

No. 80, 1961.]

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 fix the rates of normal tax in respect of the year of assessment ending the thirtieth day of June, 1961, to provide for the payment of a portion of the normal tax payable by certain companies into provincial revenue funds, to amend the law relating to income tax, the Insolvency Act, 1936, and the Technological Training Advancement Act, 1960, and to repeal the Namaqualand Copper Mines Income Tax Relief Act, 1937.

(Afrikaans text signed by the State President.)
(Assented to 30th June, 1961.)

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

Rates of normal tax.

1. (1) In terms of sub-section (2) of section *five* of the Income Tax Act, 1941 (Act No. 31 of 1941), hereinafter referred to as the principal Act, the rates of normal tax to be levied for the year of assessment ending the thirtieth day of June, 1961, shall be as follows:—

(a) In respect of the taxable income (excluding so much as is derived from mining operations carried on in the Republic 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 Republic 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 rand of the taxable income, thirty cents: Provided that there shall be deducted from the amount of tax calculated in accordance with this item a sum equal to three per centum of so much of the amount of tax so calculated as does not accrue for the benefit of the respective provincial revenue funds in terms of paragraph (*a*) of sub-section (1) of section *two* of this Act;

(ii) in the case of persons other than companies, as prescribed in the schedule below: Provided that there shall be deducted from the amount of tax calculated in accordance with the said schedule a sum equal to ten 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 the tax so calculated;

SCHEDULE.

Taxable Income.	Rates of Tax in Respect of Married Persons.
Where the taxable income— does not exceed R600	6 per cent. of each R1 of taxable income;
exceeds R600, but does not exceed R1,000	R36 plus 7 per cent. of the amount by which the taxable income exceeds R600;

Taxable Income.	Rates of Tax in Respect of Married Persons.
Where the taxable income— exceeds R1,000, but does not exceed R1,200	R64 plus 8 per cent. of the amount by which the taxable income exceeds R1,000;
„ R1,200, „ „ „ R2,400	R80 plus 8 per cent. of the amount by which the taxable income exceeds R1,200;
„ R2,400, „ „ „ R3,000	R176 plus 8 per cent. of the amount by which the taxable income exceeds R2,400;
„ R3,000, „ „ „ R4,600	R224 plus 9 per cent. of the amount by which the taxable income exceeds R3,000;
„ R4,600, „ „ „ R5,000	R368 plus 16 per cent. of the amount by which the taxable income exceeds R4,600;
„ R5,000, „ „ „ R6,000	R432 plus 25 per cent. of the amount by which the taxable income exceeds R5,000;
„ R6,000, „ „ „ R8,000	R682 plus 29 per cent. of the amount by which the taxable income exceeds R6,000;
„ R8,000, „ „ „ R10,000	R1,262 plus 35 per cent. of the amount by which the taxable income exceeds R8,000;
„ R10,000, „ „ „ R12,000	R1,962 plus 39 per cent. of the amount by which the taxable income exceeds R10,000;
„ R12,000, „ „ „ R14,000	R2,742 plus 40 per cent. of the amount by which the taxable income exceeds R12,000;
„ R14,000, „ „ „ R16,000	R3,542 plus 44 per cent. of the amount by which the taxable income exceeds R14,000;
„ R16,000, „ „ „ R18,000	R4,422 plus 47 per cent. of the amount by which the taxable income exceeds R16,000;
„ R18,000 „ „ „ „	R5,362 plus 50 per cent. of the amount by which the taxable income exceeds R18,000.

Taxable Income.	Rates of Tax in Respect of Persons who are not Married.
Where the taxable income— does not exceed R600	7½ per cent. of each R1 of taxable income;
exceeds R600, but does not exceed R1,000	R45 plus 9 per cent. of the amount by which the taxable income exceeds R600;
„ R1,000, „ „ „ R1,200	R81 plus 9 per cent. of the amount by which the taxable income exceeds R1,000;
„ R1,200, „ „ „ R2,400	R99 plus 9 per cent. of the amount by which the taxable income exceeds R1,200;
„ R2,400, „ „ „ R3,000	R207 plus 10 per cent. of the amount by which the taxable income exceeds R2,400;
„ R3,000, „ „ „ R4,600	R267 plus 11 per cent. of the amount by which the taxable income exceeds R3,000;
„ R4,600, „ „ „ R5,000	R443 plus 18 per cent. of the amount by which the taxable income exceeds R4,600;
„ R5,000, „ „ „ R6,000	R515 plus 26 per cent. of the amount by which the taxable income exceeds R5,000;
„ R6,000, „ „ „ R8,000	R775 plus 30 per cent. of the amount by which the taxable income exceeds R6,000;
„ R8,000, „ „ „ R10,000	R1,375 plus 36 per cent. of the amount by which the taxable income exceeds R8,000;
„ R10,000, „ „ „ R12,000	R2,095 plus 41 per cent. of the amount by which the taxable income exceeds R10,000;
„ R12,000, „ „ „ R14,000	R2,915 plus 42 per cent. of the amount by which the taxable income exceeds R12,000;
„ R14,000, „ „ „ R16,000	R3,755 plus 45 per cent. of the amount by which the taxable income exceeds R14,000;

Taxable Income.	Rates of Tax in Respect of Persons who are not Married.
Where the taxable income— exceeds R16,000, but does not exceed R18,000	R4,655 plus 48 per cent. of the amount by which the taxable in- come exceeds R16,000;
„ R18,000	R5,615 plus 50 per cent. of the amount by which the taxable in- come exceeds R18,000.

- (b) in respect of so much of the taxable income as has been derived by any company from mining in the Republic 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 rand 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 forty thousand rand, the rate of tax shall not exceed a percentage determined in accordance with the formula:

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

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

$$y = 20 \left(1 - \frac{6}{x} \right) \text{ by one for each completed amount}$$

of two thousand five hundred rand by which the said taxable income exceeds forty thousand rand;

- (c) in respect of so much of the taxable income as has been derived by any company from mining in the Republic for diamonds, for each rand of the taxable income, forty-five cents;
- (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 Republic, for each rand of the taxable income, thirty cents: Provided that there shall be deducted from the amount of tax calculated in accordance with this paragraph a sum equal to three per centum of the amount of tax so calculated;
- (e) in respect of so much of the taxable income of any company, the sole or principal business of which in the Republic is or has been mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss,

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 rand 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 twenty-five cents: Provided that there shall be deducted from the amount of tax calculated in accordance with this paragraph a sum equal to three per centum of the amount of tax so calculated.

- (2) (a) For the purposes of sub-section (1) income derived from mining in the Republic 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 paragraph (e) 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 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 rand contained in the said aggregate taxable income.
- (c) The tax determined in accordance with any one of the paragraphs (a) to (e) of sub-section (1), shall be payable in addition to the tax determined in accordance with any other of the said 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 amount of normal tax payable under this Act by a person other than a company in respect of the year of assessment ending the thirtieth day of June, 1961, shall, notwithstanding the provisions of the first-mentioned Act, be deemed to be equal to the amount which would have been payable as normal tax if the deduction in terms of the proviso to sub-paragraph (ii) of paragraph (a) of sub-section (1) had been five per centum of the net amount referred to in the said proviso.

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, a portion (hereinafter referred to as the provincial portion of the normal tax) equal to one-sixth of any amount of tax determined in accordance with sub-paragraph (i) of paragraph (a) of sub-section (1) of section one of this Act (before deducting the sum referred to in the proviso to the said sub-paragraph) 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 State President 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 shall not be payable by any company, the sole or principal business of which in the Republic 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.

(2) The provisions of this section shall come into operation on the first day of July, 1961.

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, section 4 of Act 36 of 1958, section 4 of Act 78 of 1959 and section 3 of Act 58 of 1960.

3. (1) Section *one* of the principal Act is hereby amended—

(a) by the substitution for the definition of "benefit fund" of the following definition:

"'benefit fund' means—

(a) any friendly society registered under the Friendly Societies Act, 1956 (Act No. 25 of 1956); or

(b) any fund which is not so registered solely because of the provisions of paragraph (a) of sub-section (2) of section *two* of the said Act; or

(c) any fund (other than a pension fund, provident fund or retirement annuity fund as defined in this section) which, in respect of the year of assessment in question, the Commissioner is satisfied is a permanent fund *bona fide* established for the purpose of providing sickness, accident or unemployment benefits for its members or mainly for such a purpose and also for the purpose of providing benefits for the widows, children, dependants or nominees of deceased members;"

(b) by the deletion in the definition of "dividend" of all the words after the word "*thirty-three*" where it occurs for the first time;

(c) by the insertion after the definition of "equity share capital" of the following definition:

"'executor' means any person to whom letters of administration have been granted by a Master or an Assistant Master of the Supreme Court appointed under the Administration of Estates Act, 1913 (Act No. 24 of 1913), in respect of the estate of a deceased person under any law relating to the administration of estates, and includes a person acting or authorized to act under letters of administration granted outside the Republic but signed and sealed by such a Master or Assistant Master for use within the Republic and, in any case where the estate is not required to be administered under the supervision of such a Master or Assistant Master, the person administering the estate;"

(d) by the insertion after the definition of "pension fund" of the following definition:

"'person' includes the estate of a deceased person;"

(e) by the substitution for paragraph (1) of the definition of "provident fund" of the following paragraph:

"(1) the fund is a permanent fund *bona fide* established solely for the purpose of providing benefits for employees on retirement from employment or solely for the purpose of providing benefits for widows, children, dependants or nominees of deceased employees or deceased former employees or solely for a combination of such purposes; and"

