CORPORATE RULES

*This **draft legislation** is released for public information. The amendments contained in this draft are merely proposals which are **subject to change and final approval by the Minister of Finance**. Early comments on this draft will be considered for possible inclusion in a revised draft Bill.*

It is the intention to release the revised draft Bill in the first seven days of October, prior to the commencement of the informal Parliamentary process.

There will be an opportunity to comment on the revised draft Bill, either directly to the National Treasury and SARS or during the public hearings in the Parliamentary Committees in mid-October 2003.

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.

Comments may be submitted to either:

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Amendment of Section 3 of Act 32 of 1948

. (1) Section 3 of the Marketable Securities Tax Act, 1948, is hereby amended—

(a) by the substitution in paragraph *(f)* for subparagraph (v) of the following subparagraph:

"(v) in **[pursuance]** terms of **[a distribution *in specie* in the course of]** an unbundling transaction contemplated in section 46 of that Act; or";

(b) by the substitution in paragraph *(f)* for item (*aa*) of subparagraph (vii) of the following item:

"*(aa)* in subparagraph (i), (ii), (iii), (iv) or (vi) **[had]** regardless of whether or not an election has been made for the provisions of that section to apply; and".

(2) Subsection (1)*(a)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of marketable securities acquired in terms of an unbundling transaction which takes effect on or after that date.

Amendment of section 9 of Act 40 of 1949

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

"*(l)* any company in terms of—

(i) **[any]** an amalgamation transaction contemplated in section 44 of the Income Tax Act, 1962 (Act No. 58 of 1962);

(ii) **[any]** an intra-group transaction contemplated in section 45 of that Act;

(iii) **[any]** a liquidation distribution contemplated in section 47 of that Act; or

(vi) a transaction which would have constituted a transaction or distribution contemplated—

(aa) in subparagraphs (i) to (iii) regardless of whether or not any election has been made that the provisions of that section apply; or

(bb) in subparagraph (i) had the market value of the asset transferred in exchange for those shares exceeded the base cost or the amount taken into account in respect of that asset as contemplated in section 44(6),

where the public officer of that company has made a sworn affidavit or solemn declaration that such amalgamation transaction, intra-

group transaction or liquidation distribution complies with the relevant provisions contained in section 44, 45 or 47, as the case may be, of that Act.".

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any property acquired in terms of an amalgamation transaction, intra-group transaction or liquidation distribution which takes effect on or after that date.

Amendment of section 41 of Act 58 of 1962

. (1) Section 41 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the definition of "allowance asset" of the following definition:

"'allowance asset' means a capital asset **[qualifying for]** in respect of which a deduction or allowance **[under the provisions of the]** is allowable in terms of this Act for purposes other than the determination of any taxable capital gain";

(b) by the substitution in subsection (1) for the words in the definition of "domestic financial instrument holding company" preceding subparagraph (i) of paragraph *(b)* of the following words:

"'domestic financial instrument holding company' means any company where more than 50 per cent of either the market value or **[actual]** the initial cost of acquisition (determined in terms of generally accepted accounting practice) of all the assets of that company, together with the assets of all controlled group companies in relation to that company, consists of financial instruments, other than—

(a) a financial instrument that constitutes a debt due to that company **[(]**or to any controlled group company in relation to that company**[)]** in respect of goods sold or services rendered by that company or controlled group company, as the case may be, where—

(i) the amount of that debt is or was included in the income of that company **[(]**or **[of any]** controlled group company, as the case may be; **[in relation to that company)]** and

(ii) that debt is an integral part of a business conducted by that company or controlled group company, as the case may be, as a going concern; or";

(b) a financial instrument **[of any]** held by that company where that company is regulated in terms of—";

(c) by the substitution for the proviso to "domestic financial instrument holding company" of the following proviso:

"Provided that in determining **[the]** whether 50 per cent **[ratio]** of the market value or initial cost of acquisition of the assets of the company and controlled group companies consists of financial instruments, the following **[will]** assets must be wholly disregarded—

