

No. 78, 1959.]

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## ACT

To fix the rates of normal and super income tax in respect of the year of assessment ending the thirtieth day of June, 1959, to provide for the repayment of certain portions of the said taxes to the taxpayers concerned and for the payment of a portion of the normal tax payable by certain companies into provincial revenue funds and to amend the law relating to income tax.

(Afrikaans text signed by the Governor-General.)  
(Assented to 4th July, 1959.)

**BE IT ENACTED** by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Rates of normal  
and super tax.

1. (1) In terms of sub-section (2) of section *five* and sub-section (2) of section *twenty-three* respectively of the Income Tax Act, 1941 (Act No. 31 of 1941), hereinafter referred to as the principal Act, the rates of normal and super tax to be levied for the year of assessment ending the thirtieth day of June, 1959, shall be as follows:

(A) In so far as normal tax is concerned—

(a) in respect of the taxable income (excluding so much as is derived from mining operations carried on in the Union by any company, but including so much as the Commissioner determines to be attributable to the inclusion in the gross income derived from mining in the Union for gold, of any amount referred to in paragraph (f) of the definition of "gross income" in section *seven* of the principal Act)—

(i) in the case of all companies, except as provided in paragraph (b) of sub-section (1) of section *two* of this Act, for each pound of the taxable income, six shillings;

(ii) in the case of persons other than companies, for each pound of the taxable income not exceeding nine thousand three hundred pounds, eighteen pence increased by one one-thousandth of a penny for each pound of such taxable income in excess of one pound, and for each pound of the taxable income over and above nine thousand three hundred pounds, thirty-seven pence: Provided that for a married person the rate for each pound of the taxable income not exceeding nine thousand three hundred pounds shall be fifteen pence increased by one one-thousandth of a penny for each pound of such taxable income in excess of one pound, and for each pound of the taxable income over and above nine thousand three hundred pounds, thirty-four pence: Provided further that there shall be added to the amount of tax calculated in accordance with the preceding provisions of this item (including the foregoing proviso thereto) a sum equal to fifteen per centum of the net amount arrived at after deducting the rebates provided for in section *thirteen* of the principal Act from the amount of tax so calculated;

(b) in respect of so much of the taxable income as has been derived by any company from mining in the Union for gold (but with the exclusion of

so much of the taxable income as the Commissioner determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (f) of the definition of "gross income" in section *seven* of the principal Act), on each pound of the taxable income a percentage determined in accordance with the formula:

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

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

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

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

20 in the formula  $y = 20 \left( 1 - \frac{6}{x} \right)$  by one for

each completed amount of twelve hundred and fifty pounds by which the said taxable income exceeds twenty thousand pounds;

- (c) in respect of so much of the taxable income as has been derived by any company from mining in the Union for diamonds, for each pound of the taxable income, nine shillings;
- (d) in respect of so much of the taxable income as has been derived by any company from mining operations (other than mining for gold or diamonds) carried on by such company in the Union, for each pound of the taxable income, six shillings;
- (e) in respect of so much of the taxable income of any company, the sole or principal business of which in the Union is or has been mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, as the Commissioner determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (f) of the definition of "gross income" in section *seven* of the principal Act, for each pound so determined to be attributable to the inclusion of any such amount, the amount by which the average rate of normal tax as determined under paragraph (b) of sub-section (2) exceeds the rate prescribed in item (i) of sub-paragraph (a);
- (f) in the case of all companies referred to in item (i) of sub-paragraph (a) or sub-paragraph (c) or (d) for each pound of the taxable income, six pence: Provided that any fraction of a pound of the tax calculated in terms of this sub-paragraph shall be disregarded;
- (g) in the case of persons referred to in item (ii) of sub-paragraph (a) eight and seven-tenths per centum of each completed one pound of the amount determined in accordance with the said item after the deduction of the rebates provided for in section *thirteen* of the principal Act: Provided that any fraction of a pound of the tax calculated in terms of this sub-paragraph shall be disregarded.