(f) by the substitution for the definition of "retirement annuity fund" of the following definition:

"'retirement annuity fund' means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in question: Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve any fund unless in respect of the year of assessment in question, he is satisfied that—

(1) the fund is a permanent fund *bona fide* established for the sole purpose of providing life annuities for the members of the fund or annuities for the widows, children, dependants or nominees of deceased members; and

(2) the rules of the fund provide—

(i) for periodical contributions by the members and for additional contributions made by way of transfer of members' interests in approved pension funds, provident funds or other retirement annuity funds;

- (ii) that not more than one-third of the total value of any annuities to which any person becomes entitled, may be commuted for a single payment, except where the annual amount of such annuities does not exceed sixty rand;
 - (iii) that no portion of any annuity payable to the widow, child, dependant or nominee of a deceased member may be commuted later than six months from the date of the death of such member;
 - (iv) adequate security to safeguard the interests of persons who may become entitled to annuities;
 - (v) that no member shall become entitled to the payment of any annuity after he reaches the age of seventy years or except in the case of a member who becomes permanently incapable through infirmity of mind or body of carrying on his occupation, before he reaches the age of fifty-five years;
 - (vi) that, where a member dies before he becomes entitled to the payment of an annuity, the benefits shall not exceed a refund to his estate or to his widow, children, dependants or nominees of the sum of the amounts (with or without reasonable interest thereon) contributed by him and an annuity or annuities to his widow, children, dependants or nominees;
 - (vii) that where a member dies after he has become entitled to an annuity no further benefit shall be payable other than an annuity or annuities to his widow, children, dependants or nominees;
 - (viii) that the sum of the annuities payable to the widow, children, dependants and nominees of a deceased member who was in receipt of an annuity at the time of his death shall not exceed the amount of that annuity;
 - (ix) that a member's contributions shall cease as soon as he becomes entitled to the payment of an annuity;
 - (x) that if a member prematurely discontinues his contributions he shall be entitled either to an annuity (payable from the date on which he would have become entitled to the payment of an annuity if he had continued his contributions) determined in relation to his actual contributions, or to be reinstated as a full member under conditions prescribed in the rules of the fund;
 - (xi) that upon the winding up of the fund a member's interest therein must either be used to purchase a policy of insurance which the Commissioner is satisfied provides benefits similar to those provided by such fund or be paid for the member's benefit into another approved retirement annuity fund;
 - (xii) that, save as is contemplated in sub-paragraph (ii), no member's rights to benefits shall be capable of surrender, commutation or assignment or of being pledged as security for any loan;
 - (xiii) that the Commissioner shall be notified of all amendments of the rules; and
- (3) the rules of the fund have been compiled with;”.

(2) The amendment effected by paragraph (d) of sub-section (1) shall be deemed to have taken effect on the fifteenth day of March, 1961.

Amendment of section 4 of Act 31 of 1941, as amended by section 3 of Act 43 of 1955.

4. Section four of the principal Act is hereby amended by the addition at the end of sub-section (1) of the following proviso:

“Provided further that the Controller and Auditor-General shall in the performance of his duties in terms

of sub-section (1) of section *eleven* of the Exchequer and Audit Act, 1956 (Act No. 23 of 1956), have access to documents in the possession or custody of the Commissioner."

Amendment of section 7 of Act 31 of 1941, as amended by section 2 of Act 34 of 1942, section 2 of Act 26 of 1943, section 3 of Act 39 of 1945, section 4 of Act 55 of 1946, section 3 of Act 45 of 1949, section 2 of Act 64 of 1951, section 3 of Act 56 of 1952, section 4 of Act 43 of 1955, section 3 of Act 55 of 1956, section 5 of Act 36 of 1958, and section 5 of Act 58 of 1960.

5. Section *seven* of the principal Act is hereby amended—

- (a) by the substitution in the Afrikaans version in paragraph *(b)bis* of the definition of "bruto-inkomste" for the words "ronde som" of the words "enkele bedrag";
- (b) by the substitution for paragraph *(b)ter* of the definition of "gross income" of the following paragraph:
- "*(b)ter* any amount determined in accordance with the provisions of the Fourth Schedule to this Act in respect of lump sum benefits so received by or accrued to or deemed to have been received by or accrued to such person from any fund (not being a superannuation, pension, provident, widows' or orphans' fund established by law) which has in respect of the current or any previous year of assessment been approved by the Commissioner as a pension fund, provident fund or retirement annuity fund, if such person was a member of such fund during any such year: Provided that the provisions of paragraph *(d)* of sub-section (1) of section *nine* shall *mutatis mutandis* apply in the case of any amount determined as aforesaid;"
- (c) by the substitution for paragraph *(d)* of the said definition of the following paragraph:
- "*(d)* any amount received or accrued from another person, as premium or like consideration paid by such other person—
- (i) for the right of use or occupation of land or buildings; or
 - (ii) for the right of use of plant or machinery; or
 - (iii) for the right of use of any patent, design, trade mark or copyright as defined in the Patents Act, 1952 (Act No. 37 of 1952), or the Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or any other property which, in the opinion of the Commissioner, is of a similar nature; or
 - (iv) for the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of such patent, design, trade mark, copyright or other property as aforesaid;"
- (d)* by the insertion after paragraph *(g)ter* of the said definition of the following paragraph:
- "*(g)quat* any amount received or accrued under or upon the surrender or disposal of any policy of insurance upon the life of an employee or, in the case of a company, upon the life of a director or an employee of that company;"

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, section 6 of Act 36 of 1958, section 5 of Act 78 of 1959 and section 6 of Act 58 of 1960.

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

- (a) by the substitution for paragraph *(a)bis* of sub-section (1) of the following paragraph:
- "*(a)bis* the use in the Republic of or the grant of permission to use in the Republic, or the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use in the Republic of any patent as defined in the Patents Act, 1952 (Act No. 37 of 1952), or any design, trade mark or copyright as defined in the Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or any other property which, in the opinion of the Commissioner, is of a similar nature, wheresoever such property has been produced or such permission has been granted or such knowledge has been imparted or such undertaking has been given or payment for such use, grant of permission, imparting of knowledge or undertaking has been made or is

- to be made, and whether such payment has been made or is to be made by a person resident in or out of the Republic;"; and
- (b) by the substitution in paragraph (b) of sub-section (9) with effect from the date of commencement thereof for the word "sum" where it occurs for the second time of the word "amount".

Insertion of section 9bis in Act 31 of 1941.

7. The following section is hereby inserted after section *nine* of the principal Act:

"Income of estates of deceased persons and beneficiaries.

9bis. (1) Any income received by or accrued to or in favour of or deemed to have been received by or accrued to or in favour of any person on or after the fifteenth day of March, 1961, in his capacity as executor of the estate of a deceased person, and any amount so received or accrued which would have been income in the hands of the deceased person, had it been received by or accrued to or in favour of or deemed to have been received by or accrued to or in favour of such deceased person during his lifetime, shall, to the extent that the Commissioner is satisfied that such income or amount has been derived for the immediate or future benefit of any ascertained heir or legatee of such deceased person, be deemed to be income received by or accrued to such heir or legatee, and shall, to the extent that the Commissioner is not so satisfied, be deemed to be income of the estate of such deceased person.

(2) So much of the amount of any expenditure incurred by or on behalf of the estate of any deceased person during any year of assessment as, in the opinion of the Commissioner, relates to any amount of income deemed to be income received by or accrued to an heir or legatee of such deceased person in terms of sub-section (1) shall—

- (a) not be taken into account in the determination of the taxable income of such estate; and
- (b) be deemed to be expenditure incurred by such heir or legatee during such year and shall, to the extent that the deduction of expenditure of the same nature is authorised by this Act, be taken into account in the determination of the taxable income of such heir or legatee.

(3) Nothing in sub-section (1) shall be construed as imposing liability for tax in respect of the same amount both in the hands of the estate or heir or legatee of a deceased person and in the hands of such deceased person.

(4) The decision of the Commissioner in the exercise of his discretion under sub-section (1) or (2) shall be subject to objection and appeal."

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, section 7 of Act 36 of 1958, section 6 of Act 78 of 1959 and section 7 of Act 58 of 1960.

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

- (a) by the substitution for paragraph (i) of sub-section (1) of the following paragraph:

"(i) interest received from any deposit in the Post Office Savings Bank of the Republic, including interest on Post Office Savings Bank Certificates or on Tax Redemption Certificates, or annual interest accrued in respect of any Union Loan Certificates or interest received in respect of any loan portion of the normal and super tax imposed under the Income Tax Act, 1953, or any subsequent Act of Parliament, or annual interest accrued in respect of Five per cent. Five Year Treasury Bonds, Five per cent. Seven Year Treasury Bonds and any amount credited as interest in respect of any contributory share, but not in respect of any amount paid or credited on any paid-up share in any building society: Provided that the exemption in respect of interest—

- (i) on deposits in the Post Office Savings Bank and on Post Office Savings Bank Certificates made or held by any one person shall be limited in each case to the sum of one hundred rand;

- (ii) on Tax Redemption Certificates held by any one person shall be limited to the sum of fifty rand;
 - (iii) on Five per cent. Five Year Treasury Bonds shall be limited to the sum of one thousand rand in the case of any taxpayer; and
 - (iv) on Five per cent. Seven Year Treasury Bonds shall be limited to the sum of one thousand rand in the case of any taxpayer;";
- (b) by the substitution with effect from the thirty-first day of May, 1961, for paragraph (j) of the said sub-section of the following paragraph:
- "(j) the salaries and emoluments payable to—
- (i) the State President; and
 - (ii) any person who holds office in the Republic as an official of any Government, other than the Government of the Republic or the Administration of the territory of South-West Africa, provided such person is stationed in the Republic for that purpose and is not ordinarily resident in the Republic;"; and
- (c) by the addition to sub-section (1) of the following paragraph:
- "(w) the receipts and accruals of the Council for Scientific and Industrial Research;".

