REPUBLIC OF SOUTH AFRICA

REVENUE LAWS AMENDMENT BILL, 2003

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

(MINISTER OF FINANCE)

[B —2003]

BILL

To amend the Marketable Securities Tax Act, 1948, so as to *(long title to follow)*

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

Amendment of Section 1 of Act 32 of 1948

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

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

"'lending arrangement' means a 'lending arrangement' as defined in the Uncertificated Securities Tax Act, 1998 (Act No. 31 of 1998).";

and

(b) by the insertion after the definition of "member" of the following definition:

"'person' includes any public authority, any local authority, any company, any body of persons (corporate or unincorporate), the estate of any deceased or insolvent person and any trust fund.".

(2) Subsection (1)*(a)* shall come into operation on the date of promulgation of this Act and shall apply in respect of the purchase of any marketable security in terms of a lending arrangement entered into on or after that date.

Amendment of section 3 of Act 32 of 1948

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

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

"*(f)* in respect of the purchase of marketable securities by a person that are acquired—

(i) in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);

(ii) in terms of a share-for-share transaction contemplated in section 43 of that Act;

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

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

(v) in terms of an unbundling transaction contemplated in section 46 of that Act;

(vi) in terms of a liquidation distribution contemplated in section 47 of that Act; or

(vii) in terms of any transaction which would have constituted a transaction or distribution contemplated—

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

(bb) in subparagraph (i), (ii) or (iii) regardless of the market value of the asset disposed of in exchange for those securities; or

(cc) in subparagraphs (i) to (vi) regardless of whether or not that person acquired those securities as capital assets or as trading stock,

where the public officer of the relevant company has made a sworn affidavit or solemn declaration that such purchase of marketable securities complies with the provisions of this paragraph;";

(b) by the addition of the following paragraph:

"*(g)* if the change in beneficial ownership is from a lender to a borrower, or vice versa, in terms of a lending arrangement and the lender or borrower, as the case may be, who has acquired beneficial ownership has certified to the member that the change is in terms of such a lending arrangement.".

(2)*(a)* 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.

(b) Subsection (1)*(b)* shall come into operation on the date of promulgation and shall apply in respect of the purchase of any marketable security in terms of a lending arrangement entered into on or after that date.

Insertion of section 4A of Act 32 of 1948

3. (1) The following section is hereby inserted in the Marketable Securities Tax Act, 1948, after section 4:

"**Schemes for obtaining undue tax benefits**

4A.(1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any transaction, operation, scheme or understanding (whether enforceable or not), including all steps by which it is carried into effect—

(a) has been entered into or carried out which has the effect of any person obtaining a tax benefit;

(b) having regard to the substance of the transaction, operation, scheme or understanding—

(i) was entered into or carried out in a manner which would not normally be employed for *bona fide* business purposes other than the obtaining of a tax benefit; or

(ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and

(c) was entered into or carried out solely or mainly for the purposes of obtaining a tax benefit,

the Commissioner shall determine the liability for any tax imposed by this Act and the amount thereof, as if the transaction, operation, scheme or understanding had not been entered into or carried out, or in such manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of such tax benefit.

(2) For the purpose of this section 'tax benefit' means—

(*a*) any reduction in the liability of any person to pay tax;

(*b*) any increase in the entitlement of any person to the refund of tax; or

(c) any other avoidance or postponement of liability for the payment of any tax imposed by this Act or any tax, duty or levy imposed by any other Act administered by the Commissioner.

(3) Any decision of the Commissioner under subsection (1) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it shall be presumed, until the contrary is proved, that such scheme was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of the purchase of any marketable security in terms of a transaction, operation, scheme or understanding entered into on or after that date.

Insertion of section 8A in Act 32 of 1948

4. The following sections is hereby inserted in the Marketable Securities Tax Act, 1948, after section 8:

"**Power to appoint agent**

8A. The Commissioner may, if he or she deems it necessary, declare any person to be the agent of any other person, and the person so declared an agent—

(a) shall for the purposes of this Act be the agent of that other person in respect of the payment of any amount of tax, penalty or interest payable by that other person under this Act; and

(b) may be required to make payment of such amount from any moneys which may be held by that agent for or be due by that agent to the person whose agent he or she has been declared to be:

Provided that a person so declared an agent who is unable to comply with a

requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of Commissioner against agent or trustee

8B. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property of any person liable to pay any tax and in as full and ample a manner.".

Amendment of section 9 of Act 32 of 1948, as substituted by section 2 of Act 46 of 1996 and amended by section 5 of Act 30 of 1998 and section 3 of Act 60 of 2001

5. Section 9 of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "information" of the following definitions:

"'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)]** printout of information generated, sent, received, stored, displayed or processed by electronic means;

'information' includes any **[data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983]** electronic representations of information in any form;".

Insertion of section 9E in Act 32 of 1948

6. (1) The following section is hereby inserted in the Marketable Securities Tax Act, 1948, after section 9D:

"**Records**

9E. A member must keep such records of every purchase of marketable securities from that member or through that member's agency for a period of five years as may be required to enable the member to observe the requirements of this Act and to enable the Commissioner to be satisfied that those requirements have been observed.".

(2) Subsection (1) shall come into operation on the date of promulgation and shall apply in respect of any records relating to the purchase of any marketable security on or after that date.

Amendment of section 1 of Act 40 of 1949

7. (1) Section 1 of the Transfer Duty Act, 1949, is hereby amended—

(a) by the substitution in the definition of "fair market value" for the words preceding item (i) of paragraph *(b)* of the following words:

"*(b)* in relation to a share (other than a share contemplated in paragraph *(d)*), or member's interest in a company as contemplated in paragraph *(d)* or *(e)* of the definition of 'property', means so much of the fair market value as at the date of acquisition of that share or member's interest, of any property held by that company which constitutes— ";

(b) by the insertion in the definition of "fair market value" after paragraph *(c)* but preceding the proviso of the following paragraph:

"*(d)* in relation to any share in a 'share block company' defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), the sum of the fair market value of that share and the amount of any loan obligation as contemplated in section 14 of that Act assumed by the person who acquired that share:".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any acquisition of any share on or after that date.

Amendment of section 5 of Act 40 of 1949, as amended by section 6 of Act 103 of 1969, section 2 of Act 86 of 1987, section 3 of Act 136 of 1992 and section 2 of Act 20 of 1994

8. (1) Section 5 of the Transfer Duty Act, 1949, is hereby amended—

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

"*(a)* If a transaction whereby property has been acquired, is, before registration of the acquisition in a deeds registry, cancelled, or dissolved by the operation of a resolutive condition, duty shall be payable only on that part of the consideration which has been or is paid to and retained by the seller and on any consideration payable by **[either party to the transaction]** the buyer for or in respect of the cancellation thereof, provided that on cancellation or dissolution of that transaction, such property completely reverts to the seller and the original buyer has relinquished all rights and has not received nor will receive any consideration arising from such cancellation or dissolution."; and

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

"(10) In the case of the acquisition of property by a person other than a natural person in terms of Item 8 of Schedule 1 to the Share Blocks Control Act, 1980 (Act No. 59 of 1980), the value of that property shall be reduced by an amount equal to the value of any supply made to **[the]** that person acquiring that property, of a share mentioned in section 8(17) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), where—".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of the cancellation of any transaction on or after that date.

Amendment of section 9 of Act 40 of 1949

9. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended—

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

"*(c)*(i) a public benefit organisation which is exempt from tax in terms of section 10(1)*(c*N*)* of the Income Tax Act, 1962 (Act No. 58 of 1962), or which continues to enjoy exemption under section 21(2)*(a)* of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000); or";

(b) 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 subparagraphs (i) to (iii) regardless of whether or not that person acquired that property as a capital asset or as trading stock, [Previous (bb) deleted]

where the public officer of that company has made a sworn affidavit or solemn declaration that such acquisition of property complies with the provisions of this paragraph."; and

(c) by the addition of the following subsections:

"(18) No duty shall be payable where—

(a) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), continues in force or is converted into a new right pursuant to that Schedule; or

(b) any prospecting right, mining right, exploration right or production right as defined in Schedule I of the Mineral and Petroleum Resources Development Act, 2002, is renewed pursuant to that Schedule.

(19) No duty shall be payable by a natural person in respect of the acquisition of property in terms of Item 8 of Schedule 1 to the Share Blocks Control Act, 1980 (Act No. 59 of 1980).".

(2)*(a)* Subsection (1)*(b)* 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.

(b) Subsection (1)*(c)* shall—

(i) in so far as it inserts subsection (18), come into operation on the date of promulgation of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), and shall apply in respect of any continuation in force, conversion or renewal on or after that date; and

(ii) in so far as it inserts subsection (19) come into operation on the date of promulgation of this Act and shall apply in respect of any property acquired on or after that date.

Amendment of section 11A of Act 40 of 1949

10. Section 11A of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "information" of the following definitions:

"'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)]** printout of information generated, sent, received, stored, displayed or processed by electronic means;

'information' includes any [data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983] electronic representations of information in any form;".

Insertion of sections 13A, 13B and 13C in Act 40 of 1949

11. The following sections are hereby inserted in the Transfer Duty Act, 1949, after section 13:

"**Recovery of duty**

13A.(1) Any amount of any duty, additional duty or penalty incurred under this Act and which is payable in terms of this Act shall, when it becomes due or is payable, be a debt due to the State by the person concerned and shall be recoverable by the Commissioner in the manner hereinafter provided.

(2) If any person fails to pay any amount of any duty, additional duty or penalty incurred under this Act when it becomes due or is payable by such person, the Commissioner may file with the clerk or registrar of any competent court a statement certified by the Commissioner as correct and setting forth the amount thereof so due or payable by that person, and that statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were a civil judgement lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement.

(3) The Commissioner may by notice in writing addressed to the clerk or registrar, withdraw the statement referred to in subsection (2), and that statement shall thereupon cease to have any effect: Provided that the Commissioner may institute proceedings afresh under that subsection in respect of any duty, additional duty, interest or penalty referred to in the withdrawn statement.

(4) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a statement for any amount whatsoever may be filed in terms of subsection (2) with the clerk of the magistrate's court having jurisdiction in respect of the person by whom the amount is payable in accordance with the provisions of this Act.

(5) Pending the conclusion of any proceedings, whether internally or in any court, regarding a dispute as to the amount of any duty, additional duty or

penalty payable, the statement filed in terms of subsection (2) shall, for purposes of recovery proceedings contemplated in subsection (2), be deemed to be correct.

Power to appoint agent

13B. The Commissioner may, if he or she deems it necessary, declare any person to be the agent of any other person, and the person so declared an agent—

(a) shall for the purposes of this Act be the agent of that other person in respect of the payment of any amount of duty, additional duty or penalty payable by that other person under this Act; and

(b) may be required to make payment of that amount from any moneys which may be held by that agent for or be due by that agent to the person whose agent he or she has been declared to be: Provided that a person so declared an agent who is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of Commissioner against agent or trustee

13C. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property of any person liable to pay any duty and in as full and ample a manner.".

Amendment of section 16 of Act 40 of 1949

12. (1) Section 16 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (1) for the following subsection:

"(1) Where property is sold to a person who is acting as an agent for some other person, the person so acting as agent shall disclose to the seller

or his or her agent the name and address of the principal for whom he orshe acts, and furnish the seller or his or her agent with a copy of the documents appointing him or her as agent—

(i) if the sale is by **[action, immediately upon]** auction, on the day of acceptance by the auctioneer of his or her offer; or

(ii) if the sale is otherwise than by auction, **[immediately upon]** on the day of conclusion of the agreement of sale.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any sale to an agent on or after that date.

Insertion of section 17A in Act 40 of 1949

13. (1) The following section is hereby inserted in the Transfer Duty Act, 1949, after section 17:

"**Additional duty in case of evasion**

17A. (1) Where any person or any person under the control or acting on behalf of that person fails to perform any duty imposed upon him or her by this Act or does or omits to do anything, with intent—

(a) to evade the payment of any amount of duty payable by him or her; or

(b) to cause a refund to him or her by the Commissioner of any amount of duty which is in excess of the amount properly refundable to him or her (hereafter referred to as 'the excess'),

that person shall be chargeable with additional duty not exceeding an amount equal to double the amount of duty referred to in paragraph *(a)* or the excess referred to in paragraph *(b)*, as the case may be.

(2) The amount of the additional duty shall be assessed by the Commissioner and shall be paid by the person within such period as the Commissioner may allow.

(3) The power conferred upon the Commissioner by this section shall be in addition to any right conferred upon him or her by this Act to institute or take other proceedings under this Act.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any failure or omission in respect of any amount of duty which becomes payable on or after that date.

Amendment of section 18 of Act 40 of 1949

14. (1) Section 18 of the Transfer Duty Act, 1949, is hereby amended by the addition of the following subsections:

"(4) The obligation to pay and the right to receive and recover any duty or penalty chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law.

(5) If any assessment relating to an appeal contemplated in subsection (4) is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the tax board or the tax court or such court of law, a due adjustment shall be made, amounts paid in excess being refunded with interest at the 'prescribed rate', as defined in section 1 of the Income Tax Act, 1962, and calculated from the date proved to the satisfaction of the Commissioner to be the date on which any excess was received and amounts short-paid being recoverable with penalty calculated as provided in section 4.

(6) The payment by the Commissioner of any interest under the provisions of subsection (5) shall be deemed to be a drawback from revenue charged to the National Revenue Fund.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any appeal noted on or after that date.

Insertion of section 20B in Act 40 of 1949

15. (1) The following section is hereby inserted in the Transfer Duty Act, 1949, after section 20A:

"**Transactions, operations, schemes or understanding for obtaining undue tax benefits**

20B.(1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any transaction, operation, scheme or understanding (whether enforceable or not), including all steps by which it is carried into effect—

(a) has been entered into or carried out which has the effect of granting a tax benefit to any person; and

(b) having regard to the substance of the transaction, operation, scheme or understanding—

(i) was entered into or carried out in a manner which would not normally be employed for *bona fide* business purposes, other than the obtaining of a tax benefit; or

(ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and

(c) was entered into or carried out solely or mainly for the purposes of obtaining a tax benefit,

the Commissioner shall determine the liability for any duty imposed by this Act, and the amount thereof, as if the transaction, operation, scheme or understanding had not been entered into or carried out, or in such manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of such tax benefit.

(2) For the purpose of this section—

'tax benefit' means—

(*a*) any reduction in the liability of any person to pay duty;

(*b*) any increase in the entitlement of any person to the refund of duty; or

(c) any other avoidance or postponement of liability for the payment of any duty imposed by this Act or any tax, duty or levy imposed by any other Act administered by the Commissioner.

(3) Any decision of the Commissioner under subsection (1) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it shall be presumed, until the contrary is proved,

that such transaction, operation, scheme or understanding was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any acquisition in terms of a transaction, operation, scheme or understanding entered into on or after that date.

Amendment of section 4 of Act 45 of 1955

16. Section 4 of the Estate Duty Act, 1955, is hereby amended by the substitution in paragraph *(h)* for subparagraph (i) of the following subparagraph:

"(i) any public benefit organisation which is exempt from tax in terms of section 10(1)*(c*N*)* of the Income Tax Act, 1962 (Act No. 58 of 1962), or which continues to enjoy exemption under section 21(2)*(a)* of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000); or".

Amendment of section 8A of Act 45 of 1955

17. Section 8A of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "instrument" of the following definitions:

"'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)]** printout of information generated, sent, received, stored, displayed or processed by electronic means;

'information' includes any **[data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983]** electronic representations of information in any form;".

Amendment of section 1 of Act 58 of 1962

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

(a) by the substitution in subsection (1) for the words in the definition of "assessment" preceding paragraph *(a)* of the following words:

"'assessment' means the determination by the Commissioner, by way of a notice of assessment (including a notice of assessment in electronic form) served in a manner contemplated in section 106(2)—";

(b) by the insertion after the definition of "date of assessment" of the following definitions:

"'date of sequestration' means—

(a) the date of voluntary surrender of an estate, if accepted by the Court; or

(b) the date of provisional sequestration of an estate, if a final order of sequestration is granted by the Court;

'depreciable asset' means an asset as defined in paragraph 1 of the Eighth Schedule (other than trading stock), in respect of which a capital deduction or allowance determined with reference to the cost or value of that asset is allowable in terms of this Act for purposes other than the determination of any taxable capital gain or capital loss;";

(c) by the deletion of the definition of "designated country";

(d) by the substitution in the definition of "dividend" for the words following item *(bb)* of subparagraph (v) of the first proviso of the following words:

"**[Provided further that for the purposes of this definition an asset shall be deemed to have been given to a shareholder of a company if any asset or any interest, benefit or advantage measurable in terms of money is given or transferred to such shareholder or if the shareholder is relieved of any obligation measurable in terms of money:]** Provided further that a reserve of any company which consists of or includes any amount transferred from the share premium account of the company shall, except to the extent to which such reserve consists of any other amount, be deemed for the purposes of this definition to be a share premium account of, or share premium received by, such company;";

(e) by the insertion after the definition of "financial year" of the following definition:

"'foreign dividend' means any dividend received by or which accrued to any person from a foreign company as defined in section 9D;";

(f) by the substitution for paragraph *(k)* of the definition of "gross income" of the following paragraph:

"*(k)* any amount received or accrued by way of **[dividends including any amount which is deemed to be a dividend declared as contemplated in the definition of 'foreign dividend' in section 9E]** a dividend: Provided that where any foreign dividend declared by a foreign company—

(i) is received by or accrues to a portfolio of a collective investment scheme referred to in paragraph *(e)*(i) of the definition of 'company' in section 1; and

(ii) that foreign dividend is distributed by that portfolio by way of a dividend, or a portion of a dividend, to any person who is entitled to that dividend by virtue of being a holder of any participatory interest in that portfolio,

that foreign dividend shall, to the extent that it is declared to that person as contemplated in subparagraph (ii), be deemed to have been declared by that foreign company directly to that person and to be a foreign dividend which is received by or accrued to that person;";

(g) by the insertion after the definition of "insolvent estate" of the following definition:

"'lending arrangement' means a "lending arrangement" as defined in the Uncertificated Securities Tax Act, 1998 (Act No. 31 of 1998).";

(h) by the deletion of the definition of "international headquarter company";

(i) by the deletion of the definition of "qualifying statutory rate";

(j) by the substitution in paragraph *(a)* of the definition of "resident" for the words in subparagraph (ii) preceding item *(aa)* of the following words:

"not at any time during the relevant year of assessment ordinarily resident in the Republic, if **[such]** that person was physically present in the Republic—";

(k) by the insertion in the definition of "resident" for the words in subparagraph (ii) of paragraph *(a)* following item *(bb)* but preceding the proviso of the following words:

"in which case that person will be a resident with effect from the first day of that relevant year of assessment:";

(l) by the substitution in the definition of "resident" for item (A) of the proviso to subparagraph (ii) of paragraph *(a)* of the following item:

"(A) a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a 'port of entry' as **[defined]** contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 2002), or does not enter at any other place in the case of a person authorised by the Minister of Home Affairs in terms of section 31(2)*(c)* of that Act; and";

(m) by the substitution in the definition of "resident" for paragraph *(b)* of the following paragraph:

"*(b)* person (other than a natural person) which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic **[(but excluding any international headquarter company)**;"; and

(n) by the deletion of the definition of "scientific research".

(2)*(a)* Subsection (1)*(c), (f), (h)*, *(i)* and *(m)* shall come into operation on 1 June 2004 and shall apply in respect of years of assessment commencing on or after that date.

(b) Subsection 1*(g)* shall come into operation on the date of promulgation of this Act.

Amendment of section 3 of Act 58 of 1962

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

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

"(1) The powers conferred and the duties imposed upon the Commissioner by or under the provisions of this Act or any amendment thereof may be exercised or performed by the Commissioner personally, or by any officer or person engaged in carrying out the said provisions under the control, direction or supervision of the Commissioner.";

(b) by the substitution in subsection (2) for the words preceding the proviso of the following words:

"Any decision made and any notice or communication issued or signed by any such officer or person may be withdrawn or amended by the Commissioner or by the officer or person concerned, and shall for the purposes of the said provisions, until it has been so withdrawn, be deemed to have been made, issued or signed by the Commissioner:"; and

(c) 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 9E, section 9F,]** section 10(1)*(c*H*)*, *(c*K*)*, *(e)*, *(i*A*)*, *(j)* and *(n*B*)*, section 11*(e)*, *(f)*, *(g)*, *(g*A*)*, *(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, 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, **[22,]** 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)* of the Eighth Schedule, shall be subject to objection and appeal.".

Amendment of section 4 of Act 58 of 1962

20. Section 4 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding the proviso of the following words:

"(1) Every person employed or engaged by the Commissioner in carrying out the provisions of this Act shall preserve and aid in preserving secrecy with regard to all matters that may come to his or her knowledge in the performance of his or her duties in connection with those provisions, and shall not communicate any such matter to any person whatsoever other than the

taxpayer concerned or his or her lawful representative nor suffer or permit any such person to have access to any records in the possession or custody of the Commissioner except in the performance of his or her duties under this Act or by order of a competent court:";

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

"*(a)* Every person so employed or engaged as contemplated in subsection (1) shall, before acting under this Act, take and subscribe before a magistrate or justice of the peace or a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed."; and

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

"(4) Any person who acts in the execution of his or her office or carries out any provisions of the Act before he or she has taken the prescribed oath or solemn declaration shall be guilty of an offence and liable on conviction to a fine not exceeding R50.".