(B) In so far as super tax is concerned—

- (a) for each pound of the income subject to super tax not exceeding nine thousand three hundred

pounds, two shillings increased by one four-hundredth of a penny for each pound of such income subject to super tax in excess of one pound, and for each pound of the income subject to super tax over and above nine thousand three hundred pounds, five shillings and ten pence: Provided that there shall be added to the amount of tax calculated in accordance with the preceding provisions of this paragraph a sum equal to fifteen per centum of the net amount arrived at after deducting the rebates provided for in section *twenty-nine* of the principal Act from the amount of tax so calculated;

(b) in addition to the tax payable under sub-paragraph (a), eight and seven-tenths per centum of each completed one pound of the amount determined in accordance with the said sub-paragraph after the deduction of the rebates provided for in section *twenty-nine* of the principal Act: Provided that any fraction of a pound of the tax calculated in terms of this sub-paragraph shall be disregarded.

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

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

(c) The tax determined in accordance with any one of the sub-paragraphs (a) to (g) of paragraph (A) of sub-section (1), shall be payable in addition to the tax determined in accordance with any other of the said sub-paragraphs.

(3) For the purposes of assessing any tax imposed by a provincial council in the exercise of its powers under the Financial Relations Consolidation and Amendment Act, 1945 (Act No. 38 of 1945), on the incomes of persons, the amounts of normal tax and super tax payable under the Income Tax Acts of the Union by any taxpayer in respect of the year of assessment ending the thirtieth day of June, 1959, shall be deemed to be equal to the respective amounts which would have been payable as normal tax and super tax if the second proviso to item (ii) of sub-paragraph (a) and sub-paragraph (g) of paragraph (A), the proviso to sub-paragraph (a) and sub-paragraph (b) of paragraph (B) of sub-section (1) had not been enacted.

Portions of the normal tax payable by certain companies to be paid into the provincial revenue funds.

2. (1) (a) Notwithstanding the provisions of sub-section (1) of section *five* of the principal Act, one-sixth of any amount of tax determined in accordance with item (i) of sub-paragraph (a) of paragraph (A) of sub-section (1) of section *one* of this Act (hereinafter referred to as the provincial portion of the normal tax), shall accrue for the benefit of the respective provincial revenue funds in the proportions set out in proclamation No. 310 of 1957, but subject to such modifications as may be determined by the Governor-General by proclamation in the *Gazette* and shall in the said proportions be paid into the said provincial revenue funds in accordance with the laws relating to the collection, banking and custody of provincial revenues as though it were a tax imposed by the provincial councils of the said provinces on the incomes of companies.

- (b) The provincial portion of the normal tax prescribed in item (i) of sub-paragraph (a) of paragraph (A) of sub-section (1) of section *one* of this Act shall not be payable by any company, the sole or principal business of which in the Union is or has been mining for gold, in respect of so much of its taxable income as the Commissioner determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (f) of the definition of "gross income" in section *seven* of the principal Act, and for the purpose of sub-paragraph (e) of paragraph (A) of sub-section (1) of section *one* of this Act the rate of tax prescribed in item (i) of the said sub-paragraph (a) shall be deemed to be five shillings for each pound of the taxable income.

(2) The provisions of this section shall come into operation on the first day of July, 1959.

Certain portions of the normal and super tax to be repayable to the taxpayers concerned.

3. (1) Notwithstanding the provisions of sub-section (1) of section *five* and sub-section (1) of section *twenty-three* respectively of the principal Act, the following portions of the normal and super tax determined in accordance with the provisions of section *one* of this Act in respect of any person for the year of assessment ending the thirtieth day of June, 1959, (which portions are hereinafter referred to as the loan portions of the normal and super tax), shall be repayable to such person in the manner and at the time hereinafter provided, namely—

- (a) the full amount of the tax payable in accordance with sub-paragraph (f) of paragraph (A) of sub-section (1) of the said section;
- (b) the full amount of the tax payable in accordance with sub-paragraph (g) of paragraph (A) of sub-section (1) of the said section;
- (c) the full amount of the tax payable in accordance with sub-paragraph (b) of paragraph (B) of sub-section (1) of the said section.