(i) any share of a controlled group company in relation to that company; and

(ii) any financial instrument which constitutes a loan, advance or debt **[if both the debtor and creditor companies are members within the same group of companies]** entered into between—

(aa) that company and any controlled group company in relation to that company; or

(bb) controlled group companies in relation to that company;";

(d) by the deletion, after the definition of "shareholder", of the word "and";

(e) by the insertion, after the definition of "shareholder", of the following definition:

"'trading stock'—

(a) for purposes of sections 42, 44, 45 and 47, includes any livestock or produce contemplated in the First Schedule and any reference in section 11*(a)* or 22(1) or (2) to an amount taken into account in respect of an asset shall, in the case of such livestock or produce, be construed as a reference to the amount taken into account in

respect thereof in terms of paragraph 5(1) or 9 of the First Schedule, as the case may be"; and

(b) for purposes of sections 42(7)*(b*(i), 43(6)*(b),* 44(5)*(b)*(i), 45(5)*(b)*(i) and 47(4)*(b)*(i), means trading stock that is neither of the same kind nor of the same or equivalent quality as trading stock regularly and continuously disposed of by that person; and

(f) by the substitution in subsection (4) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"(ii) that company has disposed of all assets and has settled all liabilities (other than assets required to satisfy any reasonably anticipated liabilities to the Commissioner or to any sphere of government of any country other than the Republic and costs of administration relating to the liquidation or winding-up), unless the Commissioner otherwise allows for a period which the Commissioner deems reasonable to enable that company to take adequate steps to wind down the business of the company; and".

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any company formation transaction, share-for-share transaction, amalgamation transaction, intra-group transaction, unbundling transaction or liquidation distribution which takes effect on or after that date.

Amendment of section 42 of Act 58 of 1962

. (1) Section 42 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words in paragraph *(a)* preceding subparagraph (i) of the following words:

"*(a)* in terms of which a person (other than a trust which is not a special trust) disposes of an asset, the market value of which is equal to or exceeds—";

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

"(ii) acquired the equity shares in that company on the date that such person acquired that asset and for a cost equal to—

(aa) where that asset is so disposed of as a capital asset, any expenditure in respect of that asset incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule and to have incurred such cost at the date of incurral by that person of such expenditure; or

(bb) where that asset is so disposed of as trading stock, the amount taken into account in respect of that asset in terms of section 11*(a)* or 22(1) or (2),

which cost must, where those equity shares are acquired as—

(A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and

(B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11*(a)* or 22(1) or (2); and";

(c) by the insertion in subsection (2) of the word "and" at the end of paragraph *(b)*;

(d) by the addition in subsection (2) of the following paragraph after paragraph *(b)*:

"*(c)* any valuation of that asset effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule must be deemed to have been effected in respect of the equity shares in that company acquired in terms of that company formation transaction.";

(e) by the substitution in subsection (4) for the words preceding paragraph *(a)* and paragraphs *(a)* and *(b)* of the following words and of the following words and paragraphs:

"(4) **[Subject to subsection (8),]** Where—

(a) a person disposes of an asset to a company in terms of a company formation transaction; and

(b) that person becomes entitled, in exchange for that asset, **[becomes entitled]** to any consideration in addition to any equity shares issued by the company to that person, other than any debt assumed by that company as contemplated in subsection (8),";

(f) by the deletion in subsection (4) of the word "or" after subparagraph (i);

(g) by the substitution for the words in subsection (4) following subparagraph (iii) of the following words:

"that must be attributed to the part of the asset deemed to have been disposed of other than in terms of a company formation transaction, must bear the same ratio to the **[total]** respective amounts referred to in subparagraphs (i) to (iii) as the market value of the consideration not consisting of equity shares issued by that company bears to the market value of the total consideration in respect of that asset.";

(h) by the substitution in subsection (6) for paragraphs *(a)* and *(b)* and the proviso of the following paragraphs and proviso:

"*(a)* disposed of all the equity shares acquired in terms of that company formation transaction **[which were not disposed of]** that are still held immediately **[before]** after that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and

(b) immediately reacquired all the equity shares **[not disposed of immediately after that person ceased to hold a qualifying interest]** contemplated in paragraph *(a)* at a cost equal to the amount contemplated in that paragraph **[*(a)*]**:

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in that company in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution

contemplated in section 47, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been financial instrument, or as the result of the death of that person.";

(i) by the substitution in subsection (8) for the words following paragraph *(b)* of the following words:

"that person must, upon the disposal of any equity share acquired in terms of that company formation transaction and notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraphs *(a)* or *(b)*, treat the face value of that debt as a capital distribution of cash in respect of that equity share, for the purposes of paragraph 76 of the Eighth Schedule, where that equity share is held as a capital asset or, where that equity share is held as trading stock, as income to be included in that person's income **[when that person disposes of that equity share]**.";

(j) by the substitution in subsection (9) for the words preceding paragraph *(a)* of the following words:

"(9) No election may be made in terms of paragraph (c) of the definition of 'company formation transaction' in subsection (1) in respect of the disposal of any asset by a person, where that asset constitutes a financial instrument **[as defined in paragraph 1 of the Eighth Schedule]**, unless—".

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any company formation transaction which takes effect on or after that date.

Amendment of section 43 of Act 58 of 1962

. (1) Section 43 of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion in subsection (1) of the following proviso at the end of the definition of "share-for-share transaction":

"Provided that this section will not apply to a disposal by a person of target shares to an acquiring company where that person and that target company form part of the same group of companies immediately before and after that disposal, if that person and that acquiring company jointly so elect.";

(b) by the insertion in subsection (2) of the word "and" at the end of paragraph *(c)*;

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

"*(d)* any valuation of that target share effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule must be deemed to have been effected in respect of those equity shares in the acquiring company.";

(d) by the substitution in subsection (3) for the words following subparagraph (ii) of the following words:

"that must be attributed to the part of the share deemed to have been disposed of other than in terms of a share-for-share transaction, must bear the same ratio to the **[total]** respective amounts contemplated in subparagraph (i) or (ii) as the market value of the consideration not consisting of equity shares issued by the acquiring company bears to the market value of the total consideration in respect of that share.";

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

"(4) Where a person disposed of a target share in terms of a share-for-share transaction and that person ceases to hold a qualifying interest in the acquiring company within a period of 18 months after the date of the disposal of that share (whether or not by way of the disposal of any shares in the acquiring company), that person must for purposes of section 22 or the Eighth Schedule be deemed to have—

(a) disposed of all the **[target]** shares acquired in terms of that share-for-share transaction **[which were not disposed of]** that are still held immediately **[before]** after that person ceased to hold such a

qualifying interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and

(b) immediately reacquired all the **[target]** shares **[not disposed of immediately after that person ceased to hold a qualifying interest]** contemplated in paragraph *(a)* at a cost equal to the amount contemplated in that paragraph **[*(a)*]**:

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in the acquiring company in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been financial instrument, or as the result of the death of that person.";

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

"(5) Where an acquiring company acquired any target share in terms of a share-for-share transaction and that acquiring company ceases to hold an interest in the target company, as contemplated in paragraph *(c)* of the definition of 'share-for-share transaction' in subsection (1), within a period of 18 months after so acquiring that share (whether or not by way of the disposal of any target shares **[in that target company]**), that acquiring company must for purposes of section 22 or the Eighth Schedule be deemed to have—

(a) disposed of all the **[equity]** target shares **[in the target company]** acquired in terms of that share-for-share transaction **[which were not disposed of]** that are still held immediately **[before]** after that acquiring company ceased to hold such an interest, for an amount equal to the market value of those **[equity]** target shares as at the beginning of that period of 18 months; and

(b) immediately reacquired all the **[equity]** target shares **[not disposed of immediately after that person ceased to hold a qualifying interest]** contemplated in paragraph *(a)* at a cost equal to the amount contemplated in that paragraph **[*(a)*]**:

Provided that the provisions of this subsection do not apply where that acquiring company ceases to hold such an interest in the target company, in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, a liquidation distribution contemplated in section 47 or an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been financial instrument.".