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 Act 61 of 1957, section 8 of Act 36 of 1958, section 7 of Act 78 of 1959 and section 8 of Act 58 of 1960.

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

- (a) by the substitution for the provisos to paragraph (d) of sub-section (2) of the following proviso:
- "Provided that—
- (i) where a deduction has been allowed under paragraph (c), the Commissioner shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph;
 - (ii) in no case shall any allowance be made for the depreciation of buildings or other structures or works of a permanent nature;
 - (iii) no allowance shall be made under this paragraph in respect of any ship to which the provisions of paragraph (d) *ter* apply;
 - (iv) the value of new or unused machinery, implements, utensils or articles which were used by the taxpayer directly in a process of manufacture or, if brought into use on or after the fifteenth day of March, 1961, in any other process which in the opinion of the Commissioner is of a similar nature, and were acquired to replace machinery, implements, utensils or articles which were damaged or destroyed by water or fire, shall be reduced by any amount which has been recovered or recouped as contemplated in paragraph (a) of sub-section (4) in respect of the damaged or destroyed machinery, implements, utensils or articles and has been excluded from the taxpayer's income in terms of sub-paragraph (i) of paragraph (b) *bis* of the said sub-section and not included in the taxpayer's income in terms of the proviso to the said sub-paragraph in the current or any previous year of assessment;
 - (v) the value of any machinery, implements, utensils or articles used by the taxpayer for the purposes of his trade shall be increased by the amount of any expenditure (other than expenditure referred to in paragraph (a)) which is proved to the satisfaction of the Commissioner to have been incurred by the taxpayer in moving such machinery, implements, utensils or articles from one location to another;";

(b) by the substitution for paragraph (d)*bis* of the said sub-section of the following paragraph:

“(d)*bis*(i) in respect of new or unused machinery or plant brought into use by the taxpayer for the purposes of his trade an allowance for the year of assessment during which such machinery or plant was so brought into use, determined as follows, namely—

- (a) if such machinery or plant was brought into use not later than the fourteenth day of March, 1961, and was used by the taxpayer directly in a process of manufacture, a sum equal to twenty per centum of the cost to him of such machinery or plant; or
- (b) if such machinery or plant was brought into use on or after the fifteenth day of March, 1961, and was used by the taxpayer directly in a process of manufacture or any other process which, in the opinion of the Commissioner, was of a similar nature, a sum equal to fifteen per centum of the cost to him of such machinery or plant:

Provided that in the case of such machinery or plant which has been acquired to replace machinery or plant which has been damaged or destroyed by water or fire the allowance shall be calculated on such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed machinery or plant and has been excluded from the taxpayer's income in terms of sub-paragraph (i) of paragraph (b)*bis* of sub-section (4) whether in the current or any previous year of assessment;

- (ii) the provisions of sub-paragraph (i) shall *mutatis mutandis* apply also with reference to new or unused machinery, implements, utensils and articles (other than vehicles and other than equipment for managers' and servants' rooms and offices) brought into use by the taxpayer for the purposes of his trade of hotel keeper;
- (iii) on the direction of the Minister of Finance, having regard to the circumstances of the case and to the recommendations of the Secretary for Bantu Administration and Development and the Secretary for Commerce and Industries, the provisions of sub-paragraph (i) shall *mutatis mutandis* apply also with reference to used machinery or plant, and the provisions of sub-paragraph (ii) shall *mutatis mutandis* apply also with reference to used machinery, implements, utensils and articles (other than vehicles and other than equipment for managers' and servants' rooms and offices), if such used machinery, plant, implements, utensils or articles, as the case may be, were brought into use on or after the fifteenth day of March, 1961, in a Bantu area or an area adjacent to a Bantu area: Provided that the cost of any such used machinery, plant, implements, utensils or articles shall for the purposes of this sub-paragraph be deemed to be the actual cost thereof less the aggregate of the amounts allowed to be deducted by the taxpayer in respect thereof under paragraph (d) in the current or any previous year of assessment: Provided further that this sub-paragraph shall not apply with reference to any such used machinery, plant, implements, utensils or articles in respect of which an allowance

was in respect of the current or any previous year of assessment granted in terms of sub-paragraph (i) or (ii);”;

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

“(d)quin notwithstanding anything to the contrary contained in paragraph (ii) of the proviso to paragraph (d), an allowance equal to two per centum of the cost (after the deduction of any amount referred to in paragraph (ii) of the proviso hereto) to the taxpayer of any building and of any improvements (other than repairs) effected thereto—

- (i) if the erection of such building was commenced by him on or after the twenty-fifth day of March, 1959, but not later than the fourteenth day of March, 1961, and such building was wholly or mainly used by him during the year of assessment for the purpose of carrying on therein any process of manufacture in the course of his trade (other than mining or farming); or
- (ii) if the erection of such building was commenced by him on or after the fifteenth day of March, 1961, and such building was wholly or mainly used by him during the year of assessment for the purpose of carrying on therein in the course of his trade (other than mining or farming) any process of manufacture or any other process which, in the opinion of the Commissioner, was of a similar nature, or such building was let by him and was wholly or mainly used for the purpose of carrying on therein any process as aforesaid in the course of any trade (other than mining or farming); or
- (iii) if the erection of such building was commenced on or after the twenty-fifth day of March, 1959, but not later than the fourteenth day of March, 1961, and has been acquired by purchase from any other person who was entitled to an allowance under sub-paragraph (i) in respect thereof, and such building was wholly or mainly used during the year of assessment by the person by whom it has been acquired for the purpose of carrying on therein any process of manufacture in the course of his trade (other than mining or farming); or
- (iv) if the erection of such building was commenced on or after the fifteenth day of March, 1961, and has been acquired by purchase from any other person who was entitled to an allowance under sub-paragraph (ii) in respect thereof, and such building was wholly or mainly used during the year of assessment by the person by whom it has been acquired for the purpose of carrying on therein in the course of his trade (other than mining or farming) a process of manufacture or any other process which, in the opinion of the Commissioner, was of a similar nature, or such building was let by him and was wholly or mainly used for the purpose of carrying on therein any process as aforesaid:

Provided that—

- (i) the aggregate of the allowances under this paragraph shall not exceed the cost (after the deduction of any amount referred to in paragraph (ii) 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;
- (ii) notwithstanding the provisions of paragraph (a) of sub-section (4), if in any year of assessment there falls to be included in a taxpayer's income in terms of the said para-

graph 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 of income for the year of assessment during which the recovery or recoupment occurred, and provided he purchases or erects, 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, any other building to which the provisions of this paragraph apply, 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 insertion in paragraph (d)*sex* of the said sub-section after the word "was" where it occurs for the second time of the words "wholly or mainly" and by the addition at the end of the said paragraph of the following words:

"and with reference to any building the erection of which was commenced by the taxpayer on or after the fifteenth day of March, 1961, and to the cost of any subsequent improvements (other than repairs) effected thereto, if the building in question was let by the taxpayer and wholly or mainly used for the purpose of carrying on therein the trade of hotel keeper;";

- (e) by the substitution for paragraphs (d)*sept* and (d)*oct* of the said sub-section of the following paragraphs:

"(d)*sept* (i) in respect of new or unused machinery or plant brought into use by the taxpayer for the purposes of his trade an allowance, to be called a 'machinery investment allowance', for the year of assessment (but not later than that ending on the thirtieth day of June, 1963), during which such machinery or plant was so brought into use, determined as follows, namely—

- (a) if such machinery or plant was brought into use on or after the second day of March, 1960, but not later than the fourteenth day of March, 1961, and was used by the taxpayer directly in a process of manufacture, a sum equal to fifteen per centum of the cost to him of such machinery or plant; or
- (b) if such machinery or plant was brought into use on or after the fifteenth day of March, 1961, and was used by the taxpayer directly in a process of manufacture or any other process which, in the opinion of the Commissioner, was of a similar nature, a sum equal to twenty per centum of the cost to him of such machinery or plant: Provided that the Minister of Finance, having regard to the circumstances of the case and to the recommendations of the Secretary for Bantu Administration and Development and the Secretary for Commerce and Industries, may direct that the allowance in respect of such machinery or plant brought into use in a Bantu area or an area adjacent to a Bantu area, shall be increased to a sum not exceeding thirty per centum of such cost;

- (ii) the provisions of sub-paragraph (i) shall *mutatis mutandis* apply also with reference to new or unused machinery, implements, utensils and articles (other than vehicles and

other than equipment for managers' and servants' rooms and offices) brought into use by the taxpayer and used by him directly for the purpose of his trade of hotel keeper;