(2) (a) The liability for the payment of any unpaid amount of the loan portions of the normal and super tax due by any person shall cease upon the death, insolvency or liquidation (in the case of a company) of that person, and the estate of a deceased or insolvent person or a company in liquidation shall not be liable for the payment of any of the loan portions of the normal and super tax in respect of any income received by or accrued to or in favour of such estate or such company in liquidation: Provided that nothing in this paragraph contained shall be construed as relieving any trust created under the will of a deceased person from liability for the payment of any of the loan portions of the normal and super tax in respect of any income received by or accrued to or in favour of such trust.

(b) A person to whom the provisions of section *fifteen* of the principal Act apply and who has no recognized agent in the Union other than the master of the ship or the pilot of the aircraft concerned, shall not be liable for the payment of any of the loan portions of the normal and super tax in respect of his taxable income determined in accordance with the said provisions.

(c) The loan portion of the normal tax prescribed in sub-paragraph (f) of paragraph (A) of sub-section (1) of section *one* of this Act relative to any company to which the provisions of item (i) of sub-paragraph (a) of paragraph (A) of sub-section (1) of the said section apply shall not be payable by any company, the sole or principal business of which in the Union is or has been mining for gold, in respect of so much of its taxable income as the Commissioner determines to be attributable to the inclusion in its gross

income of any amount referred to in paragraph (f) of the definition of "gross income" in section seven of the principal Act.

(d) No person (other than a company) not ordinarily resident nor carrying on business in the Union and no company not registered nor carrying on business in the Union, shall be liable for the payment of the loan portions of the normal and super tax.

(3) The provisions of section sixty-five of the principal Act shall not apply in relation to the loan portions of the normal and super tax.

(4) There shall from time to time be paid to the credit of the loan account referred to in the General Loans Consolidation and Amendment Act, 1917 (Act No. 22 of 1917), amounts equal to the amounts which the Commissioner determines to have been collected in respect of the loan portions of the normal and super tax.

(5) (a) The Commissioner shall, at such time as he may decide, but not later than the end of the period referred to in paragraph (c), issue to every person who has paid any of the loan portions of the normal and super tax, a certificate for the amount so paid by such person: Provided that in the event of the death, insolvency or liquidation (in the case of a company) of the person concerned before the issue of such certificate, the Commissioner may instead of issuing such certificate repay to the estate of such person or to the company in liquidation the amount paid by the person concerned in respect of any loan portions of the normal and super tax together with simple interest at the rate of four and one-half per centum per annum on such amount calculated from the date of payment of such amount by such person to the date on which the said amount is repaid by the Commissioner in terms of this proviso.

(b) If any person has failed to pay the full amount due by him in respect of the normal and super tax or in respect of such tax and any interest payable thereon under sub-section (2) of section eighty-three of the principal Act, the Commissioner shall appropriate to those portions of the normal and super tax which are not loan portions and to any interest payable as aforesaid, in such order as he may in any particular case determine, so much of the amount paid by such person as may be necessary to discharge his liability in respect of those portions of the normal and super tax which are not loan portions and of such interest, and such person or his estate or (in the case of a company) the company in liquidation shall be entitled to a certificate or repayment, as the case may be, under paragraph (a) only in respect of the balance (if any) of the amount paid which has not been so appropriated.

(c) A certificate issued in terms of paragraph (a) shall not be transferable and shall, save in such special circumstances and on such conditions as the Governor-General may prescribe, not be redeemable until the expiry of a period of five years from the first day of the month in which payment of the amount in respect of which such certificate has been issued, was effected: Provided that if in the opinion of the Commissioner the circumstances of the case warrant such action, he may, subject to such conditions as he may impose, pay the amount due under any certificate to a person other than the person to whom that certificate was issued in terms of paragraph (a).

(d) Upon expiry of the period referred to in paragraph (c), the relevant certificate shall become redeemable forthwith and may be redeemed in such manner as the Governor-General may prescribe.

(e) Any such certificate shall bear simple interest at the rate of four and one-half per centum per annum for

the period referred to in paragraph (c) on the amount of the loan portion of the normal and super tax in respect of which such certificate has been issued, which interest may be included in the face value of the certificate and shall not be payable before the date on which such certificate is redeemed.

