written request of any employee, deduct or withhold from any amount of remuneration an amount by way of employees' tax greater than that required to be deducted or withheld in terms of sub-paragraph (1), and shall remit such amount to the Commissioner, and the provisions of this Schedule relating to employees' tax shall *mutatis mutandis* apply in respect of such amount.

(3) For the purposes of this paragraph "month" means any of the twelve portions into which any calendar year is divided.

(4) Any amount required to be deducted or withheld from any amount of remuneration under this Schedule by way of employees' tax shall be calculated on the balance of such amount of remuneration remaining after deducting any current contribution by the employee concerned to any pension fund or retirement annuity fund (excluding so much of such contribution to a pension fund not established by law as is made at a rate exceeding four hundred rand per annum and so much of such contribution to a retirement annuity fund as, taken together with any current

contribution to any pension fund deducted as aforesaid, is made at a rate exceeding eight hundred rand per annum) which is calculated with reference to such amount of remuneration or to a portion of that amount or to the period in respect of which the amount of remuneration is paid or payable and which the employer is *vis-à-vis* the employee concerned, entitled or required to deduct or withhold from such amount of remuneration.

3. (1) The liability of any employer to deduct or withhold any amount of employees' tax in terms of paragraph 2 shall not be reduced or extinguished by reason of the fact that the employer has a right or is otherwise than in terms of any law under an obligation to deduct or withhold any other amount from the employees' remuneration, and such right or obligation shall notwithstanding anything to the contrary in any other law contained, for all purposes be deemed to have reference only to the amount of the remuneration remaining after the amount of employees' tax referred to in that paragraph has been deducted or withheld.

(2) The provisions of paragraph 2 shall apply in respect of all amounts payable by way of remuneration, notwithstanding the provisions of any law which provide that any such amount shall not be reduced or shall not be subject to attachment.

4. Any amount required to be deducted or withheld in terms of paragraph 2 shall be a debt due to the State and the employer concerned shall save as otherwise provided be absolutely liable for the due payment thereof to the Commissioner.

5. (1) Subject to the provisions of sub-paragraph (6) any employer who fails to deduct or withhold the full amount of employees' tax as provided in paragraph 2 shall be personally liable for the payment to the Commissioner of the amount which he fails to deduct or withhold, and shall, subject to the provisions of sub-paragraph (2), pay that amount to the Commissioner not later than the date on which payment should have been made if the employees' tax had in fact been deducted or withheld in terms of paragraph 2.

(2) Where the employer has failed to deduct or withhold employees' tax in terms of paragraph 2 and the Commissioner is satisfied that the failure was not due to an intent to postpone payment of the tax or to evade the employer's obligations under this Schedule, the Commissioner may, if he is satisfied that there is a reasonable prospect of ultimately recovering the tax from the employee, absolve the employer from his liability under sub-paragraph (1) of this paragraph.

(3) An employer who has not been absolved from liability as provided in sub-paragraph (2) shall have a right of recovery against the employee in respect of the amount paid by the employer in terms of sub-paragraph (1) in respect of that employee, and such amount may in addition to any other right of recovery be deducted from future remuneration which may become payable by the employer to that employee, in such manner as the Commissioner may determine.

(4) Until such time as an employee pays to his employer any amount which is due to the employer in terms of sub-paragraph (3), such employee shall not be entitled to receive from the employer an employees' tax certificate in respect of that amount.

(5) Any amount which an employer is required to pay in terms of sub-paragraph (1) and which he is entitled to recover from the employee in terms of sub-paragraph (3) shall, insofar as the employer only is concerned, be deemed to be a penalty due and payable by that employer.

(6) The provisions of sub-paragraph (1) shall not apply in respect of any amount or any portion of any amount of employees' tax which an employer has failed to deduct or withhold and in respect of which the provisions of sub-paragraph (3) of paragraph 28 apply.

6. (1) If an employer fails to pay any amount of employees' tax for which he is liable within the period allowed for payment thereof in terms of paragraph 2 he shall, in addition to any other penalty or charge for which he may be liable under this Act, pay a penalty equal to ten per cent of such amount.

(2) The Commissioner may, if he is satisfied that the employer's failure to pay the amount of employees' tax was not due to an intent to postpone payment of such tax or otherwise evade his obligations under this Act and was not designed to enable the employee concerned to evade such employee's obligations under this Act, remit the whole or any part of the penalty imposed under sub-paragraph (1).

(3) The penalty imposed under sub-paragraph (1) shall be paid to the Commissioner when payment is made of the amount of employees' tax to which it refers or within such further period as the Commissioner may approve.

7. Any agreement between an employer and an employee whereby the employer undertakes not to deduct or withhold employees' tax shall be void.

8. An employee shall not be entitled to recover from an employer any amount deducted or withheld by the employer from the employee's remuneration in terms of paragraph 2.

9. (1) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister of Finance in his budget statement, to the rates of provincial taxes in force or foreshadowed by the Administrator of any province in his budget statement, to the rebates applicable in terms of paragraphs (a), (b) and (c) of sub-section (1) of section six of this Act, and to any other factors having a bearing upon the probable liability of taxpayers for those taxes, prescribe deduction tables applicable to such classes of employees as he may determine, and the manner in which such tables shall be applied, and the amount of employees' tax to be deducted from any amount of remuneration shall, subject to the provisions of sub-paragraph (3) of this paragraph and paragraphs 10, 11 and 12, be determined in accordance with such tables or where sub-paragraph (3) is applicable, in accordance with that sub-paragraph.

(2) Any tables prescribed by the Commissioner in accordance with sub-paragraph (1) shall come into force on such date as may be notified by the Commissioner in the *Gazette*, and shall remain in force until withdrawn by the Commissioner.

(3) The amount to be deducted or withheld in respect of employees' tax from any lump sum to which the proviso to paragraph (c) or paragraph (d) or (e) of the definition of "gross income" in section one of this Act applies, shall be ascertained by the employer from the Commissioner before paying out such lump sum, and the Commissioner's determination of the amount to be so deducted or withheld shall be final.