(2) Subsection (1)*(b)*, *(c)*, *(d)*, *(e)* and *(f)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any share-for-share transaction which takes effect on or after that date.

Amendment of section 44 of Act 58 of 1962

. (1) Section 44 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(a)* of the definition of "amalgamation transaction" of the following paragraph:

"*(a)* in terms of which any company (hereinafter referred to as the "amalgamated company") disposes of all of its assets (other than assets required to settle any debts incurred by that amalgamated company in the ordinary course of its trade) to another company (hereinafter referred to as the "resultant company") which is a resident, by means of an amalgamation, conversion or merger; and";

(b) by the insertion in subsection (1) of the following proviso to the definition of "amalgamation transaction":

"Provided that the provisions of this section will not apply to a disposal of an asset by an amalgamated company to a resultant company where that resultant company and the person contemplated in subsection (6) form part of the same group of companies immediately before and after that disposal, if that amalgamated company, resultant company and person jointly so elect.";

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

"(4) The provisions of subsections (2) and (3) will apply to a disposal of an asset by an amalgamated company to a resultant company as part of an amalgamation transaction only to the extent that such asset is so disposed of in exchange for—

(a) an equity share or shares in that resultant company; or

(b) the assumption by that resultant company of a debt of that amalgamated company.";

(d) by the substitution for subsection (6) of the following subsection:

"(6) Subject to subsection (7), where a person (other than a trust which is not a special trust) disposes of any equity share in an amalgamated company, the market value of which share exceeds—

(a) in the case of a share held as a capital asset, the base cost of that share on the date of that disposal; or

(b) in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of section 11*(a)* or 22(1) or (2),

in return for an equity share or equity shares in the resultant company and that person—

(i) acquires that share or those shares in the resultant company as part of an amalgamation transaction that was subject to subsection (2) or (3)—

(aa) where that share in the amalgamated company is disposed of as a capital asset, as a capital asset or as trading stock; or

(bb) where that share in the amalgamated company is disposed of as trading stock, as trading stock; and

(ii) at the close of the day during which that disposal is effected, holds a qualifying interest in that resultant company,

that person must be deemed to have—

(aa) disposed of the equity share in that amalgamated company for an amount equal to the amount contemplated in subparagraphs *(a)* or *(b)*, as the case may be; **[and]**

(bb) acquired the equity share or shares in that resultant company on the date that such person acquired that equity share in the amalgamated company and for a cost equal to any expenditure in respect of that equity share in the amalgamated company incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule or taken into account in terms of section 11*(a)* or 22(1) or (2), as the case may be, and to have incurred such cost at the date of incurral by that person of such expenditure, which cost must, where those equity shares are acquired as—

(A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and

(B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11*(a)* or 22(1) or (2); and

(cc) effected any valuation of that equity share in the amalgamated company that was done within the period contemplated in paragraph 29(4) of the Eighth Schedule, in respect of the equity share or shares in that resultant company.";

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

"(7) Where—

(a) a person disposes of an equity share in an amalgamated company; and

(b) that person becomes entitled, in exchange for that share, to any consideration in addition to any equity shares in the resultant company,

the disposal of that share in the amalgamated company contemplated in paragraph *(a)* must, to the extent that that person becomes entitled to any equity shares in that resultant company, be deemed to be a disposal in respect of which subsection (6) applies (hereinafter referred to as the qualifying transaction), and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph *(b)*, be deemed to be a disposal of part of that share in respect of which subsection (6) does not apply (hereinafter referred to as the non-qualifying transaction), in which case the amount to be determined in respect of—

