

The **draft Taxation Laws Amendment Bill, 2004**, is hereby released for public comment.

It would be appreciated if comments on the draft legislation could be furnished by **Wednesday, 2 June 2004**. Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.

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REPUBLIC OF SOUTH AFRICA

**TAXATION LAWS AMENDMENT
BILL**

(As introduced in the National Assembly as a money Bill)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B - 2004]

GENERAL EXPLANATORY NOTE:

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

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

BILL

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

Amendment of section 2 of Act 40 of 1949

1. (1) Section 2 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph (b) of the following subparagraphs:

- “(i) 0 per cent of so much of the said value or the said amount, as the case may be, as does not exceed **[R140 000]** R150 000;
- (ii) 5 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R140 000]** R150 000 but does not exceed R320 000; and”.

(2) Subsection (1) shall be deemed to have come into operation on 1 March 2004 and shall apply in respect of any property acquired, or interest or restriction in any property renounced, in terms of an agreement formally and finally signed on or after that date.

Amendment of section 9 of Act 40 of 1949

2. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (18) for paragraph (b) of the following paragraph:

“(b) any prospecting right, mining right, exploration right, production right, mining permit, **[or]** retention permit or reconnaissance permit as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002, is granted or is wholly or partially renewed in terms of that Act:”.

(2) Subsection (1) shall come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002, comes into operation.

Fixing of rates of normal tax in terms of Act 58 of 1962

3. The rates of normal tax to be levied in terms of section 5(2) of the Income Tax Act, 1962, in respect of—

- (a) the taxable income of any person (other than a company) for the year of assessment ending on 28 February 2005; and
 - (b) the taxable income of any company for any year of assessment ending during the period of 12 months ending on 31 March 2005,
- shall be as set out in Schedule 1 to this Act.

Amendment of section 1 of Act 58 of 1962

4. Section 1 of the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “prescribed rate” for paragraph (b) of the following paragraph:

“(b) any other provision of this Act, such rate as the Minister may from time to time fix by notice in the *Gazette* in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999): Provided that where the Minister at any time fixes a

new rate in terms of that Act, that new rate will apply for purposes of this Act from the first day of the second month following the date on which that new rate came into operation;”.

Amendment of section 3 of Act 58 of 1962

5. Section 3 of the Income Tax Act, 1962, is hereby amended—

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

“(4) Any decision of the Commissioner under the definitions of ‘benefit fund’, ‘pension fund’, ‘provident fund’, ‘retirement annuity fund’ and ‘spouse’ in section 1, section 6, section 8(4)(b), (c), (d) and (e), section 9D, section 10(1)(cH), (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 12E, section 12G, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 30, section 31, section 35(2), section 38(4), section 41(4), section 57, section 76A, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph (b) of the definition of ‘formula A’ in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 24 and 27 of the Fourth Schedule, paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule and paragraphs 29(2A), 29(7), 31(2), 65(1)(d) and 66(1) [(c)] (e) of the Eighth Schedule, shall be subject to objection and appeal.”;

(b) by the addition of the following subsections:

“(5) The Commissioner’s power to approve a pension fund, provident fund or retirement annuity fund, as contemplated in the definitions of ‘pension fund’, ‘provident fund’ or ‘retirement annuity fund’ in section 1 and to withdraw any such approval, may be delegated by the Commissioner to the executive officer of the Financial Services Board, appointed in terms of section 13 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), subject to—

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(a) the limitations and conditions in respect of such a fund as determined by the Commissioner in terms of those definitions; and

(b) such conditions as may be agreed between the Commissioner and the executive officer.

(6) Any person aggrieved by a decision of the executive officer referred to in subsection (5) and who wishes to lodge an objection against that decision must, notwithstanding section 26(2) of the Financial Services Board Act, 1990, lodge that objection with the Commissioner in terms of the procedures contained in Part III of Chapter III of this Act.

(7) A decision by the executive officer against which objection has been lodged must, for purposes of the procedures referred to in subsection (6), be deemed to be a decision of the Commissioner.”.

Amendment of section 6 of Act 58 of 1962

6. Section 6 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

- “(a) a primary rebate, an amount of **[R5 400]** R5 800; and
- (b) a secondary rebate, if the taxpayer was or, had he or she lived, would have been **[over the age of]** 65 years of age or older on the last day of the year of assessment, an amount of **[R3 100]** R3 200.”.

Amendment of section 9E of Act 58 of 1962

7. (1) Section 9E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (b) of the definition of “foreign dividend” of the following paragraph:

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“(b) any amount deemed to have been distributed to that person or any resident who is a connected person in relation to that person, by any foreign company which is a controlled foreign company in relation to that person, as contemplated in section 64C[(3)](2)(a), (b), (c), [or] (d) or (g), and where the provisions contained in section 64C(4)(a), (b), (c), (d), (e), (f), (i), [or] (j), (k) or (l) do not apply, to the extent that the foreign company could have distributed a dividend to that person from profits which have not been subject to tax in the Republic, which amount must be deemed to be a dividend declared by that company to that person;”.

(2) Subsection (1) shall be deemed to have come into operation on 22 December 2003.

Amendment of section 10 of Act 58 of 1962

8. Section 10 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subitems (A) and (B) of item (bb) of subparagraph (xv) of paragraph (i) of the following subitems:

- “(A) in the case of any person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of [R15 000] R16 000; or
- (B) in any other case, the amount of [R10 000] R11 000.”.

Amendment of section 11 of Act 58 of 1962

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

(a) by the substitution in paragraph (o) for paragraphs (aa) and (bb) of the proviso of the following paragraphs:

- “(aa) the cost of any plant, machinery, implements, utensils or articles shall be deemed to be the actual cost plus the amount by which the value of such plant, machinery, implements, utensils or

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articles has been increased in terms of paragraph (v) of the proviso to paragraph (e) less the amount by which such value has been reduced in terms of paragraph (iv) of that proviso;

(bb) the actual cost of any plant, machinery, implement, utensil or article acquired by the taxpayer on or after 15 March 1984 shall be deemed to be the cost of that plant, machinery, implement, utensil or article as determined under paragraph (vii) of the proviso to paragraph (e);” and

(b) by the deletion of paragraph (u).