10. (1) If the Commissioner is satisfied that the circumstances warrant a variation of the basis provided in paragraph 9 for the determination of amounts of employees' tax to be deducted or withheld from remuneration of employees in the case of any employer he may agree with such employer as to the basis of determination of the said amounts to be applied by that employer, and the amounts to be deducted or withheld by that employer in terms of paragraph 2 shall, subject to the provisions of paragraphs 11 and 12, be determined accordingly.

(2) Any agreement made in terms of sub-paragraph (1) shall remain in force indefinitely, but the Commissioner or the employer concerned may give notice of termination thereof and upon the expiration of a period of three months from the date of such notice such agreement shall terminate.

11. In order to alleviate hardship to an employee due to illness or other circumstances or to correct any error in regard to the calculation of employees' tax, whether arising from the furnishing to an employer by an employee of a false or incorrect return of personal particulars or otherwise, or where the employee has in terms of sub-paragraph (2) of paragraph 12 applied to the Commissioner for the issue of a directive to his employer, to enable the employer to deduct or withhold the correct amount by way of employees' tax, the Commissioner may, having regard to the circumstances of the case, issue a directive to the employer concerned authorizing the employer to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to the employee or to deduct or withhold by way of employees' tax a specified amount or an amount to be determined in accordance with a specified rate or scale, and the employer shall comply with such directive.

EMPLOYEES TO FURNISH RETURNS OF PERSONAL PARTICULARS TO EMPLOYERS.

12. (1) Subject to the provisions of sub-paragraph (2) every employee shall furnish his employer with a return of personal particulars in such form as the Commissioner may prescribe, and shall furnish a fresh return within seven days of the date on which any change in the particulars previously furnished occurs: Provided that until a new return is received or a directive is received from the Commissioner in terms of paragraph 11, the employer shall regard the latest return submitted to him by the employee concerned as correct, and shall continue to determine the amounts to be deducted or withheld by way of employees' tax in accordance with the particulars disclosed therein.

(2) If for any reason an employee does not wish to furnish the return referred to in sub-paragraph (1) he may instead apply to the Commissioner in such form as the Commissioner may prescribe for the issue of a directive to his employer and in such case the Commissioner may issue a directive to the employer as provided in paragraph 11.

(3) If an employer has not at any time received any return of personal particulars whatsoever from an employee as required by sub-paragraph (1), or has not in respect of that employee received a directive from the Commissioner as provided in paragraph 11, he shall, until such return or directive is received, deduct or withhold employees' tax under the provisions of paragraph 9 or 10, whichever may be applicable, at the rate applicable to a person who is not a married person and who is not entitled to have any child or stepchild taken into account in the determination of the amount of employees' tax to be deducted or withheld.

(4) If the latest return of personal particulars furnished by any employee to his employer in terms of sub-paragraph (1) discloses that the employee is a divorced person the employer shall until he has in respect of that employee received a directive from the Commissioner issued under paragraph 11 deduct or withhold employees' tax under the provisions of paragraph 9 or 10, whichever may be applicable, at the rate applicable to a person who is not a married person and with due regard to the number of children or stepchildren of the employee disclosed by the said return who will not have attained the age of eighteen years on the last day of the employees' year of assessment during which the employees' tax is deducted or withheld.

FURNISHING AND OBTAINING OF EMPLOYEES' TAX CERTIFICATES.

13. (1) Subject to the provisions of paragraphs 5 and 28, every person who during the period of twelve months ending the last day of February, 1964, or any succeeding period of twelve months deducts or withholds any amount by way of employees' tax as required by paragraph 2 shall within the time allowed by sub-paragraph (2) of this paragraph deliver to each employee or former employee to whom remuneration has during the period in question been paid or become due by such person, an employees' tax certificate in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such em-

employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such person from such remuneration during the said period, excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such person unless such other certificate has been surrendered to such person by the employee or former employee and has been cancelled by such person and dealt with by him as provided in sub-paragraph (10).

(2) The employees' tax certificate referred to in sub-paragraph (1) shall be delivered—

- (a) if the person who is required to deliver the certificate has not ceased to be an employer in relation to the employee concerned, within fourteen days after the end of the period to which the certificate relates;
- (b) if the said person has ceased to be an employer in relation to the employee concerned but has continued to be an employer in relation to other employees, within fourteen days of the date on which he has so ceased; or
- (c) if the said person has ceased to be an employer, within seven days of the date on which he has so ceased,

or in any particular case within such further period as the Commissioner may approve.

(3) For the purposes of sub-paragraph (2) a person shall, if the Commissioner having regard to the circumstances of the case so directs, be deemed not to have ceased to be an employer in relation to any of his casual employees who is likely from time to time to be re-employed by such person.

(4) Notwithstanding the provisions of sub-paragraphs (1) and (2) any person who has deducted or withheld employees' tax from the remuneration of any employee shall as and when required by the Commissioner deliver to such employee an employees' tax certificate in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such person from such remuneration during any period specified by the Commissioner but excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such person unless such other certificate has been surrendered to such person by the employee or former employee and has been cancelled by such person and dealt with by him as provided in sub-paragraph (10).

(5) It shall be the duty of any employee or former employee who has not received an employees' tax certificate within the time allowed by sub-section (2) forthwith to apply to the employer for such certificate.

(6) Every taxpayer shall when rendering a return of income under the provisions of section *sixty-six* of this Act, attach to such return all employees' tax certificates in his possession which disclose information in respect of the year of assessment to which the return relates.

(7) It shall be sufficient compliance with the provisions of sub-paragraph (1) or (4) in regard to the delivery of any employees' tax certificate to any employee or former employee if such certificate is delivered to the employees' authorized agent or the representative taxpayer in respect of the remuneration shown in such certificate or, where delivery cannot conveniently be effected by personal delivery, if such certificate is sent to the employee or former employee or such agent or representative taxpayer by registered post.

(8) An employer may at the request of the employee or former employee issue a duplicate employees' tax certificate but any such duplicate shall be clearly marked as such and shall disclose full details of the original certificate.