Amendment of section 5 of Act 58 of 1962

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

(a) by the deletion in subsection (1) of paragraph *(b)*; and

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

"*(c)* any person (other than **[a person in respect of whom paragraph *(b)* applies or]** a company) during the year of assessment ended the last day of February each year; and".

Amendment of section 6*quat* of Act 58 of 1962

22. (1) Section 6*quat* of the Income Tax Act, 1962, is hereby amended—

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

"*(d)* any foreign dividend **[contemplated in section 9E]**; or";

(b) by the substitution in subsection (1A) for the word "and" at the end of subparagraph (iii) of paragraph *(a)* of the word "or";

(c) by the substitution in subsection (1A) for paragraph *(b)* of the following paragraph:

"*(b)* any controlled foreign company, in respect of such proportional amount contemplated in subsection (1)*(b)*, subject to section 72A(3);";

(d) by the deletion in subsection (1A) of paragraphs *(c)* and *(d)*;

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

"*(e)* any portfolio of a collective investment scheme in respect of the amount of any foreign dividend which is deemed to have been declared to such resident in terms of **[section 9E(5)]** the proviso to paragraph *(k)* of the definition of 'gross income' and included in the taxable income of that resident; or";

(f) by the substitution in subsection (1B) for the words in paragraph *(a)* preceding the proviso of the following words:

"*(a)* the rebate or rebates of any tax proved to be payable **[to the government of any other country or countries]** as contemplated in subsection (1A), shall not in aggregate exceed an amount which bears to the total normal tax payable the same ratio as the total taxable income attributable to the income, proportional amount, foreign dividend, taxable capital gain or amount, as the case may be, which is included as contemplated in subsection (1), bears to the total taxable income:";

(g) by the substitution in subsection (1B) for the words in paragraph (ii) of the proviso to paragraph *(a)* preceding subparagraph *(aa)* of the following words:

"(ii) where the sum of any such taxes payable to the government of any such other country or countries (excluding any taxes contemplated in subsection (1A)*(b)* which are attributable to the proportional amount of a controlled foreign company which is included in the taxable income of the resident by virtue of an election made by that resident in terms of

section 9D(1A) or 9D(12), exceeds the rebate as so determined (hereinafter referred to as the excess amount), that excess amount may—";

(h) by the deletion of paragraphs *(c)* and *(d)* of subsection (1B);

(i) by the substitution in subsection (1B) for paragraph *(e)* of the following paragraph:

"*(e)* no rebate shall be allowed in respect of any tax payable on any amount contemplated in subsection (1)*(d)*, if the resident has **[made an election]** elected to deduct the amount of withholding tax as contemplated in section **[9E(6)]** 11*(r)*."; and

(j) by the deletion of the definition of "qualifying interest" in subsection (3).

(2) Subsection (1) 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 7 of Act 58 of 1962

23. Section 7 is hereby amended by the deletion of the proviso to subsection (8).

Amendment of section 8 of Act 58 of 1962

24. (1) Section 8 of the Income Tax Act, 1962, is hereby amended—

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

"*(a)* There shall be included in the taxpayer's income all amounts allowed to be deducted or set off under the provisions of sections 11 to 20, inclusive, section 24D, section 24F, section 24G and section 27(2)*(b)* and *(d)* of this Act, except section 11*(k)*, *(p)* and *(q)*, section 11B, section 11*quin*, section 12(2) or section 12(2) as applied by section 12(3), section 12A(3), section 13(5), or section 13(5) as applied by section 13(8), or section 13*bis*(7), or section 15*(a)*, or section 15A, or under the corresponding provisions of any previous Income Tax Act,

whether in the current or any previous year of assessment which have been recovered or recouped during the current year of assessment:";

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

"*(e)* Notwithstanding paragraph *(a)*, but subject to paragraph *(e*B*)*, *(e*C*)*, *(e*D*)* and *(e*E*)*, there shall not be included in the income of a person any amount recovered or recouped as a result of the disposal of any asset, where that person has elected that paragraph 65 or 66 of the Eighth Schedule applies in respect of the disposal of that asset."; and

(c) by the insertion in subsection (4) after paragraph *(e)* of the following paragraphs:

"*(e*A*)* Where a person acquires more than one asset in replacing the asset disposed of as contemplated in paragraph *(e)*, that person must, in applying paragraphs *(e*B*)*, *(e*C*)*, *(e*D*)* and *(e*E*)*, apportion the amount recovered or recouped to the replacement assets in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each replacement asset bear to the total amount of those receipts and accruals expended in acquiring all those assets.

*(e*B*)* Where the replacement asset of a person as contemplated in paragraph *(e)* constitutes a depreciable asset, that person shall be deemed to have recovered or recouped in a year of assessment so much of the amount contemplated in paragraph *(e)* as bears to the total amount of the recovery or recoupment contemplated in paragraph *(e)* the same ratio as the amount of any capital deduction or allowance allowed in that year of assessment in respect of that 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 in that year and other years of assessment in respect of that asset.

*(e*C*)* Where a person during any year of assessment disposes of a replacement asset contemplated in paragraph *(e)* and any portion of the recovery or recoupment which is apportioned to that asset has not been included in the income of that person in terms of paragraph *(e*B*)*, *(e*D*)* or *(e*E*)* in any year of assessment (including that year of assessment), that portion must be deemed to be an amount recovered or recouped by that person in

that year in respect of that replacement asset.

*(*eD*)* Where during any year of assessment a person ceases to use a replacement asset contemplated in paragraph *(e)*, in respect of which paragraph 66 of the Eighth Schedule applies, for the purposes of that person's trade and any portion of the amount which is apportioned to that replacement asset has not been included in the income of that person in terms of paragraph *(*eB*)*, *(*eC*)* or *(*eE*)* in any year of assessment (including that year of assessment), that portion must be deemed to be an amount recovered or recouped in that year of assessment.

*(*eE*)* Where a person contemplated in paragraph *(e)* fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in paragraphs 65 or 66 of the Eighth Schedule, as the case may be, paragraph *(*eB*)* shall not apply and that person must—

(i) deem so much of the amount contemplated in paragraph *(e)* as has not been included in the income of that person as contemplated in paragraph *(*eB*)*, *(*eC*)* or *(*eD*)* to be an amount recovered or recouped for purposes of paragraph *(a)* on the date on which that prescribed period ends;

(ii) determine interest at the prescribed rate on the amount recovered or recouped from the date of the disposal contemplated in paragraph *(e)* to the date contemplated in subparagraph (i); and

(iii) deem that interest to be an amount recovered or recouped for purposes of paragraph *(a)* on the date contemplated in subparagraph (i).".

(2) Subsection (1)*(b)* and *(c)* shall come into operation on the date of promulgation of this Act and shall apply in respect of the disposal of any asset on or after that date.

Amendment of section 8E of Act 58 of 1962

25. (1) Section 8E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (ii) of paragraph *(b)* of the definition of "affected instrument" of the following subparagraph:

"(ii) such share does not rank pari passu as regards its participation in dividends with all other ordinary shares in the capital of the relevant company or, where the ordinary shares in such company are divided into two or more classes, with the shares of at least one of such classes, or any dividend payable on such share is to be calculated with reference to any specified rate of interest or is otherwise to be calculated having regard to—

(aa) the amount of capital subscribed for such share; or

(bb) the amount of any loan or advance made directly or indirectly by the shareholder or by any connected person in relation to the shareholder;".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any loan or advance made on or after that date.

Amendment of section 9 of Act 58 of 1962

26. Section 9 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph *(aa)* of the proviso of the following paragraph:

"*(aa)* 80 per cent or more of the value of the net **[asset]** assets of that company or other entity, determined on the market value basis, is attributable directly or indirectly to immovable property, (other than immovable property held by that company or entity as trading stock); and".

Amendment of section 9B of act 58 of 1962

27. (1) Section 9B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (i) of paragraph *(e)* of the proviso of the following subparagraph:

"(i) any share has been lent by a lender to a borrower as contemplated in the definition of 'lending arrangement **[in section 23 (1) of the Stamp**

Duties Act, 1968 (Act No. 77 of 1968)], such share shall for the purposes of the lender be deemed not to have been disposed of by the lender; and".

(2) This amendment shall come into operation on the date of promulgation and shall apply in respect of any lending arrangement entered into on or after that date.

Amendment of section 9D of Act 58 of 1962

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

(a) by the substitution in subsection (1) for the definition of "foreign company" of the following definition:

"'foreign company' means any association, corporation, company, arrangement or scheme contemplated in paragraph *(a)*, *(b)* or *(e)* of the definition of 'company' in section 1, which is not a resident **[or which is a resident but where that association, corporation, company, arrangement or scheme is as a result of the application of the provisions of any agreement entered into by the Republic for the avoidance of double taxation treated as not being a resident]**;";

(b) by the substitution in subsection (1) for the words in the definition of "foreign financial instrument holding company" preceding paragraph *(a)* thereof of the following words:

"'foreign financial instrument holding company' means any foreign company where more than 50 per cent of <u>either</u> the market value or actual cost of all the assets of that company, together with **[any]** <u>the assets of all</u> controlled group **[company]** <u>companies</u> in relation to that foreign company, consists of financial instruments, other than—";

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

"*(a)* any financial instrument that constitutes a debt due to that foreign company, or **[a]** <u>to any</u> controlled group company in relation to that foreign company, in respect of goods sold or services rendered by that

foreign company or controlled group company, as the case may be, where—";

(d) by the substitution in subsection (1) for subparagraph (ii) of paragraph *(a)* of the definition of "foreign financial instrument holding company" of the following subparagraph:

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

(e) by the substitution in subsection (1) of the definition of "foreign financial instrument holding company" for the words in the proviso preceding paragraph (i) and paragraph (i) of the following words and paragraph:

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

(i) **[any share—]**

(aa) for purposes of subsection (9)*(h)*, any share of a controlled group company in relation to that company; or

(bb) for purposes of any other provision of this section, any share in any other company in the same group of companies; and";

(f) by the insertion after subsection (1) of the following subsection:

"(1A) Any resident who, together with any connected person in relation to that resident, holds at least ten per cent but not more than 25 per cent of the participation rights in any foreign company (other than a foreign company contemplated in paragraph *(a)* of the definition of 'controlled foreign company'), may elect that the foreign company be deemed to be a controlled foreign company in relation to that resident in respect of any foreign tax year of that foreign company;";

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

"*(bb)* the proportional amount determined in the manner contemplated in subparagraph (i) (as if the day that foreign **[entity]** company commenced to be a controlled foreign **[entity]** company was the first day of its foreign tax year), of the net income of that company for the

period commencing on the day that the foreign company commenced to be a controlled foreign company and ending on the last day of that foreign tax year; or";

(h) by the substitution in subsection (2A) for the words preceding the proviso of the following words:

"For the purposes of this section, the 'net income' of a controlled foreign company in respect of a foreign tax year is an amount equal to the taxable income of that company determined in accordance with the provisions of this Act as if that controlled foreign company had been a taxpayer, and as if that company had been a resident for purposes of the definition of 'gross income', sections 7(8), **[9E]**, 10(1)*(h)*, 10(1)*(h*A*)*, 25B and paragraphs 2(1)*(a)*, 12, 24, 70, 71, 72 and 80 of the Eighth Schedule:";

(i) by the substitution in subsection (2A) for paragraph *(c)* of the proviso of the following paragraph:

"*(c)* no deduction shall be allowed in respect of any interest, royalties, rental or income of a similar nature paid or payable or deemed to be paid or payable by that company to any other controlled foreign company in relation to the resident (including any similar amount adjusted in terms of section 31) or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign company and other foreign company are parties, as contemplated in subsection (9)*(f*A*)*, unless that resident has elected in terms of subsection (12) that the provisions of subsection (9) shall not apply in respect of the net income of that other controlled foreign company for the relevant foreign tax year;";

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

"The provisions of **[this section]** subsection (2) shall not apply to the extent that the net income of the controlled foreign company—";

(k) by the deletion in subsection (9) of paragraph *(a)*;

(l) by the substitution in subsection (9) for the words in the proviso to paragraph *(b)* preceding subparagraph (i) of the following words:

""Provided that the provisions of this paragraph shall not apply to any net income that is attributable to **[any amounts]**—";

(m) by the substitution in subsection (9) for paragraph (i) of the proviso to paragraph *(b)* of the following paragraph:

"(i) any amounts derived from any transaction relating to the supply of goods or services by or to that controlled foreign company with any connected person (in relation to that controlled foreign company), who is a resident, unless the consideration in respect of that transaction reflects an arm's length price that is consistent with the provisions of section 31, unless the portion of the net income which is attributable to those amounts was taxed in any other country at an effective rate (after taking into account the application of any agreement for the avoidance of double taxation, if applicable, and in respect of which there is no right of recovery by any person other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment)which is equal to or exceeds the rate of tax in terms of this Act in respect of the amount of the taxable income which is attributable to that portion; or";

(n) by the substitution in subsection (9) for the words in paragraph (ii) of the proviso to paragraph *(b)* of the following words:

"(ii) any amounts derived from—";

(o) by the addition in subsection (9) to item *(aa)* of subparagraph (ii) of paragraph *(b)* of the following subitem:

"(D) the portion of the net income which is attributable to the amounts so derived was taxed in any other country at an effective rate (after taking into account the application of any agreement for the avoidance of double taxation, if applicable, and in respect of which there is no right of recovery by any person other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment) which is equal to or exceeds the rate of tax in terms of this Act in respect of the amount of the taxable income which is attributable to that portion; or";

(p) by the addition in subsection (9) to item *(bb)* of subparagraph (ii) of paragraph *(b)* of the following subitem:

"(D) the portion of the net income which is attributable to the amounts so derived was taxed in any other country at an effective rate (after taking into account the application of any agreement for the avoidance of double taxation, if applicable, and in respect of which there is no right of recovery by any person other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment)which is equal to or exceeds the rate of tax in terms of this Act in respect of the amount of the taxable income which is attributable to that portion; or";

(q) by the substitution in subsection (9) of item *(cc)* of subparagraph (ii) of paragraph *(b)* of the following item:

"*(cc)* any service performed by that controlled foreign company to a connected person (in relation to such controlled foreign company)who is a resident, unless—

(A) the service is performed outside the Republic and—

[(A)](AA) such service relates directly to the creation, extraction, production, assembly, repair or improvement of goods utilised within one or more countries outside the Republic; or

[(B)](BB) such services relate directly to the sale or marketing of goods of a connected person (in relation to that controlled foreign company) who is a resident and those goods are sold to persons who are not connected persons in relation to that controlled foreign company for delivery within the country of residence of that controlled foreign company; or

(B) the portion of the net income which is attributable to the amounts so derived was taxed in any other country at an effective rate (after taking into account the application of any agreement for the avoidance of double taxation, if applicable, and in respect of which there is no right of recovery by any person other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to

any year of assessment prior to such year of assessment) which is equal to or exceeds the rate of tax in terms of this Act in respect of the amount of the taxable income which is attributable to that portion; or";

(r) by the substitution in subsection (9) for subparagraph (iii) of paragraph *(b)* of the following subparagraph:

"(iii) any amounts in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, or any capital gain determined in respect of the disposal of any asset from which any such income is or could be earned, or any foreign currency gain determined in respect of any foreign equity instrument or any foreign currency gain determined in terms of section 24I, except **[where those amounts]**—

(aa) **[do]** to the extent that any income and capital gains attributable to those amounts (other than income in respect of which any of the provisions contained in paragraphs *(e)* to *(h)* apply) do not in total exceed **[five]** ten per cent of the **[sum of the amounts (other than those of a capital nature) and the amount of all capital gains and foreign currency gains of that controlled foreign company]** income and capital gains of the controlled foreign company attributable to that business establishment (excluding income in respect of which any of the provisions contained in paragraphs *(e)* to *(h)* apply); or

(bb) where those amounts arise from the principal trading activities of any banking or financial services, insurance or rental business, excluding any such amounts derived—

(A) by a company which is a foreign financial instrument holding company at the time that the amounts are so derived;

(B) from any connected person (in relation to that controlled foreign company) who is a resident or any resident who directly or indirectly holds at least five per cent of the participation rights in—

(i) that controlled foreign company; or

(ii) in any other company in the same group of companies which holds shares in that controlled foreign company; or

(C) **[from any resident]** to the extent that **[those amounts are produced as part of a scheme for the purpose of avoiding the liability for any tax, duty or levy imposed in terms of this Act or any other law administered by the Commissioner]** those amounts form part of any scheme in terms of which any amount received or accrued by any person is exempt from tax while any corresponding expenditure is deductible by that person or by any connected person in relation to that person;";

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

"*(f)* is attributable to any foreign dividend **[contemplated in section 9E]** declared to **[or deemed to have been declared to]** that controlled foreign company, by any other controlled foreign company **[from an amount which relates to an amount of income]** in relation to the resident, to the extent that the foreign dividend does not exceed the aggregate of all amounts which **[has]** have been or will be included in the income of the resident in terms of this section in any year of assessment, which relate to the net income of—

(i) the company declaring the dividend; or

(ii) any other company which has been included in the income of that resident by virtue of that resident's participation rights in that other company held indirectly through the company declaring the dividend,

reduced by so much of all foreign dividends received by or accrued to that controlled foreign company as was excluded from the application of this section in terms of this paragraph:";

(t) by the substitution in subsection (9) for paragraph *(h)* of the following paragraph:

"*(h)* is attributable to any amount received by or accrued to that controlled foreign company**[—**

(i)] from the disposal of any interest in the equity share capital of any other foreign company**[; or**

(ii) by way of a dividend declared to that controlled foreign company by any other foreign company],

(other than a foreign company which would have constituted a domestic financial instrument holding company immediately before that disposal had it been a resident), if that controlled foreign company (together with any other company in the same group of companies as that controlled foreign company) immediately before that disposal **[or at the time of the declaration of dividend]—**

(aa) held more than 25 per cent of the equity share capital in that other foreign company; and

(bb) **[in the case of any disposal contemplated in subparagraph (i),]** held such interest contemplated in item *(aa)* for a period of at least 18 months prior to that disposal, unless that interest was acquired by the controlled foreign company from any other foreign company, where that controlled foreign company and that other foreign company form part of the same group of companies and that controlled foreign company and that other foreign company in aggregate held that interest for more than 18 months:

Provided that **[the provisions of subparagraph (i) shall not apply where that other foreign company is a foreign financial instrument holding company immediately before that disposal]** in determining the total equity share capital in a foreign company, there shall not be taken into account any share which would have constituted an affected instrument, as contemplated in section 8E, but for the three year period requirement contained in that section.";

(u) by the deletion of subsection (11); and

(v) by the addition of the following subsection:

"(12) A resident who, together with any connected person in relation to that resident, holds at least 10 per cent but not more than 25 per cent of the participation rights of a controlled foreign company may elect that all the provisions of subsection (9) shall not apply in respect of the net income

determined for a relevant foreign tax year of any controlled foreign company in which that resident holds any participation rights.".

(2) Subsection (1) shall come into operation on 1 June 2004 and shall apply in respect of the foreign tax year of a controlled foreign company which ends during any year of assessment commencing on or after that date.

Repeal of section 9E of Act 58 of 1962

29. (1) Section 9E of the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) 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.

Repeal of section 9F of Act 58 of 1962

30. (1) Section 9F of the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) 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 9G of Act 58 of 1962

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

(a) by the substitution for subsections (1) and (2) of the following subsection:

"(1) For the purposes of this section 'foreign currency' means any currency **[which is not legal tender in]** other than currency of the Republic.

(2) **[Notwithstanding the provisions of section 25D,]** The amount to be included in the gross income of a person in respect of the disposal by that person of any foreign equity instrument which constitutes trading stock, shall be **[determined by translating]** the amount received or accrued in any currency other than currency of the Republic in respect of that disposal translated into the currency of the Republic at the average exchange rate for

the year of assessment during which that foreign equity instrument is disposed of."; and

(b) by the substitution for subsection (3) of the following subsection:

"Any—

(a) expenditure incurred by a person in any foreign currency **[other than currency of the Republic]** in respect of any foreign equity instrument which is allowable as a deduction in terms of the provisions of this Act; or

(b) amount in any foreign currency **[other than currency of the Republic]** which is taken into account in the determination of the taxable income of any person in respect of any foreign equity instrument,

shall, for **[purposes of determining the taxable income of that person for]** the year of assessment in which that foreign equity instrument is disposed of, be translated into the currency of the Republic—

(i) in the case of a foreign equity instrument acquired before 1 October 2001, at the ruling exchange rate on 1 October 2001; or

(ii) in any other case, at the average exchange rate for the year of assessment during which—

(aa) in the case of paragraph *(a)*, that expenditure was actually incurred by that person; or

(bb) in the case of paragraph *(b)*, the expenditure which relates to the amount so taken into account was actually incurred by that person.".