(2)(a) Subsection (1)(a) shall be deemed to have come into operation on 22 December 2003 and shall apply in respect of any disposal on or after that date.

(b) Subsection (1)(b) shall come into operation on 1 January 2005 and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 11B of Act 58 of 1962

10. (1) Section 11B of the Income Tax Act, 1962, is hereby amended by the substitution in the Afrikaans text for the words in subsection (3) preceding the proviso of the following words:

“(3) Daar word toegelaat as ‘n aftrekking deur ‘n belastingpligtige ten opsigte van enige gebou, masjinerie, installasie, gereedskap, werktuig of artikel van ‘n kapitale aard deur daardie belastingpligtige gebruik vir doeleides van navorsing en ontwikkeling, ‘n vermindering gelyk aan 40 persent van die koste van daardie gebou, masjinerie, installasie, gereedskap, werktuig of artikel in die jaar van aanslag waarin dit vir die eerste maal deur daardie belastingpligtige in gebruik geneem is en 20 persent in elk van die drie **[onmiddelike]** onmiddellik daaropvolgende jare van aanslag:”.

(2) Subsection (1) is deemed to have come into operation on 22 December 2003.

Amendment of section 12B of Act 58 of 1962

11. (1) Section 12B of the Income Tax Act, 1962, is hereby amended—
- (a) by the addition in subsection (1) of the word “or” at the end of paragraph (f);
 - (b) by the addition to subsection (1) of the following paragraph:

“(g) machinery, plant, implement, utensil or article which was or is brought into use for the first time by the taxpayer for the purposes of his or her trade to be used for the production of bio-diesel or bio-ethanol.”
- (2) Subsection (1) shall come into operation on 18 February 2004 and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 23 of Act 58 of 1962

12. Section 23 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (d) of the following paragraph:

- “(d) any tax, duty, levy, interest or penalty imposed under this Act, any additional tax imposed under section 60 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and any interest or penalty payable in consequence of the late payment of any tax, duty, **[or]** levy or contribution payable under any Act administered by the Commissioner, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), **[and]** the Skills Development Levies Act, 1999 (Act No. 9 of 1999), and the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002);”.

Amendment of section 24G of Act 58 of 1962

13. (1) Section 24G of the Income Tax Act, 1962, is hereby amended—

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- (a) by the substitution in subsection (1) for paragraph (b) of the definition of “permanent work” of the following paragraph:

“(b) the reimbursement **[to the State of]** for the cost of acquisition or expropriation of land required for the purposes of the toll road;”;

- (b) by the addition in subsection (1) to the definition of “permanent work” of the following paragraph:

“(c) any payment made to the South African National Roads Agency Limited in respect of the acquisition of the right to operate a toll road.”;

- (c) by the substitution in subsection (1) for paragraph (b) of the definition of “single toll road” of the following paragraph:

“(b) two or more toll roads or portions thereof in respect of which a single agreement has been concluded with the **[State]** South African National Roads Agency Limited;”;

- (d) by the substitution in subsection (1) for the definition of “tolling period” of the following definition:

“‘tolling period’, in relation to a toll road, means the initial period during which the **[State]** South African National Roads Agency Limited has granted to the taxpayer or any other person the right to operate such toll road, including any period in respect of which such right was so granted in terms of an interim agreement concluded by the **[State]** South African National Roads Agency Limited, but excluding any extension of such first-mentioned period in respect of which a right of renewal may be exercised;”;

- (e) by the substitution for subsection (4) of the following subsection:

“(4) No deduction or allowance shall be granted under this Act in respect of expenditure contemplated in subsection (2) otherwise than as provided in that subsection **[or section 11(o)]**.”.

(2) Subsection (1)(a), (b), (c) and (d) is deemed to have come into operation on 19 May 1998.

Amendment of section 24K of Act 58 of 1962

14. (1) Section 24K of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any amount contemplated in the definition of ‘interest rate agreement’ in subsection (1) shall for the purposes of this Act be deemed to have been incurred by or accrued to, as the case may be, a person contemplated in such definition on a day to day basis **[(which conforms with generally accepted accounting practice and is consistently applied for all financial reporting purposes)]** during the period in respect of which it is calculated.”.

(2) Subsection (1) is deemed to have come into operation on 1 July 2002 and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of section 29A of Act 58 of 1962

15. Section 29A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the words in subparagraph (ii) of paragraph (a) preceding the proviso of the following words:

“(ii) any policy of which the owner is a person **[or body the entire receipts and accruals of whom or of which are]** where any amount constituting gross income of whatever nature would be exempt from tax [under any provision] in terms of section 10 were it to be received by or accrue to that person:”.

Amendment of section 45 of Act 58 of 1962

16. Section 45 of the Income Tax Act, 1962, is hereby amended by the addition in subsection (6) of the Afrikaans text to paragraph (a) of the following subparagraph:

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“(iv) daardie finansiële instrument ‘n ekwiteitsaandeel in ‘n beheerde groepmaatskappy met betrekking tot daardie oordraggewende maatskappy uitmaak en daardie beheerde groepmaatskappy onmiddellik voor daardie beskikking nie ‘n plaaslike finansiële instrumenthouermaatskappy of ‘n buitelandse finansiële instrumenthouermaatskappy was nie: Met dien verstande dat by die vasstelling of daardie beheerde groepmaatskappy ‘n plaaslike finansiële instrumenthouermaatskappy of ‘n buitelandse finansiële instrumenthouermaatskappy uitmaak, enige finansiële instrument waarvan die markwaarde gelyk is aan die basiskoste daarvan, in geheel buite rekening gelaat moet word; of”.

Amendment of section 66 of Act 58 of 1962

17. Section 66 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subitems (A) and (B) of item (aa) of subparagraph (ii) of paragraph (b) of the following subitems:

- “(A) in the case of any person who was or, had he lived would have been, at least 65 years of age on the last day of the year of assessment, exceeded **[R10 000]** R16 000; or
- (B) in any other case, exceeded **[R6 000]** R11 000; or”.