(9) Unless authorized thereto by the Commissioner no duplicate employees' tax certificate may be issued by an employer otherwise than as provided in sub-paragraph (8).

(10) Any cancelled or spoiled employees' tax certificate shall not be destroyed by the employer concerned but shall be retained by him until the Commissioner requires it to be surrendered to him.

(11) The Commissioner shall control the issue to employers of stocks of unused employees' tax certificates and may prescribe conditions in regard to the manner in which such unused certificates may be used or as to the surrender of unused stocks of such certificates and every employer shall account to the Commissioner for used, unused, cancelled or spoiled certificates as and when required by the Commissioner.

(12) In the case of any employer who has a mechanized accounting system the Commissioner may subject to such conditions as he may impose approve the use by such employer of employees' tax certificates in a form other than the form prescribed for general use and if any such employer fails to comply with the conditions imposed by the Commissioner the Commissioner may withdraw his consent for the use of such certificates and the employer shall forthwith or from any date specified by the Commissioner cease to use such certificates and shall within such period as the Commissioner may prescribe surrender to the Commissioner all unused stocks of such certificates.

(13) Every person who ceases to be an employer shall, unless the Commissioner otherwise directs, within fourteen days of his ceasing to be an employer surrender to the Commissioner all unused employees' tax certificates in his possession.

(14) If any person fails to surrender any unused employees' tax certificates as required by sub-paragraph (12) or (13), any officer engaged

in carrying out the provisions of this Act who has in relation to such person been authorized thereto by the Commissioner in writing or by telegram may without previous notice, at any time during the day enter any premises whatsoever and on such premises search for and seize such certificates and in carrying out such search, open or cause to be removed and open any article in which he suspects any such certificates to be contained.

(15) For the purposes of this Schedule any employees' tax certificate on which appears the name or any trade name of any employer shall until the contrary is proved be deemed to have been issued by such employer if such certificate is in a form prescribed by the Commissioner for general use and was supplied by the Commissioner to such employer for use by him or is in a form approved by the Commissioner under sub-paragraph (11) for use by such employer.

EMPLOYERS TO KEEP RECORDS AND FURNISH RETURNS.

14. (1) Every employer shall in respect of each employee maintain a record showing the amounts of remuneration paid or due by him to such employee and the amount of employees' tax deducted or withheld from each such amount of remuneration, and such record shall be retained by the employer and shall be available for scrutiny by the Commissioner.

(2) Every employer shall when making any payment of employees' tax submit to the Commissioner a declaration in such form as the Commissioner may prescribe showing, in addition to any other information that may be required, the total amounts included in such payment in respect of employees resident in each of the four provinces of the Republic and employees resident outside the Republic.

(3) Every employer shall—

(a) in respect of the period of twelve months ending the last day of February, 1964, and each succeeding period of twelve months; and

(b) if he ceases to carry on any business or other undertaking in respect of which he has paid or become liable to pay remuneration to any employee or otherwise ceases to be an employer, in respect of the period from the first day of March immediately preceding the date on which he has ceased to carry on such business or other undertaking or to be an employer, as the case may be, to the date on which he has so ceased to carry on such business or undertaking or to be an employer, as the case may be,

within fourteen days after the end of the period in question, or within such longer time as the Commissioner may approve, render to the Commissioner a return in such form as the Commissioner may prescribe showing the names and addresses of all the persons who during such period were employees in relation to such employer and the total remuneration paid to or accrued to each employee in respect of such period and the total amount of employees' tax deducted or withheld from the remuneration of each such employee during such period.

REGISTRATION OF EMPLOYERS.

15. (1) Every person who is an employer shall apply to the Commissioner in such form as the Commissioner may prescribe for registration as an employer—

(a) in the case of a person who is an employer on the first day of March, 1963, not later than the thirty-first day of March, 1963; and

(b) in the case of a person who becomes an employer after the first day of March, 1963, within fourteen days after becoming an employer,

or in either such case within such further period as the Commissioner may approve.

(2) Any person who has furnished a declaration to the Commissioner under the provisions of section *thirty-six* of the Income Tax Amendment Act, 1962 (Act No. 90 of 1962), shall be deemed to have applied for registration as an employer under this paragraph.

(3) Every person who has applied or is deemed to have applied for registration under sub-paragraph (1) shall within fourteen days after changing his address or ceasing to be an employer, notify the Commissioner in writing of his new address or of the fact of his having ceased to be an employer, as the case may be.

(4) The Commissioner may at such times as he may decide issue public notices drawing attention to the provisions of this paragraph.

LIABILITY OF REPRESENTATIVE EMPLOYERS AND OTHERS.

16. (1) Every representative employer shall as regards the remuneration which he pays or is liable to pay to any employee in his representative capacity, be subject in all respects to the same duties, responsibilities and liabilities under this Schedule as if that remuneration were remuneration paid or liable to be paid by him in his personal capacity.

(2) Any employees' tax or interest on employees' tax or any penalty imposed under this Part shall be recoverable from the person who in terms of the definition of "employer" in paragraph 1 is an employer by virtue of his having paid or become liable to pay remuneration in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor, or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund, or from the representative employer, but to the extent only of any assets belonging to the person, body, trust, estate or fund represented or administered by him which may be in his possession or under his management, disposal or control, and the provisions of sections *ninety-six* and *ninety-seven* of this Act shall *mutatis mutandis* apply in the case of such first-mentioned person or representative employer as if he were a representative taxpayer.

(3) The executor of the estate of any deceased employer or the trustee of the insolvent estate of any employer shall fulfil such obligations of the deceased or insolvent employer under paragraphs 13 and 14 as arise in consequence of that employer ceasing to be an employer because of his death or insolvency, or as have not been fulfilled by such employer before his death or insolvency.

PART III.

PROVISIONAL TAX.

PAYMENT OF PROVISIONAL TAX.