- (f) (i) Where the amount in respect of which any certificate has or would, but for the proviso to paragraph (a), have been issued, was paid by instalments, the date of payment of the last of such instalments shall for the purposes of this sub-section be deemed to be the date of payment of that amount.
- (ii) If in the case of any taxpayer who in terms of section *fifty-six* of the principal Act has on or before the first day of July, 1959, made any provisional payment in respect of the taxes leviable under this Act, the amount so paid is on finality of the assessment found to be equal to or in excess of the amount (including the amount of the loan portion of the normal tax) properly chargeable, the date of payment of the loan portion of the normal tax shall be deemed to be the first day of July, 1959.
- (g) Notwithstanding anything to the contrary in any other law contained, no stamp duty shall be payable in respect of any receipt given by any person for the payment to him of any amount in terms of the proviso to paragraph (a) or upon the redemption of any certificate which has been issued in terms of this sub-section.
- (h) The provisions of the General Loans Consolidation and Amendment Act, 1917 (Act No. 22 of 1917), shall in so far as they may be applicable, and subject to the provisions of this section, *mutatis mutandis* apply in respect of certificates issued in terms of this sub-section.

(6) The Governor-General may make regulations as to all matters which he considers it necessary or expedient to prescribe in order that the purposes of this section may be achieved, and may in such regulations prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of twenty-five pounds.

(7) The regulations made under the Income Tax Act, 1953 (Act No. 34 of 1953), shall *mutatis mutandis* apply for purposes of this section and shall be deemed to have been made in terms of sub-section (6).

(8) The Governor-General may by proclamation in the *Gazette* determine a date after which assessments for the payment of the loan portions of the normal and super taxes shall not be issued by the Commissioner.

(9) The provisions of this section shall come into operation on the first day of July, 1959.

Amendment of section 1 of Act 31 of 1941, as amended by section 2 of Act 39 of 1945, section 3 of Act 55 of 1946, section 2 of Act 40 of 1948, section 2 of Act 45 of 1949, section 2 of Act 56 of 1952, section 2 of Act 43 of 1955, section 2 of Act 55 of 1956, section 4 of Act 61 of 1957 and section 4 of Act 36 of 1958.

4. Section *one* of the principal Act is hereby amended—

- (a) by the insertion after the definition of "agent" of the following definition:

"any other deep level gold mine" means any producing gold mine (other than a new deep level gold mine) in respect of which the Government Mining Engineer has upon application made to him recognized that its principal object is the mining of gold bearing ores at vertical depths exceeding seven thousand five hundred feet from the surface and in respect of which he is satisfied, at the time the application is lodged with him, that mining at such depths has commenced or will be commenced within a period of five years;"

- (b) by the insertion before the words "deep level gold mine" in the definition of "deep level gold mine" of the word "new"; and

- (c) by the insertion in the definition of "dividend" after the words "not being" of the words "a permanent building society or".

Amendment of section 9 of Act 31 of 1941, as amended by section 3 of Act 26 of 1943, section 4 of Act 39 of 1945, section 5 of Act 55 of 1946, section 4 of Act 45 of 1949, section 3 of Act 34 of 1953, section 4 of Act 55 of 1956 and section 6 of Act 36 of 1958.

5. (1) Section *nine* of the principal Act is hereby amended by the addition of the following sub-section:

“(9) If, within the period of ten years from the date of the award by any company of any bonus shares which in terms of paragraph (iii) (cc) of the definition of ‘dividend’ in section *one* did not rank as a dividend, any cash or the value of any asset is given to any shareholder of that company in pursuance of the liquidation or reconstruction of the company or the partial reduction of the share capital of the company, an amount which bears to the sum of the amount of any such cash and the value of any such asset the same ratio as the amount awarded by way of such bonus shares (less any amount so awarded out of share premium account) bears to the total amount awarded by way of such bonus shares, shall be deemed to be part of the taxable income of the company: Provided that the amount so deemed to be part of the taxable income shall not exceed the nominal value of such bonus shares less the nominal value of any such shares awarded out of share premium account: Provided further that this sub-section shall not apply where any such cash or the value of any such asset is given in respect of any class of redeemable share capital for the repayment of which special provisions are contained in the memorandum and articles of association of the company, and the holders of the equity share capital of the company were not, either at the time of the award of such bonus shares or at any time thereafter, shareholders in that class of redeemable share capital.”