(2) Subsection (1) shall come into operation on the date of promulgation and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 10 of Act 58 of 1962

32. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs *(a)* and *(b)* of the following paragraphs:

"*(a)* the **[revenues]** receipts and accruals of the Government, any provincial administration or of any other state;

(b) the **[revenues]** receipts and accruals of local authorities;";

(b) by the substitution in subsection (1) for paragraph *(c*H*)* of the following paragraph:

"*(c*H*)* the receipts and accruals of any company, society or other association of persons or any trust, whether or not registered under any law (other than a co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981)), if—

(i) the sole object of **[such]** that company, society, association or trust in terms of—

(aa) the constitution of the company, society or association;

(bb) the instrument establishing the trust,

which has been approved by the Commissioner, is to receive, hold and apply moneys contributed by any taxpayer contemplated in section 11*(h*A*)* to **[such]** that company, society, association or trust in accordance with that section **[11*(h*A*)*]** in order to discharge, at the time of discontinuation or operations on a mine or part of a mine are discontinued, any of the following or like obligations imposed upon any person in terms of any law which regulates mining operations (other than costs which are required in terms of any law to be incurred on an ongoing basis during the life of a mine), namely—

[*(aa)*] (A) the rehabilitation of disturbances of the surface of land and the prevention and combating of pollution of the air, land, sea or other water where such disturbances and pollution are due to mining, prospecting, quarrying or similar operations;

[*(bb)*] (B) the protection of the surface of land and water sources and the making safe of undermined ground and of dangerous excavations, tailings, waste dumps and structures, of whatsoever nature, made in the course of mining, prospecting, quarrying or similar operations; and

[*(cc)*] (C) the demolition or removal of any building, structure or other thing erected or constructed in connection with

mining, prospecting, quarrying or similar operations, the removal of any debris or other objects and the restoration, as far as is practicable, of the surface to its natural state;

(iA) the Minister of Minerals and Energy certifies that the moneys contemplated in subparagraph (i) have not been distributed for any purpose other than the sole object contemplated in subparagraph (i);

(ii) **[such]** that company, society or association is under its constitution, or **[such]** that trust is under the instrument establishing **[such]** that trust, not permitted to distribute any of its profits or gains to any person and is required to utilize its funds solely for the object for which it has been established: Provided that such company, society, association or trust shall be permitted to invest its funds, **[in institutions approved by the Commissioner]** until such time as those funds are required—

(aa) with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

(bb) in any financial instrument—

(i) of a company contemplated in paragraph *(a)* of the definition of 'listed company' in section 1 (other than shares in the taxpayer contemplated in subparagraph (i)) or any connected person in relation to that taxpayer; or

(ii) issued by any sphere of government in the Republic;

(cc) in any other investments which were made by that company, society, association or trust before ***(date to be determined)***

[until such time as such funds are required];

(iii) in terms of the constitution of such company, society or association or the instrument establishing such trust it will upon its winding-up or liquidation be obliged to give or transfer its

assets remaining after the satisfaction of its liabilities to some other company, society, association or trust with a similar object to that of the said company, society, association or trust; and

(iv) the Commissioner has approved such company, society, association or trust on such conditions as **[he]** the Commissioner may deem necessary to ensure that the activities of such company, society, association or trust are wholly directed to the furtherance of its sole object:

Provided that—

(a) where the Commissioner is—

(i) satisfied that such company, society, association or trust has during any year of assessment in any material respect; or

(ii) during any year of assessment satisfied that such company, society, association or trust has on a continuous or repetitive basis,

failed to comply with the provisions of this section, or the constitution or instrument under which it is established to the extent that it relates to the provisions of this section, the Commissioner shall after due notice withdraw approval of that company, society, association or trust with effect from the commencement of that year of assessment, unless corrective steps are taken by that company, society, association or trust within a period stated by the Commissioner in that notice;

(b) where the Commissioner has withdrawn approval of a company, society, association or trust as contemplated in paragraph *(a)*, that company, society, association or trust must, within three months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any other company, society, association or trust which is—

(i) approved in terms of this section; and

(ii) not a connected person in relation to such company, society, association or trust;

(c) where a company, society, association or trust during any year of assessment fails to transfer, or to take reasonable steps to transfer, any assets as contemplated in subparagraph (iii) or paragraph *(a)* of this proviso, the accumulated net revenue which has not been so transferred shall for the purposes of this Act be deemed to be an amount of taxable income which accrued to that company, society, association or trust during that year of assessment.";

(c) by the substitution in subsection (1) for the words in item *(aa)* of subparagraph (xv) of paragraph *(i)* preceding the proviso of the following words:

"so much of the aggregate of any foreign dividends **[contemplated in section 9E]** and interest received by or accrued to him or her from a source outside the Republic, which are not otherwise exempt from tax, as does not during the year of assessment exceed R1 000:";

(d) by the substitution in subsection (1) for the words in item *(bb)* of subparagraph (xv) of paragraph *(i)* preceding subitem (A) of the following words:

"*(bb)* so much of the aggregate of any interest received by or accrued to him or her from a source in the Republic and any dividends (other than foreign dividends **[contemplated in section 9E]**), which are not otherwise exempt from tax, as does not during the year of assessment exceed—";

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

"dividends (other than foreign dividends) received by or accrued to or in favour of any person:"

(f) by the deletion in subsection (1) of the word "or" at the end of item *(cc)* of the proviso to subparagraph (i) of paragraph *(k)*;

(g) by the deletion in subsection (1) of item *(dd)* of the proviso to subparagraph (i) of paragraph *(k)*; and

(h) by the addition in subsection (1) to paragraph *(k)* of the following subparagraph:

"(ii) so much of any foreign dividend received by or accrued to a person—

(aa) where that person (in the case of a company, together with any other company in the same group of companies as that person)

holds more than 25 per cent of the total equity share capital in that company: Provided that—

(i) in determining the total equity share capital in a company, there shall not be taken into account any share which—

(aa) would have constituted an affected instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; or

(bb) forms part of any scheme in terms of which any amount received or accrued by any person is exempt from tax while any corresponding expenditure is deductible by that person or by any connected person in relation to that person; and

(ii) this exemption does not apply in respect of any foreign dividend received or accrued by virtue of the holding of any share contemplated in subparagraph (i);

(bb) which relates to any amount which was declared by a listed company which complies with paragraphs *(a)* and *(b)* of the definition of 'listed company' in section 1 and more than 10 per cent of the equity share capital in that listed company is at the time of the declaration of that foreign dividend held collectively by residents;

(cc) who is a resident to the extent that the foreign dividend does not exceed the aggregate of all amounts which have been or will be included in the income of that resident in terms of section 9D in any year of assessment, which relate to the net income of—

(A) the company declaring the dividend; or

(B) any other company which has been included in the income of that resident in terms of section 9D by virtue of that resident's participation rights in that other company held indirectly through the company declaring the dividend,

reduced by so much of all foreign dividends received by or accrued to that resident at any time from any company contemplated in subitems (A) or (B), as was either exempt from

tax in terms of this item or was not included in the income of that resident by virtue of any inclusion in terms of section 9D;";

(dd) to the extent that the profits from which the foreign dividend is distributed—

(A) relate to any amount which has been or will be subject to tax in the Republic in terms of this Act, unless those profits have been or will be exempt or taxed at a reduced rate in the Republic as a result of the application of any agreement for the avoidance of double taxation; or

(B) arose directly or indirectly from any dividends declared by any company which is a resident;

(i) by the deletion of paragraph *(kA)* of subsection (1);

(j) by the substitution in subsection (1) for paragraph (A) of the proviso to subparagraph (ii) of paragraph *(o)* of the following paragraph:

"(A) for purposes of this subparagraph, a person who is in transit through the Republic between two places outside the Republic and who does not formally enter the Republic through a port of entry as **[defined]** contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 2002), or does not enter at any other place in the case of a person authorised by the Minister in terms of section 31(2)*(c)* of that Act, shall be deemed to be outside the Republic; and";

(k) by the deletion in subsection (1) of paragraph *(s)*;

(l) by the substitution in subsection (1) for the words in paragraph *(x)* preceding the proviso of the following words:

"so much of any amount (being a lump sum) referred to in paragraph *(d)* of the definition of 'gross income' in section 1 or in section 7A(4A) **[or (5)]** as does not exceed R30 000 less the sum of any other amounts which have been excluded from the taxpayer's income by virtue of the exemption conferred by this paragraph, whether in the current or any previous year of assessment:";

(m) by the addition to subsection (1) of the following paragraph:

"*(zI)* any amount received by or accrued to or in favour of any person from the Government, where—

(i) that amount is granted in terms of an agreement for the

performance by that person of an institutional function in terms of a Public Private Partnership, as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(ii) that person is required in terms of that agreement to expend that amount for the development of any physical infrastructure of the Republic;

(iii) that amount will be so expended before that person commences performing that institutional function; and

(iv) the ownership of that physical infrastructure will vest in the Government."; and

(n) by the substitution for subsection (3) of the following subsection:

"(3) The exemptions from tax provided by any paragraph of subsection (1) shall not extend to—

(a) any payments out of the **[revenues]** receipts, accruals, amounts or profits mentioned in such paragraph; or

(b) any tax leviable under this Act in respect of any taxable capital gain determined in accordance with the Eighth Schedule.".

(2)*(a)* Subsection (1)*(b)* shall come into operation on 1 January 2004 and shall apply in respect of any year of assessment commencing on or after that date.

(b) Subsection (1)*(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(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.

(c) Subsection (1)*(k)* shall come into operation on 1 January 2004 and shall apply in respect of years of assessment commencing after that date.

(d) Subsection (1)*(m)* shall come into operation on the date of promulgation and shall apply in respect of any amount received or accrued on or after that date.

Amendment of section 11 of Act 58 of 1962

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

(a) by the insertion after paragraph *(b*B*)* of the following paragraph:

"*(b*C*)* an amount of any interest actually incurred by a company in the production of the income of that company for the year of assessment in the form of foreign dividends: Provided that—

(i) this deduction shall be limited to the amount of those foreign dividends which are included in the income of that company during that year of assessment; and

(ii) any amount whereby that interest exceeds the amount of those foreign dividends as contemplated in subparagraph (i), mustbe reduced by the amount of any foreign dividends received by or accrued to that company during that year which are exempt from tax, and the balance shall be carried forward to the immediately succeeding year of assessment and be deemed to be an amount of interest actually incurred by that company during that succeeding year of assessment in the production of income in the form of foreign dividends;";

(b) by the addition in paragraph *(g*A*)* to the proviso of the following paragraph:

"*(ff)* no deduction shall be allowed under this paragraph in respect of any expenditure incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004;";

(c) by the addition to subparagraph *(g*B*)* of the following proviso:

"Provided that no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;";

(d) by the insertion after paragraph *(g*B*)* of the following paragraph:

"*(g*C*)* an allowance in respect of any expenditure actually incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004 to acquire (otherwise than by way of devising, developing or creating)—

(i) any invention or patent as defined in the Patents Act, 1978 (Act No. 57 of 1978);

(ii) any design as defined in the Designs Act, 1993 (Act No. 195 of 1993);

(iii) any copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978);

(iv) any other property which is of a similar nature (other than Trade Marks as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993)); or

(v) any knowledge connected with the use of such patent, design, copyright or other property or the right to have such knowledge imparted,

which shall be allowed during the year of assessment in which that invention, patent, design, copyright, other property or knowledge is brought into use for the first time by the taxpayer for the purposes of the taxpayer's trade: Provided that—

(aa) where that expenditure actually incurred by the taxpayer exceeds R5 000, that allowance shall not exceed in any year of assessment—

(A) five per cent of the amount of that the expenditure in respect of any invention, patent, copyright or other property of a similar nature or any knowledge connected with the use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or

(B) 10 per cent of the amount of that expenditure of any design or other property of a similar nature or any knowledge connected with the use of such design or other property or the right to have such knowledge imparted;

(bb) where any such invention, patent, design, copyright or other property or knowledge was acquired from any person who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the expenditure to that connected person or the market value of that invention, patent, design, copyright or other property or knowledge as determined on the date upon which it was acquired by the taxpayer;";

(e) by the substitution for paragraph *(h*A*)* of the following paragraph:

"*(h*A*)* so much of any amount **[paid]** (other than an amount in respect of which any deduction or allowance has been or will be granted under

any other provision of this Act) paid in cash by a taxpayer engaged in mining, prospecting, quarrying or similar operations to a company, society, association of persons or trust referred to in section 10(1)*(cH)* to be used **[by such company, society, association or trust]** for the purposes contemplated in **[such]** that section[**: Provided that such amount shall be]** as does not exceed an amount determined **[and such payment shall be made]** in accordance with **[—**

(i) the constitution of such company, society or association of persons; or

(ii) the instrument establishing such trust,

as has been approved by the Commissioner in terms of section 10(1)*(cH)*] the formula:

$$\frac{(A - B)}{C},$$

in which formula in respect of each mine—

'A' represents the amount determined by a suitably qualified person of the estimated costs to be incurred at the time that operations of the mine or part of the mine are discontinued in order to discharge the obligations imposed in terms of any law which regulates mining operations;

'B' means the market value of the assets held by the company, society, association or trust in respect of that mine on the date of the determination of the estimated costs in symbol 'A'; and

'C' represents the estimated remaining life of that mine in number of years:

Provided that so much of the amount so paid in cash by that taxpayer as exceeds the deduction allowable in terms of this paragraph shall, for the purposes of this paragraph, be deemed to be an amount paid by the taxpayer in cash to that company, society, association or trust in the immediately succeeding year of assessment to be used for the purpose contemplated in section 10(1)*(cH)*;";

(f) by the substitution for paragraph *(o)* of the following paragraph:

"*(o)* an amount by which the cost to that taxpayer of any depreciable asset—

(i) which qualifies for a capital allowance or deduction in terms of section 11*(e)*, 12B, 12C, 12E, 14 or 14*bis*; and

(ii) the expected useful life of which for tax purposes does not exceed ten years as determined from the date of original acquisition,

exceeds the sum of the amount received or accrued from the disposal of that asset and the amount of any such capital allowance or deduction allowed in respect of that asset in that year or any previous year of assessment: Provided that for the purposes of this paragraph—

(aa) the cost of any machinery, implements, utensils or articles shall be deemed to be the actual cost plus the amount by which the value of such machinery, implements, utensils or articles has been increased in terms of paragraph (v) of the proviso to paragraph *(e)* and less the amount by which such value has been reduced in terms of paragraph (iv) of that proviso;

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

(cc) the cost of any aircraft in respect of which any allowance has been made to the taxpayer under section 14*bis* shall be deemed to be the actual cost less any amount (not being an amount which has been included in the income of the taxpayer for any year of assessment in terms of section 8(4)*(i)*) by which the cost or estimated cost price of such aircraft has in the calculation of such allowance been reduced in terms of section 14*bis*(2)*(a)*;

(dd) the cost of any ship in respect of which any allowance has been made to the taxpayer under the provisions of section 14 shall be deemed to be the actual cost less any amount (not being an amount which has been included in the income of the taxpayer for any year of assessment in terms of section 8(4)*(d)*) by which the cost or estimated cost price of such ship has in the calculation of such allowance been reduced in terms of the

definition of 'adjustable cost' or 'adjustable cost price' in section 14 (2);";

(g) the addition to paragraph *(p)* of the following proviso:

"Provided that no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;";

(h) by the addition in paragraph *(q)* of the following paragraph to the proviso:

"(iii) no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;";

(i) by the insertion after paragraph *(q)* of the following paragraph:

"*(r)* notwithstanding section 23*(g)*, at the election of that person, the amount of withholding tax on dividends proved to be payable in respect of any foreign dividend which is included in the gross income of that person: Provided that an election made by a person in terms of this paragraph applies in respect of all foreign dividends received by or accrued to that person during the year of assessment in respect of which the election was made."; and

(j) by the insertion in subsection (1) of the following subparagraph after subparagraph (ii) of paragraph *(t)*:

"(iii) of the South African National Roads Agency Limited incorporated in terms of section 3 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);".

(2)*(a)* Subsection (1)*(a)* shall come into operation on 1 June 2004 and shall apply in respect of any interest incurred during or balance of interest carried forward in terms of section 9E(5A) of the Income Tax Act, 1962, to any year of assessment commencing on or after that date.

(b) Subsection (1)*(e)* shall come into operation on 1 January 2004 and shall apply in respect of an amount paid by a taxpayer during any year of assessment commencing on or after that date.

(c) Subsection (1)*(f)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal on or after that date.

(d) Subsection (1)*(i)* shall come into operation on 1 June 2004 and shall apply in respect of any dividend received or accrued during any year of assessment commencing on or after that date.

(e) Subsection (1)*(j)* shall come into operation on the date of incorporation of the company contemplated in section 3 of the South African National Roads Agency Limited and National Roads Act, 1998.

Insertion of section 11A in Act 58 of 1962

34. (1) The following sections are hereby inserted in the Income Tax Act, 1962, after section 11:

"**Deductions in respect of expenditure and losses incurred prior to commencement of trade**

11A. (1) For purposes of determining the taxable income derived during any year of assessment by a person from carrying on any trade, there shall be allowed as a deduction from the income so derived, any expenditure and losses—

(a) actually incurred by that person prior to the commencement of and in preparation for carrying on that trade;

(b) which would have been allowed as a deduction in terms of section 11 (other than section 11*(x)*) or section 11B, had the expenditure or losses been incurred after that person commenced carrying on that trade; and

(c) which were not allowed as a deduction in that year or any previous year of assessment.

(2) So much of the expenditure and losses contemplated in subsection (1) as exceeds the income derived during the year of assessment from carrying on that trade after deduction of any amounts allowable in that year of assessment in terms of any other provision of this Act, shall not be set off against any income of that person which is derived otherwise than from carrying on that trade, notwithstanding section 20(1)*(b)*.

(3) In the case of a small business corporation as defined in section 12E, the expenditure and losses actually incurred as contemplated in subsection (1) shall for purposes of this section be increased by an amount equal to such expenditure and losses, but not exceeding R20 000.".

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

Insertion of section 11B in Act 58 of 1962

35. The following section is hereby inserted in the Income Tax Act, 1962, after section 11:

"**Deduction in respect of research and development**

11B. (1) For purposes of this section—

'cost' in relation to any building, machinery, plant, implement, utensil or article means the lesser of—

(a) the actual cost to the taxpayer of the erection, addition, improvement to or acquisition of any building or actual cost of that machinery, plant, implement, utensil or article; or

(b) the cost which a taxpayer would have incurred in respect of the direct cost of acquisition of that building, machinery, plant, implement, utensil or article (including the direct cost of the installation or erection thereof), if that taxpayer had acquired that building, machinery, plant, implement, utensil or article under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition was in fact concluded;

'copyright' means copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978);

'design' means a design as defined in the Designs Act, 1993 (Act No. 195 of 1993);

'invention' means an invention as defined in the Patents Act, 1978 (Act No.57 of 1978);

'patent' means a patent as defined in the Patents Act, 1978;

'research and development' means research and development conducted in the Republic that results or potentially may result in an identifiable intangible asset as contemplated under generally accepted accounting practice, but does not include research and development relating to—

(a) the social sciences, arts, humanities or management;

(b) market research, sales or marketing promotion; or

(c) testing analysis, quality control, periodic alterations or other similar routine activities; and

'trade mark' means trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993).

(2) There shall be allowed as a deduction during any year of assessment commencing on or after 1 January 2004—

(a) any expenditure actually incurred by a taxpayer in that year of assessment—

(i) in respect of research and development undertaken directly by that taxpayer; or

(ii) by way of payment to any other person (other than a connected person in relation to that taxpayer for research and development undertaken by any other person on behalf of that taxpayer,

for purposes of devising, developing or creating any invention, patent, design, copyright or other property which is of a similar nature (other than any trade mark);

(b) any expenditure actually incurred by a taxpayer in that year of assessment for purposes of—

(i) registration of any invention, patent, design, copyright or other property; and

(ii) obtaining the extension of the period of legal protection, the extension of the registration period, or the renewal of the registration of any such invention, patent, design, copyright or other property.

(3) In addition to any allowance contemplated in subsection (2), there shall be allowed as a deduction by a taxpayer in respect of any building, machinery, plant, implements, utensils and articles of a capital nature used by

that taxpayer for purposes of research and development, an allowance equal to 40 per cent of the cost of that building, machinery, plant, implements, utensils and articles in the year of assessment that it is brought into use for the first time by that taxpayer and 20 per cent in each of the three immediately succeeding years of assessment: Provided that where any building was used partly for research and development and partly for other purposes in the same year of assessment, the allowance for that year of assessment shall be limited to an amount which bears to the full amount of the allowance for that year, the same ratio as the use of that building for research and development bears to the total use of that building in that year of assessment

(4) No deduction shall be allowed under subsection (2)*(a)*(ii) in respect of any expenditure, unless—

(a) that expenditure relates to the acquisition of any such invention, patent, design, copyright or other property;

(b) the payments are for discovery of new information; and

(c) full ownership and control by the taxpayer exists over the results of such research and development.

(5) No allowance shall be allowed in terms of this section in respect of any machinery, plant, implement, utensil and article of a person which was used during the year of assessment for purposes other than research and development.

(6) The allowance contemplated this section shall apply in lieu of any other deduction or allowance granted under any other provision of this Act, unless the taxpayer elects in the year of assessment that the building, machinery, plant, implement, utensil or article is brought into use for the first time by that taxpayer that the deduction or allowance granted under that other provision shall apply, in which case subsections (2) and (3) shall not apply in respect of that building, machinery, plant, implement, utensil or article, as the case may be.".