(iii) on the direction of the Minister of Finance, having regard to the circumstances of the case and to the recommendations of the Secretary for Bantu Administration and Development and the Secretary for Commerce and Industries, the provisions of sub-paragraph (i) shall *mutatis mutandis* apply also with reference to used machinery or plant, and the provisions of sub-paragraph (ii) shall *mutatis mutandis* apply also with reference to used machinery, implements, utensils and articles (other than vehicles and other than equipment for managers' and servants' rooms and offices), if such used machinery, plant, implements, utensils or articles, as the case may be, were brought into use on or after the fifteenth day of March, 1961, in a Bantu area or an area adjacent to a Bantu area: Provided that the cost of any such used machinery, plant, implements, utensils or articles shall for the purposes of this sub-paragraph be deemed to be the actual cost thereof less the aggregate of the amounts allowed to be deducted by the taxpayer in respect thereof under paragraphs (d) and (d)*bis* in the current or any previous year of assessment: Provided further that in the case of any machinery, plant, implements, utensils or articles in respect of which an allowance was in the current or any previous year of assessment granted to any person in terms of sub-paragraph (i) or (ii) the allowance shall be a sum equal to such proportion (not exceeding ten per centum) of the said cost as the said Minister may direct;

(d)oct (i) an allowance, to be called a 'building investment allowance', in respect of the cost to the taxpayer—

- (a) of any building owned by him the erection of which was commenced on or after the second day of March, 1960, but not later than the fourteenth day of March, 1961, and of any improvements (other than repairs), commenced on or after such first-mentioned date but not later than such last-mentioned date, to such building, and to any building owned by him the erection of which was commenced before the second day of March, 1960, if the building in question was wholly or mainly used by him for the purpose of carrying on therein any process of manufacture in the course of his trade (other than mining or farming); and
- (b) of any building owned by him the erection of which was commenced on or after the fifteenth day of March, 1961, but not later than the thirtieth day of June, 1962, and of any improvements (other than repairs), commenced on or after such first-mentioned date but not later than such last-mentioned date, to such building, and to any building owned by him the erection of which was commenced before the fifteenth day of March, 1961, if the building in question was wholly or mainly used by him for the purpose of carrying on therein in the course of his trade (other than mining or farming) any process of manufacture or any other process which, in the opinion of

the Commissioner, was of a similar nature, or if such building was let by him and was wholly or mainly used for the purpose of carrying on therein any process as aforesaid in the course of trade (other than mining or farming),

such allowance to be a sum equal to ten per centum of the cost of such buildings or improvements for the year of assessment (but not later than that ending on the thirtieth day of June, 1964), during which—

- (A) in the case of the cost of erection of a building used by the taxpayer or the lessee, the building was first so used;
- (B) in the case of any improvements to a building, the improvements were completed:

Provided that the Minister of Finance, having regard to the circumstances of the case and to the recommendations of the Secretary for Bantu Administration and Development and the Secretary for Commerce and Industries, may direct that the allowance in respect of buildings or improvements referred to in item (b) which have been used in the manner aforesaid in a Bantu area or an area adjacent to a Bantu area, shall be increased to a sum not exceeding twenty per centum of such cost;

- ii) the provisions of sub-paragraph (i) shall *mutatis mutandis* apply also with reference to any building wholly or mainly used by the taxpayer or the lessee for the purpose of carrying on therein the trade of hotel keeper;";

(f) by the substitution for paragraph (e) of the said sub-section of the following paragraph:

“(e) an allowance in respect of any premium or consideration in the nature of a premium paid by a taxpayer for—

- (i) the right of use or occupation of land or buildings used or occupied for the production of income or from which income is derived; or
- (ii) the right of use of any plant or machinery used for the production of income or from which income is derived; or
- (iii) the right of use of any patent as defined in the Patents Act, 1952 (Act No. 37 of 1952), or any design, trade mark or copyright as defined in the Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or of any other property which, in the opinion of the Commissioner, is of a similar nature if such patent, design, trade mark, copyright or other property is used for the production of income or income is derived therefrom; or
- (iv) the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of such patent, design, trade mark, copyright or other property as aforesaid:

Provided that—

- (i) the allowance under sub-paragraph (i), (ii) or (iii) shall not exceed for any one year such portion of the amount of the premium or consideration so paid as is equal to the said amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said amount, whichever is the greater;
- (ii) if the taxpayer is entitled to such use or occupation for an indefinite period he shall be deemed, for the purposes of this paragraph, to be entitled to such use or occupa-

- tion for such period as, in the opinion of the Commissioner, represents the probable duration of such use or occupation; and
- (iii) the allowance under sub-paragraph (iv) shall not exceed for any one year such portion (not being less than one twenty-fifth) of the amount of the premium or consideration so paid as the Commissioner may allow having regard to the period during which the taxpayer will enjoy the right to use such patent, design, trade mark, copyright or other property as aforesaid and any other circumstances which in the opinion of the Commissioner are relevant;";
- (g) by the substitution in paragraph (i) *quat* of the said sub-section for the expression "three hundred pounds" wherever it occurs of the expression "eight hundred rand";
- (h) (i) by the insertion in paragraph (j) of the said sub-section after the expression "*(d)quin*" where it occurs for the first time of the expression "or *(d)sex*";
- (ii) by the substitution in the said paragraph for the expression "and *(d)quin*" of the expression "*(d)quin* and *(d)sex*";
- (iii) by the substitution in paragraph (ii) of the proviso to the said paragraph for the expression "paragraph (iii)" of the expression "paragraph (ii)";
- (iv) by the addition of the following paragraph to the said proviso:
- "(iii) for the purposes of this paragraph the cost of any machinery, implements, utensils or articles shall be deemed to be the actual cost plus the amount by which the value of such machinery, implements, utensils or articles has been increased in terms of paragraph (v) of the proviso to paragraph (d) and less the amount by which such value has been reduced in terms of paragraph (iv) of the said proviso;";
- (i) by the substitution in sub-paragraph (iii) of paragraph (j) *quat* of the said sub-section for the figures "1961" of the figures "1962";
- (j) by the addition to the said sub-section of the following paragraphs:
- "(t) expenditure actually incurred in connection with the appointment of any agent for the sale outside the Republic of goods manufactured by the taxpayer in the course of a trade (other than mining or farming) carried on by him in the Republic;
- (u) the amount of any premium actually incurred by the taxpayer under any policy of insurance taken out upon the life of an employee or, in the case of a company, upon the life of a director or an employee of that company, if such policy is the property of the taxpayer;"; and
- (k) by the insertion after paragraph (b) of sub-section (4) of the following paragraph:
- "(b) *bis* (i) If any amount which was deducted under paragraph (d) or *(d)bis* of sub-section (2) in respect of machinery or plant which was used by the taxpayer directly in a process of manufacture, or directly in any other process carried on by him on or after the fifteenth day of March, 1961, which, in the opinion of the Commissioner, was of a similar nature, has as a result of damage or destruction by water or fire (hereinafter referred to as 'the event') been recovered or recouped during any year of assessment, and if the taxpayer satisfies the Commissioner that—
- (a) he has concluded or will within a period of one year (or such longer period as the Commissioner in the circumstances of the case may allow) from the date of the event conclude a contract for

the acquisition by him of further new or unused machinery or plant (hereinafter referred to as the 'further machinery or plant') to replace the aforesaid machinery or plant; and

- (b) such further machinery or plant has been or will be brought into use within a period of three years from the date of the event and will be used by him directly in a process of manufacture or any other process which, in the opinion of the Commissioner, is of a similar nature for a period of not less than five years or until such further machinery or plant is scrapped or disposed of in the ordinary course of the taxpayer's trade prior to the expiry of such period of five years,

the said amount shall, notwithstanding the provisions of paragraph (a) of this subsection, not be included in the income of the taxpayer for the aforesaid year of assessment: Provided that if, owing to any occurrence or because of any circumstance arising during any year of assessment the Commissioner is no longer satisfied in regard to the matters in regard to which in terms of the preceding provisions of this paragraph he is required to be satisfied, the said amount shall be included in the income of the taxpayer for the year of assessment during which such occurrence takes place or such circumstance arises.

- (ii) If as a result of the loss, sale or disposal in any other manner by the taxpayer of the further machinery or plant referred to in sub-paragraph (i) there has accrued to or been received by the taxpayer an amount in excess of the cost thereof less the amount referred to in the said sub-paragraph, so much of such excess as does not exceed such last-mentioned amount shall (unless such last-mentioned amount has been included in income in terms of the proviso to the said sub-paragraph) be deemed to have been recovered or recouped and shall be included in the taxpayer's income for the year of assessment during which such further machinery or plant was so lost, sold or disposed of in addition to any recovery or recoupment referred to in paragraph (a)."

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, section 7 of Act 55 of 1956, section 8 of Act 78 of 1959 and section 9 of Act 58 of 1960.

10. Section *thirteen* of the principal Act is hereby amended—

- (a) by the substitution in paragraph (b) of sub-section (2) for the word "pound" wherever it occurs of the word "rand"; and
- (b) by the substitution in the said paragraph for the words "eight pounds ten shillings" of the words "seventeen rand".

Insertion of section 16*ter* in Act 31 of 1941.

11. (1) The following section is hereby inserted in the principal Act after section *sixteen bis*:

"Taxable income of persons deriving royalties and similar payments in the Republic, and payment of tax thereon.

16ter (1) Any person (not being a person who is ordinarily resident in the Republic or a company which is registered, managed or controlled in the Republic) to whom any amount referred to in paragraph (a)*bis* of sub-section (1) of section *nine* is deemed to accrue from a source within the Republic, shall (apart from taxable income derived from other sources) be deemed to have derived from that amount a taxable income equal to thirty per centum of that amount.