17. (1) Every provisional taxpayer shall in the manner provided in this Part make payments (called provisional tax) to the Commissioner in respect of his liability for normal and provincial taxes in respect of every year of assessment ending after the twenty-eighth day of February, 1963, and in the case of a person other than a company, in respect of the year of assessment ending upon that date if the Commissioner has in terms of sub-section (13)ter of section *sixty-six* of this Act agreed to accept accounts in respect of the last-mentioned year of assessment to a date falling after the twenty-eighth day of February, 1963.

(2) If any period prescribed by this Schedule for the payment of provisional tax ends upon a date falling on or before the thirty-first day of March, 1963, such period shall for the purposes of this Schedule be deemed to have been extended to the thirtieth day of April, 1963.

(3) Where for the purpose of determining any amount of provisional tax required to be paid by any provisional taxpayer in respect of any year of assessment the liability of such taxpayer for normal tax or any provincial tax is required to be estimated in respect of such year, such liability shall—

(a) so far as normal tax is concerned be deemed to be the amount of normal tax which, calculated at the relevant rate referred to in sub-paragraph (4), would be payable by the provisional taxpayer in respect of the amount of taxable income estimated by such taxpayer in terms of sub-paragraph (1) of paragraph 19 during the period prescribed by this Schedule for the payment of the said amount of provisional tax, or any extension of such period granted in terms of sub-paragraph (2) of paragraph 25, or if the amount so estimated has been increased by the Commissioner in terms of sub-paragraph (3) of paragraph 19, the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income as so increased, or if the Commissioner has estimated the provisional taxpayer's taxable income in terms of sub-paragraph (2) of paragraph 19, the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income so estimated;

(b) so far as the personal tax levied by any provincial council is concerned, be deemed to be the amount of personal tax which would be payable by the provisional taxpayer in respect of the estimated amount of taxable income in respect of which normal tax is calculated in terms of item (a) of this sub-paragraph; and

(c) so far as provincial income tax is concerned, be deemed to be the amount of provincial income tax which, calculated at the relevant rate referred to in sub-paragraph (4), would be payable in respect of the amount of normal tax (or such portion of such amount as would in terms of the ordinance under which such provincial income tax is levied be taken into account if such amount were the amount actually payable by the taxpayer) taken into account in terms of item (a) of this sub-paragraph for the purpose of determining the said amount of provisional tax.

(4) For the purposes of any calculation of normal tax or any personal or provincial income tax under sub-paragraph (3) the rate at which such tax is to be calculated shall be—

(a) in respect of normal tax, the relevant rate fixed by Parliament in respect of the year of assessment in respect of which the relevant provisional tax payment is required to be made under this Schedule, or if at the date on which payment of provisional tax is made the rate has not been fixed, at the relevant rate in respect of that year foreshadowed by the Minister of Finance in his budget statement, or if at that date the rate has not been fixed or foreshadowed as aforesaid, at the relevant rate fixed by Parliament in respect of the latest preceding year of assessment in respect of which rates have been fixed by Parliament; and

(b) in respect of any personal or provincial income tax, the relevant rate fixed in respect of the first-mentioned year of assessment by the provincial council of the province in which the provisional taxpayer is ordinarily resident at the date on which payment of provisional tax is made, or if at that date the rate has not been fixed, at the relevant rate in respect of that year foreshadowed by the Administrator of the said province in his budget statement, or if at that date the rate has not been fixed or foreshadowed as aforesaid, at the relevant rate fixed by the said council in respect of the latest preceding year of assessment in respect of which a rate has been fixed by that Council in respect of such tax.

EXEMPTIONS.

18. (1) There shall be exempt from payment of provisional tax—
- (a) in respect of any period in respect of which provisional tax would but for the provisions of this item be payable by him any person (other than a company) who satisfies the Commissioner that he has not during such period derived any income apart from remuneration, rents, interest, dividends or any amount referred to in paragraph (i), (iii), (v), (vi) or (vii) of the definition of "remuneration" in paragraph 1, and that his taxable income during such period by way of rents, interest, dividends and any amount referred to in the said paragraph (vii) will not in the aggregate exceed four hundred rand;
 - (b) any person in respect of whose liability for normal tax for the relevant year of assessment payments are required to be made under section *thirty-three* or *thirty-five* of this Act;
 - (c) any person who under the provisions of sub-paragraph (2) has elected not to be a provisional taxpayer and who has not under the provisions of sub-paragraph (3) become a provisional taxpayer in respect of the relevant year of assessment.

(2) Any person (other than a company) who—

- (a) has at any time during the period of eight months ending the twenty-eighth day of February, 1963, carried on and is on that date carrying on farming, fishing or diamond digging operations, or has after that date, but not later than the thirtieth day of June, 1965, commenced for the first time to carry on any such operations, unless prior to the date of such commencement he has by virtue of paragraph (a) of the definition of "provisional taxpayer" in paragraph 1 become a provisional taxpayer; and
- (b) shows to the satisfaction of the Commissioner that his taxable income will be wholly or mainly derived from such operations,

shall, subject to the provisions of sub-paragraph (5), be entitled to elect not to be a provisional taxpayer provided such election is made in such form as the Commissioner may prescribe and is lodged with the Commissioner not later than the thirtieth day of June, 1963, or, in the case of any person who commenced to carry on such operations after the twenty-eighth day of February, 1963, not later than the last day of the year of assessment during which such operations were so commenced.

(3) Any election made under sub-paragraph (2) shall be binding upon the person making such election and shall remain in force until—

- (a) the Commissioner upon such terms and conditions as he may impose has consented in writing to such person becoming a provisional taxpayer; or
- (b) it appears to the Commissioner that it is unlikely that such person will derive his taxable income wholly or mainly from farming, fishing or diamond digging operations.

(4) Any decision of the Commissioner in the exercise of his discretion under item (b) of sub-paragraph (3) shall be subject to objection and appeal.

(5) In any case where it appears that the taxable income of any person will consist in whole or in part of amounts derived by his wife, regard shall for the purposes of item (b) of sub-paragraph (2) and item (b) of sub-paragraph (3) be had to the total taxable income to be derived by both the husband and the wife, and in such case the election under sub-paragraph (2) shall be made by the husband.