Amendment of section 75 of Act 58 of 1962

18. Section 75 of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (2).

Amendment of section 88G of Act 58 of 1962

19. Section 88G of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) maintain a register of all disputes settled in the circumstances contained in **[these regulations]** this Part; and”.

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962

20. (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (4) of the following subparagraph:

“(4) **[Any]** The amount required to be deducted or withheld from any **[amount of]** remuneration under this Schedule by way of employees tax, **[shall]** must be calculated on the balance of **[such amount of]** the remuneration remaining after deducting **[in respect of]** therefrom—

(a) any contribution by the employee concerned to any pension fund or retirement annuity fund which the employer is entitled or required to deduct from **[such amount of]** that remuneration, but limited to the deduction to which the employee is entitled under section 11(k) or (n), as the case may be, having regard to the remuneration and the period in respect of which it is payable; **[and]**

(b) at the option of the employer any **[such]** contribution to a retirement annuity fund which has been paid by the employee and in respect of which proof of payment has been furnished to the employer, but limited to the deduction to which the employee is entitled under section 11(n) having regard to the remuneration and the period in respect of which it is payable;

(c) at the option of the employer, any premium paid by the employee, of which proof of payment has been furnished to the employer, in terms of an insurance policy—

- (i) to the extent that it covers that employee against the loss of income as a result of illness, injury, disability or unemployment; and
- (ii) in respect of which all amounts payable in terms of that policy constitutes or will constitute income as defined, but limited to the deduction to which the employee is entitled under section 11(a); and
- (d) any contribution by the employee to a medical scheme as contemplated in section 18(1)(a), if the employee is entitled to a rebate under section 6(2)(b),

[an amount which, having regard to such remuneration or to the period in respect of which it is payable, is sufficient to restrict the aggregate of the deductions under this subparagraph during the year of assessment to an amount equal to the deduction to which the employee is entitled under the provisions of section 11(k)(i) or (ii) or 11(n)(aa) or (bb), as the case may be, and, in the case of any employee who is entitled to a rebate under section 6 (2) (b), after deducting any contribution by the employee to a medical scheme contemplated in section 18 (1) (a)].”; and

- (b) by the substitution in subparagraph (5) of paragraph (aa) of the proviso to item (a) of the following paragraph:

“(aa) more than 80 per cent of the gross income of such person during the year of assessment consists of, or is likely to consist of, an amount or amounts received from any one client of such person, or any associated institution as defined in the Seventh Schedule to this Act in relation to such client, unless that person is a labour broker which throughout the year of assessment employs more than three full-time employees—

- (A) who are on a full-time basis engaged in the business of that labour broker of providing or procuring persons for clients of that labour broker; and
- (B) who are not connected persons in relation to that labour broker.”.

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(2)(a) Subsection (1)(a) shall come into operation on 1 August 2004 and shall apply in respect of any remuneration paid on or after that date.

(b) Subsection (1)(b) shall come into operation on the date of promulgation of this Act and shall apply in respect of any application for an exemption certificate on or after that date.

Amendment of paragraph 16 of Fourth Schedule to Act 58 of 1962

21. Paragraph 16 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2B) for the words preceding item (a) of the following words:

“Every representative employer and person contemplated in subparagraph (2) shall be personally liable for the payment of any employees’ tax, additional tax, penalty or interest payable by that representative employer or person in his or her representative capacity to the extent that the representative employer or person, while it remains unpaid,—”.

Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962

22. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (b) of the following item:
 - “(b) any person in respect of whose liability for normal tax for the relevant year of assessment payments are required to be made under section thirty-three **[or thirty-five]** of this Act;”;
- (b) by the deletion in subparagraph (1) of item (c).

Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962

23. Paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “valuation date” of item (a) of the following item:

- “(a) in the case of any person **[contemplated in section 10(1)(cA)]** which after 1 October 2001 ceases to be an exempt person for purposes of **[that section and]** paragraph 63, the date on which that person so ceases to be an exempt person; or”.

Amendment of paragraph 39 of Eighth Schedule to Act 58 of 1962

24. Paragraph 39 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (b) of the following item:

- “(b) which is immediately after the disposal—
- (i) a member of the same group of companies as that person; or
 - (ii) a trust with a beneficiary which is a member of the same group of companies as that person.
- [immediately after the disposal subject to subparagraph (3)].”.**

Amendment of paragraph 65 of Eighth Schedule to Act 58 of 1962

25. (1) Paragraph 65 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraphs (4) and (5) of the following subparagraphs:

“(4) Where a replacement asset contemplated in **[subsection]** subparagraph (1) constitutes a depreciable asset, the person must

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

(5) Where a person during any year of assessment disposes of a replacement asset **[contemplated in subparagraph (4)]** and any portion of the disregarded capital gain which is apportioned to that asset **[as contemplated in subparagraph (3)]**, has not otherwise been treated as a capital gain in terms of **[subparagraph (4)]** this paragraph, that person must treat that portion of disregarded gain as a capital gain from the disposal of that replacement asset in that year of assessment.”;

- (b) by the substitution in subparagraph (6) for the words preceding item (a) of the following words:

“(6) Where a person fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in **[subsection]** subparagraph (1)(d)(iii) or (iv), subparagraph (2) shall not apply and that person must—“;

- (c) by the substitution for subparagraph (7) of the following subparagraph:
“(7) Where a replacement asset or assets constitute personal use assets, the provisions of this paragraph shall not apply, **[unless the asset disposed of as contemplated in subparagraph (1)(a) constitutes a personal use asset]**.”.

(2) Subsection (1) is deemed to have come into operation on 22 December 2003 and shall apply in respect of any disposal on or after that date.

Amendment of paragraph 67C of Eighth Schedule to Act 58 of 1962

26. (1) Paragraph 67C of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (b) and the words following item (b) of the following item and words:

“(b) any prospecting right, mining right, exploration right or production right, mining permit, **[or]** retention permit or reconnaissance permit, as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), is wholly or partially renewed in terms of **[this]** that Act, and the continued, converted or renewed right or permit will be treated as one and the same asset as the right or permit before continuation, conversion or renewal for purposes of this Act.”.