Amendment of section 12C of Act 58 of 1962

36. Section 12C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph *(c)* of the proviso of the following subparagraphs:

"(i) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement **[during the period commencing]** on or after 1 March 2002 **[and ending on 28 February 2005]**; and

(ii) brought into use by the taxpayer **[during that period]** on or after that date in a process of manufacture or process which in the opinion of the Commissioner is of a similar nature, carried on by that taxpayer in the course of its business (other than banking, financial services, insurance or rental business),".

Amendment of section 12E of Act 58 of 1962

37. (1) Section 12E of the Income Tax Act, 1962, is hereby amended—

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

"(ii) none of the shareholders or members at any time during the year of assessment of the company or close corporation holds any shares or has any interest in the equity of any other company as defined in section 1, other than—

(aa) a company contemplated in paragraph *(a)* of the definition of 'listed company'; **[or]**

(bb) any portfolio in a collective investment scheme contemplated in paragraph *(e)* of the definition of 'company';); or

(cc) a company contemplated in section 10(1)*(e)*(i), (ii) or (iii); and

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

"(iii) not more than 20 per cent of the **[gross income]** total of all receipts and accruals (other than those of a capital nature) and all the capital gains of the company or close corporation consists collectively of

investment income and income from the rendering of a personal service; and".

(2)*(a)* Subsection (1)*(a)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending 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 year of assessment commencing on or after that date.

Amendment of section 12H of Act 58 of 1962

38. (1) Section 12H of the Income Tax Act, 1962, is hereby amended—

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

"Notwithstanding section 23B, but subject to subsection (3), there shall be allowed to be deducted from the income derived by any employer during any year of assessment, an allowance determined in accordance with subsection (2), where—"; and

(b) by the addition in subsection (2) of the word "and" at the end of subparagraph (ii) of paragraph *(a)*.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001 and shall apply in respect of any registered learnership entered into or completed on or after that date.

Insertion of section 13*quat* in Act 58 of 1962

39. The following section is hereby inserted in the Income Tax Act, 1962, after section 13*bis*:

"**Deductions in respect of erection or improvement of buildings in urban development zones**

13*quat.* (1) For the purposes of this section—

'certificate of occupancy' means a certificate contemplated in section 14(1) of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);

'cost' means the costs (other than borrowing or finance costs) actually incurred on or before 1 January 2008 to erect or extend, add to or improve a building and includes any costs incurred—

(a) in demolishing any existing building or part thereof;

(b) in excavating the land for purposes of erection, extension, addition or improvement of a building; and

(c) in respect of structures or works directly adjoining the building so erected, extended, added or improved, for purposes of providing—

(i) water, power or parking with respect to that building;

(ii) drainage or security for that building;

(iii) means of waste disposal for that building; or

(iv) access to that building, including the frontage thereof;

'demarcated zone' means a zone demarcated by a municipality in terms of subsection (7);

(2) There shall be allowed to be deducted from the income of the taxpayer an allowance (to be known as the urban development zones allowance) determined in terms of subsection (3), in respect of the cost of the erection, extension, addition or improvement of any commercial or residential building within a demarcated zone—

(a) which was commenced by the taxpayer on or after *(date of tabling)* in terms of a contract formally and finally signed by all parties thereto on or after that date; and

(b) in respect of which a certificate of occupancy has been granted.

(3) The amount of the allowance contemplated in subsection (2)—

(a) in the case of the erection of any new building or the extension of or addition to any building (other than a building in respect of which paragraph *(b)* applies), is equal to—

(i) 20 per cent of the cost to the taxpayer to erect that building, which is deductible in the year of assessment during which that building is brought into use by that taxpayer for the purposes of

that taxpayer's trade; and

(ii) five per cent of that cost in each of the 16 succeeding years of assessment; or

(b) in the case of the improvement of any existing building or part of a building (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved, is equal to—

(i) 20 percent of the cost to the taxpayer of the extension, addition or improvement, which is deductible in the year of assessment during which the part of the building so extended, added or improved is brought into use by the taxpayer for the purposes of that taxpayer's trade; and

(ii) 20 per cent of that cost in each of the four succeeding years of assessment.

(4) No deduction shall be allowed under this section, unless the taxpayer has together with the tax return for the year of assessment in which the deduction is claimed under subsection (4)*(a)*(i) or *(b)*(i), provided to the Commissioner—

(a) a certificate from the municipality confirming that the building is located within a demarcated zone of that municipality;

(b) the total amount of the costs to the taxpayer of the erection, extension, addition or improvement and the extent that those costs relate to any portion of the building in respect of which a certificate of occupancyhas been granted; and

(c) particulars as to whether the costs were incurred in respect of the erection of a building as contemplated in subsection (3)*(a)* or the extension, addition or improvement of a building as contemplated in subsection (3)*(b)*.

(5) No deduction shall be allowed under this section in respect of any building which has been disposed of by the taxpayer during any previous year of assessment.

(6) For the purposes of this section, the municipal councils for the municipal areas of Buffalo City, Cape Town, Ekurhuleni, Emalahleni, eThekwini, Johannesburg, Mafikeng, Mangaung, Matjhabeng, Mbombela,

Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje and Tshwane must each designate by notice in the *Gazette* a single inner city district within its municipal boundaries—

(a) which is consistent with that municipality's integrated development plan adopted and undertaken in terms of Chapter 5 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

(b) which constitutes a priority area within the economic development strategy for the municipal council which is developed in terms of section 26*(c)* of the Local Government: Municipal Systems Act, 2000;

(c) where formal partnership arrangements between the municipal council and its business community have been implemented by way of any contract to promote urban development within that inner city district;

(d) which proportionately contributes or previously contributed the largest portion of the total receipts of the relevant municipality in the form of rates and taxes and where the contribution from that district is declining; and

(e) where additional measures have been implemented by the municipal council to support the regeneration of that district, including any capital or operational expenditure or special tariffs for categories of residential, commercial or industrial users.

(7) A municipal council may publish the notice as contemplated in subsection (7) only after that council has proved to the Minister that the area it intends to demarcate complies with the provisions of subsection (7).

(8) The Commissioner must on an annual basis submit a report to the Minister containing information relating to—

(a) the number of taxpayers which have during the relevant year become entitled to claim an allowance in terms of this section;

(b) the total amount of the costs to those taxpayers which is or will be allowable as a deduction in terms of this section; and

(c) the total amount of the deductions by taxpayers allowed in that year in terms of this section.

(9) Every municipal council contemplated in subsection (6) must report annually to the Minister of Finance on all costs incurred in respect of which this section applied.".

Amendment of section 18A of Act 58 of 1962

40. (1) Section 18A of the Income Tax Act, 1962, is hereby amended—

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

"Notwithstanding the provisions of section 23, there shall be allowed to be deducted from the taxable income of any taxpayer so much of the sum of any *bona fide* donations by that taxpayer in cash or of property made in kind **[made by such taxpayer and]** (other than property which constitutes or is subject to any fiduciary right, usufruct or other similar right or which constitutes an intangible asset or financial instrument, unless that financial instrument is a share in a listed company), which was actually paid or transferred during the year of assessment to—";

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

"(i) public benefit organisation approved by the Commissioner under section 30 or which continues to enjoy exemption under section 21(2)*(a)* of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000); or";

(c) by the insertion in subsection (1) after paragraph *(a)* of the following paragraph:

"*(c)* the Government, any provincial administration or local authority as contemplated in section 10(1)*(a)* or *(b)*;";

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

"*(bb)* complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A);"; and

(e) by the substitution in subsection (1) for subparagraph (i) of paragraph *(b)* of the following subparagraph:

"(i) provides funds or assets **[solely]** to any public benefit organisation, institution, board or body contemplated in paragraph *(a)*; and";

(f) by the substitution in subsection (1) for subparagraph (ii) of paragraph *(b)* and the words following subparagraph (ii) of the following subparagraph and words:

"(ii) during the year of assessment preceding the year of assessment of such public benefit organisation during which the donation is received, distributed or incurred the obligation to so distribute at least 75 per cent of the funds received by such organisation by way of donations which qualified for a deduction in terms of this section: Provided that the Commissioner may, upon good cause shown and subject to such conditions as he or she may determine, either generally or in a particular instance, waive, defer or reduce the obligation to distribute any funds, having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds,

as does not exceed **[the greater of—**

***(aa)*]** five per cent of the taxable income of the taxpayer as calculated before allowing any deduction under this section or section 18 **[or**

(bb) **R1 000**:

Provided that the Commissioner may, upon good cause shown and subject to such conditions as he or she may determine, either generally or in a particular instance, waive, defer or reduce the obligation to distribute any funds as contemplated in paragraph (b) (ii), having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds].";

(g) by the insertion after subsection (1B) of the following subsection:

"(1C) The constitution or founding document of a public benefit organisation carrying on the activity contemplated in paragraph 4 of Part II of the Ninth Schedule, must expressly provide that the organisation—

(a) may not issue any receipt contemplated in subsection (2) in respect of any donation made by a person to that public benefit organisation, unless—

(i) that donation is made by that person on or after 1 August 2002, but before 1 August 2005; and

(ii) that person (in the case of a company, together with any other company in the same group of companies as that company) has

during the relevant year of assessment of that person donated an amount of at least R1 million to that organisation;

(b) must ensure that every donation contemplated in paragraph *(a)*, in respect of which such a receipt has been issued, will be matched by a donation to that organisation of the same amount made by a person who is not a resident and which is made from funds generated and held outside the Republic; and

(c) must utilise the amount of—

(i) all donations contemplated in paragraph *(a)*, in respect of which such a receipt has been issued, and all income derived therefrom, in the Republic in carrying on that activity; and

(ii) all donations contemplated in paragraph *(b)*, either in the Republic in carrying on that activity, or in respect of a transfrontier conservation area of which the Republic forms part.";

(h) by the insertion after subsection (2) of the following subsections:

"(2A) A public benefit organisation, institution, board or body may only issue a receipt contemplated in subsection (2) in respect of any donation to the extent that—

(a) in the case of a public benefit organisation, institution, board or body contemplated in subsection (1)*(a)* which carries on activities contemplated in Parts I and Part II of the Ninth Schedule, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule; or

(b) in the case of a public benefit organisation contemplated in subsection (1)*(b)* which provides funds to public benefit organisations, institutions, boards or bodies that carry on public benefit activities contemplated in Part II of the Ninth Schedule and to other entities, that donation will be utilised solely to provide funds to a public benefit organisation, institution, board or body contemplated in subsection (1)*(a)*, which will utilise those funds solely in carrying on activities contemplated in Part II of the Ninth Schedule.

(2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must together with its annual return for a

year of assessment submit to the Commissioner an audit certificate confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A).”; and

(i) by the substitution in subsection (3) for paragraphs *(a)*, *(b)*, *(c)* and *(d)* of the following paragraphs:

“*(a)* where such property constitutes—

(i) a financial instrument which is trading stock of the taxpayer, the lower of fair market value of that financial instruments on the date of that donation or the amount which has been taken into account for the purposes of section 22(8); or

(ii) any other trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22(8) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property; or

(b) where such property (other than trading stock) constitutes an asset used by the taxpayer for the purposes of his trade, the lower of—

(i) the fair market value of that property on the date of that donation; or

(ii) the cost to the taxpayer of such property less any allowance (other than any investment allowance) allowed to be deducted from the income of the taxpayer under the provisions of this Act in respect of that asset; or

(c) where such property does not constitute trading stock of the taxpayer or an asset used by him for the purposes of his trade, the lower of —

(i) the fair market value of that property on the date of that donation; or

(ii) the cost to the taxpayer of such asset, less, in the case of a movable asset which has deteriorated in condition by reason of use or other causes, a depreciation allowance calculated in the manner contemplated in section 8(5)*(b*B*)*(i); or

(d) where such property is purchased, manufactured, erected, assembled,

installed or constructed by or on behalf of the taxpayer in order to form the subject of the said donation, the lower of—

(i) the fair market value of that property on the date of that donation; or

(ii) the cost to the taxpayer of such property.".

(2) Subsection (1)*(a), (c), (d), (e), (g), (h)* and *(i)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any donation which takes effect on or after that date.

Amendment of section 20 of Act 58 of 1962

41. (1) Section 20 of the Income Tax Act, 1962, is hereby amended—

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

"For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall, subject to section 20A, be set off against the income so derived by such person—"; and

(b) by the substitution in subsection (1) for paragraph *(b)* of the proviso and the words following paragraph *(b)* of the following paragraph:

"*(b)* derived by any person from the carrying on within the Republic of any trade, any—

(i) assessed loss incurred by such person during such year; or

(ii) any balance of assessed loss incurred in any previous year of assessment,

in carrying on any trade outside the Republic.".

(2)*(a)* Subsection (1)*(a)* shall come into operation on 1 March 2004 and shall apply in respect of any year of assessment commencing on or after that date.

(b) Subsection (1)*(b)* shall be deemed to have come into operation on 6 December 2000.

Insertion of section 20A in Act 58 of 1962

42. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 20:

"**Ring-fencing of assessed losses of certain trades**

20A. (1) Subject to subsection (3), where the circumstances in subsection (2) apply during any year of assessment in respect of any trade carried on by a natural person, any assessed loss incurred during that year in carrying on that trade may not be set off against any income of that person derived during that year otherwise than from carrying on that trade, notwithstanding section 20(1)*(b)*.

(2) Subsection (1) applies where the taxable income of a person for a year of assessment (before taking into account the set-off of any assessed losses incurred in carrying on any trade during that year and the balance of assessed loss carried forward from the preceding year) equals or exceeds the amount at which the maximum marginal rate of tax chargeable in respect of the taxable income of individuals becomes applicable, and where—

(a) that person has, during the five year period ending on the last day of that year of assessment, incurred an assessed loss in at least three years of assessment in carrying on the trade contemplated in subsection (1) (before taking into account any balance of assessed loss carried forward); or

(b) the trade contemplated in subsection (1), in respect of which the assessed loss was incurred constitutes—

(i) any sport practised by that person or any relative;

(ii) any dealing in collectibles by that person or any relative;

(iii) the rental of residential accommodation, unless at least 80 per cent of the residential accommodation is used by persons who are not relatives of that person for at least half of the year of assessment;

(iv) the rental of transportation assets, unless at least 80 per cent of the transportation assets are used by persons who are not relatives of that person for at least half of the year of assessment;

(v) animal showing by that person or any relative;

(vi) farming or animal breeding carried on by that person otherwise than on a full-time basis;

(vii) any form of performing or creative arts practised by that person or any relative; or

(viii) any form of gambling or betting practised by that person or any relative.

(3) The provisions of subsection (1) do not apply in respect of an assessed loss incurred by a person during any year of assessment from carrying on any trade contemplated in subsection (2)*(a)* or *(b)*, where that trade constitutes a business in respect of which there is a reasonable prospect of deriving taxable income (other than taxable capital gain) within a reasonable period having special regard to—

(a) the proportion of the gross income derived from that trade in that year of assessment in relation to the amount of the allowable deductions incurred in carrying on that trade during that year;

(b) the level of activities carried on by that person or the amount of expenses incurred by that person in respect of advertising or selling in carrying on that trade;

(c) whether that trade is carried on in a commercial manner, taking into account—

(i) the number of full-time employees appointed for purposes of that trade (other than persons partly or wholly employed to provide services of a domestic or private nature);

(ii) the commercial setting of the premises where the trade is carried on;

(iii) the extent of the equipment used exclusively for purposes of carrying on that trade; and

(iv) the time that the person spends at the premises conducting that business;

(d) the number of years of assessment during which assessed losses were incurred in carrying on that trade in relation to the period from the date when that person commenced carrying on that trade and taking into account—

(i) any unexpected events giving rise to any of those assessed losses; and

(ii) the nature of the business involved;

(e) the business plans of that person and any changes thereto to ensure that taxable income is derived in future from carrying on that trade; and

(f) the extent to which any asset attributable to that trade is used, or is available for use, by that person or any relative of that person for recreational purposes or personal consumption.

(4) Subsection (3) does not apply in respect of a trade contemplated in subsection (2)*(b)* (other than farming) carried on by a person during any year of assessment where that person has, during the ten year period ending on the last day of that year of the assessment, incurred an assessed loss in at least six years of assessment in carrying on that trade (before taking into account any balance of assessed loss carried forward).

(5) Notwithstanding section 20(1)*(a)*, any balance of assessed loss carried forward from the preceding year of assessment, which is attributable to an assessed loss in respect of which subsection (1) applied in that preceding year or any prior year of assessment, may not be set off against any income derived by that person otherwise than from carrying on the trade contemplated in subsection (1).

(6) For the purposes of this section and section 20, the income derived from any trade referred to in subsections (1) or (5), includes any amount which is included in the income of that person in terms of section 8(4) in respect of an amount deducted in any year of assessment in carrying on that trade.

(7) Notwithstanding anything to the contrary contained in this Act, all farming activities carried on by a person shall be deemed to constitute a single trade carried on by that person for the purposes of this section.

(8) Where the provisions of subsection (2) apply during any year of assessment in respect of any trade carried on by a person, that person must indicate in his or her return contemplated in section 66 for that year of assessment the nature of the business and whether subsection (2)*(a)* or *(b)* applies in respect of that trade.

(9) Where during any year of assessment a person fails to comply with subsection (8) in respect of any trade carried on by him or her, the provisions of subsection (1) shall, notwithstanding subsection (3), apply in respect of any assessed loss incurred by that person in carrying on that trade during that year, unless there were reasonable grounds for believing that the trade formed part of another trade carried on by him or her.

(10) For the purposes of subsections (2)*(a)* and (4), any assessed loss incurred in any year of assessment ending on or before 29 February 2004 shall not be taken into account.

(11) For the purposes of this section—

(a) 'assessed loss' means 'assessed loss' as defined in section 20(2); and

(b) 'relative' in relation to a person means a parent, child, stepchild, brother, sister, grandchild or grandparent of that person.".

(2) Subsection (1) shall come into operation on 1 March 2004 and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of section 22 of Act 58 of 1962

43. (1) Section 22 of the Income Tax Act, 1962, is hereby amended—

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

"*(a)* any marketable security has been lent by a lender to a borrower in terms of a lending arrangement **[as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968)]**, such marketable security shall be deemed not have been acquired by such borrower; or";

(b) by the substitution in subsection (8) for item (B) of paragraph *(b)* of the following item:

"(B) where such trading stock has been applied, disposed of or distributed in a manner contemplated in paragraph *(b)* (otherwise than in the manner contemplated in item (C)) or ceases to be held as trading stock, an amount equal to the market value of such trading stock;";

(c) by the addition in subsection (8) after item (B) of paragraph *(b)* of the following item:

"(C) where such trading stock has been applied for the purpose of making a donation in respect of which the provisions of section 18A apply, an amount equal to the amount which was taken into account for that year of assessment in respect of the value of that trading stock in terms of subsection (2).";

(d) the substitution in subsection (9) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"(ii) such person has, during such year of assessment, lent such marketable security to a borrower in terms of a 'lending arrangement' **[as defined in section in section 23 (1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968)]**; and"; and

(e) the substitution in subsection (9) for subparagraph (ii) of paragraph *(b)* of the following subparagraph:

"(ii) such person has, during such year of assessment, borrowed such marketable security from a lender in terms of a 'lending arrangement' **[as defined in section in section 23 (1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968)]**; and".

(2)*(a)* Subsection (1)*(a)*, *(d)* and *(e)* shall come into operation on the date of promulgation of this Act.

(b) Subsection (1)*(b)* and *(c)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any trading stock applied on or after that date.

Amendment of section 23 of Act 58 of 1962

44. (1) Section 23 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in paragraph *(m)* for item *(aa)* of subparagraph (iii) of the following item:

"*(aa)* **[which]** to the extent that it covers that person **[solely]** against the loss of income as a result of illness, injury, disability or unemployment; and"; and

(b) by the addition of the following paragraph:

"*(n)* any deduction or allowance in respect of any asset to the extent that the asset is acquired from an amount granted to the taxpayer by the Government which is exempt from tax.".

(2) Subsection (1) 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 23B of Act 58 of 1962

45. Section 23B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) No deduction shall be allowed under section 11*(a)* **[or *(b)*]** in respect of any expenditure or loss of a type for which a deduction or allowance may be granted under any other provision of this Act, notwithstanding that such other provision may impose any limitation on the amount of such deduction or allowance.".

Amendment of section 23F of Act 58 of 1962

46. Section 23F of the Income Tax Act, 1962, is hereby amended—

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

"Where any taxpayer has during any year of assessment incurred expenditure for the acquisition of trading stock which was neither disposed of by him during such year nor held by him at the end of such year, any deduction which may be allowed to him under the provisions of section 11*(a)* **[or *(b)*]** in respect of such expenditure shall not be allowed in such year, but such expenditure shall for the purposes of such provisions be deemed to have been incurred by him in the first subsequent year of assessment in which—";

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

"(2) Where any taxpayer has during any year of assessment disposed of any trading stock in the ordinary course of his trade for any consideration the

full amount of which will not accrue to him during such year of assessment and any expenditure incurred in respect of the acquisition of such trading stock was allowed as a deduction under the provisions of section 11*(a)* **[or *(b)*]** during such year or any previous year of assessment, the amount ofsuch expenditure so allowed as a deduction shall be deemed to have been recovered or recouped by such taxpayer and be included in the income of the taxpayer for the year of assessment during which such trading stock was so disposed of, and there shall be allowed to be deducted in—"; and

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

"*(b)* any expenditure incurred in respect of the acquisition of such asset was allowed as a deduction under the provisions of section 11*(a)* **[or *(b)*]** or was otherwise taken into account during such year or any previous year of assessment,".