(i) in the case of a disposal of a share as a capital asset, the base cost of that share at the time of that disposal; or

(ii) in the case of the disposal of a share as trading stock, the amount taken into account in respect of that share in terms of section 11*(a)* or 22(1) or (2),

that must be attributed to the part of the share deemed to have been disposed of in terms of the non-qualifying transaction, must bear the same ratio to the **[total amount]** <u>respective</u> amounts contemplated in subparagraphs (i) or (ii) as the market value of the total consideration not consisting of equity shares in that resultant company bears to the amount of the full consideration in respect of that share.";

(f) by the substitution for paragraph *(b)* of subsection (9) of the following paragraph:

"*(b)* any shares acquired by a company in terms of that disposal must be deemed**[—**

(i)] not to be a dividend which accrued to that company for the purposes of section 64B(3)**[; and**

(ii) **to be profits which are not of a capital nature for the purposes of section 64B(5)*(c)*]**."

(g) by the substitution for subsection (10) of the following subsection:

"(10) So much of the amount of any other consideration to which a person becomes entitled as contemplated in subsection (7)*(b)* as does not exceed the amalgamated company's profits and reserves which are available for distribution must, for purposes of section 64B, be deemed to be a dividend declared and distributed out of profits of that amalgamated company to that person and to have accrued as a dividend to that person on the date on which that person became entitled thereto.";

(h) by the substitution in subsection (11) for paragraphs *(a)* and *(b)* and the proviso of the following paragraphs and proviso:

"*(a)* disposed of all the equity shares in the resultant company acquired in terms of that qualifying transaction **[which were not disposed of]** that are still held immediately **[before]** after that person ceased to hold such an interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and

(b) immediately reacquired all the equity shares **[not disposed of immediately after that person ceased to hold a qualifying interest]** contemplated in paragraph *(a)* at a cost equal to the amount contemplated in that paragraph **[*(a)*]**:

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in that resultant company, as contemplated in the definition of 'qualifying interest' in subsection (1), in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been financial instrument, or as the result of the death of that person.";

(i) by the substitution for subsection (12) of the following subsection:

"(12) The provisions of this section do not apply in respect of the disposal of the assets of an amalgamated company where that amalgamated company immediately prior to that disposal constitutes a domestic financial instrument holding company or a foreign financial instrument holding company as defined in section 9D.";

(j) by the substitution for subsection (13) of the following subsection:

"(13) The provisions of **[subsections (2) and (3)]** this section do not apply where the amalgamated company—

(a) has not, within a period of six months after the date of the amalgamation transaction, taken the steps contemplated in section 41(4) to liquidate, wind up or deregister; or

(b) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in paragraph *(a)*, or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered.".

(2) Subsection (1)*(a)*, *(c)*, *(d)*, *(e)*, *(f)* and *(h)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any amalgamation transaction which takes effect on or after that date.

Amendment of section 45 of Act 58 of 1962

. (1) Section 45 of the Income Tax Act, 1962, is hereby amended—

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

"*(a)* in terms of which any asset is disposed of by one company (hereinafter referred to as the 'transferor company') to another company which is a resident (hereinafter referred to as the 'transferee company') and both companies form part of the same group of companies **[on the date]** as at the close of the day of that transaction;";

(b) by the substitution in subsection (4) for the words preceding the proviso of the following words:

"(4) Where an asset is disposed of by a transferor company to a transferee company in terms of an intra-group transaction and the transferor company and the transferee company at any time before the disposal by the transferee company of that asset, cease to form part of any group of companies in relation to each other, that transferee company must, for purposes other than for determining the amount of any capital deduction or allowance in respect of that asset to which that transferee company may be entitled in terms of section 11*(e)*, 12B, 12C, or 12E, be deemed to have disposed of that asset for an amount equal to the market value of that asset on the date on which the disposal in terms of that intra-group transaction was effected and as having immediately reacquired that asset for a cost equal to that market value:";

(c) by the substitution in subsection (5) for the words preceding paragraph *(a)* of the following words:

"(5) Where a transferee company disposes of an asset, other than in terms of an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been financial instrument, within a period of 18 months after acquiring that asset in terms of an intra-group transaction and—"

(d) by the substitution in subsection (6) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"(ii) the total market value, immediately prior to that disposal, of all financial instruments so transferred (other than financial instruments contemplated in paragraph (i) or (iv)),";

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any intra-group transaction which takes effect on or after that date.