(2) Subsection (1) shall come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), comes into operation.

Amendment of paragraph 75 of Eighth Schedule to Act 58 of 1962

27. Paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1)Where a company makes a distribution of an asset *in specie* to a shareholder (including an interim dividend), that company must be treated as having disposed of that asset to that shareholder on the date of distribution for an amount received or accrued equal to the market value of that asset on **[the]** that date **[of distribution]**.”.

Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962

28. Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

“(3) Any distribution of an asset *in specie* received by or accrued to a shareholder must be treated as having been acquired on the date of distribution and for [at an] expenditure equal to the market value of that asset on that [and on the] date [contemplated in paragraph 75(2)], which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”.

Amendment of paragraph 78 of Eighth Schedule to Act 58 of 1962

29. Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) Where a company issues capitalisation shares, those capitalisation shares must be treated as having been acquired on the date of distribution for expenditure incurred and paid of nil, except to the extent that the issue of those shares constitutes a dividend, in which case they must be treated as having been acquired on the date of distribution for expenditure incurred and paid equal to the amount of that dividend.”.

Amendment of section 4 of Act 91 of 1964

30. (1) Section 4 of the Customs and Excise Act, 1964, is hereby amended by renumbering subsection 3E as subsection (3E).

(2) Subsection (1) shall be deemed to have come into operation on 22 December 2003.

Amendment of Chapter VA of Act 91 of 1964

31. (1) Chapter VA of the Customs and Excise Act, 1964, is hereby amended—

- (a) by renumbering section 47C as section 54A;
- (b) by renumbering section 47D as section 54B;
- (c) by renumbering section 47E as section 54C;
- (d) by renumbering section 47F as section 54D;
- (e) by renumbering section 47G as section 54E; and
- (f) by renumbering section 47H as section 54F.

(2) Subsection (1) shall be deemed to have come into operation on 1 June 2004.

Amendment of section 77A of Act 91 of 1964

32. (1) Section 77A of the Customs and Excise Act, 1964, is hereby amended by renumbering paragraph (b) as subsection (2).

(2) Subsection (1) shall come into operation on the date on which section 77A of the Customs and Excise Act, 1964, comes into operation.

Amendment of section 77P of Act 91 of 1964

33. (1) Section 77P of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

- (a) be in such format which, subject to section ~~[3E]~~ 4(3E), does not disclose the identity of the person concerned, and be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister of Finance, as the case may be; and”.

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(2) Subsection (1) shall be deemed to have come into operation on 22 December 2003.

Amendment of section 105 of Act 91 of 1964

34. Section 105 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) the interest so payable shall be paid at a rate the Minister of Finance determines in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999): Provided that where the Minister at any time fixes a new rate in terms of that Act, that new rate will apply for purposes of this Act from the first day of the second month following the date on which that new rate came into operation ;”.

Amendment of Schedule No. 1 to Act 91 of 1964

35. (1) Schedule No. 1 to the Customs and Excise Act, 1964, is hereby amended as set out in Schedule 2 to this Act.

(2) Subject to the provisions of section 58(1) of the Customs and Excise Act, 1964, subsection (1) shall be deemed to have come into operation on 18 February 2004.

Amendment of section 1 of Act 77 of 1968

36. (1) Section 1 of the Stamp Duties Act, 1968, is hereby amended by the deletion of the definition of “fixed deposit”.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2004.

Amendment of section 7 of Act 77 of 1968

37. Section 7 of the Stamp Duties Act, 1968, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (d);
- (b) by the substitution in subsection (1) for paragraphs (g) and (h) of the following paragraphs:

“(g) in the case of the original issue of a marketable security **[or of a negotiable certificate of deposit]**, the company or corporate body issuing the marketable security **[or negotiable certificate of deposit]**;

(h) in the case of the registration of transfer of a marketable security **[or of a negotiable certificate of deposit]**, the transferee;”.

Repeal of section 21 of Act 77 of 1968

38. (1) Section 21 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2004 and shall apply in respect of any fixed deposit receipt given on or after that date.

Amendment of section 23 of Act 77 of 1968

39. Section 23 of the Stamp Duties Act, 1968, is hereby amended by the deletion in subsection (3) of paragraph (ii) of the proviso.

Repeal of item 7 of Schedule 1 to Act 77 of 1968

40. (1) Item 7 of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 1 March 2004 and shall apply in respect of any mortgage bond executed on or after that date.

Repeal of item 13 of Schedule 1 to Act 77 of 1968

41. (1) Item 13 of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 1 April 2004 and shall apply in respect of any fixed deposit receipt given on or after that date.

Amendment of section 1 of Act 89 of 1991

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

(a) by the substitution for the definition of “prescribed rate” of the following definition:

“‘prescribed rate’ in relation to any interest payable in terms of this Act means a rate equal to the rate fixed from time to time by the Minister by notice in the *Gazette* in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999): Provided that where the Minister at any time fixes a new rate in terms of that Act, that new rate will apply for purposes of this Act from the first day of the second month following the date on which that new rate came into operation;”;

(b) by the deletion of the definition of “registration number”;

(c) by the deletion in the definition of “second-hand goods” of the word “and” at the end of item (i) and the addition of the word “and” at the end of item (ii);

(d) by the amendment to the definition of “second-hand goods” of paragraph (iii):

“(iii) any prospecting right, mining right, exploration right, production right, mining permit, retention permit or reconnaissance permit as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), **[issued]** granted or renewed in terms of that Act or received upon conversion pursuant to Schedule II, except when that prospecting right, mining right, exploration right, production right or interest in that right is transferred, ceded, let, sublet, alienated or varied or otherwise disposed as contemplated in section 11 of the Mineral and Petroleum Resources Development Act, 2002.”;

(e) by the insertion before the definition of “vendor” of the following definition:

“VAT registration number’, in relation to any vendor, means the number allocated to that vendor by the Commissioner for the purposes of this Act;”.

(2) Subsection (1)(c) and (d) shall come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002, comes into operation.