(2) The amendment effected by sub-section (1) shall be deemed first to have taken effect in respect of assessments for the year of assessment which ended on the thirtieth day of June, 1958.

Amendment of section 10 of Act 31 of 1941, as amended by section 3 of Act 34 of 1942, section 4 of Act 26 of 1943, section 2 of Act 47 of 1944, section 5 of Act 39 of 1945, section 6 of Act 55 of 1946, section 3 of Act 40 of 1948, section 5 of Act 45 of 1949, section 4 of Act 56 of 1952, section 4 of Act 34 of 1953, section 5 of Act 55 of 1956, section 5 of Act 61 of 1957 and section 7 of Act 36 of 1958.

6. Section *ten* of the principal Act is hereby amended—

(a) by the insertion in paragraph (c) of sub-section (1) before the words “building society” of the word “terminating”;

(b) by the deletion of paragraph (d) of the said sub-section; and

(c) by the substitution for sub-section (2) of the following sub-section:

“(2) The exemptions provided by any of the paragraphs in sub-section (1) shall not extend to any payments out of the revenues, receipts, accruals or profits mentioned in the said paragraphs.”

Amendment of section 11 of Act 31 of 1941, as amended by section 4 of Act 34 of 1942, section 5 of Act 26 of 1943, section 6 of Act 39 of 1945, section 7 of Act 55 of 1946, section 4 of Act 40 of 1948, section 6 of Act 45 of 1949, section 5 of Act 56 of 1952, section 5 of Act 34 of 1953, section 2 of Act 55 of 1954, section 5 of Act 43 of 1955, section 6 of Act 55 of 1956, section 6 of

7. Section *eleven* of the principal Act is hereby amended—

(a) by the addition at the end of paragraph (d) *bis* of sub-section (2) of the following proviso:

“Provided that in respect of any year of assessment commencing with that ending on the thirtieth day of June, 1960, the allowance under this paragraph shall be twenty per cent.”;

(b) by the substitution in paragraph (d) *quat* of the said sub-section for the words “Commissioner of Customs and Excise” of the words “Secretary for Transport”, and by the insertion after the reference “(Act No. 57 of 1951),” of the words “prior to its amendment by the Merchant Shipping Amendment Act, 1959.”;

(c) by the insertion after paragraph (d) *quat* of the said sub-section of the following paragraph:

“(d) *quin* notwithstanding anything to the contrary contained in the second proviso to paragraph (d), an allowance equal to two per centum of the cost (after the deduction of any amount referred to in paragraph (iii) of the proviso

Act 61 of 1957  
and section 8  
of Act 36 of  
1958.

hereto) to the taxpayer of any building the erection of which by him was commenced on or after the twenty-fifth day of March, 1959, and the cost of any subsequent improvements (other than repairs) effected thereto, if the building in question was used by him during the year of assessment for the purpose of carrying on therein any process of manufacture carried on by him in the course of his trade (other than mining or farming): Provided that—

- (i) any person who acquires by purchase any building erected after the said date from any other person who was entitled to an allowance under this paragraph in respect of that building shall, in respect of every year of assessment during which the building continues to be used by him for the purpose of carrying on therein any process of manufacture carried on by him in the course of his trade (other than mining or farming), be entitled to an allowance equal to two per centum of the cost (after the deduction of any amount referred to in paragraph (iii) of this proviso) to him of the building so acquired together with the cost of any improvements (other than repairs) subsequently effected thereto;
- (ii) the aggregate of the allowances under this paragraph shall not exceed the cost (after the deduction of any amount referred to in paragraph (iii) of this proviso) of any such building so erected or purchased, as the case may be, together with the cost of any subsequent improvements (other than repairs) effected thereto;
- (iii) if in any year of assessment there falls to be included in a taxpayer's income in terms of paragraph (a) of sub-section (4) an amount which has been recovered or recouped in respect of any allowance made under this paragraph in respect of any building, the amount so recovered or recouped shall, at the option of the taxpayer to be notified by him in writing to the Commissioner when submitting his return for the year of assessment during which the recovery or recoupment occurred, provided he purchases or erects any other building to which the provisions of this paragraph apply within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, and notwithstanding the provisions of the said paragraph, not be included in his income for such year of assessment, but shall be set off against the cost to him of such further building purchased or erected by him;”;