Amendment of section 24G of Act 58 of 1962

47. Section 24G of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph *(c)* of the following paragraph:

"*(c)* any interest (other than interest which is deductible under section 11*(a)* **[or *(b)*]**) incurred by the taxpayer during the year of assessment in respect of any loan utilized for the purpose of financing any expenditure contemplated in paragraph (a) or *(b)*; and".

Amendment of section 24I of Act 58 of 1962

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

(a) by the substitution in subsection (1) for paragraphs *(b)* and *(c)* of the definition of "local currency" of the following paragraphs:

"*(b)* any resident in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, **[any]** the currency **[which is legal tender in]** of the Republic; or

(c) any person that is not a resident in respect of any exchange item which is attributable to a permanent establishment in the Republic, **[any]** the currency **[which is legal tender in]** of the Republic;";

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

"(9) For purposes of this section, any exchange item of a person contemplated in subsection (2), held by that person on 1 October 2001, other than in the course of trade of such person, shall be deemed to have been received, incurred, acquired or entered into, as the case may be, by that person on that date at the ruling exchange rate on that date for purposes of this section."; and

(c) by the substitution in subsection (10) for paragraph *(b)* of the following paragraph:

"*(b)* any controlled foreign company in relation to any exchange item contemplated in paragraph *(a)*:".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending on or after that date.

Substitution of section 25C of Act 58 of 1962

49. The following section hereby substitutes section 25C of the Income Tax Act, 1962:

"**Income of insolvent estates**

25C. For the purposes of this Act, and subject to any such adjustments as may be necessary**[—**

***(a)*]** the estate of a person prior to sequestration and that person's insolvent estate[**; and**

(b) **where the order of sequestration has been set aside, that person's insolvent estate and that person's estate after that order has been set aside,]**

shall be deemed to be one and the same person for purposes of determining—

(a) the amount of any allowance, deduction or set off to which that insolvent estate may be entitled;

(b) any amount which is recovered or recouped by or otherwise required to be included in the income of that insolvent estate; and

(c) any taxable capital gain or assessed capital loss of that insolvent estate.".

Substitution of section 25D of Act 58 of 1962

50. (1) The following section hereby substitutes section 25D of the Income Tax Act, 1962:

"**Determination of taxable income in foreign currency**

25D. (1) Unless expressly otherwise provided in this Act, the amount of any taxable income derived by a person during any year of assessment from amounts received by or accrued to, or expenditure incurred by, that person **[which are denominated]** in any currency other than the currency of the Republic, shall be determined—

[*(a)* in that currency; or]

[*(b)*]*(a)* where **[that income is]** the amounts so received, accrued or incurred are attributable to a permanent establishment of that person outside the Republic, in the currency used by that permanent establishment for purposes of financial reporting (other than the currency of any country in the common monetary area); or

[and the amount so determined shall be translated to the currency of the Republic by applying the average exchange rate for that year of assessment];

(b) in any other case, in the currency in which the amounts so received or accrued or the expenditure so incurred is denominated.";

(2) The amount of any taxable income for any year of assessment determined in terms of this Act in any currency other than the currency of the

Republic, must be translated to the currency of the Republic by applying the average exchange rate for that year of assessment.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 30 of Act 58 of 1962

51. (1) Section 30 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (iii) of paragraph *(b)* of the definition of "public benefit organisation" of the following subparagraph:

"(iii) at least 85 per cent of such activities, measured as **[either]** the cost related to the activities **[or the time expended in respect thereof,]** (other than costs paid from donations received by or accrued to that organisation from persons who are not residents or from receipts and accruals derived directly or indirectly therefrom) are carried out for the benefit of persons in the Republic, unless—

(aa) at least 90 per cent of all donations received by or accrued to that organisation are derived by way of receipts and accruals from persons who are not residents; or

(bb) the Minister, having regard to the circumstances of the case, directs otherwise; and".

(2) Subsection (1) shall come into operation on the date of promulgation and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 31 of Act 58 of 1962

52. Section 31 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of paragraph *(d)* of the definition of "international agreement".

Amendment of section 35 of Act 58 of 1962

53. Section 35 of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subsection (2) of paragraph *(c)*; and

(b) by the addition of the following subsection:

"(3) The general provisions contained in Parts I to VI of Chapter III of this Act shall *mutatis mutandis* apply in respect of any withholding tax on royalties payable in terms of this section.".

Amendment of section 41 of Act 58 of 1962

54. (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 which is a resident, where more than 50 per cent of either the market value or actual cost 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 as a going concern by that company or controlled group company, as the case may be; or";

(b) a financial instrument **[of any]** held by that company (or controlled group company) 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 actual cost 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) (other than paragraphs *(b)* and *(c)*) 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

55. (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 a 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 so much of the face value of that debt as relates to that equity share, 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]**."; and

(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

56. (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 amount]** 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 a 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 a 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

57. (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 the words in subsection (7) following paragraph (ii) of the following words:

"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]** respective 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 as contemplated in section 64C(4)*(c)* 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 a 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."; and

(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

58. (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 a financial instrument, within a period of 18 months after acquiring that asset in terms of an intra-group transaction and—"; 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), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern;";

(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

59. (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 to the shareholder or 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, to the extent to which those shares are so disposed of—

(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:

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]** portion of the cost 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."; and

(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

60. (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 assets are so 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."; and

(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

61. (1) 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.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001 and shall apply in respect of any donation that takes effect on or after that date.

Amendment of section 61 of Act 58 of 1962

62. Section 61 of the Income Tax Act, 1962, is hereby amended by the addition of the following paragraph:

"*(h)* any reference in section 76 to taxable income of a taxpayer is deemed to include a reference to the value of any property disposed of by that taxpayer under a donation.".

Amendment of section 64B of Act 58 of 1962

63. (1) Section 64B of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subsection (1) of the word "and" at the end of subparagraph (i) of paragraph *(a)* of the definition of "dividend cycle";

(b) by the insertion in subsection (1) after subparagraph (ii) of paragraph *(a)* of the definition of "dividend cycle" of the following subparagraphs:

"(iii) the date on which that company was incorporated, formed or otherwise established; and

(iv) the date on which that company becomes a resident.";

(c) by the substitution in subsection (1) for the words following paragraph *(a)* of the definition of "dividend cycle" of the following words:

"and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C(2)";

(d) by the substitution in subsection (1) for the words following subparagraph (ii) of paragraph *(a*A*)* of the definition of "dividend cycle" of the following words:

"and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C(2); and";

(e) by the substitution in subsection (1) for paragraph *(b)* of the definition of "dividend cycle" of the following paragraph:

"*(b)* in relation to any subsequent dividend declared by that company, the period commencing immediately after the previous dividend cycle of the company and ending on the date on which such dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C(2).";

(f) by the substitution for the words in subsection (3) preceding the proviso of the following words:

"The net amount of any dividend referred to in subsection (2) shall be the amount by which such dividend declared by a company exceeds the sum of any dividends (other than—

(a) any dividends contemplated in subsection (5)*(b)*, *(c)*, *(d)*, **[and]** *(f)* and *(j);* **[or]**

(b) any foreign dividends **[as defined in section 9E]**; or

(c) any dividend which accrued to a borrower as contemplated in the definition of 'lending arrangement' in respect of a share which was borrowed in terms of such arrangement,

but including foreign dividends **[which]** to the extent that those foreign dividends are exempt in terms of **[section 9E(7)*(c)*, *(d)*, *(e)*(ii), (iii) or (iv) or *(f)*), or section 9E (8A)]** section 10(1)*(k)*(ii)*(dd)*), which have during the dividend cycle in relation to such firstmentioned dividend accrued to the company:";

(g) by the substitution in subsection (4) for the words in paragraph *(c)* preceding subparagraph (i) of the following words:

"Where any cash or assets is or are **[given]** transferred or distributed—";

(h) by the substitution in subsection (5) for paragraph *(a)* of the following paragraph:

"*(a)* dividends declared by any company the entire receipts and accruals of which, or so much of the receipts and accruals of which as are derived otherwise than from investments, are exempt from tax under the

provisions of section 10: Provided that the provisions of this paragraph shall not apply to a company **[(other than a company referred to in section 10(1)*(s)*)]** which is exempt from tax under the said provisions solely because it derives gross income of a particular nature;";

(i) by the substitution in subsection (5) for subparagraph (ii) of paragraph *(c)* of the following subparagraph:

"(ii) distribution of profits of a capital nature (other than capital profits attributable to the disposal of any asset on or after 1 October 2001 which capital profits must, in the case of an asset acquired before that date, be limited to the amount of profit determined as if that asset had been acquired on 1 October 2001 for a cost equal to the market value of that asset on that date **[as]** determined in the manner contemplated in paragraph 29 of the Eighth Schedule): Provided that where that company became a resident after 1 October 2001, the capital profits in respect of an asset acquired before becoming a resident, must be limited to the amount of profit determined as if that asset had been acquired on the date of so becoming a resident for a cost equal to the market value of that asset on that date; or";

(j) by the addition in subsection (5) to paragraph *(c)* of the following subparagraph:

"(iii) distribution of profits derived by that company before that company became a resident:";

(k) by the substitution in subsection (5) for the words preceding subparagraph (i) of paragraph *(f)* of the following words:

"*(f)* any dividend declared by a company which accrues to a shareholder (as defined in Part III) of that company if—";

(l) by the substitution in subsection (5) for subparagraphs (i) and (ii) of paragraph *(f)* of the following subparagraph:

"(i) that shareholder is a controlling group company **[forming part of the same group of companies as]** in relation to the controlled group company declaring the dividend;

(ii) to the extent that the dividend declared by that controlled group company is derived out of profits earned by **[the company declaring**

the dividend] that company during any period when that company formed part of the same group of companies as the shareholder to whom the dividend **[was declared]** accrued";

(m) by the addition to subsection (5) of the word "and" at the end of subparagraph (iii) of paragraph *(f)*;

(n) by the deletion in subsection (5) of subparagraph (iv) of paragraph *(f)*;

(o) by the addition in subsection (5) to paragraph *(f)* of the following proviso:

"Provided that for purposes of this paragraph, where that shareholder company was formed solely by one or more companies within that group of companies, that shareholder company must be deemed to have been in existence and to have been the controlling company in relation to that company declaring the dividend from the date on which the controlling company in relation to that shareholder company was formed;";

(p) by the deletion of subsection (6);

(q) by the substitution in subsection (7) for the words preceding the proviso of the following words:

"(7) The secondary tax on companies shall be paid to the Commissioner by the company liable therefore**[—**

(a) **where such tax is payable in respect of any dividend declared on or before 30 June 1993—**

(i) **if a year of assessment of the company ended during the period from 1 December 1992 to 31 March 1993, by not later than 31 December 1993; and**

(ii) **in any other case, by not later than 31 July 1993; and**

(b) **where such tax is payable in respect of any dividend declared after 30 June 1993,]** by not later than the last day of the month following the month in which the dividend cycle relevant to such dividend ends and each payment of such tax shall be accompanied by a return in such form as the Commissioner may require:"; and

(r) by the deletion of subsection (10).

(2)*(a)* Subsection (1)*(f)* shall —

(i) to the extent that it inserts the provisions contained in paragraph *(c)* in section (3) come into operation on the date of promulgation of this Act and shall apply

in respect of any dividend accrued in terms of any lending arrangement on or after that date; and

(ii) to the extent that it amends the rest of subsection (3), come into operation on 1 June 2004 and shall apply in respect of any dividends accrued during any year of assessment commencing on or after that date.

(b) Subsection (1)*(h)* shall come into operation on 1 January 2004 and shall applyin respect of any dividend declared by any company during any year of assessment commencing after that date.

(c) Subsection (1)*(j)* shall come into operation on 26 February 2003 and shall apply in respect of any dividend declared on or after that date.

(d) Subsection (1)*(l)*, *(m)*, *(n)* and *(o)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any dividend declared on or after that date.

(e) Subsection (1)*(p)* shall come into operation on 1 June 2004 and shall apply in respect of any dividend declared on or after that date.

Amendment of section 64C of Act 58 of 1962

64. (1) Section 64C of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subsection (1) of the definition of "recipient";

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

"(2) For the purposes of section 64B, **[any]** an amount **[which is in terms of subsection (3) deemed to have been distributed by a company]** shall, subject to the provisions of subsection (4), be deemed to be a dividend declared by **[such]** a company **[out of that company's profits (determined in respect of the most recent year of assessment and which are available for distribution), to a shareholder, where that shareholder]** to a shareholder, where—

(a) **[receives a deemed distribution as contemplated in subsection (3); or]** any cash or asset is distributed or transferred by that company to or for the benefit of that shareholder or any connected person in relation to that shareholder;

(b) **[is a connected person in relation to any person who receives a deemed distribution as contemplated in subsection (3),]** the shareholder or any connected person in relation to that shareholder is released or relieved from any obligation measurable in money which is owed to that company by that shareholder or connected person;

(c) any debt owed by the shareholder or any connected person in relation to that shareholder to any third party is paid or settled by that company;

(d) any amount is used or applied by that company in any other manner for the benefit of the shareholder or any connected person in relation to that shareholder;

(e) that amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder or connected person in relation to such a shareholder, the consideration of which is adjusted in accordance with the provisions of section 31; or

(f) any loan or advance is granted and made available to that shareholder or connected person in relation to that shareholder

[notwithstanding the fact that such amount may have been so distributed by way of a loan or credit to the recipient or that the recipient may in consequence of such distribution have assumed any other form of obligation to make a future payment to the company];";

(c) by the deletion of subsection (3);

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

"(4) The provisions of subsection **[(3)]** (2) shall not apply—";

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

"*(a)* where the **[distribution of such]** amount constitutes a dividend or would have constituted a dividend but for the provisions of paragraphs *(e)* to *(i)*, inclusive, of the definition of 'dividend' in section 1;

(b) where **[such]** the amount **[distributed]** constitutes remuneration in the hands of the **[recipient]** shareholder or any connected person in relation to that shareholder or the settlement of any debt owed by the company to the **[recipient]** shareholder or connected person;";

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

"*(c)* to so much of any **[such]** amount **[distributed]** (other than an amount contemplated in subsection **[(3)]**(2)*(e)*) as exceeds the company's profits and reserves which are available for distribution, including any amount deemed in terms of the definition of 'dividend' in section 1 to be a profit available for distribution:";

(g) by the substitution in subsection (4) for paragraphs *(d)* and *(e)* of the following paragraphs:

"*(d)* to any loan granted in respect of which a rate of interest not less than the 'official rate of interest', as defined in paragraph 1 of the Seventh Schedule is payable by the **[recipient]** shareholder or any connected person in relation to the shareholder;

(e) to any loan granted to the **[recipient]** shareholder or any connected person in relation to the shareholder if the **[recipient]** shareholder or connected person is an employee of the company or an associated institution contemplated in paragraph 1 of the Seventh Schedule in relation to the company and such loan is granted under, and in compliance with the normal terms and conditions of, a loan scheme generally available to employees of the company or of the associated institution who are not shareholders;";

(h) by the substitution in subsection (4) for the words in paragraph *(f)* preceding subparagraph (i) of the following words:

"*(f)* to any loan or credit granted to a **[recipient]** shareholder of the company or any connected person in relation to the shareholder during any year of assessment, if—";

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

"(ii) the amount thereof is not included in any subsequent loan or credit granted to the **[recipient]** shareholder or any connected person in relation to the shareholder; and";

(j) by the substitution in subsection (4) of paragraph *(h)* of the following paragraph:

"*(h)* to a made by any company to any other company; within the same group of companies, if that **[loan is utilised by that other company in the Republic]** other company is a resident;";

(k) by the deletion in subsection (4) of the word "and" at the end of paragraph *(i)*;

(l) by the substitution in subsection (4) for paragraph *(j)* of the following paragraph:

"*(j)* to any loan granted to any **[recipient]** shareholder or connected person in relation to the shareholder, which is a company by any other company which holds for its own benefit, whether directly or indirectly, any of the equity share capital of such **[recipient company]** shareholder or connected person: Provided that the provisions of this paragraph shall not apply where such **[recipient company]** shareholder or connected person holds any of the equity share capital in such other company; and.";

(m) by the addition to subsection (4) of the following paragraph:

"*(k)* to any amount deemed to be a dividend declared by a company as contemplated in subsection (2)*(a)*, *(b)*, *(c)* or *(d)* to a shareholder or any connected person in relation to the shareholder, which is a resident—

(i) if that shareholder is a controlling group company in relation to the company which is deemed to have declared that dividend; and

(ii) to the extent that the amount of the profits and reserves available for distribution that was taken into account in terms of section 64C(4)*(c)* were derived during the period that the shareholder was a controlling group company in relation to that company.";

(n) by the addition to subsection (4) of the following paragraph:

"*(l)* to any amount deemed to be a dividend declared by a company as contemplated in subsection (2)*(a)*, *(b)*, *(c)* or *(d)* to any controlled group company in relation to that company.";

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

"(5) Where any loan granted by a company to a **[recipient]** shareholder or any connected person in relation to the shareholder—";

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

"*(b)* is thereafter wholly or partly repaid by the **[recipient]** shareholder or connected person,"; and

(q) by the addition of the following subsection:

"(6) For purposes of this section and section 64B, the dividend contemplated in subsection (2)*(a)*, *(b)*, *(c)*, *(d)* and *(f)* shall respectively be deemed to have been declared by the company on the date that the cash or asset is distributed or transferred, the obligation is released or relieved, the debt is paid or settled, the amount is used or applied or the loan or advance is made available, as the case may be.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any cash or asset distributed, any obligation relieved, any debt settled, any amount applied, any adjustment or any loan or advance granted on or after that date.

Substitution of section 65 of Act 58 of 1962

65. The following section hereby substitutes section 65 of the Income Tax Act, 1962:

"**Returns to be in form and submitted at place prescribed by Commissioner**

65. All forms of returns and other forms required for the administration of this Act shall be in such form and be submitted at such place as may be prescribed by the Commissioner from time to time.".

Amendment of section 66 of Act 58 of 1962

66. Section 66 of the Income Tax Act, 1962, is hereby amended—

(a) by the addition in subsection (13) to paragraph *(a)* of the following proviso:

"Provided that where—

(a) a person dies, a return shall be made for the period commencing on the first day of that year of assessment and ending on the date of death;

(b) the estate of a person is sequestrated, separate returns must be made for the periods—

(i) commencing on the first day of that year of assessment and ending on the date preceding the date of sequestration; and

(ii) commencing on the date of sequestration and ending on the last day of that year of assessment."; and

(b) by the substitution in the Afrikaans text for paragraph *(b)* of subsection (13) of the following paragraph:

"*(b)* in die geval van 'n maatskappy, vir die hele tydperk van die betrokke **[finansiële jaar]** boekjaar van daardie maatskappy wat die jaar van aanslag uitmaak.".

Insertion of section 67 in Act 58 of 1962

67. The following section is hereby inserted in the Income Tax Act, 1962, after section 66:

"**Registration as taxpayer**

67. (1) Every person who at any time becomes liable for any normal tax or who becomes liable to submit any return contemplated in section 66 must, within 60 days after so becoming a taxpayer, apply to the Commissioner to be registered as a taxpayer.

(2) Subsection (1) does not apply in respect of any person whose income is derived solely from net remuneration, as defined in paragraph 11B of the Fourth Schedule, and the employees' tax required to be deducted or withheld

from that net remuneration under the Fourth Schedule consists solely of Standard Income Tax on Employees.".

Amendment of section 70 of Act 58 of 1962

68. Section 70 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (2) of paragraph *(b)*.

Amendment of section 70B of Act 58 of 1962

69. Section 70B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Every person who administers a portfolio of financial instruments, **[as defined in the Eighth Schedule]**, on behalf of any other person and has the mandate of that other person to buy and sell any such financial instruments on such other person's behalf, shall furnish to the Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe.".

Substitution of section 72A of Act 58 of 1962

70. (1) The following section hereby substitutes section 72A of the Income Tax Act, 1962:

"**Return [as to participation right in] relating to controlled foreign company**

72A. (1) Every resident who on the last day of the foreign tax year of a controlled foreign entity or immediately before a foreign company ceases to be a controlled foreign company directly or indirectly, together with any connected person in relation to that resident, holds at least 10 per cent of the

participation rights in any controlled foreign company, must submit to the Commissioner together with the return contemplated in section 66 in respect of that year of assessment a return containing—

(a) the name, address and country of residence of the controlled foreign company;

(b) a description of the various classes of participation rights in that controlled foreign company;

(c) the percentage and class of participation rights held by the resident, whether directly, indirectly or together with connected persons and any such rights held by all connected persons;

(d) the rights of that person to participate in—

(i) any dividends of that controlled foreign company; and

(ii) any distribution upon the liquidation of that controlled foreign company,

and any such rights of all connected persons;

(e) the determination of the net income of the controlled foreign company and the calculation of the proportional amount relating thereto;

(f) a description of any amount of tax proved to be payable by that controlled foreign company to the government of any other country in respect of any income contemplated in paragraph *(e)*, including particulars relating to the country in which that tax was payable and the underlying profits to which that foreign tax relates.