(2) (a) Any person who incurs a liability to pay to any other person (not being a person who is ordinarily resident in the Republic or a company which is registered, managed or controlled in the Republic) any amount referred to in paragraph (a)*bis* of sub-section (1) of section *nine* or who receives payment of the said amount on behalf of such other person, shall within fourteen days after the end of the month during which the said liability is incurred or the said payment is received, as the case may be, or within such further period as the Commissioner may approve, make a payment (which shall be deemed to be an advance payment made on behalf of such other person) to the Commissioner in respect of such other person's obligation to pay normal tax for the year of assessment during which the said amount accrues to or is received by such other person, calculated on a sum equal to thirty per centum of the said amount at the rate of tax applicable to the taxable income (other than taxable income derived from mining operations in the Republic) of companies and shall submit to the Commissioner at the time of such tax payment a declaration in such form as the Commissioner may prescribe: Provided that—

(i) if the Commissioner is satisfied that the tax payment required to be made in terms of this paragraph in respect of the said amount has been or will be made by any person, the Commissioner may direct that any other person who is, in terms of this paragraph, required to make a tax payment in respect of the said amount, shall be relieved of the duty to make such tax payment;

(ii) for the purposes of this sub-section a person having an address outside the Republic shall, until the contrary is proved, be deemed to be not ordinarily resident in the Republic or, in the case of a company, to be a company which is not registered, managed or controlled in the Republic.

(b) Any person making a payment to the Commissioner in terms of paragraph (a) shall, notwithstanding any agreement to the contrary, be entitled to deduct or withhold the amount of such payment from the amount which he is liable to pay to the aforesaid other person, or to recover the amount so paid from such other person or to retain out of any money that may be in his possession or may come to him as the agent of such other person an amount equal to the amount of such payment.

(c) The provisions of sub-section (2) of section *five* shall *mutatis mutandis* apply in respect of payments made to the Commissioner in terms of paragraph (a).

(d) A taxpayer on whose behalf a payment has been made to the Commissioner in terms of paragraph (a) shall not be entitled to recover the amount of such payment from the person

who under the provisions of paragraph (b) deducts, withholds or retains the amount of such payment and shall be deemed to have received the amount so deducted or withheld.

(e) Every person who is required to make a payment to the Commissioner in terms of paragraph (a) shall be personally liable for making such payment, and the amount so payable shall be deemed to be a tax due by such person and shall be recoverable from him in the manner prescribed in section *eighty-five*.

(f) Nothing in this section contained shall be construed as relieving any person to whom the provisions of sub-section (1) apply from the obligation to render a return of income for any year of assessment or from paying any tax for which he may be liable or as depriving him of the right to prove for the purposes of section *eighty-nine* that payments made on his behalf in terms of paragraph (a) in respect of any year of assessment were in excess of the amount of normal tax properly chargeable under this Act in respect of income received by or accrued to him or deemed to have been received by or to have accrued to him during such year."

(2) Sub-section (2) of section *sixteen ter* of the principal Act shall be deemed to have come into operation on the first day of July, 1960: Provided that—

(i) notwithstanding the provisions of paragraph (a) of the said sub-section any amount of normal tax which was, in terms of the said paragraph, payable within a period ending before the date of commencement of this Act shall be payable within fourteen days of such commencement or within such longer period as the Commissioner may approve;

(ii) if any person who is required to make a payment to the Commissioner on behalf of another person in terms of paragraph (a) of the said sub-section proves to the satisfaction of the Commissioner that his liability to pay any amount to such other person as is referred to in the said paragraph has not later than the date of commencement of this Act been discharged, and that if he were to make the said payment to the Commissioner he would be unable at such last-mentioned date or at a later date to avail himself of the provisions of paragraph (b) of the said sub-section, the said person shall be absolved from making the payment in question to the Commissioner;

(iii) paragraph (ii) of this proviso shall not be construed as relieving any person to whom the provisions of sub-section (1) of the said section apply from the obligation to render a return of income for any year of assessment or from paying any tax for which he may be liable.

Amendment of section 18 of Act 31 of 1941, as substituted by section 9 of Act 78 of 1959, and amended by section 10 of Act 58 of 1960.

12. Section *eighteen* of the principal Act is hereby amended—

(a) by the substitution in sub-section (1) for the words "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 or any retirement annuity fund as defined in this Act or dividends) which the Commissioner" of the words:

"gross income (other than—

(a) 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 Republic with any pension fund or retirement annuity fund as defined in section *one*;

- (b) income proved to the satisfaction of the Commissioner to have been derived by the taxpayer from the investment of funds attributable to individual annuity contracts entered into by him in respect of which annuities are being paid and which are not connected with any business carried on by him in the Republic with any fund referred to in paragraph (a);
 - (c) one-third of any dividends received by or accrued to him and which are not included in his income referred to in paragraphs (a) and (b)),
- which the Commissioner"; and
- (b) by the deletion at the end of paragraph (iii) of sub-section (2) of the word "and", the addition at the end of paragraph (iv) of that sub-section of the word "and", and the addition to that sub-section of the following paragraph:

"(v) such allowance as may be made each year by the Commissioner in respect of claims which have been intimated but not paid: 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 of those years of assessment, be twenty-five per centum of such allowance for the year of assessment ending on the thirtieth day of June, 1961, fifty per centum of such allowance for the year of assessment ending on the thirtieth day of June, 1962, and seventy-five per centum of such allowance for the year of assessment ending on the thirtieth day of June, 1963."

Amendment of section 20 of Act 31 of 1941, as amended by section 11 of Act 35 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 35 of 1956, section 7 of Act 61 of 1957, section 9 of Act 36 of 1958 and section 11 of Act 78 of 1959.

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

- (a) by the substitution in sub-section (1) for the expression "(2)*ter* and (3)" of the expression "(2)*ter*, (3), (3)*bis* and (3)*ter*";
- (b) by the insertion in the said sub-section after the words "incurred during that year" of the words "(excluding so much of such capital expenditure as is deductible under sub-section (3)*bis*)"; and
- (c) by the insertion after sub-section (3) of the following sub-sections:

"(3)*bis* There shall, in addition to the quotient referred to in sub-section (1), be deducted under paragraph (f) of sub-section (2) of section *eleven* from income derived from the working of any mine other than a copper mine in the district of Namaqualand in the Province of the Cape of Good Hope or the district of Letaba in the Province of the Transvaal, or a gold or diamond mine, twenty-five per centum of the capital expenditure incurred in respect of such mine on or after the fifteenth day of March, 1961, or such percentage of the said capital expenditure in excess of twenty-five per centum (but not exceeding one hundred per centum) as may be directed by the Minister of Finance having regard in the circumstances of the case to the degree to which the product of such mine is processed in the Republic and to the recommendations of the Secretary for Mines and the Secretary for Commerce and Industries.

(3)*ter* In the case of income derived from the working of any copper mine in the district of Namaqualand in the Province of the Cape of Good Hope or the district of Letaba in the Province of the Transvaal, there shall, in lieu of the quotient referred to in sub-section (1), be deducted in respect of the year of assessment during which the production of copper commences, the amount of capital expenditure incurred up to the close of that year of assessment, and thereafter in respect of each succeeding year of assessment the actual capital expenditure incurred during the year of assessment."

Amendment of section 33 of Act 31 of 1941, as amended by section 6 of Act 47 of 1944, section 13 of Act 55 of 1946 and section 13 of Act 78 of 1959.

14. Section *thirty-three* of the principal Act is hereby amended—

- (a) by the insertion in paragraph (a) of sub-section (2) after the word "whose" of the word "equity";
- (b) by the substitution for sub-paragraph (iv) of that paragraph of the following sub-paragraph:
 "(iv) the general public was throughout the year of assessment in question interested either directly as shareholders in the company or indirectly as shareholders in any other public company, in more than fifty per centum of every class of equity shares issued by the company; or"; and
- (c) by the substitution for sub-paragraph (i) of paragraph (b) of the said sub-section of the following sub-paragraph:
 "(i) the general public was throughout the year of assessment in question interested either directly as shareholders in the company or indirectly as shareholders in any other public company, in more than fifty per centum of every class of equity shares issued by the company; and".

Repeal of section 37*bis* of Act 31 of 1941, as inserted by section 9 of Act 56 of 1952, and amended by section 13 of Act 58 of 1960.

15. Section *thirty-seven bis* of the principal Act is hereby repealed with effect from the commencement of the year of assessment ending on the thirtieth day of June, 1961.

Substitution of section 42 of Act 31 of 1941.

16. The following section is hereby substituted for section *forty-two* of the principal Act:

"Income subject to tax.

42. (1) The non-resident shareholders' tax shall be paid in respect of the amount of—

- (a) any dividend (excluding such portion thereof as consists of an interim dividend) which has been declared by any company after the thirtieth day of June, 1960; and
- (b) any interim dividend the payment of which has been approved after that date by the directors of any company or by some other person or persons under authority conferred by the memorandum and articles of association of that company,

if the shareholder to whom the dividend or interim dividend has been paid or is payable is—

- (i) a person, other than a company, not ordinarily resident nor carrying on business in the Republic; or
- (ii) a deceased estate referred to in sub-paragraph (iii) of paragraph (k) of sub-section (1) of section *ten* and such dividend is in terms of that sub-paragraph exempt from normal tax; or
- (iii) a company, not registered nor carrying on business in the Republic; or
- (iv) the holder of bearer scrip, irrespective of whether he is resident within or outside the Republic,

and was a shareholder as at the date of declaration of the dividend, or if some date other than the date of declaration of the dividend is specified as the date at which a shareholder is required to be registered to be entitled to the dividend, such other date.