(d) by the substitution for paragraph (j) of the said sub-section of the following paragraph:

“(j) an allowance in respect of any building of the nature described in paragraph (d)quin or any machinery, implements, utensils and articles used by the taxpayer for the purposes of his trade which have been scrapped by such taxpayer during the year of assessment, such allowance to be the excess of the original cost to such taxpayer of such building, machinery, implements, utensils or articles over the total amount arrived at by adding all the allowances made in respect thereof under paragraph (d) or the corresponding provision of any previous Income Tax Act, and paragraphs (d)bis, (d)ter, (d)quat and (d)quin to any amount or the value of any advantage accruing to the taxpayer in respect of the sale or other disposal of such



building, machinery, implements, utensils and articles: Provided that—

- (i) no allowance shall be made in the case of any such building which has been scrapped within a period of ten years from the date of erection or purchase; and
  - (ii) for the purposes of this paragraph the cost of any building shall be deemed to be the actual cost less any amount deducted from such cost in terms of paragraph (iii) of the proviso to paragraph (d) *quin*”; and
- (e) by the substitution in paragraph (o) of the said sub-section for the word “five” of the word “ten” and for the figure “1958” of the figure “1963”.

Amendment of section 13 of Act 31 of 1941, as amended by section 7 of Act 39 of 1945, section 8 of Act 55 of 1946, section 2 of Act 52 of 1947, section 5 of Act 40 of 1948, section 6 of Act 56 of 1952, section 3 of Act 55 of 1954, section 6 of Act 43 of 1955 and section 7 of Act 55 of 1956.

8. Section *thirteen* of the principal Act is hereby amended by the substitution in paragraph (a) of sub-section (2) for the words “fourteen pounds” of the words “fifteen pounds” and for the word “Provided” of the words “Provided that where the taxpayer is entitled to a deduction in respect of more than two children in terms of this paragraph, the deduction to be allowed in respect of children in excess of two shall be seventeen pounds for each such child: Provided further”.

Substitution of section 18 of Act 31 of 1941.

9. The following section is hereby substituted for section *eighteen* of the principal Act:

“Insurance business.

18. (1) Notwithstanding anything contained in this Act the taxable income derived from the carrying on of long-term insurance business by any taxpayer who carries on any such business in the Union (whether on mutual principles or otherwise) shall be deemed to be an amount equivalent to thirty per centum of the gross income (other than income proved to the satisfaction of the Commissioner to have been derived by the taxpayer from the investment of funds attributable to any long-term insurance business carried on by him in the Union with any pension fund as defined in this Act or dividends) which the Commissioner is satisfied has been derived by such taxpayer from the investment (including the letting of any property) of so much of his funds as are invested within or outside the Union in respect of any long-term insurance business carried on by him in the Union and of so much of his funds as are invested within the Union in respect of any long-term insurance business carried on by him outside the Union.

(2) Subject to the provisions of this Act the taxable income derived by any taxpayer from the carrying on in the Union of short-term insurance business (whether on mutual principles or otherwise) shall be determined by charging against the sum of all premiums (including premiums on reinsurance) received by or accrued to such taxpayer in respect of the insurance of any risk and other amounts derived from the carrying on of such business of insurance in the Union, the sum of—

- (i) the total amount of the liability incurred in respect of premiums on reinsurance;
- (ii) the actual amount of the liability incurred in respect of any claims during the year of assessment in respect of that business of insurance, less the value of any claims recovered or recoverable under any contract of insurance, guarantee, security or indemnity;

- (iii) the expenditure (other than expenditure falling under paragraphs (i) and (ii)) incurred in respect of that business of insurance; and
- (iv) such allowance as may be made each year by the Commissioner in respect of unexpired risks: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer in the following year of assessment: Provided further that the allowances which may be made in respect of any of the years of assessment referred to hereunder shall in lieu of the allowance which (but for this proviso) the Commissioner would have allowed in respect of any year of assessment, be twenty-five per centum of such allowance for the year of assessment ending on the thirtieth day of June, 1959, fifty per centum of such allowance for the year of assessment ending on the thirtieth day of June, 1960, and seventy-five per centum of such allowance for the year of assessment ending on the thirtieth day of June, 1961.