(2) A resident must together with the return contemplated in subsection (1), submit a copy of the financial statements of the controlled foreign company (prepared in accordance with generally accepted accounting practice) for the foreign tax year of that controlled foreign company which ends during that year of assessment of that resident.

(3) Where a person in respect of any year of assessment fails to comply with the provisions of—

(a) subsection (1)*(c)* in respect of the participation rights held in any controlled foreign company and no reasonable grounds exist for that person to believe that such person was not subject to that requirement—

(i) that person shall be deemed to hold all the participation rights in that controlled foreign company for purposes of section 9D, unless that person proves otherwise;

(ii) the exclusions contemplated in section 9D(9) shall not apply in determining the proportional amount of the net income of that controlled foreign company which must be included in the income of that person in terms of section 9D; and

(iii) the provisions of section 6*quat* shall not apply in respect of any tax proved to be payable to the government of any other country with respect to the proportional amount of the net income of that controlled foreign company which is included in the income of that person in terms of section 9D; or

(b) subsection (2) and no reasonable grounds exist for that failure which are outside the control of the person—

(i) the proportional amount which must be included in the income of that person in terms of section 9D for that year shall be determined with reference only to the receipts and accruals of the controlled foreign company; and

(ii) the provisions of section 6*quat* shall not apply in respect of any tax proved to be payable to the government of any other country with respect to the proportional amount of the net income of that controlled foreign company which is included in the income of that person in terms of section 9D.".

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

Amendment of section 73A of Act 58 of 1962

71. Section 73A of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the heading of the following heading:

"**Record keeping by persons [deriving income other than remuneration] who render returns**"; and

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

paragraph:

"*(b)* any **[data created by means of a "computer" as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983) including data in the electronic form in which it was originally created or in which it is stored for the purposes of backing up such data]** electronic representations of information in any form,".

Amendment of section 74 of Act 58 of 1962

72. Section 74 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "information" of the following definitions:

"'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)]** printout of information generated, sent, received, stored, displayed or processed by electronic means;

'information' includes any **[data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983]** electronic representations of information in any form;".

Amendment of section 75 of Act 58 of 1962

73. (1) Section 75 of the Income Tax Act, 1962, is hereby amended by the insertion in subsection (1) after paragraph *(a)* of the following paragraph:

*(a*A*)* any person who fails to register as a taxpayer as contemplated in section 67;".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any failure to register on or after that date.

Insertion of Part IA in Chapter III of Income Tax Act, 1962

74. (1) The following Part is hereby inserted in Chapter III of the Income Tax Act, 1962, after Part I:

"PART IA

Reportable Transactions

Definitions

76A. (1) For purposes of this Part—

'financial benefit' means any reduction in finance costs, fees or charges;

'participant' in relation to a reportable transaction includes any person who directly or indirectly derives a tax benefit or financial benefit as a consequence of investing, borrowing or participating in any manner in that reportable transaction;

'reportable transaction' includes—

(a) any arrangement in terms of which—

(i) certain assumptions are made with regard to the tax treatment of that arrangement or any part thereof;

(ii) any tax benefits or financial benefits are derived by any person which result from the tax treatment so assumed; and

(iii) provision is made for the variation of any rights or obligations of any participant in terms of that arrangement where the tax treatment so assumed does not materialise;

(b) any arrangement—

(i) which is offered to a participant under any conditions of confidentiality relating to the structure of the arrangement and tax treatment of any part thereof; or

(ii) where the structure of the arrangement and tax treatment of any part thereof is claimed by any person to be proprietary to that person; or

(c) any arrangement which is substantially similar to any arrangement identified by the Minister by notice in the *Gazette*;

'tax benefit' means any reduction in or postponement of the liability of a person for any tax, duty, levy, charge or other amount in terms of any Act administered by the Commissioner.

Reporting of transaction

76B. (1) Every company or trust which—

(a) derives any tax benefit in terms of a reportable transaction; or

(b) claims any arrangement to be proprietary to that person as contemplated in paragraph *(b)*(ii) of the definition of 'reportable transaction',

must report that transaction to the Commissioner.

(2) The company or trust contemplated in subsection (1) must report the transaction contemplated in subsection (1) to the Commissioner—

(a) at the earlier of the date that the last of the transaction documents are signed or the date of implementation of the reportable transaction; and

(b) in such form and at such place as the Commissioner may prescribe.

(3) The company or trust must in so reporting provide to the Commissioner—

(a) a description of all the steps and key features of the tax shelter transaction;

(b) a list of all the parties to and participants in the tax shelter transaction;

(c) details of the promotional materials relating to that tax shelter transaction;

(d) certified copies of all the signed documents relating to that tax shelter transaction and the financial model of that tax shelter transaction; and

(e) if available, a live computer programme in respect of that reportable tax shelter transaction.

Identification number of reportable transaction

76C.(1) The Commissioner must issue an identification number in respect of a reportable transaction within 60 days after the date that the transaction is reported in terms of section 76B.

(2) Only one identification number will be issued by the Commissioner in respect of any reportable transaction, regardless of the number of persons reporting that transaction.

Effect of identification number

76D. An identification number issued by the Commissioner in respect of a reportable transaction is issued for administrative purposes only and shall not—

(a) have the effect that such transaction has been approved or authorised by the Commissioner;

(b) have the effect that any assumption of the tax treatment in terms of that transaction or any part thereof is accepted by the Commissioner; and

(c) absolve any party to or participant in that transaction from any obligation or liability which may be imposed on any such party or participant, whether by law or otherwise.

Failure to report transaction

76E. Where a company or trust fails to report a reportable transaction as contemplated in section 76B that company or trust may not claim any tax benefits in terms of that transaction to which that company or trust may otherwise have been entitled.

Duties of participants

76F. Every participant in a reportable transaction must in that participant's tax return for a year of assessment, disclose the identification

number of any reportable transaction in terms of which that participant during that year of assessment derives any tax benefit or financial benefit.".

(2) Subsection (1) shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.

Amendment of section 79B of Act 58 of 1962

75. Section 79B of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) The Commissioner must withdraw any assessment issued in respect of—

(a) the estate of a person for the period prior to the date of sequestration; and

(b) the insolvent estate of that person,

where the sequestration order is set aside.".

Amendment of section 81 of Act 58 of 1962

76. (1) Section 81 of the Income Tax Act, 1962, is hereby amended by the addition to subsection (2) of the following proviso:

"Provided that the period for objection may not be so extended—

(a) for a period exceeding 30 days, unless exceptional circumstances exist which gave rise to the delay in lodging the objection;

(b) where more than three years has lapsed from the date of the assessment; or

(c) where the assessment was made in accordance with the practice generally prevailing on the date of that assessment.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any objection lodged on or after that date.

Amendment of section 83 of Act 58 of 1962

77. Section 83 of the Income Tax Act, 1962, is hereby amended—

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

"(4C) If at any stage during the hearing of an appeal, or after hearing of the appeal but before judgement has been handed down—

(a) one of the judges dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal shall be heard *de novo*, unless the court consists of three judges, as contemplated in subsection (4B), and the remaining judges constitute the majority of judges before whom the hearing was commenced, in which case the hearing shall proceed before the remaining judges and members; or

(b) one of the members dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal shall proceed before the President and remaining members.

(4D) The judgement of the remaining judges and members contemplated in subsection (4C), shall be the judgement of the court.";

(b) by the addition in subsection (13) of the word "and" at the end of paragraph *(c)*;

(c) by the addition to subsection (13) of the following paragraph:

"*(d)* hear any interlocutory application and decide on procedural matters as provided for in the rules of the tax court contemplated in section 107A.".

Amendment of section 83A of Act 58 of 1962

78. Section 83A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (7) for the words of paragraph *(b)* preceding subparagraph (i) of the following words:

"within **[30 days before the date of the hearing of the appeal]** the period prescribed in the rules contemplated in section 107A, furnish the members of the board and the appellant with a written notice of the time and place of the hearing of the appeal and a dossier containing copies of—".

Insertion of Part IIIA in Chapter III of Act 58 of 1962

79. The following Part is hereby inserted in Chapter III of the Income Tax Act, 1962, after Part III:

"PART IIIA

Settlement of Dispute

Definitions

88A. (1) For the purposes of this Part—

'dispute' means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law;

'settle' means to resolve a dispute by compromising any disputed liability, otherwise than by way of either the Commissioner or the person concerned accepting the other party's interpretation of the facts or the law applicable to those facts, or of both the facts and the law, and 'settlement' shall be construed accordingly.

Purpose of Part

88B. (1) The basic principle in law is that it is the duty of the Commissioner to assess and collect taxes, duties, levies, charges and other amounts according to the laws enacted by Parliament and not to forgo any such taxes, duties, levies, charges or other amounts properly chargeable and payable.

(2) Circumstances may, however, require that the strictness and rigidity of this basic principle be tempered where it would be to the best advantage of the state.

(3) The purpose of this Part is to prescribe the circumstances whereunder it would be inappropriate and whereunder it would be appropriate that the basic rule be tempered and for a decision to be taken to settle a dispute.

Circumstances where inappropriate to settle

88C. It will be inappropriate and not to the best advantage of the state to settle a dispute, where, in the opinion of the Commissioner,—

(a) the action on the part of the person concerned which relates to the dispute, constitutes intentional tax evasion or fraud and no circumstances contemplated in section 88D exist;

(b) the settlement would be contrary to the law or a clearly established practice of the Commissioner on the matter, and no exceptional circumstances exist to justify a departure from the law or practice;

(c) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose;

(d) the pursuit of the matter through the courts will significantly promote compliance of the tax laws and the case is suitable for this purpose; or

(e) the person concerned has not complied with the provisions of any Act administered by the Commissioner and the Commissioner is of the opinion that the non-compliance is of a serious nature.

Circumstances where appropriate to settle

88D. The Commissioner may, where it will be to the best advantage of the state, settle a dispute, in whole or in part, on a basis that is fair and equitable to both the person concerned and SARS, having regard to *inter alia*—

(a) whether that settlement would be in the interest of good management of the tax system, overall fairness and the best use of the Commissioner's resources;

(b) the cost of litigation in comparison to the possible benefits with reference to—

(i) the prospects of success in a court;

(ii) the prospects of the collection of the amounts due; and

(iii) the costs associated with collection;

(c) whether there are any—

(i) complex factual or quantum issues in contention; or

(ii) evidentiary difficulties,

which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative dispute resolution procedures or the courts;

(d) a situation where a participant or a group of participants in a tax avoidance arrangement has accepted the Commissioner's position in the dispute, in which case the settlement may be negotiated in an appropriate manner required to unwind existing structures and arrangements; or

(e) whether the settlement of the dispute will promote compliance of the tax laws by the person concerned or a group of taxpayers or a section of the public in a cost-effective way.

Power to settle and disclosure

88.E (1) A dispute may be settled, as contemplated in section 88D, by the Commissioner personally or any official delegated by the Commissioner for that purpose.

(2) The Commissioner or the relevant delegated official must ensure that he or she does not have, or did not at any stage have, a personal, family, social, business, professional, employment or financial relationship with the person concerned.

Procedure for settlement

88F. (1) The person concerned should at all times disclose all relevant facts in discussions during the process of settling a dispute.

(2) Any settlement will be conditional upon full disclosure of material facts known to the person concerned at the time of settlement.

(3) All disputes settled in whole or in part, as contemplated in section 88D, must be evidenced by a written agreement between the parties in the format as may be prescribed by the Commissioner and must include details on—

(a) how each particular issue was settled;

(b) relevant undertakings by the parties;

(c) treatment of that issue in future years;

(d) withdrawal of objections and appeals; and

(e) arrangements for payment.

(4) The written agreement will represent the final agreed position between the parties and will be in full and final settlement of all or the specified aspects of the dispute in question between the parties.

(5) The Commissioner must, where the dispute is not ultimately settled, explain the further rights of objection and appeal to the person concerned.

(6) Subject to section 88G, the Commissioner and delegated official must adhere to the secrecy provisions with regard to the information relating to the person concerned and may not disclose the terms of any agreement to third parties unless authorised by law or by the person concerned.

(7) The Commissioner must adhere to the terms of the agreement, unless it emerges that material facts were not disclosed to it or there was fraud or misrepresentation of the facts.

(8) The Commissioner has the right to recover any outstanding amounts involved in the settlement in full where the person concerned fails to adhere to any agreed payment arrangement.

Register of settlements and reporting

88G. (1)The Commissioner must—

(a) maintain a register of all disputes settled in the circumstances contained in these regulations; and

(b) fully document the process in terms of which each dispute was settled, which document must be signed on behalf of the Commissioner and the person concerned.

(2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister of Finance a summary of all disputes which were settled in whole or in part during the period of 12 months covered by that summary, which must—

(a) be in such format which, subject to section 4(1)*(b)*, 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

(b) contain details of the number of disputes settled or part settled, the amount of revenue forgone and estimated amount of savings in costs of litigation, which must be reflected in respect of main classes of taxpayers or sections of the public.".

Amendment of section 89*quat* of Act 58 of 1962

80. (1) Section 89*quat* of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the proviso of the following proviso:

"Provided that—

(a) where any interest is payable to the taxpayer on any amount in respect of any period in terms of the provisions of section 88, no interest shall be payable to the taxpayer in terms of the provisions of this subsection in respect of the said amount and period; or

(b) where the refund by the Commissioner is delayed due to any default or delay by the taxpayer to comply with any provision of this Act or with any request by the Commissioner, the period in which interest shall be payable shall be suspended from the date the taxpayer is in default or fails to comply until the date of compliance by that taxpayer.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any refund made by the Commissioner on or after that date.

Amendment of section 104 of Act 58 of 1962

81. Section 104 of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) Any person who —

(a) fails to report a reportable transaction as required by section 76B;

(b) claims any tax benefit in terms of a reportable transaction where no identification number has been issued in terms of section 76C in respect of that reportable transaction; or

(c) fails to disclose in that person's tax return the identification number of a reportable transaction as required by section 76F,

shall be guilty of an offence and upon conviction shall be liable for a fine or imprisonment for a period not exceeding five years.".

Amendment of section 106 of Act 58 of 1962

82. Section 106 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2) for the word "and" at the end of paragraph *(c)* of the word "or";

(b) by the insertion in subsection (2) after paragraph *(c)* of the following paragraph:

"*(cA)* if transmitted to that person by electronic means;";

(c) by the addition in subsection (2) of the word "or" at the end of subparagraph (iii) of paragraph *(d)*; and

(d) by the addition in subsection (2) to paragraph *(d)* of the following subparagraph:

"(iv) if transmitted to the company or its public officer by electronic means;".

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

83. Paragraph 1 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item *(a)* of the following item:

"*(a)* a reference to a year of assessment shall in the case of any taxpayer who has under the provisions of **[subsection (13) or (13)*ter* of section sixty-six]** section 66(13A) of this Act been permitted to furnish accounts in respect of the income derived by him from pastoral, agricultural or other farming operations made up to a date other than the last day of the relevant year of assessment, be construed as a reference to the period covered by such accounts; and".

Amendment of paragraph 8 of First Schedule to Act 58 of 1962

84. Paragraph 8 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) Where any farmer has during any year of assessment incurred expenditure in respect of the acquisition of livestock, the deduction which may be allowed to him under section 11*(a)* **[or *(b)*]** of this Act in respect of the cost price of such livestock shall be limited to an amount which, together with the value of livestock held and not disposed of by him at the beginning of such year, does not exceed the income received by or accrued to him from farming during such year and the value of livestock held and not disposed of by him at the end of such year.".

Amendment of paragraph 12 of First Schedule to Act 58 of 1962

85. Paragraph 12 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (3B) of the following subparagraph:

"(3C) The amount of any expenditure carried forward and deemed to be incurred by a person in the next succeeding year in terms of paragraph 12(3) of the First Schedule must be reduced by any amount of expenditure in respect of which an election has been made in terms of paragraph 20A(1) of the Eighth Schedule.".

Amendment of paragraph 19 of First Schedule to Act 58 of 1962

86. Paragraph 19 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (4) of the following subparagraph:

"(4) In determining under this paragraph any amount of normal tax which is or would be chargeable no regard shall be had to the deductions provided for in section 6 **[or 6*bis*]** of this Act, and nothing in this paragraph

contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of **[his]** that person's taxable income.".

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

87. Paragraph 1 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in "formula C" for item (i) of symbol "B" in subparagraph *(b)* of the following item:

"(i) where the number of completed years of employment are in terms of the rules of the fund in question taken into account for the purpose of determining the amount of the benefit payable to him by the fund, the number of completed years of employment of the taxpayer after 1 March 1998, including previous or other periods of service approved as pensionable service in terms of the rules of any fund after 1 March 1998, other than completed years of employment representing—

(aa) any benefit of a member of any fund referred to in paragraph *(a)* or *(b)* of the definition of 'pension fund' in section 1, hereinafter referred to as a 'public sector fund', which is after 1 March 1998 paid for the benefit of such member into another public sector fund in respect of any previous or other periods of service or membership accounted for prior to 1 March 1998 in terms of the rules of any public sector fund; or

(bb) years of pensionable service purchased after 1 March 1998 by 'non-statutory force members' as defined in the Government Employees' Pension Law, 1996 (Proclamation No. 21 of 1996); or".

Amendment of paragraph 6 of Fourth Schedule to Act 58 of 1962

88. (1) Paragraph 6 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraphs (1) and (2) of the following subparagraphs:

"(6) (1) If an employer fails to pay any amount of employees' tax for which **[he]** that employer is liable within the period allowable for payment thereof in terms of paragraph 2, that employer shall—

(a) where the Commissioner is satisfied that the employer's failure was due to an intent to postpone payment of employees' tax or otherwise evade that employer's or any employee's obligations under this Act, pay a penalty not exceeding an amount equal to twice the amount of the employees' tax which that employer so fails to pay; or

(b) in any other case, pay a penalty equal to 10 per cent of such amount,

in addition to any other penalty or charge for which **[he]** that employer may be liable under this Act.

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

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any failure to pay any amount which becomes payable on or after that date.

Insertion of paragraph 6A of Fourth Schedule to Act 58 of 1962

89. (1) The following paragraph is hereby inserted in the Fourth Schedule to the Income Tax Act, 1962, after paragraph 6:

"6A. Where an amount of employees' tax which has been deducted or withheld by an employer which is a company (other than a listed company) in accordance with paragraph 2 has not been paid over to the Commissioner within the period prescribed in paragraph 2, the public officer and every director and shareholder of that company shall be personally liable for the payment to the Commissioner of that amount and for any penalty

contemplated in paragraph 6(1)*(a)* which may be imposed in respect of that amount.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount deducted or withheld on or after that date.

Substitution of paragraph 11 of Fourth Schedule to Act 58 of 1962

90. The following paragraph hereby substitutes paragraph 11 of the Fourth Schedule to the Income Tax Act, 1962:

"11. The Commissioner may, having regard to the circumstances of the case, issue a directive—

(a) to an employer authorising that employer—

(i) to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to any employee of that employer; or

(ii) to deduct or withhold by way of employees' tax from any remuneration in terms of paragraph 2, a specified amount or an amount to be determined in accordance with a specified rate or scale,

in order to alleviate hardship to that employee due to circumstances outside the control of the employee or where the remuneration constitutes commission or to correct any error in regard to the calculation of employees' tax and the employer must comply with that directive; or

(b) to an employer which is a private company, authorising that employer—

(i) to refrain from paying any amount under paragraph 11C(2); or

(ii) to pay under that paragraph a specified amount or an amount to be determined in accordance with a specified rate or scale,

in order to alleviate hardship to an employer which is a private company and the employer must comply with that directive.".

Amendment of paragraph 11C of Fourth Schedule to Act 58 of 1962

91. (1) Paragraph 11C of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for subitem (A) of item *(aa)* of paragraph (ii) of the proviso of the following subitem:

"(A) 'T' shall be determined based on the balance of remuneration paid or payable by that company to that director in respect of the year of assessment preceding that last year of assessment, increased by an amount equal to 20 per cent (or such other percentage as the Minister may from time to time determine by notice in the *Gazette*) of that remuneration; and";

(b) by the substitution in subparagraph (1) for item *(bb)* of paragraph (ii) of the proviso of the following item:

"*(bb)* the preceding year of assessment, contemplated in sub-item *(aa)*, has not yet been determined or that director was not employed by that company in that preceding year, the company must request the Commissioner to determine the amount of remuneration which is deemed to have been received for the purpose of this subparagraph.";

(c) by the substitution for subparagraph (2) of the following subparagraph:

"(2) Subject to subparagraph (6), every private company shall on a monthly basis, in respect of every director of that company, pay to the Commissioner an amount determined in accordance with subparagraph (3), which shall for the purposes of sections 79, 89bis, 89ter, 89quat, 90, 102 and 102A of the Act and paragraphs 1, 4, 6, 11, 12, 13 and 14 and Parts III and IV of this Schedule, be deemed to be an amount of employees' tax which was required to be deducted or withheld by the company as an employer in terms of paragraph 2 of this Schedule.";

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

"(4) A company shall have a right of recovery against a director in respect of any amount paid by that company in terms of subparagraph **[(1)]** (2), in respect of that director and that amount may, in addition to any other

right of recovery, be deducted from **[future remuneration]** any amount which is or may become payable by that company to that director."; and

(e) by the addition of the following subparagraph:

"(6) Subparagraph (2) does not apply to a private company in respect of a director where more than 80 per cent of the amount contemplated in 'T' in subparagraph (1)*(b)* in respect of the last year of assessment of that director as contemplated in 'T', represents fixed monthly payments of remuneration paid by that company to that director during that year of assessment.".