(2) The non-resident shareholders' tax shall not be payable in respect of—

- (a) any dividend declared not later than the fifteenth day of March, 1961, by a company which was, in respect of the year of assessment ended the thirtieth day of June, 1960, exempt from undistributed profits tax in terms of paragraph (d), (e) or (f) of section *fifty-one* (hereinafter referred to as 'the distributing company') to a company not registered nor carrying on business in the Republic (hereinafter referred to as 'the shareholder company');

- (b) so much of the value of any dividend declared by the distributing company to the shareholder company on or after the sixteenth day of March, 1961, but not later than the thirtieth day of June, 1961, as is proved to the satisfaction of the Commissioner to have been distributed out of income derived by the distributing company during the year of assessment ended the thirtieth day of June, 1960, if the return of income of the distributing company in respect of the year of assessment ended the thirtieth day of June, 1960, was, in terms of sub-section (13) of section *fifty-five* made up to a date later than the thirtieth day of June, 1960;
- c) so much of the amount of any dividend declared by the distributing company to the shareholder company on or after the sixteenth day of March, 1961, as is proved to the satisfaction of the Commissioner to have been distributed by way of an award of bonus shares out of income which was derived by the distributing company during any year of assessment which ended not later than the thirtieth day of June, 1960; and
- (d) so much of the amount of any dividend declared on or after the sixteenth day of March, 1961, by the distributing company to the shareholder company as remains after the deduction therefrom of a sum equal to the amount (if any) by which the aggregate of the amounts which were received by or accrued to or deemed to have been received by or to have accrued to the distributing company after the year of assessment ended the thirtieth day of June, 1960, and which, in the opinion of the Commissioner, were available for distribution to the shareholder company by way of dividend, exceeds the aggregate of the amounts of dividends (excluding the dividend in question) declared by the distributing company to the shareholder company on or after the sixteenth day of March, 1961, in respect of which non-resident shareholders' tax was payable.

(3) Sub-section (2) shall not be construed as exempting from non-resident shareholders' tax any dividend payable by the distributing company to the shareholder company in respect of any share or by virtue of any right to participate in the income or profits of the distributing company which the shareholder company acquired after the specified date in relation to the return of income of the distributing company for the year of assessment ended the thirtieth day of June, 1960.

(4) For the purposes of this section, "dividend" or "interim dividend" includes any dividend or interim dividend distributed by a company out of, or by way of the capitalisation of, the profits of that company which had previously been apportioned among its shareholders in terms of section *thirty-seven* as the taxable income or income subject to super tax of that company or in terms of section *thirty-seven bis* as the apportionable income of that company."

Substitution
of sections
44 and 45 of
Act 31 of 1941.

17. The following sections are hereby substituted for sections *forty-four* and *forty-five* of the principal Act:

"Recovery
of the
tax.

44. (1) Notwithstanding the provisions of section *forty-three* the tax shall be payable by and recoverable from the persons set out hereunder—

- (a) in the case of dividends distributable by any company to any person whose address appearing in the share register of the company is outside the Republic or to any holder of bearer scrip, the company by which the dividend is declared; or

(b) in the case of dividends received by any agent in the Republic on behalf of any shareholder referred to in section *forty-two*, the agent so receiving the dividend.

(2) For the purposes of this section a person shall be deemed to be the agent of a shareholder referred to in section *forty-two* and shall be deemed to have received a dividend on behalf of that shareholder if that person's address appears in the share register of the company as the registered address of the shareholder and the dividend warrant or cheque in payment of the dividend distributable to the shareholder is delivered at that address: Provided that any person so deemed to be the agent of any shareholder shall as regards such shareholder and in respect of any income received by or accruing to him or in his favour have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from the Republic.

(3) Nothing contained in sub-section (2) shall be construed as relieving any company by which a dividend is declared from the duties and responsibilities imposed upon it by section *seventy-three* as the agent of any shareholder or member absent from the Republic.

(4) Any tax payable in terms of this section by any company or agent for any shareholder may be recovered by such company or such agent, as the case may be, from the shareholder concerned.

Rate of tax.

45. The rate of tax shall be seven and one-half per centum of the amounts specified in section *forty-two*."

Amendment of section 46 of Act 31 of 1941, as amended by section 10 of Act 34 of 1942, section 14 of Act 56 of 1952, and section 17 of Act 58 of 1960.

18. Section *forty-six* of the principal Act is hereby amended by the deletion of the words "paragraph (a), (a)*bis* or (a)*ter* of".

Amendment of section 47 of Act 31 of 1941, as amended by section 11 of Act 34 of 1942, section 15 of Act 56 of 1952 and section 6 of Act 34 of 1953.

19. (1) Section *forty-seven* of the principal Act is hereby amended—

(a) by the substitution for sub-section (1) of the following sub-section:

"(1) The company which in terms of paragraph (a) of sub-section (1) of section *forty-four* is required to pay the tax on any dividend shall pay to the Commissioner the tax due on such dividend within thirty days, or such further period as may be approved by the Commissioner, of the date on which the dividend is payable, and shall furnish him with a return showing the names and addresses of the persons with the amount in each case to whom the dividend accrues and in the case of dividends payable in respect of bearer scrip the total dividends distributable to holders of such scrip.";

(b) by the insertion in sub-section (2) after the words "paragraph (b)" of the words "of sub-section (1)";

(c) by the deletion of sub-section (3); and

(d) by the substitution in sub-section (4) for the expression "(1), (2) and (3)" of the expression "(1) and (2)".

(2) If non-resident shareholders' tax is payable in respect of any dividend declared by a company which was in respect of the year of assessment ended the thirtieth day of June, 1960, exempt from undistributed profits tax in terms of paragraph (d), (e) or (i) of section *fifty-one* of the principal Act to a company not registered nor carrying on business in the Republic, and the date on which the dividend is payable or the date of delivery of the dividend warrant or cheque in payment of the dividend at the address of the shareholder's agent is a date which occurs before the date of commencement of this Act, the said tax shall, notwithstanding the provisions of section *forty-seven* of the principal Act be paid within thirty days of the said date of commencement or within such further period as the Commissioner may approve.

Amendment of section 48 of Act 31 of 1941, as amended by section 11 of Act 55 of 1956.

20. Section *forty-eight* of the principal Act is hereby amended by the deletion of all the words occurring after the word "*thirty-three*".

Amendment of section 50 of Act 31 of 1941, as inserted by section 10 of Act 43 of 1955 and amended by section 12 of Act 55 of 1956, section 11 of Act 36 of 1958 and section 19 of Act 58 of 1960.

21. Section *fifty* of the principal Act is hereby amended—

- (a) by the substitution in paragraph (b) of the definition of "distributable income" for the expression "paragraphs (i) and (v)" of the expression "paragraph (iv)";
- (b) by the deletion of paragraph (i) of the said definition, the existing paragraphs (ii), (iii), (iv) and (v) becoming paragraphs (i), (ii), (iii) and (iv), respectively;
- (c) by the insertion in the definition of "total net profits" after the word "assessment" where it occurs for the third time of the words "(without applying the provisions of paragraph (a) of sub-section (3) of section *eleven*)"; and

(d) by the addition at the end of the last-mentioned definition of the following words:

"and all amounts deducted in terms of paragraph (a) of this definition in the determination of the company's total net profits, whether in the current or any previous year of assessment, which have been recovered or recouped by it during the current year of assessment, less the following amounts, namely—

- (a) any expenditure (other than expenditure of a capital nature) which is proved to the satisfaction of the Commissioner to have been actually and necessarily incurred by the company during the year of assessment in the course and by reason of its ordinary business operations and which but for this paragraph would not have been allowable as a deduction in the determination of the company's total net profits; and
- (b) any deficit incurred by the company which has been brought forward from the preceding year of assessment: Provided that the deficit shall be reduced by the amount or value of any benefit received by or accruing to the company resulting from a concession granted by or a compromise made with such company's creditors whereby its liabilities to them have been reduced or extinguished, if such liabilities arose in the ordinary course of trade.

For the purposes of this definition 'deficit' means any amount, as established to the satisfaction of the Commissioner, by which the sum of the deductions admissible in the determination of total net profits exceeds the sum of the amounts from which they are so deductible, and in relation to any year of assessment preceding that which ended on the thirtieth day of June, 1955, or in relation to any year of assessment ending on or after that date in respect of which the company was not subject to undistributed profits tax, means any amount, as established to the satisfaction of the Commissioner, by which the sum of the deductions which would have been admissible in the determination of total net profits exceeds the sum of the amounts from which they would have been so deductible if in respect of the first-mentioned year of assessment the provisions of this Part had been in operation or in respect of the last-mentioned year of assessment the company had been subject to undistributed profits 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, section 12 of

22. (1) Section *fifty-one* of the principal Act is hereby amended by the substitution for paragraph (i) of the following paragraph:

- "(i) any company all of whose equity shares were throughout the specified period held by the Government of the Republic or by one or more public companies or by one or more private companies which are themselves exempt from this tax in terms of this section excluding

Act 66 of 1958,
section 15 of
Act 78 of 1959
and section 20 of
Act 58 of 1960.

paragraphs (f) and (g), or by one or more public companies and one or more such private companies or partly by one or more public companies or such private companies and partly by persons other than companies if, in the case of any company whose equity shares were partly held by persons other than companies as aforesaid, the Commissioner is satisfied that the company would have been recognised as a public company in terms of paragraph (a) of sub-section (2) of section *thirty-three* for the year of assessment in question if the shares held by persons other than companies had represented the company's total share capital and the holders of the said shares had been the company's only shareholders;".