Amendment of section 2 of Act 89 of 1991

43. Section 2 of the Value-Added Tax Act, 1991, is hereby amended by the deletion in subsection (1) of paragraph (l).

Amendment of section 6 of Act 89 of 1991

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

“(e) publishing and making known the name and VAT registration number of any vendor.”.

Amendment of section 11 of Act 89 of 1991

45. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (m) of the following paragraph:

“(m) a registered vendor supplies goods in terms of a sale or instalment credit agreement to a registered vendor in **[the] a customs [secured] controlled area [of an Industrial Development Zone]** and consigns or delivers the goods to that vendor in that area;”.

(2) Subsection (1) shall come into operation on the date that section 153(1)(c) of the Second Revenue Laws Amendment Act, 2001 (Act No. 60 of 2001), comes into operation.

Amendment of section 20 of Act 89 of 1991

46. (1) Section 20 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(b) the name, address and VAT registration number of the supplier;”;

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

“(c) the name and address of the recipient and where the recipient is a registered vendor, the VAT registration number of the recipient;”;

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

“(b) the name, address and VAT registration number of the supplier;”.

(2)(a) Subsection (1)(a) and (c) shall come into operation on the date of promulgation.

(b) Subsection (1)(b) shall come into operation on 1 March 2005.

Amendment of section 21 of Act 89 of 1991

47. (1) Section 21 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (3) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) the name, address and VAT registration number of the vendor;”;

(b) by the substitution in subsection (3) for subparagraph (iii) of paragraph (a) of the following subparagraph:

“(iii) the name and address of the recipient and, where the recipient is a registered vendor, the VAT registration number of the recipient, except where the credit note relates to a supply in respect of which a tax invoice contemplated in section 20(5) was issued;”;

(c) by the substitution in subsection (3) for subparagraph (ii) of paragraph (b) of the following subparagraph:

“(ii) the name, address and VAT registration number of the vendor;”;

(d) by the substitution in subsection (3) for subparagraph (iii) of paragraph (b) of the following subparagraph:

“(iii) the name and address of the recipient and, where the recipient is a registered vendor, the VAT registration number of the recipient, except where the debit note relates to a supply in respect of which a tax invoice contemplated in section 20(5) was issued;”.

(2)(a) Subsection (1)(a) and (c) shall come into operation on the date of promulgation.

(b) Subsection (1)(b) and (d) shall come into operation on 1 March 2005.

Amendment of section 29 of Act 89 of 1991

48. Section 29 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph (a) for subparagraphs (i) and (ii) of the following subparagraphs:

- “(i) the name and address of the seller and, if registered as a vendor, his VAT registration number;
- (ii) the name and address of the person whose goods are sold (hereinafter referred to as the owner) and, if the owner is registered under this Act, the VAT registration number of the owner;”.

Amendment of section 39 of Act 89 of 1991

49. Section 39 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the insertion after subsection (4) of the following subsection:

“(5) Where any person who is liable for the payment of tax and is required to make such payment in the manner prescribed in section 7(3)(c), fails to pay any amount of such tax on the date on which in terms of the Customs and Excise Act liability arises for the payment of the excise duty referred to in section 7(3)(a), that person shall, in addition to such amount of tax, pay—

- (a) a penalty equal to 10 per cent of the said amount of tax; and
- (b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on that amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.”;

(b) by the substitution for subsection (7) of the following subsection:

“(7) To the extent that the Commissioner is satisfied that the failure on the part of the person concerned or any other person under

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the control or acting on behalf of that person to make payment of the tax within the period for payment contemplated in subsection (1)(a), (2), (3), (4), (6) or (6A) or on the date referred to in subsection (5), as the case may be—”.

Amendment of section 54 of Act 89 of 1991

50. Section 54 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (3) for the words following paragraph (b) of the following words:

“the agent shall maintain sufficient records to enable the name and address and VAT registration number of the principal to be ascertained and in respect of all supplies made on or after 1 January 2000 by or to the agent on behalf of the principal, the agent shall notify the principal in writing within 21 days of the end of the calendar month during which the supply was made or received, of the particulars contemplated in paragraphs (e), (f) and (g) of section 20(4) in relation to such supplies.”.

Amendment of Item 407.00 of Schedule 1 to Act 89 of 1991

51. Item 407.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph 4A of the notes to item 407.00 of the following paragraph:

“4A. The exemption in item 407.02/00.00/02.00 is only applicable if the total value of the goods declared under item 407 (excluding goods provided for in item 407.01) does not exceed **[R10 000]** R12 000 (or such other amount as the Minister may fix by way of a notice in the *Gazette*).”.

Amendment of item 409.00 of Schedule 1 to Act 89 of 1991

52. Item 409.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the substitution in subitem 409.07 for the words preceding paragraph (i) of the following words:

“409.07/00.00/01.00 Compensating products obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the **[Director-General: Trade and Industry on the recommendation of the Board of Trade and Industry]** International Trade Administration Commission, provided—”.

Amendment of item 412.00 of Schedule 1 to Act 89 of 1991

53. Item 412.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subitem 412.11 for paragraphs (i) and (ii) of the proviso of the following paragraphs:

“(i) the importation of any goods under this item shall be subject to a certificate issued by the **[Director-General: Trade and Industry]** International Trade Administration Commission and to such other conditions as may be agreed upon by the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland; and

(ii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the **[Director-General: Trade and Industry]** International Trade Administration Commission.”;

(b) by the substitution in subitem 412.12 for paragraph (ii) of the proviso of the following paragraph:

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- “(ii) the importation of any goods under this item shall be subject to a certificate issued by the **[Director-General: Trade and Industry]** International Trade Administration Commission and to such other conditions as may be agreed upon by the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland; and”;
- (c) by the substitution in subitem 412.27 for paragraph (a) of the proviso of the following paragraph:
- “(a) a specific permit issued by the **[Director-General: Trade and Industry on the recommendation of the Board on Tariffs and Trade]** International Trade Administration Commission, is submitted;”.