(3) Nothing in this section contained shall be construed as relieving any taxpayer from the obligation to render returns of any income (other than income to which the provisions of sub-section (1) or (2) apply) or from any liability for taxation in respect of such income or as depriving any such person of the right to set off against the taxable income derived from the business of insurance any loss incurred in respect of any other business or any balance of loss so incurred which the taxpayer would be entitled to set off under the provisions of sub-section (3) of section *eleven*.

(4) In this section—

‘insurance’ includes reinsurance;

‘long-term insurance business’ means long-term insurance business as defined in the Insurance Act, 1943 (Act No. 27 of 1943), and includes any business which in the opinion of the Commissioner is medical aid insurance business conducted on a non-cancellable basis;

‘short-term insurance business’ means any insurance business other than long-term insurance business.”.

Amendment of section 19*bis* of Act 31 of 1941, as inserted by section 10 of Act 55 of 1946.

10. Section *nineteen bis* of the principal Act is hereby amended with effect from the date of commencement of section *ninety-four bis* by the insertion after the words “section *ninety-four*” of the words “or *ninety-four bis*”.

Amendment of section 20 of Act 31 of 1941, as amended by section 11 of Act 55 of 1946, section 4 of Act 52 of 1947, section 6 of Act 40 of 1948, section 3 of Act 64 of 1951, section 8 of Act 55 of 1956, section 7 of Act 61 of 1957 and section 9 of Act 36 of 1958.

11. Section *twenty* of the principal Act is hereby amended—

- (a) by the substitution in paragraph (c) of the definition of “capital expenditure” in sub-section (10) for the words “in the case of any deep level gold mine” of the words “in the case of any new deep level gold mine or any other deep level gold mine”;
- (b) by the insertion in sub-paragraph (i) of the said paragraph before the words “the expenditure” of the words “if the mine is a new deep level gold mine”, and the addition at the end of that sub-paragraph of the words “and if the mine is any other deep level gold mine, the balance of capital expenditure unredeemed in terms of sub-section (1) at the commencement of the year of assessment during which the mine is recognized as any other deep level gold mine and the expenditure referred to in paragraph (a);” and
- (c) by the insertion in the said paragraph before the words “for the period from the end of the month” of the words “if the mine is a new deep level gold mine”, and after the words “assessed loss” of the words “and if the mine is any other deep level gold

mine for a period of ten years from the commencement of the year of assessment during which the mine is recognized as any other deep level gold mine”.

Amendment of section 30 of Act 31 of 1941, as substituted by section 5 of Act 47 of 1944 and amended by section 7 of Act 56 of 1952, section 9 of Act 43 of 1955 and section 10 of Act 55 of 1956.

12. Section *thirty* of the principal Act is hereby amended by the insertion after paragraph (a) of sub-section (1) of the following paragraph:

“(a)*bis*. dividends, distributed by any company, received by or accrued to or in favour of the deceased estate of any person who at date of death was not ordinarily resident nor carrying on business in the Union, if, but for this exemption, such deceased estate would have been liable for super tax in respect of such dividends;”.

Amendment of section 33 of Act 31 of 1941, as amended by section 6 of Act 47 of 1944 and section 13 of Act of 55 of 1946.

13. Section *thirty-three* of the principal Act is hereby amended by the substitution in paragraph (e) of sub-section (2) for the words “the First Schedule to this Act” of the words “section *eighteen*”.

Amendment of section 42 of Act 31 of 1941, as amended by section 8 of Act 34 of 1942, section 8 of Act 47 of 1944 and section 11 of Act 56 of 1952.

14. Section *forty-two* of the principal Act is hereby amended—

(a) by the insertion after sub-item (1) of paragraph (a) of the following sub-item:

“(1)*bis*. a deceased estate referred to in paragraph (a)*bis*. of sub-section (1) of section *thirty* and such dividend is in terms of that paragraph exempt from super tax; or”; and

(b) by the insertion in paragraph (a)*bis* after the word “Union” of the words “or a deceased estate referred to in paragraph (a)*bis* of sub-section (1) of section *thirty*, and such dividend is in terms of that paragraph exempt from super tax”.