(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 ended upon the thirtieth day of June, 1960: Provided that if any company so elects and informs the Commissioner of its election in writing on or before the thirty-first day of December, 1961, the said amendment shall in relation to that company be deemed first to take effect in respect of assessments for the year of assessment ending on the thirtieth day of June, 1961.

Amendment of
section 54*ter* of
Act 31 of 1941,
as inserted by
section 10 of
Act 43 of 1955
and amended by
section 8 of
Act 61 of 1957.

23. Section *fifty-four ter* of the principal Act is hereby amended by the substitution in sub-paragraph (iii) of paragraph (b) of sub-section (1)*bis* for the words "for land bank purposes" of the words "by sworn appraisers appointed by Masters of the Supreme Court".

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,
section 9 of
Act 61 of 1957
and section 16 of
Act 78 of 1959.

24. Section *fifty-four quat* of the principal Act is hereby amended—

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

"(a) so much of the sum of the values of all casual gifts made by the donor during—

(i) the period of twelve months ending on the thirty-first day of December of any year but not later than the thirty-first day of December, 1961; or

(ii) the period ending on the first specified date following the thirty-first day of December, 1961, and commencing on the first day of January, 1962, or ending on any subsequent specified date and commencing on the day following the immediately preceding specified date,

as does not exceed one thousand rand: Provided that, in the case of casual gifts made during any period referred to in sub-paragraph (ii) which either exceeds or is less than twelve months, the amount in respect of which the tax shall not be payable in terms of this paragraph shall be an amount which bears to one thousand rand the same ratio as such period bears to twelve months;"; and

(b) by the addition at the end of the said sub-section of the following words:

"For the purposes of this sub-section 'specified date' in relation to any donor shall have the meaning assigned thereto in the definition of that expression in sub-section (4) of section *thirty-three*, the reference in the said definition to a company being construed as including a reference to a person other than a company."

Amendment of
section 54*dec* of
Act 31 of 1941,
as inserted by
section 10 of
Act 43 of 1955
and amended by
section 11 of
Act 61 of 1957.

25. Section *fifty-four dec* of the principal Act is hereby amended by the insertion in sub-section (6) after the words "*fifty-four ter*" of the words "of the value".

Amendment of section 55 of Act 31 of 1941, as amended by section 14 of Act 36 of 1958.

26. Section *fifty-five* of the principal Act is hereby amended by the substitution in sub-section (12) for the words "On His Majesty's Service" of the word "Official".

Amendment of section 69 of Act 31 of 1941.

27. (1) Section *sixty-nine* of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph:

"(e) in respect of the income received by or accrued to or deemed to have been received by or accrued to any deceased person during his lifetime and the income received by or accrued to or deemed to have been received by or accrued to the estate of any deceased person, the executor or administrator of the estate of such deceased person;"

(2) The amendment effected by sub-section (1) shall be deemed to have taken effect on the fifteenth day of March, 1961.

Amendment of the Third Schedule to Act 31 of 1941, as added by section 7 of Act 52 of 1947 and amended by section 7 of Act 40 of 1948, section 17 of Act 45 of 1949, section 6 of Act 64 of 1951, section 5 of Act 55 of 1954, section 15 of Act 61 of 1957 and section 17 of Act 36 of 1958.

28. The Third Schedule to the principal Act is hereby amended—

(a) by the substitution for sub-item (i) of item (b) of sub-paragraph (1) of paragraph 8 of the following sub-item:

"(i) the value of any livestock or produce held and not disposed of by him at the end of the day immediately preceding the date of such commencement or recommencement; together with";

(b) by the insertion in sub-item (ii) of the said item after the word "produce" of the words "(other than livestock or produce referred to in sub-item (i))";

(c) by the insertion in paragraph 12 after the word "company" wherever it occurs of the words "or the estate of a deceased person";

(d) by the deletion in sub-paragraph (3) of paragraph 20 of the words "and super tax" and the words "and income subject to super tax" and by the substitution in paragraph (ii) of the proviso to the said sub-paragraph for the words "pound of taxable income or income subject to super tax" of the words "rand of taxable income"; and

(e) by the deletion in paragraph 22 of the words "and super tax" and the words "and income subject to super tax" and by the substitution in the said paragraph for the words "pound of taxable income or income subject to super tax, as the case may be," of the words "rand of taxable income".

Substitution of references to "the Union" in Act 31 of 1941.

29. The principal Act is hereby amended by the substitution for the expression "the Union" wherever that expression occurs of the expression "the Republic".

Addition of 4th Schedule to Act 31 of 1941.

30. The Schedule to this Act is hereby added to the principal Act as the Fourth Schedule thereto.

Repeal of Act 40 of 1937.

31. The Namaqualand Copper Mines Income Tax Relief Act, 1937 (Act No. 40 of 1937), is hereby repealed with effect from the commencement of the year of assessment ending on the thirtieth day of June, 1961.

Amendment of section 101 of Act 24 of 1936, as substituted by section 87 of Act 31 of 1941 and amended by section 30 of Act 16 of 1943.

32. The following section is hereby substituted for section *one hundred and one* of the Insolvency Act, 1936 (Act No. 24 of 1936), with effect from the first day of July, 1961:

"Preference in regard to taxes on persons or the incomes or profits of persons. 101. Thereafter any balance of the free residue shall be applied in paying—

(a) any tax on persons or the incomes or profits of persons for which the insolvent was liable under any Act of Parliament or Ordinance of the Territory or a Provincial Council in respect of any period prior to the date of sequestration of his estate, whether or not that tax has become payable after that date;

(b) in the case of an insolvent partnership, so much of any tax due and payable by any partner as is referable to the taxable income derived by him from the partnership, the amount so referable being deemed to be a sum which bears to the total amount due by him as tax the same ratio as his taxable income derived from the partnership bears to his total taxable income from all sources within the Union."

Amendment of section 2 of Act 69 of 1960.

33. Section two of the Technological Training Advancement Act, 1960 (Act No. 69 of 1960), is hereby amended by the insertion in sub-section (2) after the words "said donation" of the words "if made before the fifteenth day of March, 1961, or the full amount of the said donation, if made on or after the fifteenth day of March, 1961,".

Commencement of certain amendments.

34. Except where otherwise provided in this Act the amendments effected by this Act, other than the amendments provided for in sections sixteen to twenty, inclusive, shall first take effect in respect of assessments for the year of assessment ending on the thirtieth day of June, 1961.

Short title.

35. This Act shall be called the Income Tax Act, 1961.

Schedule.

(FOURTH SCHEDULE TO ACT NO. 31 OF 1941.)

Computation of Gross Income Derived by way of Lump Sum Benefits from Pension, Provident and Retirement Annuity Funds (Paragraph (b)ter of the definition of Gross Income in Section 7 of this Act).

1. For the purposes of this Schedule—

"formula A", in relation to a pension fund or provident fund, means the formula—

$$Y = \frac{10}{1} \times \frac{N}{50} \times \frac{1}{3} \times \text{Average Salary,}$$

in which formula "Y" represents the amount which has to be determined, "N" represents the number of completed years (not exceeding fifty) in the period of employment of the taxpayer which, in terms of the rules of the fund in question, is taken into account for the purpose of determining the amount of the benefits payable to him under the fund or, if the period of employment is not taken into account for that purpose, in the period of his membership of the fund during which contributions thereto were made in respect of his membership, and "average salary" means the highest annual average salary (not exceeding ten thousand rand) actually earned by the taxpayer during any five consecutive years in the service of the employer by whom he was employed during his membership of the fund: Provided that—

- (i) the period of employment or membership to be taken into account in applying the formula in relation to any such fund shall be reduced by any period of employment or membership which is common to such fund and any other such fund if such common period has been included in the period of employment or membership taken into account in applying the formula in relation to such other fund;
- (ii) unless, not later than the date on which he submits his first return of income in which is included or should have been included any lump sum benefit referred to in sub-paragraph (1) of paragraph 5 or within such further period as the Commissioner in the circumstances of the case may allow, any taxpayer who is a member of two or more such funds having a common period of employment or membership informs the Commissioner in writing in relation to which fund such common period shall be applied, the said common period shall be applied to such fund as the Commissioner, with the object of achieving the best result for the taxpayer, may determine;

"formula B", in relation to a pension fund, provident fund or retirement annuity fund means the formula—

$$Z = C - D,$$

in which formula—

(a) "Z" represents the amount which has to be determined;

(b) "C" represents an amount not exceeding twenty thousand rand representing the sum of the amounts calculated in accordance with formula A in relation to the taxpayer in respect of each pension or provident fund of which he is or was a member and from which any lump sum benefit was or may be derived in consequence of or following upon his retirement or death on or after the fifteenth day of March, 1961, and the aggregate of the lump sum benefits received by or accrued to or deemed to have been received by or accrued to him from retirement annuity funds in the circumstances described in sub-paragraph (1) of paragraph 5 on or after the fifteenth day of March, 1961, and whether in the current or any previous year of assessment: Provided that the lump sum benefits in respect of any retirement annuity fund taken into account for the purpose of this calculation shall not exceed the amount received or accrued in commutation of not more than one-third of the taxpayer's annuity from such fund, or, in the case of the death of a member before his retirement in relation to such fund, an amount equal to one-third of the member's own contributions to such fund (including so much of any amount paid into such fund for his benefit by another approved retirement annuity fund or any approved pension or provident fund as represented his own contributions to the fund by which such amount was so paid) together with reasonable interest on one-third of the said contributions calculated from the dates of payment of the respective contributions to the date of death of such member; and

(c) "D" represents the sum of the deductions which may have been allowed to the taxpayer in terms of sub-paragraph (1) of paragraph 5 in respect of previous years of assessment;

"lump sum benefit" includes any amount determined by the commutation of an annuity or portion of an annuity and any fixed or ascertainable amount (other than an annuity) payable by any fund referred to in paragraph (b) *ter* of the definition of "gross income" in section *seven* of this Act whether in one amount or in instalments;

"pension fund" in relation to any taxpayer means a fund (other than a superannuation, pension, provident, widows' or orphans' fund established by law) which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a pension fund as defined in section *one* of this Act, if during any such year the taxpayer was a member of such fund;

"provident fund" in relation to any taxpayer means a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a provident fund as defined in section *one* of this Act, if during any such year the taxpayer was a member of such fund;

"retire" means, in relation to a member of—

(a) a pension fund, to retire from employment and become entitled to the payment of an annuity from such fund;

(b) a provident fund, to retire from employment and become entitled to the payment of full benefits in terms of the rules of the fund; and

(c) a retirement annuity fund, to become entitled to the payment of an annuity from such fund,

and "retirement" in relation to a member of any of the said funds bears a corresponding meaning;

"retirement annuity fund" in relation to any taxpayer means a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a retirement annuity fund as defined in section *one* of this Act, if during any such year the taxpayer was a member of such fund.