ESTIMATES OF TAXABLE INCOME TO BE MADE BY PROVISIONAL TAXPAYERS.

19. (1) Every provisional taxpayer shall, during every period within which provisional tax is payable as provided in this Part or any extension of such period granted in terms of sub-paragraph (2) of paragraph 25, submit to the Commissioner, in such form as the Commissioner may prescribe, an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment in respect of which provisional tax is payable: Provided that the amount of any estimate submitted by a provisional taxpayer during any relevant period referred to in item (a) or (b) of sub-paragraph (1) of paragraph 21 or item (a) or (b) of paragraph 23, or any extension of any such period granted in terms of sub-paragraph (2) of paragraph 25, shall, unless the Commissioner having regard to the circumstances of the case agrees to accept an estimate of a lower amount, not be less than the amount of the provisional taxpayer's taxable income for the year of assessment immediately preceding the year of assessment in question: Provided further that where in the case of a company the immediately preceding year of assessment in relation to such company is a transition period as defined in sub-section (1) of section *twenty-one bis* of this Act, the taxable income for such preceding year shall for the purposes of this paragraph be deemed to be an amount equal to the amount at which such taxable income would have been determined if no deduction from income had been made in terms of the said section.

(2) If the provisional taxpayer fails to submit any estimate as required by sub-paragraph (1) the Commissioner may estimate the said taxable income, and such estimate shall be final and conclusive.

(3) The Commissioner may call upon any provisional taxpayer to justify any estimate made by him in terms of sub-paragraph (1), or to furnish particulars of his income and expenditure or any other particulars that may be required, and, if the Commissioner is dissatisfied with the said estimate, he may increase the amount thereof to such amount as he considers reasonable, and the estimate as increased shall be final and conclusive.

(4) For the purposes of this paragraph the immediately preceding year of assessment in relation to the year of assessment ending the twenty-ninth day of February, 1964, shall in the case of every provisional

taxpayer (other than a company) be deemed to be the year of assessment ended the thirtieth day of June, 1962.

(5) Any estimate made by the Commissioner under the provisions of sub-paragraph (2) or (3) shall be deemed to take effect in respect of the relevant period within which the provisional taxpayer is required to make any payment of provisional tax in terms of this Part, or within any extension of such period granted in terms of sub-paragraph (2) of paragraph 25.

ADDITIONAL TAX IN THE EVENT OF TAXABLE INCOME
BEING UNDERESTIMATED.

20. (1) If the final or last estimate of his taxable income made in terms of sub-paragraph (1) of paragraph 19 by a provisional taxpayer in respect of any year of assessment discloses his estimated taxable income in respect of that year of assessment in an amount which is less than ninety per cent of the amount of his taxable income as finally determined for that year and which is also less than the amount of his taxable income for the immediately preceding year of assessment, the taxpayer shall, subject to the provisions of sub-paragraphs (2), (3) and (4), be required to pay to the Commissioner in addition to the normal and provincial taxes chargeable in respect of his taxable income an amount by way of additional tax equal to twenty per cent of the difference between the sum of the amounts of normal and provincial taxes as calculated in respect of the taxable income as so estimated by the taxpayer and the lesser of the following amounts, namely—

- (a) the sum of the amounts of normal and provincial taxes calculated in respect of ninety per cent of his taxable income as finally determined for the relevant year of assessment; and
- (b) the sum of the amounts of normal and provincial taxes calculated in respect of his taxable income for the immediately preceding year of assessment at the rates applicable in respect of the year of assessment in respect of which the estimate has been submitted:

Provided that where the immediately preceding year of assessment is a transition period as defined in sub-section (1) of section *twenty-one bis* of this Act, the taxable income for such preceding year of assessment shall for the purposes of this paragraph be deemed to be an amount equal to the amount at which the taxable income of the taxpayer would have been determined if no deduction had been made from his income in terms of that section.

(2) Where the Commissioner is satisfied that the taxpayer has become liable to pay additional tax under sub-paragraph (1) by reason of the fact that his taxable income for the year of assessment in question is affected by circumstances of which he was not aware at the time of making the estimate referred to in sub-paragraph (1), the Commissioner may in his discretion remit the additional tax or a part thereof.

(3) The provisions of sub-paragraph (1) of this paragraph shall not apply in any case where the Commissioner has under the provisions of sub-paragraph (3) of paragraph 19, increased the final or last estimate made by the taxpayer in respect of the relevant year of assessment.

(4) Any decision of the Commissioner in the exercise of his discretion under sub-paragraph (2) shall be subject to objection and appeal.

PAYMENT OF PROVISIONAL TAX BY PROVISIONAL TAXPAYERS (OTHER THAN
COMPANIES) WHOSE TAXABLE INCOME IS NOT NORMALLY DERIVED
WHOLLY OR MAINLY FROM FARMING, FISHING OR DIAMOND DIGGING.

21. (1) Subject to the provisions of sub-paragraph (2) provisional tax shall be paid by every provisional taxpayer (other than a company) in the following manner, namely—

- (a) within four months of the commencement of the year of assessment in question, one quarter of an amount equal to the total estimated liability of such taxpayer (as determined in accordance with paragraph 17) for normal and provincial taxes in respect of that year, less the total amount of any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during the period of three months reckoned from the commencement of such year;
- (b) within seven months of the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such taxpayer (as re-determined in accordance with paragraph 17) for normal and provincial taxes in respect of that year, less the sum of the amounts of any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during the period of six months reckoned from the commencement of such year and the amount paid in terms of item (a); and
- (c) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such taxpayer (as finally determined in accordance with paragraph 17) for normal and provincial taxes in respect of that year, less the sum of the amounts of any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during such year and the amounts paid in terms of items (a) and (b).

(2) If the Commissioner has in terms of sub-section (13)ter of section *sixty-six* of this Act agreed to accept accounts from any provisional taxpayer in respect of any year of assessment drawn to a date falling after the end of such year, the periods referred to in items (a) and (b) of sub-paragraph (1) shall, notwithstanding the provisions of that sub-paragraph, be reckoned from such date as the Commissioner upon the application of the taxpayer and having regard to the circumstances

of the case may approve, and in such case the last day of such year of assessment shall for the purposes of item (c) of that sub-paragraph be deemed to be the day preceding the first anniversary of the said date.