Amendment of section 51 of Act 31 of 1941, as inserted by section 10 of Act 43 of 1955, and amended by section 13 of Act 55 of 1956 and section 12 of Act 36 of 1958.

15. Section *fifty-one* of the principal Act is hereby amended by the insertion in paragraph (h) after the words “South Africa” of the words “any building society”.

Amendment of section 54*quat* of Act 31 of 1941, as inserted by section 10 of Act 43 of 1955, and amended by section 14 of Act 55 of 1956 and section 9 of Act 61 of 1957.

16. Section *fifty-four quat* of the principal Act is hereby amended by the deletion in paragraph (h) of sub-section (1) of the letter “(d)”.

Substitution of section 90 of Act 31 of 1941, as substituted by section 20 of Act 55 of 1946.

17. The following section is hereby substituted for section *ninety* of the principal Act:

“Trans-  
actions,  
operations or  
schemes for  
purposes of  
avoiding or  
postponing  
liability for  
or reducing  
amounts of  
taxes on  
income.

90. (1) (a) Where 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) has been entered into or carried out, which has the effect of avoiding or postponing liability for any tax, duty or levy on income (including any such tax, duty or levy imposed by a previous Act), or of reducing the amount thereof, and which in the opinion of the Commissioner, having regard to the circumstances under which the transaction, operation or scheme was entered into or carried out—

(i) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or

carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; or

- (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length under a transaction, operation or scheme of the nature of the transaction, operation or scheme in question,

and the Commissioner is of opinion that the avoidance or the postponement of such liability, or the reduction of the amount of such liability, was the sole or one of the main purposes of the transaction, operation or scheme, the Commissioner shall determine the liability for any tax, duty or levy on income and the amount thereof as if the transaction, operation or scheme had not been entered into or carried out or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such avoidance, postponement or reduction.

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

- (c) For the purposes of paragraph (a) any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act) whereby any person (other than a company) who is ordinarily resident or carrying on business in the Union, or any company registered or carrying on business in the Union, has disposed of shares held by such person or such company in any company registered or incorporated in the Union to any person (other than a company) not ordinarily resident nor carrying on business in the Union or to any company registered outside the Union, shall, unless it is proved to the satisfaction of the Commissioner that the parties are independent persons dealing at arm's length with each other, be deemed to be a transaction, operation or scheme entered into or carried out by means or in a manner not normally employed in the entering into or carrying out of such a transaction, operation or scheme of the nature of the transaction, operation or scheme in question.

(2) Any decision of the Commissioner under sub-section (1) shall be subject to objection and appeal, and in proceedings relating thereto, whenever it is proved that the transaction, operation, scheme, agreement or change in shareholding in question would result in the avoidance or the postponement of liability for payment of any tax, duty or levy on income or in the reduction of the amount thereof it shall be presumed, until the contrary is proved—

- (a) in the case of any such transaction, operation or scheme, that its sole or one of its main purposes was the avoidance or the postponement of such liability, or the reduction of the amount of such liability; and
- (b) in the case of any such agreement or change in shareholding, that it has been entered into or effected solely or mainly for the purpose of utilizing the assessed loss or balance of assessed loss in question in order to avoid or postpone such liability or to reduce the amount thereof.”.

Insertion of section 91bis in Act 31 of 1941.

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

“Jurisdiction of Courts.

91bis. Any person charged with an offence under this Act may notwithstanding anything to the contrary contained in any law, be tried in respect of that offence by any court having jurisdiction within any area in which he resides or carries on business.”.

Repeal of First Schedule to Act 31 of 1941, as amended by section 19 of Act 34 of 1942 and section 12 of Act 43 of 1955.

19. The First Schedule to the principal Act is hereby repealed.

Commencement of certain amendments.

20. Except where otherwise provided in this Act the amendments effected by this Act shall, save in the case of the amendments effected by sections *fourteen*, *sixteen* and *eighteen* first take effect in respect of assessments for the year of assessment ending on the thirtieth day of June, 1959.

Short title.

21. This Act shall be called the Income Tax Act, 1959.