Amendment of section 46 of Act 58 of 1962

. (1) Section 46 of the Income Tax Act, 1962, is hereby amended—

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

"(1) For purposes of this section 'unbundling transaction' means any transaction in terms of which all the equity shares of a company which is a resident (hereinafter referred to as the 'unbundled company') that are held by a company (hereinafter referred to as the 'unbundling company') which, if listed, is a resident, are disposed of by that unbundling company—

(a) where that unbundling company is a listed company and the shares of the unbundled company are listed within 12 months after that disposal, to the shareholders of that unbundling company;

(b) where that unbundling company is an unlisted company, to any shareholder of that unbundling company that forms part of the same group of companies as that unbundling company; or

(c) pursuant to an order in terms of the Competition Act, 1998 (Act No. 89 of 1998) made by the Competition Tribunal or the Competition Appeal Court, to the shareholders of that unbundling company,

in accordance with the effective interest of that shareholder or those shareholders, as the case may be, in the shares of that unbundling company: Provided that the shares contemplated in paragraph *(a)* or *(b)* constitute—

(i) where that unbundled company is a listed company immediately before that disposal—

(aa) more than 25 per cent of the equity shares of that unbundled company in the case where no other shareholder holds an equal or greater amount of equity shares in that unbundled company; or

(bb) in any other case, at least 35 per cent of the equity shares of that unbundled company; or

(ii) where that unbundled company is an unlisted company immediately before that disposal, more than 50 per cent of the equity shares of that unbundled company.";

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

"(2) Where an unbundling company disposes of shares to a shareholder in terms of an unbundling transaction, that unbundling company must disregard that disposal for purposes of determining its taxable income or assessed loss.";

(c) by the substitution in subsection (3) for the words preceding paragraph *(a)* and paragraph *(a)* of the following words and paragraph:

"(3) Where a shareholder acquires **[distributable]** shares in terms of an unbundling transaction—

(a) that shareholder must be deemed to have acquired the equity shares held in the unbundling company (hereinafter referred to as the 'previously held shares') and those **[distributable]** shares at a cost equal to—";

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

"*(b)* that shareholder must determine the portion of the cost contemplated in paragraph *(a)* that must be attributed to those **[distributable]** shares, by determining an amount which bears to that cost the same ratio that the market value of those **[distributable]** shares, as at the close of the day after the date of that disposal, bears to the sum of the market values, as at the close of that day, of the previously held shares and of those **[distributable]** shares, which **[amount]** <u>portion of the cost</u> must, where the shareholder held the previously held shares as—

(i) capital assets and acquired those **[distributable]** shares as capital assets, be treated as an expenditure actually incurred

and paid by that shareholder in respect of those **[distributable]** shares for the purposes of paragraph 20 of the Eighth Schedule; or

(ii) trading stock and acquired those **[distributable]** shares as trading stock, be treated as the amount to be taken into account by that shareholder in respect of those **[distributable]** shares for the purposes of section 11*(a)* or 22(1) or (2); and";

(e) by the substitution in subsection (3) for paragraph *(d)* of the following paragraph:

"*(d)* that shareholder's previously held shares and those **[distributable]** shares must be deemed to be the same shares in respect of the date of acquisition of those shares and the date of incurral of any expenditure in respect of those previously held shares.";

(f) by the substitution in subsection (4) for the words preceding paragraph *(a)* and paragraph *(a)* of the following words and paragraph:

"(4) Where those **[distributable]** shares are disposed of by an unbundling company to a shareholder in terms of an unbundling transaction and that shareholder held the previously held shares in that unbundling company as a result of the exercise, by that shareholder, of a right contemplated in section 8A, a portion of any gain made by that shareholder in the exercise of that right to acquire those previously held shares must be included in the income of that shareholder—

(a) in the year of assessment during which that shareholder becomes entitled to dispose of those **[distributable]** shares, which portion shall be an amount which bears to such gain the same ratio as that contemplated in **[paragraph]** subsection (3)*(b)*; and";

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

"(5) Where **[distributable]** shares are disposed of by an unbundling company to a shareholder in terms of an unbundling transaction—

(a) the disposal by that unbundling company of the **[distributable]** shares must be deemed not to be a dividend with respect to that unbundling company for the purposes of section 64B(3); and

(b) any **[distributable]** shares acquired by a company in terms of that disposal must be deemed**[—**

(i)] not to be a dividend which accrued to that company for the purposes of section 64B(3)**[; and**

(ii) to be profits which are not of a capital nature for the purposes of section 64B(5)*(c)*].";

(h) by the substitution for subsection (6) of the following subsection:

"(6) Any **[distributable]** shares disposed of by an unbundling company in terms of an unbundling transaction, must be deemed to have been disposed of first from the share premium account of that unbundling company.";

(i) by the substitution in subsection (7) for paragraph *(b)* of the following paragraph:

"*(b)* in respect of any disposal of **[distributable]** shares in terms of an unbundling transaction to a shareholder who is not a resident, where that shareholder acquires more than five per cent of those **[distributable]** shares.";

(j) by the addition of the following subsection after subsection (7):

"(8) Where an unlisted unbundling company disposes of shares in an unlisted unbundled company in terms of an unbundling transaction to a shareholder and that unbundled company is a controlled group company in relation to that shareholder immediately before and after that disposal, the provisions of this section will not apply to that disposal if that shareholder and that unbundling company jointly so elect.".

(2) Subsection (1)*(a)*, *(b)*, *(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)* and *(i)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any unbundling transaction which takes effect on or after that date.

Amendment of section 47 of Act 58 of 1962

. (1) Section 47 of the Income Tax Act, 1962, is hereby amended—

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

"(1) For the purposes of this section 'liquidation distribution' means any transaction—

(a) in terms of which any company (hereinafter referred to as the 'liquidating company') **[disposes of]** distributes all its assets (other than assets required to settle any debts incurred by that liquidating company in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company, to the extent to which those shares so disposed of are disposed of to another company (hereinafter referred to as the 'holding company') which is a resident and which holds, on the date of that disposal, at least 75 per cent of the equity shares of that liquidating company; and

(b) in respect of which that liquidating company and that holding company have jointly elected that this section applies in respect of all the assets so disposed of by that liquidating company to that holding company.";

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

"(5) Where a holding company disposes of any equity share in a liquidating company as a result of the liquidation, winding up or deregistration of that liquidating company, that holding company must **[be treated to have disposed of that share for an amount equal to—**

(a) **in the case of that share held as a capital asset, the base cost of that share on the date of that disposal; or**

(b) **in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of section 11(a) or 22(1) or (2)]**

disregard that disposal for purposes of determining its taxable income or assessed loss.";

(c) by the substitution in subsection (6) for the words in paragraph *(c)* preceding the proviso of the following words:

"*(c)* the liquidating company—

(i) has not, within a period of six months after the date of the amalgamation transaction, taken the steps contemplated in section 41(4) to liquidate, wind up or deregister **[that company]**; or

(ii) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in paragraph (i), or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered:".

(2) Subsection (1)*(a)* and *(b)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any liquidation distribution which takes effect on or after that date.

Amendment of section 56 of Act 58 of 1962

. Section 56 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph *(r)* of the following paragraph:

"*(r)* by a company to any other company that is a member of the same group of companies as the company making that donation. ".