(3) The provisions of this paragraph shall not apply in the case of any provisional taxpayer in respect of whom the Commissioner has under item (a) of paragraph 26 directed that the provisions of paragraph 22 shall apply.

PROVISIONAL TAX PAYMENTS BY PROVISIONAL TAXPAYERS (OTHER THAN COMPANIES) WHOSE TAXABLE INCOME IS NORMALLY DERIVED WHOLLY OR MAINLY FROM FARMING, FISHING OR DIAMOND DIGGING.

22. Every provisional taxpayer (other than a company) whose income is normally derived wholly or mainly from farming, fishing or diamond digging and in respect of whom the Commissioner has directed that the provisions of this paragraph shall apply, shall not later than the last day of the year of assessment in question pay by way of provisional tax an amount equal to the total estimated liability of such taxpayer (determined in accordance with paragraph 17) for normal and provincial taxes in respect of that year, less the sum of the amounts of any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during that year.

PROVISIONAL TAX PAYMENTS BY COMPANIES.

23. Provisional tax shall be paid by every company which is a provisional taxpayer in the following manner, namely—

- (a) within four months of the commencement of the year of assessment in question, one quarter of an amount equal to the total estimated liability of such company (as determined in accordance with paragraph 17) for normal tax in respect of that year;
- (b) within seven months of the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such company (as re-determined in accordance with paragraph 17) for normal tax in respect of that year less the amount paid in terms of item (a); and
- (c) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such company (as finally determined in accordance with paragraph 17) for normal tax in respect of that year, less the sum of the amounts paid in terms of items (a) and (b).

24. The Commissioner may absolve any provisional taxpayer from making payment of any amount of provisional tax payable in terms of item (a) or (b) of paragraph 21 or paragraph 22 or item (a) or (b) of paragraph 23, if he is satisfied that the taxable income which may be derived by such taxpayer for the year of assessment in question cannot be estimated on the facts available at the time when payment of the amount in question has to be made.

EXTENSION OF TIME FOR PAYMENT OF PROVISIONAL TAX.

25. (1) If after the end of any period within which provisional tax is payable in terms of this Schedule the Commissioner has under the provisions of sub-paragraph (3) of paragraph 19 increased the amount of any estimate of taxable income submitted by any provisional taxpayer during such period, any additional provisional tax payable as a result of the Commissioner having made such increase shall, notwithstanding the provisions of paragraphs 21, 22 and 23, be payable within such period as the Commissioner may determine.

(2) The Commissioner may, having regard to the circumstances of the case, extend the period within which any amount of provisional tax is to be paid, or may agree to accept payment of any such amount in equal or varying amounts.

CERTAIN MATTERS TO BE DECIDED BY THE COMMISSIONER.

26. The Commissioner's decision or direction in regard to the following matters shall be final and conclusive, namely—

- (a) the question whether any provisional taxpayer (other than a company) should from time to time pay provisional tax in the manner provided in paragraph 21 or in the manner provided in paragraph 22;
- (b) the question as to what amount of provisional tax should for the purposes of paragraph 21 or paragraph 22 be payable by any spouse whose returns are separately assessed in terms of sub-section (6) of section *seventy-seven* of this Act.

PENALTY ON LATE PAYMENTS OF PROVISIONAL TAX.

27. (1) If any provisional taxpayer fails to pay any amount of provisional tax for which he is liable within the period allowed for payment thereof in terms of paragraph 21, 22 or 23, or sub-paragraph (1) of paragraph 25, or within such extended period as the Commissioner may allow in terms of sub-paragraph (2) of paragraph 25, he shall, in addition to any other penalty or charge incurred by him under this Act, pay to the Commissioner a penalty equal to ten per cent of the amount not paid.

(2) The Commissioner may, if he is satisfied that the provisional taxpayer's failure to pay the amount of provisional tax was not due to an intent to evade or postpone payment of the tax, or otherwise evade his obligations under this Act, remit the whole or any part of the penalty imposed under sub-paragraph (1).

PART IV.

GENERAL.

EMPLOYEES' TAX AND PROVISIONAL TAX TO BE SET OFF AGAINST TAX LIABILITY.

28. (1) There shall be set off against the liability of the taxpayer in respect of normal and provincial taxes and any other taxes (excluding non-resident shareholders' tax, undistributed profits tax, excess profits duty and donations tax) due by the taxpayer which, by virtue of the definition of "tax" in section one of this Act, constitute taxes for the purposes of Part IV of Chapter III of this Act, the amounts of employees' tax deducted or withheld by the taxpayer's employer during any year of assessment for which the taxpayer's liability for normal and provincial taxes has been assessed by the Commissioner and the amounts of provisional tax paid by the taxpayer, and—

- (a) if, in the case of a taxpayer who is not a provisional taxpayer, the sum of the said amounts of employees' tax exceeds the amount of the taxpayer's total liability for the said taxes, the excess amount shall be refunded to the taxpayer;
- (b) if, in the case of any provisional taxpayer, the sum of the said amounts of employees' tax and provisional tax exceeds the taxpayer's total liability for the said taxes, the Commissioner shall not be required to make any refund of the excess amount (or any portion thereof) standing to the taxpayer's credit unless the Commissioner is satisfied having regard to the circumstances of the case that a refund of such excess amount (or a portion thereof) is warranted, and any amount (after the deduction of any amount refunded to the taxpayer) standing to the taxpayer's credit shall be set off against the taxpayer's liability for any of the said taxes for which he is subsequently assessed by the Commissioner or may be set off in whole or in part against any amount of provisional tax which the taxpayer is required to pay under this Schedule; and
- (c) if, in the case of any taxpayer, the taxpayer's total liability for the aforesaid taxes exceeds the sum of the said amounts of employees' tax and provisional tax, the amount of the excess shall be payable by the taxpayer to the Commissioner.