(2) Subsection (1)*(e)* shall come into operation on 1 March 2004 and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962

92. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words in subitem (ii) of item *(e)* preceding the proviso of the following words:

"(ii) in respect of which a notice of assessment relevant to the estimate has been issued by the Commissioner not less than **[fourteen]** 60 days before the date on which the estimate is submitted to the Commissioner:".

Amendment of paragraph 20A of Fourth Schedule to Act 58 of 1962

93. Paragraph 20A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) Subject to the provisions of subparagraphs (2) and (3), where any provisional taxpayer is liable for the payment of normal tax in respect of any amount of taxable income derived by **[him]** that provisional taxpayer during any year of assessment and the estimate of his or her taxable income for that year required to be submitted by him or her under paragraph 19(1) during the period contemplated in paragraph 21(1)*(b)*, 22(1) or 23*(b)*, as the case may

be, was not submitted by him or her on or before the last day of that year or, if the period for the payment of provisional tax due by him or her in respect of such period has under paragraph 25(2) been extended to a date later than the end of such year, on or before such date, the taxpayer shall, unless the Commissioner has estimated the said taxable income under paragraph 19(2) or has increased the amount thereof under paragraph 19(3), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of such taxable income, an amount by way of additional tax equal to 20 per cent of the amount by which the normal tax payable by him or her in respect of such taxable income exceeds the sum of any amounts of provisional tax paid by him or her in respect of such taxable income within any period allowed for the payment of such provisional tax under this Part or within any extension of such period under paragraph 25(2) and any amounts of employees' tax deducted or withheld from his or her remuneration by his or her employer during such year.".

Amendment of paragraph 21 of Fourth Schedule to Act 58 of 1962

94. Paragraph 21 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for items *(a)* and *(b)* of the following items:

"*(a)* within the period of six months reckoned from the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such taxpayer (as determined in accordance with paragraph 17) for normal tax in respect of that year, less the total amount of—

(i) any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during such period; and

(ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under the provisions of section 6*quat*; and

(b) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such taxpayer (as finally

determined in accordance with paragraph 17) for normal tax in respect of that year, less the **[sum of the amounts]** total amount of—

(i) any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during such year and the amount paid in terms of item *(a)*; and

(ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under the provisions of section 6*quat*.".

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

95. Paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of "foreign currency" of the following definition:

"'foreign currency' means any currency **[which is not legal tender in]** other than currency of the Republic;".

Amendment of paragraph 2 of the Eighth Schedule to Act 58 of 1962

96. Paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

"(1) Subject to paragraph **[86]** 97, this Schedule applies to the disposal on or after valuation date—".

Amendment of paragraph 11 of the Eighth Schedule of Act 58 of 1962

97. (1) Paragraph 11 of the Eighth Schedule of the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item *(h)* of following item:

"*(h)* by a lender to a borrower or by a borrower to a lender where any **[marketable]** security has been lent by a lender to a borrower in terms of a 'lending arrangement' **[as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968), and another marketable security of the same kind and of the same or equivalent quantity and quality has been or will be returned by the borrower to that lender before the end of the 12 month period contemplated in that definition;]** or".

(2) Subsection (1) shall come into operation on the date of promulgation and shall apply in respect of any disposal on or after that date.

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962

98. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) Where an event described in subparagraph (2) occurs, a person will be treated for the purposes of this Schedule as having disposed of an asset described in that subparagraph for **[proceeds]** an amount received or accrued equal to the market value of the asset at the time of the event and to have immediately reacquired the asset at an expenditure equal to that market value, which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)*.";

(b) by the substitution in subparagraph (2) for item *(a)* of the following item:

"*(a)* a person who ceases to be a resident, **[or a resident who is as a result of the application of any agreement entered into by the Republic for the avoidance of double taxation treated as not being a resident]**, in respect of all assets of that person other than assets in the Republic listed in paragraph 2(1)*(b)*(i) and (ii);"; and

(c) by the substitution in subparagraph (5) for the words following subitem (ii) of item (a) of the following:

"but does not apply where—

(aa) the amount of that reduction or discharge constituted—

(A) a capital gain in terms of paragraph 3*(b)*(ii); or

(B) has been taken into account in terms of section 20(1)*(a)*(ii) or paragraph 20(3): or

(bb) that person and that creditor are members of the same group of companies unless—

(A) that debt (or any substituted debt) was acquired directly or indirectly from a person who is not a member of that group of companies; or

(B) that person or another person became members of that group of companies after that debt (or any substituted debt) arose; and these transactions were part of a scheme to avoid any tax otherwise imposed by virtue of this subparagraph.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any reduction or discharge on or after that date.

Amendment of paragraph 19 of Eighth Schedule to Act 58 of 1962

99. Paragraph 19 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (2) of the following subparagraph:

"(2) The provisions of subparagraph (1) shall not apply to the extent that dividends **[were received by or accrued to a holding company or an intermediate company with respect to the company distributing the dividends]** were declared by a company to a shareholder (as defined in Part III of the Act) which forms part of the same group of companies as the company declaring the dividend, where the controlling company and the company declaring the dividend are residents.";

(b) by the substitution in subparagraph (3) for subitem (i) of item *(b)* of the following subitem:

"(i) any foreign dividend **[as defined in section 9E,]** that has been included in the income of the person disposing of the share and any foreign dividend which is exempt from tax in terms of section **[9E(7)*(e)*(i)]** 10(1)*(k)*(ii)*(cc)*;"; and

(c) by the deletion of paragraph *(d)* of subparagraph (3).

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962

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

(a) by the substitution in subparagraph (1) for the words in item *(g)* preceding subitem (i) of the following words:

"*(g)* the following amounts actually incurred as expenditure directly related to the cost of ownership of the asset, which is used wholly and exclusively for business purposes or which constitutes a share listed on a recognised **[stock]** exchange or a participatory interest in a portfolio of a collective investment scheme—";

(b) by the substitution in subparagraph (1) for subitem (iii) of item *(h)* of the following subitem:

"(iii) a share in a controlled foreign company, an amount equal to the proportional amount of the net income of that company (or any other controlled foreign company in relation to that resident in which that controlled foreign company directly or indirectly has an interest) which was included in the income of that person in terms of section 9D during any year of assessment (other than such portion of that proportional amount which relates to the amount of any taxable capital gain included in that proportional amount) plus the proportional amount of the net capital gains of that controlled foreign company, less the amount of any foreign dividend distributed by that company to that person during any year of assessment which was exempt from tax in terms of section **[9E(7)*(e)*(i)]** 10(1)*(k)*(ii)*(cc)*; or"; and

(c) by the substitution in subparagraph (3) for item *(a)* of the following item:

"*(a)* is or was allowable as a deduction in determining the taxable income of that person (otherwise than in terms of section 11*(o)*) before the inclusion of any taxable capital gain;".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal on or after that date.

Insertion of paragraph 20A of Eighth Schedule to Act 58 of 1962

101. (1) The following subparagraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 20:

"**Provisions relating to farming development expenditure**

20A. (1) Notwithstanding the provisions of paragraph 20(3)*(a)*, where a person carrying on pastoral, agricultural or other farming operations as contemplated in section 26, incurred expenditure in respect of the matters referred to in items *(c)* to *(i)* of paragraph 12(1) of the First Schedule (hereinafter in this paragraph referred to as 'capital development expenditure') and that person—

(a) ceased to carry on such pastoral, agricultural or other farming operations during any year of assessment; and

(b) at any time thereafter disposes of immovable property on which those operations were carried on,

that person may elect that the amount of the capital development expenditure, or part thereof, which is carried forward and deemed in terms of paragraph 12(3) of the First Schedule to be expenditure which has been incurred in the next succeeding year of assessment for purposes of paragraph 12(1) of the First Schedule (as reduced in terms of paragraph 12(3B) of the First Schedule, if applicable), must be treated as expenditure incurred and paid in respect of that immovable property for the purposes of this Part.

(2) The amount of the capital development expenditure in respect of which the election may be made in terms of subparagraph (1) may not exceed

the proceeds from the disposal of that immovable property contemplated in subparagraph (1), reduced by any other amount allowable in terms of paragraph 25, in the case of a pre-valuation date asset or paragraph 20, in any other case.

(3) Where a person adopts or determines the market value of immovable property on which pastoral, agricultural or other farming operations were

carried on as the valuation date value of that asset in terms of paragraph 29(4), only capital development expenditure incurred by that person on or after 1 October 2001 must be taken into account for purpose of calculating the amount in respect of which an election can be made in terms of subparagraph (1).".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal on or after that date.

Amendment of paragraph 27 of Eighth Schedule to Act 58 of 1962

102. Paragraph 27 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (3) of the following subparagraph:

"(3) Where—

(a) a person has determined the market value of an asset of that person on the valuation date, as contemplated in paragraph 29, or the market value of an asset of that person has been published in terms of that paragraph; and

[*(a)*]*(b)* the expenditure allowable in terms of paragraph 20 incurred by that person before the valuation date in respect of that asset—

(i) is equal to or exceeds the proceeds from the disposal of that asset; and

(ii) exceeds the market value of that asset on valuation date,

the valuation date value of that asset must be the higher of—

(aa) the market value; or

(bb) those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset**[; or**

(b) **the provisions of item *(a)* do not apply, the valuation date value of that asset must be the lower of—**

(i) that market value; or

(ii) the time-apportionment base cost of that asset as

contemplated in paragraph 30.];

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

"(4) Where the provisions of subparagraph (3) do not apply, the valuation date value of that asset, contemplated in subparagraph (1), is the time-apportionment base cost of that asset, as contemplated in paragraph 30.".

Amendment of paragraph 30 of Eighth Schedule to Act 58 of 1962

103. Paragraph 30 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the first formula in subparagraph (4) of the following formula:

"$Y = B + \frac{[(P_1 - B_1) \times N]}{T + N}$,".

Amendment of paragraph 33 of the Eighth Schedule to Act 58 of 1962

104. Paragraph 33 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) Subject to subparagraphs (2), (3), **[and]** (4) and (5), where part of an asset is disposed of, the proportion of the base cost attributable to the part disposed of is an amount which bears to the base cost of the entire asset the same proportion as the market value of the part disposed of bears to the market value of the entire asset immediately prior to that disposal.";

(b) by the deletion in subparagraph (3) of the word "and" at the end of item *(a)*;

(c) by the insertion in subparagraph (3) of the word "and" at the end of item *(b)*;

(d) by the addition to subparagraph (3) of the following item:

"*(c)* the improving or enhancing of a leased asset."; and

(e) by the addition of the following subparagraph:

"(5) When determining the time-apportionment base cost of the part of an asset that has been disposed of, any reference to base cost in this

paragraph must be treated as meaning the expenditure allowable in terms of paragraph 20 in respect of that asset.".

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

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

"(1) A person must, when determining the aggregate capital gain or aggregate capital loss of that person, disregard any capital loss determined in respect of the disposal of an asset to any person—

(a) who was a connected person in relation to that person immediately before that disposal; or

(b) which is—

(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 that transaction, subject to subparagraph (3).".

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962

106. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) Subject to subparagraph (4), where a person during any year of assessment disposes of an asset for proceeds **[denominated]** in a **[foreign]** currency other than currency of the Republic after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal in that **[foreign]** currency and that capital gain or capital loss must be translated **[into the local currency]** in accordance with the provisions of section 25D(2).";

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

"(2) **[Despite section 25D,]** Where a person disposes of an asset, (other than an asset contemplated in **[subsection]** subparagraph (4)), for proceeds which are either received or accrued or denominated for purposes of financial reporting of a permanent establishment of that person in any currency (hereinafter referred to as the 'currency of disposal') after having incurred expenditure in respect of that asset which is either actually incurred or denominated for purposes of financial reporting in another currency (hereinafter referred to as the 'currency of expenditure'), that person must for purposes of determining the capital gain or capital loss on the disposal of that asset—

(a) where the currency of expenditure is actually incurred or denominated in the local currency, translate the proceeds into the local currency at the average exchange rate for that year of assessment during which that asset was disposed of;

(b) where the currency of disposal is received or accrued or denominated in the local currency, translate the expenditure which is allowable in terms of paragraph 20, into the local currency at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the local currency did not exist at the time of expenditure, the first available exchange rate for that local currency); and

(c) where neither the currency of disposal nor the currency of expenditure constitutes local currency—

(i) translate the amount of the expenditure, which is allowable in terms of paragraph 20, to the currency of disposal at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the currency of disposal did not exist at the time of expenditure, the first available exchange rate for that currency of disposal); and

(ii) translate the amount of the capital gain or capital loss determined in foreign currency to the local currency at the average exchange rate for the year of assessment during which the asset was disposed of,

and must translate the amount of the capital gain or loss in accordance with the provisions of section 25D.";

(c) by the substitution in subparagraph (4) for the words preceding item *(a)* of the following words:

"**[Despite section 25D,]** Where a person during any year of assessment disposes of any—";

(d) by the substitution in subparagraph (4) for item *(b)* of the following item:

"*(b)* asset the capital gain or capital loss from the disposal of which is derived or deemed to have been derived from a source in the Republic, as contemplated in section 9(2) (other than **[an asset contemplated in section 9(2)*(b)*(i) or]** an asset contemplated in paragraph *(b)* of the definition of 'foreign currency asset' in paragraph 84),";

(e) by the substitution in subparagraph (4) for item (ii) of the following item:

"(ii) the expenditure incurred in respect of that foreign equity instrument or that asset, as the case may be, into the currency of the Republic at the average exchange rate for the year of assessment during which that expenditure was incurred:";

(f) by the substitution in subparagraph (5) for item *(b)* of the following item:

"*(b)* the base cost of the person acquiring that asset must for purposes of paragraphs 12, 38 and 40**[, 42 and 67]** be treated as being denominated in that currency.";

(g) by the insertion after subparagraph (5) of the following subparagraph:

"(5A) Where paragraph 12(5) applies in respect of any debt owed by a person in any foreign currency, the base cost of the claim which is treated as having been acquired by that person in terms of paragraph 12(5)*(b)*(i) must be treated as being denominated in that foreign currency."; and

(h) by the substitution in subsection (7) for paragraph *(a)* of the definition of "local currency" of the following paragraph:

"*(a)* in relation to a permanent establishment of a person, the currency used by that permanent establishment for purposes of financial reporting (other than the currency of any country in the common monetary area);".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of disposals on or after that date.

Amendment of paragraph 55 of the Eighth Schedule to Act 58 of 1962

107. Paragraph 55 of the Eighth 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)* in respect of any policy, where that person is or was an employee or director whose life was insured in terms of that policy and any premiums paid by that person's employer were deducted in terms of section 11*(w)*;''; and

(b) by the substitution in subparagraph (1) for the words in item *(c)* preceding subitem (i) of the following words:

"*(c)* in respect of a policy that was taken out to insure against the death, disability or severe illness of that person by any other person who was a partner of that person, or held any shares or similar interest in a company in which that person held any share or similar interest, for the purpose of enabling that person to acquire, upon the death, disability or severe illness of that person, the whole or part of—".

Substitution of paragraph 62 of Eighth Schedule to Act 58 of 1962

108. (1) The following paragraph is hereby substituted for paragraph 62 of the Eighth Schedule to the Income Tax Act, 1962:

"**Donations and bequests to public benefit organisations and exempt persons**

62. A person must disregard a capital gain or capital loss determined in respect of the donation or bequest of an asset by that person to—

(a) the Government or any provincial administration;

(b) a public benefit organisation exempt from tax in terms of section 10(1)*(c*N*)*;

(c) a person approved by the Commissioner in terms of section 10(1)*(cA)* or *(d)*; or

(d) a person referred to in section 10(1)*(b)*, *(c*E*)* or *(e)*.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any donation which takes effect on or after that date.

Substitution of paragraph 63 of Eighth Schedule to Act 58 of 1962

109. The following paragraph is hereby substituted for paragraph 63 of the Eighth Schedule to the Income Tax Act, 1962:

"**Exempt persons**

63. A person must disregard any capital gain or capital loss in respect of the disposal of an asset where **[all the]** all receipts and accruals of **[that person would have been]** whatever nature would be exempt from tax in terms of section 10**[, if those receipts and accruals had been received by or accrued to that person]** were they to be received by or to accrue to that person.".

Substitution for paragraph 65 of Eighth Schedule to Act 58 of 1962

110. (1) The following paragraph hereby substitutes paragraph 65 of the Eighth Schedule to the Income Tax Act, 1962:

"**Involuntary disposal**

65. (1) A person may elect that this paragraph must apply in respect of the disposal of an asset (other than a financial instrument), where—

(a) that asset is disposed of by way of operation of law, theft or destruction;

(b) proceeds accrue to that person by way of compensation in respect of that disposal;

(c) those proceeds are equal to or exceed the base cost of that asset; and

(d) (i) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more asset (hereinafter referred to as the 'replacement asset or assets');

(ii) the replacement asset constitutes an asset contemplated in section 9(2);

(iii) the contracts for the acquisition of the replacement asset or assets have all been or will be concluded within 18 months from the date of the disposal of that asset; and

(iv) the replacement asset or assets will all be brought into use within three years of the disposal of that asset,

(2) Where a person has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5) and (6) be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

(3) Where a person acquires more than one asset in replacing the asset disposed of as contemplated in subparagraph (1), that person must, in applying subparagraphs (4) and (5), apportion the capital gain derived from the disposal of that asset to the replacement assets in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those assets.

(4) Where a replacement asset contemplated in subsection (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 (2), as bears to the total amount of that disregarded gain 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 in that year and other years of assessment in respect of that 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 been treated as a capital gain in terms of subparagraph (4) or (6) in any year of assessment (including that year of assessment), that person must in that year of assessment treat that portion of disregarded gain as a capital gain from the disposal of that replacement asset.

(6) Where a person fails to conclude a contract or fails to bring any replacement asset into use within the prescribed period, subparagraph (4) shall not apply and that person must—

(a) treat so must of the disregarded capital gain as a capital gain on the date on which that prescribed period ends;

(b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item *(a)*; and

(c) treat that interest as a capital gain on the date contemplated in item *(a)* when determining that person's aggregate capital gain or aggregate capital loss.

(7) Where a replacement asset or assets constitute a 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) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal on or after that date.

Substitution for paragraph 66 of Eighth Schedule to Act 58 of 1962

111. (1) The following paragraph hereby substitutes paragraph 66 of the Eighth Schedule to the Income Tax Act, 1962:

"**Reinvestment in replacement assets**

66. (1) A person may elect that this paragraph must apply in respect of the disposal of an asset, where—

(a) that asset qualified for a capital deduction or allowance in terms of section 11*(e)*, 12B, 12C, 12E, 14 or 14*bis*;

(b) the proceeds received or accrued from that disposal are equal to or exceed the base cost of that asset;

(c) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more assets (hereinafter referred to as the 'replacement asset or assets'), all of which will qualify for a capital deduction or allowance in terms of section 11*(e)*, 12B, 12C or 12E;

(d) the replacement asset constitutes an asset contemplated in section 9(2)*(b)*; and

(e) the replacement asset or assets are all brought into use in the year of assessment during which the asset contemplated in item *(a)* is disposed of or within 18 months after that disposal.

(2) Where a person has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5), (6) and (7), be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

(3) Where a person acquires more than one asset in replacing the asset disposed of as contemplated in subparagraph (1), that person must, in applying subparagraphs (4), (5) and (6), apportion the capital gain derived from the disposal of that asset to the replacement assets in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those assets.

(4) A person must treat as a capital gain for a year of assessment, so much of the disregarded capital gain contemplated in subparagraph (2), as bears to the total amount of that disregarded capital gain the same ratio as the amount of any deduction or allowance allowed in that year in terms of section 11*(e)*, 12B, 12C or 12E in respect of the replacement asset bears to

the total amount of the deduction or allowance in terms of that section (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable in that year and other years of assessment in respect of that asset.

(5) Where a person during any year of assessment disposes of a replacement asset and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4), (6) or (7) in any year of assessment (including that year of assessment, that person must in that year of assessment treat that portion of disregarded capital gain as a capital gain from the disposal of that replacement asset.

(6) Where during any year of assessment a person ceases to use a replacement asset for the purposes of that person's trade and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4), (5) or (7) in any year of assessment (including that year of assessment), that person must treat that portion of disregarded capital gain as a capital gain for that year of assessment.

(7) Where a person fails to bring any replacement asset into use within the prescribed period, subparagraph (4) shall not apply and that person must—

(a) treat so much of the disregarded capital gain as has not been treated as a capital gain in terms of subparagraph (4) as a capital gain on the date that the prescribed period ends;

(b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item *(a)*; and

(c) treat that interest as a capital gain on the date contemplated in item *(a)* when determining that person's aggregate capital gain or aggregate capital loss.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal on or after that date.