Amendment of Item 7 of Schedule 1 to Act 77 of 1968

. (1) Item 7 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the insertion in *Exemptions* of the following paragraph:

"*(f)* Any cession of a mortgage bond where such cession is pursuant to the transfer of assets in terms of the following provisions contained in Part II of the Income Tax Act, 1962 (Act No. 58 of 1962)—

(i) a company formation transaction contemplated in section 42 of that Act;

(ii) an amalgamation transaction contemplated in section 44 of that Act;

(iii) an intra-group transaction contemplated in section 45 of that Act;

(iv) any liquidation distribution contemplated in section 47 of that Act; or

(v) a transaction which would have constituted a transaction or distribution contemplated—

(aa) in subparagraphs (i) to (iv) regardless of whether or not an election has been made for the provisions of that section to apply;

(bb) in subparagraphs (i) or (ii) had the market value of the asset transferred in exchange for those shares exceeded the base cost or the amount taken into account in respect of that asset as contemplated in section 42(1)(*a*) or 44(6),

where the public officer of the relevant company has made a sworn affidavit or solemn declaration that such cession of a mortgage bond complies with the provisions of this paragraph.".

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any cession of a mortgage bond in terms of any company formation, amalgamation transaction, intra-group transaction or liquidation distribution which takes effect on or after that date.

Amendment of Item 15 of Schedule 1 to Act 77 of 1968

. (1) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in *Exemptions from the duty under paragraph (3)* for subparagraph (v) of paragraph *(x)* of the following subparagraph:

"(v) in **[pursuance]** terms of **[a distribution *in specie* in the course of]** an unbundling transaction contemplated in section 46 of that Act;";

(b) by the substitution in the *Exemptions from the duty under paragraph (3)* for item *(aa)* of subparagraph (vii) of paragraph *(x)* of the following item:

"*(aa)* in subparagraph (i), (ii), (iii), (iv) or (vi) **[had]** regardless of whether or not an election has been made for the provisions of that section to apply; and".

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of transfers of marketable securities in terms of any unbundling transaction which takes effect on or after that date.

Amendment of section 6 of Act 31 of 1998

. (1) Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended—

(a) by the substitution in subsection (1) for item *(ee)* of subparagraph (ix) of paragraph *(b)* of the following subparagraph:

"*(ee)* in **[pursuance]** terms of **[a distribution *in specie* in the course of]** an unbundling transaction contemplated in section 46 of that Act;";

(b) by the substitution in subsection (1) for sub-items (A) and (B) of item *(gg)* of subparagraph (ix) of paragraph *(b)* the following sub-item:

"(A) in subparagraph *(aa)*, *(bb)*, *(cc)*, *(dd)* or *(ff)* **[had]** regardless of whether or not an election has been made for the provisions of that section to apply; and

(B) in **[subparagraph]** items *(aa)*, *(bb)* or *(cc)* had the market value of the asset transferred in exchange for those marketable securities exceeded the base cost or the amount taken into account in respect thereof, as contemplated in section 42 (1) (a), 43 (1) (a) or 44 (6) of that Act,".

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of a change in beneficial ownership in marketable securities in terms of an unbundling transaction which takes effect on or after that date.

Amendment of section 113 of Act 74 of 2002

. Section 113 of the Revenue Laws Amendment Act, 2002, is hereby amended by the addition of the following subsection:

"(2) Subsection (1) shall—

(a) to the extent that it substitutes the word "company" with the word "person", be deemed to have come into operation on 1 October 2001, and applies in respect of any registration of transfer of a marketable security on or after that date; and

(b) to the extent that it amends the rest of Item 15, be deemed to have come into operation on 6 November 2002 and applies in respect of any registration of transfer of a marketable security in terms of a transaction which takes effect on or after that date.".

Amendment of section 122 of Act 74 of 2002

. Section 122 of the Revenue Laws Amendment Act, 2002, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any acquisition of beneficial ownership in terms of a transaction which takes effect on or after that date.".