Amendment of Item 490.00 of Schedule 1 to Act 89 of 1991

54. Item 490.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for subitem 490.40/00/00/01/00 of the following subitem:

“490.40/00.00/01.00 Machinery or plant (excluding tower cranes) for use on contract in civil engineering or construction work, in such quantities and at such times and subject to such conditions as the Commissioner, on the recommendation of the International Trade Administration Commission, may allow by specific permit.”;

- (b) by the substitution for subitem 490.90 of the following subitem:

“490.90/00.00/01.00 Machinery or plant (excluding tower cranes) for use on contract other than for purposes of civil engineering or construction work, in such quantities and at such times and subject to such conditions as the Commissioner, on the recommendation of

the **[Board of Trade and Industry]**
International Trade Administration
Commission, may allow by specific permit.”.

Amendment of Schedule 2 to Act 89 of 1991

55. (1) Schedule 2 to the Value-Added Tax Act, 1991, is hereby amended by the substitution in Part A for subparagraph (c) of paragraph 2 of the following subparagraph:

“(c) a tax invoice in respect of the relevant supply is issued **[which, in addition to the]** containing such particulars as required by section 20(4) of this Act **[states the registration number of the recipient]**.”.

(2) Subsection (1) shall come into operation on 1 March 2005.

Amendment of section 3 of Act 38 of 1996

56. (1) Section 3 of the Tax on Retirement Funds Act, 1996, is hereby amended by the substitution for paragraph (e) of the following paragraph:

“(e) ‘D’ represents the amount of any foreign dividends received by or accrued to such fund during such tax period **[as determined in accordance with the provisions of section 9E]** which are not exempt in terms of section 10(1)(k)(ii) of the Income Tax Act, 1962 (Act No. 58 of 1962).”.

(2) Subsection (1) shall be deemed to have come into operation on 1 September 2004 and shall apply in respect of any foreign dividend received or accrued on or after that date.

Insertion of section 13A in Act 38 of 1996

57. The following section is hereby inserted in the Tax on Retirement Funds Act, 1996, after section 13:

“Interest on delayed refund of overpayment

13A. (1) The amount by which any tax on retirement funds paid by a person in respect of any tax period exceeds the tax on retirement funds as finally determined for that period is refundable to that person.

(2) Interest is payable by the Commissioner on an amount refunded in terms of subsection (1) at the rate referred to in paragraph (a) of the definition of ‘prescribed rate’ in section 1 of the Income Tax Act, which interest is determined from the day following the last date for payment of the tax on retirement funds as contemplated in section 6 to the date that the refund is made to that person.

(3) Subsection (2) does not apply in respect of any amount refunded where interest is payable to that person on that amount in respect of the same period in terms of section 88 of the Income Tax Act, 1962.”

Amendment of section 56 of Act 53 of 1999

58. Section 56 of the Revenue Laws Amendment Act, 1999, which inserts section 54A in the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for the words preceding the heading to section 54A of the Customs and Excise Act, 1964, of the following words:

“(1) The following section is hereby inserted after section **[54]** 116 of the Customs and Excise Act, 1964:”; and

(b) by renumbering section 54A of the Customs and Excise Act, 1964, which is inserted by section 56(1) of the Revenue Laws Amendment Act, 1999, as section 116A.

Amendment of section 115 of Act 60 of 2001

59. Section 115 of the Second Revenue Laws Amendment Act, 2001, is hereby amended—

- (a) to the extent that it amends section 4(3) of the Customs and Excise Act, 1964, by the deletion of paragraph (iv) of the proviso to section 4(3) of that Act; and
- (b) by the deletion in subsection (2) of paragraph (a).

Amendment of section 20 of Act 12 of 2003

60. Section 20 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

- “(a) in respect of the tax relief contemplated in section 15 or 17, where the applicant or facilitator, as the case may be, fails to submit the tax return for the last year of assessment ending on or before 28 February 2003 by **[29 February 2004]**—
 - (i) a date determined by the Amnesty Unit, in the case where the applicant or facilitator was not registered for tax or the registration of the applicant or facilitator was dormant at the time that the application for amnesty was submitted; or
 - (ii) 31 March 2004, in any other case; or”.

Amendment of section 30 of Act 12 of 2003

61. Section 30 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, is hereby amended—

- (a) by renumbering the existing wording thereof as subsection (1); and

(b) by the addition of the following subsection:

“(2) The regulations issued under this Act are deemed to have been enacted as part of this Act with effect from 1 June 2003.”.

Amendment of section 26 of Act 45 of 2003

62. Section 26 of the Revenue Laws Amendment Act, 2003, is hereby amended—

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

“(b) Subsection (1)(c), (d), (e), (f), (g) and (h) [and (i)] shall come into operation on 1 June 2004 and shall apply in respect of any foreign dividend received or accrued during any year of assessment commencing on or after that date.”;

(b) by the addition to subsection (2) of the following paragraph:

“(f) Subsection (1)(i) shall come into operation on 1 June 2004 and shall apply in respect of any year of assessment commencing on or after that date.”.

Amendment of section 28 of Act 45 of 2003

63. Section 28 of the Revenue Laws Amendment Act, 2003, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) shall come into operation on 1 January 2004 and shall apply in respect of any expenses actually incurred during any year of assessment ending on or after that date.”.

Amendment of section 38 of Act 45 of 2003

64. Section 38 of the Revenue Laws Amendment Act, 2003, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1)(b) shall come into operation on the date of promulgation and shall apply in respect of any asset acquired on or after that date.”.

Amendment of section 53 of Act 45 of 2003

65. Section 53 of the Revenue Laws Amendment Act, 2003, is hereby amended by the deletion in the Afrikaans text of paragraph (*f*) of subsection (1).

Amendment of section 166 of Act 45 of 2003

66. Section 166 of the Revenue Laws Amendment Act, 2003, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) (a) Subsection (1)(a) and (b) [**and (d)**] shall [**to the extent it inserts subsection (23)**] come into operation on the date determined by the President by proclamation in the *Gazette*; and
(b) Subsection (1)(d) shall to the extent that it inserts subsection (23) in section 8 of the Value-Added Tax Act, 1991, come into operation on the date determined by the President by proclamation in the *Gazette*.”.