2. The amount to be included in the gross income of any person in terms of paragraph (b) *ter* of the definition of "gross income" in section *seven* of this Act shall be the aggregate of the amounts received by or accrued to or deemed to have been received by or accrued to such person by way of lump sum benefits during any year of assessment from any pension funds, provident funds or retirement annuity funds, less the deductions permitted under the provisions of this Schedule.

3. Any lump sum benefit which becomes recoverable in consequence of or following upon the death of a member of a pension fund, provident fund or retirement annuity fund shall be deemed to be a lump sum benefit which accrued to such member immediately prior to his death: Provided that so much of any tax payable as is due to the inclusion in the income of such member of any amount in accordance with the provisions of this paragraph, may be recovered from the person to whom or in whose favour the lump sum benefit in question accrues.

4. (1) If in terms of the rules of a pension, provident or retirement annuity fund any lump sum benefit arising out of a member's withdrawal or resignation is payable at a fixed or ascertainable future date such benefit shall be deemed to have accrued to such member on that date or on the date of his death, whichever is earlier, and shall be assessed to tax in respect of the year of assessment during which such benefit is deemed to accrue as though it were a lump sum benefit derived by him upon his withdrawal or resignation from the fund or upon his retirement or immediately prior to his death, as the case may be.

(2) If upon a member's withdrawal or resignation from, or upon the winding up of, a pension fund, provident fund or retirement annuity fund, a policy of insurance is ceded or otherwise made over to or in

favour of such member, any lump sum due in respect of such policy upon its maturity or earlier surrender shall be deemed to be a lump sum benefit accruing to such member from a pension fund, provident fund or retirement annuity fund, as the case may be, on the date of such maturity or surrender, or, if such member dies before such date, on the date of his death and shall be assessed to tax in respect of the year of assessment during which such benefit is deemed to accrue as though it were a lump sum benefit derived by him upon his withdrawal or resignation from the fund or upon his retirement or immediately prior to his death, as the case may be: Provided that if after the cession or making over of such policy any premiums are paid thereon by such member, there shall be deducted from such lump sum, in addition to any other deduction to which such member may be entitled in terms of this Schedule, an amount which bears to such lump sum the same ratio as the sum of the premiums paid by him after such cession or making over bears to the sum of all the premiums paid on such policy.

(3) If a member of a provident fund retires from such fund before he or she reaches the age of fifty-five years in the case of a male or fifty years in the case of a female on grounds other than ill-health, any lump sum benefits received by or accrued to or deemed to have been received by or accrued to such member in consequence of or following upon such retirement shall, unless the Commissioner, having regard to the circumstances of the case, otherwise directs, be assessed to tax not in accordance with the provisions of paragraph 5 but in accordance with the provisions of paragraph 6 as though it were a lump sum benefit derived by such member in consequence of or following upon such member's withdrawal or resignation from such fund.

Benefits accruing upon retirement and benefits deemed to have accrued immediately prior to the taxpayer's death: Deductions.

5. (1) The deduction to be allowed in determining the amount required to be included in the taxpayer's gross income for any year of assessment in terms of paragraph 2 shall, if the lump sum benefits in question have been derived in consequence of or following upon the taxpayer's retirement or are deemed to have accrued to him immediately prior to his death, be an amount (not exceeding the aggregate value of such lump sum benefits) equal to the greater of the following amounts, namely—

- (a) an amount determined in accordance with formula B in relation to such taxpayer but subject to the provisions of sub-paragraph (2); or
- (b) an amount equal to the sum of the amounts which would have been allowed to be deducted in terms of paragraph (b)ter of the definition of "gross income" in section seven of this Act prior to its amendment by the Income Tax Act, 1961, if such lump sum benefits had been received by or had accrued to such taxpayer on the fourteenth day of March, 1961, and had been required to be included in his gross income in terms of the said paragraph, less the aggregate of any deductions which may have been allowed to the taxpayer under this sub-paragraph in respect of any years of assessment preceding the year of assessment in question.

(2) Notwithstanding anything to the contrary contained in the definition of "formula B" in paragraph 1, the amount that shall be taken into account as representing the symbol C in that formula for the purpose of determining the amount of the deduction to be allowed in terms of item (a) of sub-paragraph (1) in the circumstances described in any of the items of this sub-paragraph shall not be less than the amount stated in the relevant item, namely—

- (a) four thousand rand if the taxpayer is or was a member of a provident fund from which any lump sum benefit was or may be derived in consequence of or following upon his retirement on or after the fifteenth day of March, 1961;
- (b) in respect of lump sum benefits deemed to have accrued immediately prior to the taxpayer's death, ten thousand rand;
- (c) in respect of lump sum benefits deemed to have accrued to the taxpayer immediately prior to his death and consisting of or including benefits derived from provident funds, an amount equal to the sum of the taxpayer's own contributions to such funds including so much of the amounts paid into such funds for his benefit by other provident funds as represented his own contributions to such other funds;
- (d) in respect of lump sum benefits deemed to have accrued to the taxpayer immediately prior to his death and consisting of or including lump sum benefits derived from retirement annuity funds in any case in which the death has occurred before the taxpayer's retirement in relation to such funds, an amount (not exceeding the lesser of twenty thousand rand or the aggregate value of such lump sum benefits) equal to the sum of the amounts the taxpayer could have derived in respect of the commutation of one-third of all annuities to which he would have become entitled from such funds if the date of his retirement in relation to such funds had fallen on the day preceding his death.

(3) Where, in respect of any year of assessment, an amount has to be determined in accordance with formula B in relation to any taxpayer in regard to any pension fund or provident fund prior to the date of his retirement in relation to such fund, it shall be assumed for the purposes of such determination that such taxpayer will survive the date of his retirement in relation to the fund in question and that he will continue

to be employed until that date on the scale of salary at which he is employed at the date on which the determination is made.

(4) For the purposes of any calculation in accordance with formula B no regard shall be had to any lump sum benefit from any retirement annuity fund which has not yet been received by or accrued to the taxpayer.

(5) For the purposes of calculating any amount which would have been allowed to be deducted in terms of paragraph (b) *ter* of the definition of "gross income" in section *seven* of this Act in the circumstances described in item (b) of sub-paragraph (1) regard shall be had to the contributions actually made by the taxpayer to the fund or funds in question and the period or periods of his employment before the fifteenth day of March, 1961, and no cognisance shall be taken of any contributions or of any employment on or after that date.

Withdrawal or resignation: Winding-up: Deductions.

6. The deduction to be allowed in determining the amount required to be included in the taxpayer's gross income for any year of assessment in terms of paragraph 2 shall, if the lump sum benefits in question have been derived in consequence of or following upon his withdrawal or resignation from any pension funds, provident funds or retirement annuity funds, or upon the winding up of any such funds, be the sum of the following amounts, namely—

- (a) so much of the lump sum benefits derived from pension funds as is paid for the benefit of such taxpayer into another approved pension fund or any approved retirement annuity fund;
- (b) so much of the lump sum benefits derived from provident funds as is paid for the benefit of such taxpayer into another approved provident fund, any approved pension fund or any approved retirement annuity fund;
- (c) so much of the lump sum benefits derived from retirement annuity funds as is applied in accordance with the provisions of sub-paragraph (xi) of paragraph (2) of the definition of "retirement annuity fund" in section *one* of this Act; and
- (d) so much of the excess of the aggregate value of the lump sum benefits in question derived from all the funds over the sum of the amounts allowed to be deducted under the preceding sub-paragraphs as does not exceed six hundred rand:

Provided that in respect of any lump sum benefits so derived by such taxpayer from any provident fund, the sum of the deductions under sub-paragraphs (b) and (d) shall not be less than the lesser of either the aggregate value of such lump sum benefits or the sum of such taxpayer's own contributions to such fund including so much of the amounts paid into such fund for his benefit by other provident funds as represented his own contributions to such other funds.

7. For the purpose only of calculating the rate of normal tax payable in respect of any year of assessment by any person whose income for that year includes an amount determined in accordance with the provisions of this Schedule, there shall be deducted from the taxable income of such person the amount so included in his income, but in no case shall the rate of tax be less than that applicable to the first one rand of taxable income and nothing herein contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of his taxable income.