(2) The burden of proof that any amount of employees' tax has been deducted or withheld by his employer shall be upon the taxpayer and any employees' tax certificate shall be *prima facie* evidence that the amount of employees' tax reflected therein has been deducted by the employer.

(3) If the Commissioner is satisfied that the amount or any portion of the amount of employees' tax shown in any employees' tax certificate has not been deducted or withheld by the employer and the amount of employees' tax shown in such tax certificate has been applied as provided in sub-paragraph (1), the employer and the employee shall be jointly and severally liable to pay to the Commissioner the amount which should not have been so applied and such amount shall be recoverable under this Act as if it were a tax.

(4) An employer who has under sub-paragraph (3) paid to the Commissioner an amount which has but should not have been applied under the provisions of sub-paragraph (1), may, if the amount was shown or included in the certificate because of a *bona fide* error, recover the amount so paid from the employee concerned, and in that case the provisions of sub-paragraph (3) of paragraph 5 shall *mutatis mutandis* apply.

(5) No employees' tax certificate shall be issued by the employer in respect of any amount recovered by him from the employee in terms of sub-paragraph (4) nor shall any such amount be included in any return rendered in terms of sub-paragraph (3) of paragraph 14.

(6) If the Commissioner is satisfied that the employee to whom an employees' tax certificate refers was directly or indirectly responsible for an incorrect amount being shown on such certificate he may absolve the employer from the liability imposed upon him by sub-paragraph (3), and in that case the employee shall be solely liable under that sub-paragraph.

29. No refund of any amount of employees' tax or provisional tax shall be made to the taxpayer concerned otherwise than as provided in paragraph 28.

OFFENCES.

30. (1) Any person who—

- (a) makes or becomes liable to make any payment of remuneration and who fails to deduct or withhold therefrom any amount of employees' tax or to pay such amount to the Commissioner as and when required by paragraph 2; or
- (b) uses or applies any amount deducted or withheld by him by way of employees' tax for purposes other than the payment of such amount to the Commissioner; or
- (c) makes or issues or causes or allows to be made or issued or knowingly possesses or uses or causes to be used any employees' tax certificate which is false; or
- (d) without just cause shown by him fails to comply with any directive issued to him by the Commissioner in terms of paragraph 11; or
- (e) furnishes to his employer or the Commissioner a false or misleading return of personal particulars or gives any false informa-

tion or misleads his employer in relation to any matter affecting the amount of employees' tax to be deducted in his case; or

- (f) fails or neglects to deliver to any employee or former employee any employees' tax certificate as required by paragraph 13; or
- (g) fails to comply with any condition prescribed by the Commissioner in terms of sub-paragraph (11) of paragraph 13 in regard to the manner in which employees' tax certificates may be used or as to the surrender of unused stocks of such certificates, or to account for used, unused or spoiled employees' tax certificates when required by the Commissioner under that paragraph or on ceasing to be an employer fails to surrender unused employees' tax certificates in his possession as required by sub-paragraph (13) of that paragraph; or
- (h) fails to comply with any condition prescribed by the Commissioner by which he is bound in terms of sub-paragraph (12) of paragraph 13; or
- (i) fails or neglects to maintain any record as required by paragraph 14 or to retain such record for a period of five years from the date of the last entry therein or to furnish to the Commissioner any declaration as required by that paragraph; or
- (j) fails or neglects to apply to the Commissioner for registration as an employer as required by sub-paragraph (1) of paragraph 15, or having so applied fails or neglects to notify the Commissioner of any change of his address or the fact of his having ceased to be an employer as required by sub-paragraph (3) of that paragraph; or
- (k) alters any employees' tax certificate made or issued by any other person or falsely pretends to be the employee named in any employees' tax certificate or for his own advantage or benefit obtains credit with respect to or payment of the whole or any part of any amount of employees' tax deducted or withheld from remuneration received by another person; or
- (l) not being an employer and without being duly authorized by any person who is an employer, issues or causes to be issued any document purporting to be an employees' tax certificate; or
- (m) fails to submit to the Commissioner any estimate of his taxable income as required under paragraph 19,

shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) For the purposes of item (b) of sub-paragraph (1) an amount which has been deducted or withheld by any person from remuneration shall until the contrary is proved be deemed to have been used or applied by such person for purposes other than the payment of such amount to the Commissioner if such amount is not paid to the Commissioner within the period allowed for payment under paragraph 2.

RECOVERY OF EMPLOYEES' TAX, PROVISIONAL TAX, PENALTY, ADDITIONAL TAX AND INTEREST.

31. Any amount of employees' tax, provisional tax, penalty or additional tax payable in terms of this Schedule, and any amount of interest payable in terms of section *eighty-nine bis* of this Act shall when it becomes due or is payable be a debt due to the State and may be recovered by the Commissioner in the manner prescribed in section *ninety-one* for the recovery of tax and interest due or payable under this Act.

EXTENSION OF SCOPE OF CERTAIN PROVISIONS OF ACT FOR PURPOSES OF THIS SCHEDULE.

32. For the purposes of this Schedule—

any reference in sub-section (1) or (2) of section *seventy-four* of this Act to the income of any person shall be deemed to include a reference to any remuneration paid or payable by any employer and to any employees' tax required to be deducted or withheld and paid by any employer;

any reference in sub-section (3) of section *ninety-five* of this Act to any tax payable in respect of any assessment shall be deemed to include a reference to any provisional tax payable in terms of this Schedule and any reference in sub-section (4) of that section to any tax payable in respect of any assessment made upon any public officer in his capacity as such shall be deemed to include a reference to any provisional tax payable by any public officer in his capacity as such;

- (c) any reference in sections *ninety-six* to *one hundred*, inclusive, of this Act, to tax shall be deemed to include a reference to provisional tax.

PAYMENTS TO AND REFUNDS FROM THE CONSOLIDATED REVENUE FUND AND THE PROVINCIAL REVENUE FUNDS.