Amendment of section 169 of Act 45 of 2003

67. Section 169 of the Revenue Laws Amendment Act, 2003, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (*a*); and
- (b) by the substitution in subsection (1) for paragraph (*b*) of the following paragraph:

“(b) Subsection (1)[**(a)**], (*e*), (*f*), (*h*), (*j*) and (*k*) shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.”.

Amendment of section 172 of Act 45 of 2003

68. Section 172 of the Revenue Laws Amendment Act, 2003, is hereby amended—

- (a) by the numbering of the existing provision as subsection (1); and
- (b) by the addition of the following subsection:

“(2) Subsection (1)(a) shall come into operation on 1 March 2005 and shall apply in respect of any supply made on or after that date.”.

Amendment of section 192 of Act 45 of 2003

69. Section 192 of the Revenue Laws Amendment Act, 2003, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) shall in so far as it inserts section **[12A]** 11A in the Uncertificated Securities Tax Act, 1998, come into operation on the date of promulgation of this Act and shall apply in respect of the purchase of any security in terms of a transaction, operation, scheme or undertaking entered into on or after that date.”.

Amendment of section 208 of Act 45 of 2003

70. Section 208 of the Revenue Laws Amendment Act, 2003, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2)(a) Subsection (1)(a) shall be deemed to have come into operation on 1 April 2004.

(b) Subsection (1)(b) shall come into operation on the date that **[section 2 of]** the Unemployment Insurance Amendment Act, 2003, comes into operation.”.

Continuation of certain amendments of Schedules Nos. 1 to 6 and 10 to Act 91 of 1964

71. (1) Every amendment or withdrawal of or insertion in Schedules Nos. 1 to 6, inclusive, and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56 or 75(15) of that Act during the calendar year ending on 31 December 2003 shall not lapse by virtue of the provisions of section 48(6), 49, 56(3) or 75(16) of that Act.

(2) The amendment of Part 2 of Schedule No. 1 and Schedule No. 6 to the Customs and Excise Act, 1964, made respectively under sections 48 and 75 of that Act by Government Notices R.402, R.404 and R.405 of 26 March 2004, in respect of the said Part 2 of Schedule No. 1 and Schedule No. 6 shall not lapse by virtue of the provisions of section 48(6) of that Act.

Transitional Mineral and Petroleum Provisions

72. The transitional mineral and petroleum provisions relating to the continuation of payments to the State for the removal and disposal of minerals are set out in Schedule 3 of this Act.

Short title and commencement

73. (1) This Act shall be called the Taxation Laws Amendment Act, 2004.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2005.

SCHEDULE 1

RATES OF NORMAL TAX PAYABLE BY PERSONS (OTHER THAN COMPANIES) IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 28 FEBRUARY 2005, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 2005

(Section 3)

1. The rates of normal tax referred to in section 3 of this Act in respect of persons (other than companies) are as follows:—

(a) in respect of the taxable income of any person (other than a person in respect of which subparagraph (b) applies), an amount of tax calculated in accordance with the table below:

Taxable Income	Rates of Tax
Where the taxable income—	
Does not exceed R74 000.....	18 per cent of each R1 of the taxable income;
Exceeds R74 000 but does not exceed R115 000	R13 320 plus 25 per cent of the amount by which the taxable income exceeds R74 000;
“ R115 000 “ “ “ “ R155 000	R23 570 plus 30 per cent of the amount by which the taxable income exceeds R115 000;
“ R155 000 “ “ “ “ R195 000	R35 570 plus 35 per cent of the amount by which the taxable income exceeds R155 000;
“ R195 000 “ “ “ “ R270 000	R49 570 plus 38 per cent of the amount by which the taxable income exceeds R195 000;
“ R270 000	R78 070 plus 40 per cent of the amount by which the taxable income exceeds R270 000.

(b) in respect of the taxable income of any trust (other than a special trust), an amount of 40 cents on each rand of taxable income.

2. The rates of normal tax referred to in section 2 of this Act in respect of companies are, subject to the provisions of paragraph 4, as follows:—

- (a) on each rand of the taxable income of any company (excluding taxable income referred to in subparagraphs (b), (c), (d), (e), (f), (g) and (h)), 30 cents, or, in the case of such a company which mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, 38 cents;
- (b) in respect of the taxable income of any company which qualifies as a small business corporation as defined in section 12E of the Income Tax Act, 1962, on each rand of the taxable income as does not exceed R150 000, 15 cents, and on each rand of the taxable income of such company as exceeds R150 000, 30 cents;
- (c) on each rand of the taxable income of any employment company as defined in section 12E of the Income Tax Act, 1962, 35 cents;
- (d) on each rand of the taxable income derived by any company from mining for gold on any gold mine with the exclusion of so much of the taxable income as the Commissioner for the South African Revenue Service determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the Income Tax Act, 1962, but after the set-off of any assessed loss in terms of section 20(1) of that Act, a percentage determined in accordance with the formula:

$$y = 37 - \frac{185}{x}$$

or, in the case of a company which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, in accordance with the formula:

$$y = 46 - \frac{230}{x}$$

in which formulae y represents such percentage and x the ratio expressed as a percentage which the taxable income so derived (with the said exclusion, but before the set-off of any assessed loss or deduction which is not attributable to the mining for gold from the said mine) bears to the income so derived (with the said exclusion);

- (e) on each rand of the taxable income of any company, the sole or principal business of which in the Republic is, or has been, mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Commissioner for the South African Revenue Service determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the Income Tax Act, 1962, a rate equal to the average rate of normal tax or 30 cents, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of its aggregate taxable income from mining for gold on any gold mine for the period from which that company commenced its gold mining operations on that gold mine to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;
- (f) on each rand of the taxable income derived by any company from carrying on long-term insurance business in respect of its individual policyholder fund, company policyholder fund and corporate fund, 30 cents;
- (g) on each rand of the taxable income (excluding taxable income referred to in subparagraphs (b), (c), (d), (e), (f) and (h)) derived by a company which is not a resident and which carries on a trade through a branch or agency within the Republic, 35 cents;
- (h) on each rand of the taxable income derived by a qualifying company as contemplated in section 37H of the Income Tax Act, 1962, subject to the provisions of the said section, zero cents:

Provided that the tax determined in accordance with any of subparagraphs (a) to (h), inclusive, shall be payable in addition to the tax determined in accordance with any other of the said subparagraphs.

3. The rates set forth in paragraphs 1 and 2 shall be the rates required to be fixed by Parliament in accordance with the provisions of section 5(2) of the Income Tax Act, 1962.
4. For the purposes of paragraph 2, income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold, and any other income which results directly from mining for gold.
5. In this Schedule, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning so assigned.

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SCHEDULE 2

AMENDMENTS TO SCHEDULE NO. 1 TO THE CUSTOMS AND EXCISE ACT, 1964

(Section 35)

Tariff item	Tariff heading	Description	Present rate of duty		Proposed rate of duty	
			Excise	Customs	Excise	Customs
104.00		Prepared foodstuffs; beverages, spirits and vinegar; tobacco				
104.01	19.01	Malt extract; food preparations of flour, grouts, meal starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on totally defatted basis not elsewhere specified or included:				
.10		Traditional African beer powder as defined in Additional Note 1 to Chapter 19	34.7c/kg	34.7c/kg	34.7c/kg	34.7c/kg
104.10	22.03	Beer made from malt				
.10		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82c/l	7.82c/l	7.82c/l	7.82c/l
.20		Other	2 819.30c/l of absolute alcohol	2 819.30c/l of absolute alcohol	3 073.04c/l of absolute alcohol	3 073.04c/l of absolute alcohol
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must, other than that of heading no. 20.09				
	22.05	Vermouths and other wine of fresh grapes flavoured with plants or aromatic substances				
.02		Sparkling wine	252.60c/l	252.60c/l	323.32c/l	323.32c/l
.04		Unfortified wine	89.6c/l	89.6c/l	117.10c/l	117.10c/l
.06		Fortified wine	200.75c/l	200.75c/l	232.87c/l	232.87c/l
104.17	22.06	Other fermented beverages, (for example, cider, perry and mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included:				
.05		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82c/l	7.82c/l	7.82c/l	7.82c/l
.15		Other fermented beverages, unfortified	143.55c/l	143.55c/l	153.74c/l	153.74c/l
.17		Other fermented beverages, fortified	254.54c/l	254.54c/l	295.27c/l	295.27c/l
.22		Mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages	143.55c/l	143.55c/l	153.74c/l	153.74c/l
.90		Other	254.54c/l	254.54c/l	295.27c/l	295.27c/l

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Tariff item	Tariff heading	Description	Present rate of duty		Proposed rate of duty	
			Excise	Customs	Excise	Customs
104.20	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher; ethyl alcohol and other spirits, denatured, of any strength				
	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages:				
.10		Wine spirits, manufactured by the distillation of wine	4 038.10c/l of absolute alcohol	3 942.10c/l of absolute alcohol	4 583.65c/l of absolute alcohol	4 487.65c/l of absolute alcohol
.15		Spirits, manufactured by the distillation of any sugar cane product	4 038.10c/l of absolute alcohol	3 942.10c/l of absolute alcohol	4 583.65c/l of absolute alcohol	4 569.65c/l of absolute alcohol
.25		Spirits, manufactured by the distillation of any grain product	4 038.10c/l of absolute alcohol	3 942.10c/l of absolute alcohol	4 583.65c/l of absolute alcohol	4 537.65c/l of absolute alcohol
.29		Other spirits	4 038.10c/l of absolute alcohol	4 038.10c/l of absolute alcohol	4 583.65c/l of absolute alcohol	4 583.65c/l of absolute alcohol
.40		Liqueurs and other spirituous beverages	4 038.10c/l of absolute alcohol	4 038.10c/l of absolute alcohol	4 583.65c/l of absolute alcohol	4 583.65c/l of absolute alcohol
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes				
.10		Cigars, cheroots and cigarillos, of tobacco or of tobacco substitutes	106 600c/kg net	106 600c/kg net	123 304c/kg net	123 304c/kg net
.20		Cigarettes, of tobacco or of tobacco substitutes	194.25c/10 cigarettes	194.25c/10 cigarettes	226.40c/10 cigarettes	226.40c/10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences:				
.10		Cigarette tobacco and substitutes thereof	12 447c/kg	12 447c/kg	13 903c/kg	13 903c/kg
.20		Pipe tobacco and substitutes thereof	5 824c/kg net	5 824c/kg net	6 832c/kg net	6 832c/kg net

SCHEDULE 3
TRANSITIONAL MINERAL AND PETROLEUM PROVISIONS

(Section 72)

Definitions

1. For purposes of this Schedule, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), bears the meaning so assigned.

Continuation of payments to State for removal and disposal of minerals

2. (1) If a holder of any mining right, production right or mining permit or any prospecting right with a permission to remove and dispose of minerals—

(a) acquired that right or permit upon conversion of an old order right or OP26 right in terms of Schedule II of the Mineral and Petroleum Resources Development Act, 2002; and

(b) was immediately before that conversion required to make lease, royalty or similar payments to the State in terms of any conditions imposed pursuant to the laws applicable in respect of that old order right or OP26 right, as consideration for the removal and disposal of minerals, or would have been required to make such payments had any minerals been removed and disposed of,

that holder must, notwithstanding the repeal of any law in terms of which those conditions were imposed, make payments of that nature to the State to the extent that the mining right, production right, prospecting right or mining permit relates to the same mining or production area as the converted old order right or OP 26 right.

(2)(a) The Minister of Finance must, in consultation with the Minister, determine the amount of the payments required under subparagraph (1) according to the same practices, formulas and procedures which applied before conversion.

(b) Any provision providing for the payment of any penalties or interest charges for failure to make timely payment of the amounts referred to in subparagraph (1), which was in effect before conversion, continues to apply in respect of any failure to make timely payment as required under this Schedule.

Authority and responsibility for collection

3. The Minister has the authority and responsibility to collect the payments referred to in paragraph 2.

Commencement and termination

4. (1) This Schedule is deemed to have come into operation on 1 May 2004.

(2) Paragraphs 1 and 2 cease to apply after five years from the date on which the Mineral and Petroleum Resources Development Act, 2002, comes into operation.