33. (1) For the purposes of this paragraph "fiscal year" means any period from the first day of April in any year to the next succeeding thirty-first day of March.

(2) Notwithstanding anything in any law contained any amount received by the Commissioner on or after the first day of April, 1963, whether by way of employees' tax, provisional tax or otherwise, in respect of any tax (other than normal tax payable by any company, non-resident shareholders' tax, undistributed profits tax, excess profits duty or donations tax) as defined in section *one* of this Act for the purposes

of Part IV of Chapter III of this Act, or any interest payable in terms of section *eighty-nine* or *eighty-nine bis* (other than interest payable by any company in respect of normal tax or provisional tax), or any penalty imposed under paragraph 5, 6 or 27 (other than a penalty payable by any company under paragraph 27), or any additional tax imposed on any person other than a company under paragraph 20, shall accrue for the benefit of the Consolidated Revenue Fund and the provincial revenue fund referred to in sub-paragraph (3) in such proportions as may, on the basis prescribed in sub-paragraph (5), be determined by the Commissioner for the fiscal year during which the amount is received, and the sums so accruing to the Consolidated Revenue Fund and the respective provincial revenue funds shall be deemed to be the full payments due to the said funds in respect of such tax, interest, penalty or additional tax and no adjustment shall be made save as is provided in sub-paragraph (6).

(3) The provincial revenue fund for the benefit of which a proportion of the amount referred to in sub-paragraph (2) shall in terms of that sub-paragraph accrue, shall be—

- (a) where the amount referred to in sub-paragraph (2) is paid by way of employees' tax or any penalty imposed under paragraph 5 or 6, the provincial revenue fund of the province in which the employee concerned is resident when the employees' tax to which such amount has reference is under this Schedule required to be deducted or withheld by the employer concerned;
- (b) where such amount is paid by way of provisional tax or any penalty imposed under paragraph 27, the provincial revenue fund of the province in which the provisional taxpayer is on charge for income tax purposes when such amount is paid;
- (c) where such amount is paid otherwise than by way of employees' tax or provisional tax the provincial revenue fund of the province in respect of which the taxpayer concerned has been assessed to tax.

(4) Any amount refunded in respect of any tax, interest, penalty or additional tax referred to in sub-paragraph (2) shall be paid as a drawback from revenues accruing to the Consolidated Revenue Fund and the provincial revenue fund of the province for the benefit of which any amount paid in respect of such tax, interest, penalty or charge has accrued, in such proportions as may on the basis prescribed in sub-paragraph (5) be determined by the Commissioner for the fiscal year during which the refund is made.

(5) Subject to the provisions of sub-paragraph (6) the proportions of any amount accruing for the benefit of the Consolidated Revenue Fund and any provincial revenue fund in terms of sub-paragraph (2) or to be paid as a drawback from revenues accruing to such funds in terms of sub-paragraph (4) shall be determined in respect of each province by the Commissioner as follows, namely—

- (a) in so far as the proportion relating to the Consolidated Revenue Fund is concerned, in accordance with the formula:

$$W = \frac{A}{B} \times \frac{100}{1}; \text{ and}$$

- (b) in so far as the proportion relating to the relevant provincial revenue fund is concerned, in accordance with the formula:

$$X = \frac{C}{B} \times \frac{100}{1},$$

in which formulae—

- (i) "W" represents the proportion, expressed as a percentage, of any amount payable by or refundable to any person (other than a company) liable for provincial taxes in respect of the province concerned which accrues for the benefit of or is to be paid as a drawback from revenues accruing to the Consolidated Revenue Fund;
 - (ii) "A" represents the aggregate of the amounts of normal tax which the Commissioner estimates as payable by persons (other than companies) liable for provincial taxes in respect of the province concerned in respect of the year of assessment ending during the year ending the thirty-first day of December immediately preceding the commencement of the fiscal year for which the determination is made;
 - (iii) "B" represents the aggregate of the amounts of normal and provincial taxes which the Commissioner estimates as payable by the persons referred to in item (ii) in respect of the year of assessment referred to in that item;
 - (iv) "X" represents the proportion, expressed as a percentage, of any amount referred to in item (i) which accrues for the benefit of or is to be paid as a drawback from revenues accruing to the relevant provincial revenue fund; and
 - (v) "C" represents the aggregate of the amounts of provincial taxes which the Commissioner estimates as payable by the persons referred to in item (ii) in respect of the year of assessment referred to in that item.
- (6) (a) In applying the formulae set out in sub-paragraph (5) in relation to the fiscal year ending the thirty-first day of March, 1965, any reference in item (ii), (iii) or (v) to a year of assessment shall be deemed to be a reference to the year of assessment ended the thirtieth day of June, 1962.

(b) If the rates of normal or provincial taxes in respect of persons other than companies in respect of the last year of assessment ending before the commencement of any fiscal year differ materially from the respective rates of normal or provincial taxes, as the case may be, in respect of the year of assessment ending during the year ending the thirty-first day of December immediately preceding the commencement of that fiscal year, the Commissioner shall make such adjustment in his determination of the proportions referred to in sub-paragraph (5) as he deems necessary.

(7) All amounts of employees' tax and provisional tax which any taxpayer (other than a company) is, in terms of paragraph 28, entitled to have set off against his liability for normal, provincial and other taxes or interest shall, notwithstanding anything in any law contained, be set off against the normal and provincial taxes for which the taxpayer is actually liable notwithstanding the fact that such amounts may, in whole or in part, have accrued in terms of sub-paragraph (2) for the benefit of the provincial revenue fund of a province other than the province by which the provincial taxes for which such taxpayer is liable are levied.

(8) Notwithstanding anything in any law contained a portion equal to one-sixth of any amount payable by any company (other than a company which derives income in the Republic from mining) by way of interest on normal tax in terms of section *eighty-nine* of this Act, interest on provisional tax in terms of section *eighty-nine bis* of this Act, additional tax under paragraph 20 or penalty under paragraph 27 shall accrue for the benefit of the respective provincial revenue funds in the proportions determined by the State President from time to time by proclamation in the *Gazette*.