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

112. Paragraph 67 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for item *(a)* of the following item:

"(1)*(a)* Subject to subparagraph **[3]** (3), a person (hereinafter referred to as the 'transferor') must disregard any capital gain or capital loss determined in respect of the disposal of an asset to his or her spouse (hereinafter referred to as the 'transferee')."; and

(b) by the substitution in subparagraph (1) for subitem (iii) of item *(b)* of the following subitem:

"(iii) incurred that expenditure on the same date and in the same currency that it was incurred by the transferor; and".

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

113. (1) Paragraph 67A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

"(3) For the purposes of subparagraph (2) 'proceeds' include all cash and the market value of any assets received by or accrued to a holder of a participatory interest from the collective investment scheme on or after the valuation date and which does not constitute gross income in the hands of that holder.".

(2) Subsection (1) shall be deemed to have come into operation on the date that the Collective Investment Schemes Control Act, 2003, came into operation and shall apply in respect of any distribution on or after that date.

Insertion of paragraph 67B of Eighth Schedule to Act 58 of 1962

114. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 67A:

"**Transfer of a unit by a share block company to its member**

67B. (1) Where any company which operates a share block scheme as contemplated in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), transfers a unit in immovable property in terms of Item 8 of Schedule 1 to that Act to a person who holds a share in that company,—

(a) that company must disregard any capital gain or capital loss determined in respect of that disposal of that unit to that person; and

(b) that person must disregard any capital gain or capital loss determined in respect of the disposal of that share.

(2) Where a person who held a share in a share block company acquires a unit in the circumstances contemplated in subparagraph (1), that person must be treated as having—

(a) acquired that unit for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in acquiring that share;

(b) effected improvements to that unit for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in effecting improvements to the immovable property in respect of which that person had a right of use as a result of the ownership of that share;

(c) acquired that unit on the date that that share was acquired;

(d) incurred the amount of expenditure contemplated in paragraph 20 on the same date that it was incurred by that person to acquire that share and improve that immovable property; and

(e) used that unit in the same manner as that person used the immovable property in respect of which that person had a right of use as a result of the ownership of that share; and

(f) adopted or determined the market value as contemplated in paragraph 29(4) as the valuation date value of that unit, for an amount equal to the market value adopted or determined by that person in terms of that paragraph for that share.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

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

115. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 67B:

"**Mineral rights conversions and renewals**

67C. Notwithstanding paragraph 11, there is no disposal where—

(a) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002) continues in force or is converted into a new right pursuant to the same Schedule; or

(b) any prospecting right, mining right, exploration right or production right as defined in Schedule I of the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002) is renewed pursuant to the same Schedule,

and the continued, converted or renewed right will be deemed to be one and the same asset as the right before continuation, conversion or renewal for purposes for purposes of this Act.".

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

Amendment of paragraph 72 of the Eighth Schedule to Act 58 of 1962

116. Paragraph 72 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by substitution for subparagraph (a) of the following subparagraph:

"*(a)* a resident has made a donation, settlement or other disposition to any person (other than **[a public benefit organisation contemplated in section 30 or a foreign]** an entity, **[as defined in section 9D,]** which is not resident and which is **[of a]** similar **[nature]** to a public benefit organisation contemplated in section 30); and".

Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962

117. (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subparagraph (1) of the definition of "company";

(b) by the insertion after the definition of "capital distribution" of the following definition:

"'date of distribution' in relation to any distribution, means the date of approval of the distribution by the directors or by some other person or body of persons with comparable authority conferred under the memorandum and articles of association of the company making the distribution or under a law, regulation or rule to which that company is subject;"; and

(c) by the substitution in subparagraph (1) for the definition of "share" of the following definition:

"'share' in relation to a company means—

(a) any share capital of, or member's interest in, that company and any right or interest in or to such share capital or member's interest, whether or not that share capital or member's interest carries a right to participate in dividends or a capital distribution; or

(b) a participatory interest in a portfolio of a collective investment scheme referred to in paragraph *(e)* of the definition of 'company'.".

(2) Subsection (1)*(a)* and *(c)* shall be deemed to have come into operation on the date that the Collective Investment Schemes Control Act, 2003, came into operation and shall apply in respect of any distribution on or after that date.

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

118. Paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraphs (1) and (2) of the following subparagraphs:

"(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 for proceeds equal to market value.

(2) The market value of any asset contemplated in subparagraph (1) must be its market value on the date of **[the]** distribution **[is approved by the directors or by some other person with comparable authority conferred under the memorandum and articles of association of the company making the distribution]** except where the distribution contemplated in subparagraph (1) is made—

(a) by a company subject to the condition that it be payable to shareholders registered in that company's share register on a specified date, in which case it must be the market value on that date;

(b) by a company to shareholders of that company otherwise than by way of a formal declaration of a dividend, in which case it must be the market value on the date on which the shareholders became entitled to that distribution; or

(c) by the liquidator of a company to the shareholders of that company in the course of the winding up or liquidation of that company, in which case it must be the market value on the date on which the shareholders became entitled to that distribution.".

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

119. (1) Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (2) for item *(b)* of the following item:

"*(b)* those newly issued shares must be treated as—

(i) having **[an aggregate base cost]** been acquired for an amount of expenditure equal to the aggregate **[base cost]** expenditure allowable in terms of paragraph 20 incurred in respect of **[the]** those previously held shares which expenditure must be treated as having been incurred on the same date as the expenditure incurred in respect of those previously held shares **[with the aggregate base cost allocated among all those newly**

issued shares in proportion to their relative market values; and];

(ii) having been acquired on the same date as those previouslyheld shares; and

(iii) having a market value equal to any market value adopted or determined in respect of those previously held shares in terms of paragraph 29(4),

with the aggregate expenditure or market value as the case may be allocated among all those newly issued shares in proportion to their relative market values.”; and

(b) by the substitution in subparagraph (3) for item *(b)* of the following item:

“*(b)* both the substitution and that capital distribution must be treated as separate transactions with the **[base cost]** expenditure allowable in terms of paragraph 20 and any market value adopted or determined in terms of paragraph 29(4) in respect of those previously held shares allocated between both transactions based on the relative market values of the newly issued shares and that capital distribution received in exchange therefor.”.

(2) Subsection (1) shall be deemed to come into operation on 1 October 2001.

Amendment of paragraph 84 of Eighth Schedule to Act 58 of 1962

120. Paragraph 84 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “foreign currency” of the following definition:

“‘foreign currency’ means any currency **[which is not legal tender in]** other than the currency of the Republic;”.

Amendment of paragraph 86 of Eighth Schedule to Act 58 of 1962

121. Paragraph 86 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion in subparagraph (1) of the following words after item *(b)*:

"reduced by any amount included therein, which is or was during any year of assessment included in the taxable income of that person (or of that person's spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset.".

Amendment of paragraph 88 of Eighth Schedule to Act 58 of 1962

122. Paragraph 88 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) A person must be treated as having acquired on valuation date all foreign currency assets (other than personal foreign currency assets) of that person which **[have not been]** were held and not disposed of by that person before that date.";

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

"(2) Where a person—

[*(a)*] ceases to be a resident **[or]**

[*(b)* who is a resident, is as a result of the application of any agreement entered into by the Republic with any other country for the avoidance of double taxation, treated as not being a resident,]

that person must be treated as having disposed of all foreign currency assets (other than personal foreign currency assets) acquired and not disposed of by that person before so ceasing to be **[or treated as not being]** a resident."; and

(c) by the substitution of subparagraph (6) for the following subparagraph:

"(6) Where a person ceases to hold a foreign currency asset as a personal foreign currency asset, that person must be treated as having acquired that foreign currency asset on the date that the person so ceases to hold that foreign currency asset as a personal foreign currency asset.".

Amendment of paragraph 92 of Eighth Schedule to Act 58 of 1962

123. Paragraph 92 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph *(a)* of the following subparagraph:

"*(a)* reducing that amount by**[—**

(i)] any capital gain determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part), which was included in that amount; or

[(ii) any other amount included therein, which is or was during any year of assessment included in the taxable income of that person (or of that person's spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset; or]".

Amendment of paragraph 93 of Eighth Schedule to Act 58 of 1962

124. Paragraph 93 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (3) for item *(c)* of the following item:

"*(c)* acquire any foreign equity instrument or any asset in local currency as contemplated in paragraph 43(4); or"; and

(b) by the addition of the following subparagraph:

"(4) Where a person incurred any liability before the valuation date, that person must, for purposes of this paragraph be treated as having incurred that liability on the valuation date.".

Substitution of paragraph 94 of Eighth Schedule to Act 58 of 1962

125. The following paragraph hereby substitutes paragraph 94 of the Eighth

Schedule to the Income Tax Act, 1962:

"**Involuntary disposal of foreign currency asset**

94. A person must disregard any foreign currency capital gain or foreign currency capital loss determined in respect of an involuntary disposal of any foreign currency asset by way of expropriation, theft or physical loss.".

Amendment of paragraph 96 of Eighth Schedule to Act 58 of 1962

126. Paragraph 96 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following paragraph:

"(1) The provisions of paragraphs 11(2)*(a), (e)* and *(i)*, 12(1), 12(2)(a), 13, 14, 36, 38, 39, 40, 56, 62, 63, 68, 69, 70, 71, 72, 73, 80, **[and]** 82 and 83 of the Eighth Schedule to the Act, shall apply *mutatis mutandis* in respect of the determination of any foreign currency capital gain or foreign currency capital loss resulting from the disposal of any foreign currency asset.".

Amendment of paragraph 1 of Part I of Ninth Schedule to Act 58 of 1962

127. Paragraph 1 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following item:

"*(q)* The promotion of access to media and a free press.".

Amendment of paragraph 3 of Part I of Ninth Schedule to Act 58 of 1962

128. Paragraph 3 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"*(a)* The development, construction, upgrading, conversion or procurement of housing units for the benefit of **[poor and needy**

persons whose monthly household income falls within the housing subsidy eligibility requirements of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997).";

(b) by the substitution for subparagraph *(c)* of the following subparagraph:

"*(c)* The provision of residential care for retired persons, where—

(i) more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and **[regular meals and]** nursing services are provided by the organisation carrying on such activity; and

(ii) residential care for retired persons who are poor and needy is provided by that organisation without recovery of cost.";

(c) by the substitution for subparagraph *(d)* of the following subparagraph:

"*(d)* Building and equipping of—

(i) **[community centres,]** clinics **[sport facilities]** or crèches; or

(ii) community centres, sport facilities or other facilities of a similar nature,

for the benefit of the poor and needy."; and

(d) by the addition of the following subparagraph:

"*(h)* The administration of collective housing projects comprising housing units that have been developed, constructed, upgraded, converted or procured for the benefit of persons as contemplated in subparagraph *(a)*.".

Amendment of paragraph 11 of Part I of Ninth Schedule to Act 58 of 1962

129. Paragraph 11 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph *(b)* for the words preceding item (i) of the following words:

"The hosting of any international event approved by the Minister for purposes of **[these regulations]** this paragraph, having regard to—".

Amendment of paragraph 1 of Part II of Ninth Schedule to act 58 of 1962

130. Paragraph 1 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraphs:

"*(c)* The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatised persons.

(d) The provision of disaster relief.

(e) The rescue or care of persons in distress.

(f) The provision of poverty relief.

(g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.

(h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.

(i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.

(j) The promotion or advocacy of human rights and democracy.

(k) The protection of the safety of the general public.

(l) The promotion or protection of family stability.

(m) The provision of legal services for poor and needy persons.

(n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents.

(o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.

(p) Community development for poor and needy persons and anti-poverty initiatives, including—

(i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;

(ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or

(iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage

businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation.".

Amendment of paragraph 2 of Part II of Ninth Schedule to Act 58 of 1962

131. Paragraph 2 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraphs:

"*(e)* The provision of blood transfusion, organ donor or similar services.

(f) The provision of primary health care education, sex education or family planning.".

Amendment of paragraph 3 of Part II of Ninth Schedule to Act 58 of 1962

132. Paragraph 3 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

"*(l)* The provision of scholarships, bursaries and awards to poor and needy persons for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.".

Addition of paragraph 5 to Part II of Ninth Schedule to Act 58 of 1962

133. The following paragraph is hereby added to Part II of the Ninth Schedule to the Income Tax Act, 1962:

"LAND AND HOUSING

5.*(a)* The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income falls within the housing subsidy eligibility requirements of the

National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997).

(b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph *(a)*.

(c) Building and equipping of clinics or crèches for the benefit of the poor and needy.

(d) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.".

Amendment of section 1 of Act 91 of 1964

134. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the insertion after the definition of "customs duty" of the following definitions:

"'degrouping depot' means any degrouping depot for air cargo contemplated in section 6(1)*(hc)* and licensed under the provisions of this Act; and

'degrouping operator' means the licensee of a degrouping depot;"; and

(b) by the substitution for the definition of "duty" of the following definition:

"'duty' means any duty leviable under this Act and—

(a) subject to section 47B, any passenger tax leviable under that section; and

(b) subject to Chapter VA, any environmental levy leviable under that Chapter.";

(c) by the insertion after the definition of "entry for home consumption" of the following definitions:

"'environmental levy' shall mean any duty leviable under Part 3 of Schedule No. 1 on any goods which have been manufactured or imported into the Republic;

'environmental levy goods' means any goods specified in Part 3 of Schedule No. 1 which have been manufactured in or imported into the Republic.";

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

"'International Trade Administration Commission' means the International Trade Administration Commission established by section 7 of the International Trade Administration Act, 2002 (Act No. 71 of 2002);".

(2) Subsection (1)*(c)* shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.

Amendment of section 3 of Act 91 of 1964

135. Section 3 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections:

"(1) Any duty imposed or power conferred on the Commissioner may be performed or exercised by the Commissioner personally or by an officer or any other person under a delegation from or under the control or direction of the Commissioner.

(2)*(a)* Any decision made and any notice or communication signed or issued by any such officer or person may be withdrawn or amended by the Commissioner or by the officer or person concerned (with effect from the date of making such decision or signing or issuing such notice or communication or the date of withdrawal or amendment thereof) and shall, until it has been so withdrawn, be deemed, except for the purposes of this sub-section, to have been made, signed or issued by the Commissioner.

(b) The Commissioner may make rules regarding any matter which the Commissioner considers reasonably necessary and useful for the purposes of administering the provisions of this section."; and

(b) by the deletion of subsections (3) and (4).

Amendment of section 4 of Act 91 of 1964

136. Section 4 of the Customs and Excise Act, 1964 is hereby amended –

(a) by the insertion of the following subsection:

"3E Notwithstanding anything to the contrary contained in subsection (3), the Auditor-General shall in the performance of the Auditor-General's duties in terms

of section 3 of the Auditor-General Act, 1995 (Act No. 12 of 1995) have access to the documents in the possession or custody of the Commissioner or a Controller."

(b) by the addition of the following paragraph:

"(8A)*(a)* An officer may stop and detain any goods in order to determine whether the provisions of this Act or any other law have been complied with in respect of such goods as contemplated in section 107 (2) (a). *(b)* The release of goods may be stopped at any time while such goods are under customs control or in or on any premises licensed under this Act. *(c)*(i) Whenever any goods are stopped as contemplated in this paragraph the goods may be detained under the control of a Controller for any reasonable period required to determine whether the goods comply with the provisions of this Act or such other law.

(ii) Any detention under this section is not subject to the provisions of section 93 and the officer or Controller must release the goods if found to comply with the provisions of this Act or such other law.

(iii) Where at any time during such detention the officer or Controller decides that it is necessary to establish whether the goods are liable to forfeiture, a detention under section 88(1)(a) may be substituted for the detention under this subsection.".

Amendment of section 6 of Act 91 of 1964

137. Section 6 of the Customs and Excise Act, 1964 is hereby amended by the substitution in subsection (1) for paragraph (hc) of the following paragraph:

"(hc) places where degrouping depots may be established to which air cargo may be removed from a transit shed before due entry thereof for the—

(a) storage, detention, unpacking or examination of consolidated packing or its contents;

(b) removal to another such degrouping depot or the delivery to importers of such contents after due entry thereof;

(c) consolidation of air cargo for export;

(d) such other purposes as may be specified by rule.".

Amendment of section 35 A of Act 91 of 1964

138. Section 35 A of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) The Commissioner may prescribe by rule –

(a) the sizes and types of containers which may be used by a manufacturer for the packing of cigarettes and cigarette tobacco.

(b) distinguishing marks or numbers in addition to the stamp impression referred to in subsection (2) which must or must not appear on containers of cigarettes and cigarette tobacco removed from a customs and excise warehouse for home consumption or for export;

(c) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section.

(2) No licensee may remove any cigarettes or allow any cigarettes to be removed from a customs and excise warehouse unless –

(a) if removed for home consumption, a stamp impression determined by the Commissioner has been made on their containers; or

(b) if removed for export, such stamp impression does not appear on the containers; and

(c) the cigarettes otherwise comply in every respect with the requirements prescribed by rule."

Amendment of section 44 of Act 91 of 1964

139. Section 44 of the Customs and Excise Act, 1964 is hereby amended—

(a) by the substitution in subsection (5) for paragraphs *(b)* of the following paragraph:

"*(b)* if due entry of the goods has not been made—

(i) upon delivery thereof to the State Warehouse or other place indicated for the purposes of this section by the Controller; or

(ii) in the case of air cargo, upon delivery thereof to a degrouping depot;";

(b) by the deletion of paragraph *(d)*."; and

(c) by the insertion after subsection (5B) of the following subsection:

"(5C)*(a)* The degrouping operator shall be liable for the duty on all goods delivered to the degrouping depot.

(b) The liability for duty of the degrouping operator shall cease—

(i) upon receipt of such goods in any other degrouping depot in accordance with the procedures prescribed by rule;

(ii) upon lawful delivery after due entry thereof to the importer or the importer's agent;

(iii) in respect of any of such goods of which due entry has not been made upon delivery thereof to the state warehouse or other place indicated for the purposes of this section by the Controller.".

Amendment of section 46 of Act 91 of 1964

140. Section 46 of the Customs and Excise Act, 1964 is hereby amended—

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

"*(c)* such other processes as the Commissioner may, at the request of the International Trade Administration Commission, by rule prescribe in respect of any class or kind of goods, have taken place in the production or manufacture of goods of such class or kind in that territory."; and

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

"(2) The Commissioner may from time to time, at the request of the International Trade Administration Commission, by rule increase the percentage prescribed in subsection (1), in regard to any class or kind of imported goods, or in regard to any class or kind of such goods from a particular territory, to which that subsection applies;".

Amendment of section 47 of Act 91 of 1964

141. (1) Section 47 of the Customs and Excise Act, 1964, is hereby amended—

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

"(1) Subject to the provisions of this Act, duty shall be paid for the benefit of the National Revenue Fund on all imported goods, all excisable goods, all surcharge goods, all environmental levy goods and all fuel levy goods in accordance with the provisions of Schedule No. 1 at the time ofentry for home consumption of such goods: Provided that the Commissioner may condone any underpayment of such duty where the amount of such underpayment in the case of—

(a) goods imported by post is less than fifty cents;

(b) goods imported in any other manner is less than five rand; or

(c) excisable goods is less than two rand."

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

"(7) To the extent that any goods, classifiable under any tariff heading or subheading of Part 1 of Schedule No. 1 that is expressly quoted in any tariff item, environmental levy item or fuel levy item or item of Part 2, 3, 5 or 6 of the said Schedule or in any item in Schedule No. 2, are specified in any such tariff item, environmental levy item or fuel levy item or item, the item concerned shall be deemed to include only such goods classifiable under such tariff heading or subheading.";

(c) by the substitution in subsection (9) for subparagraph (i) of paragraph (b) of the following paragraph:

"(i) Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under paragraph *(d)*, any amount due in terms thereof shall, notwithstanding that **[an internal administrative appeal has been filed as contemplated in section 95A or]** any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown, suspend such payment until the date the appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal.";

(d) by the substitution in subsection (9) for subparagraph (cc) of paragraph (b)(ii) of the following subparagraph:

"(cc) any amendment of a determination or new determination is made effective under paragraph *(d)*.**[or section 95A]**";

(e) by the substitution in subsection (9) for paragraph (c) of the following paragraph:

"*(c)* Whenever a court amends or orders the Commissioner to amend any determination made under subsection (9) *(a)* or *(d)* **[or section 95A]** or any determination is amended or a new determination is made under paragraph *(d)* the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph *(b) (i)* for any period during which such determination remained in force.";

(f) by the substitution in subsection (9) for subparagraph (bb) of paragraph (d)(i) of the following subparagraph:

"*(bb)* **[except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed, before it has been considered,]** amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).";

(g) by the substitution in subsection (9) for subparagraph (i) of paragraph *(b)* of the following subparagraph:

"(i) Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under paragraph *(d)*, any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown, suspend such payment until the date the appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal;";

(h) by the substitution in subsection (9) for subparagraph *(cc)* of paragraph *(b)*(ii) of the following subparagraph:

"*(cc)* any amendment of a determination or new determination is made effective under paragraph (d) or section 77F.";

(i) by the substitution in subsection (9) for paragraph *(c)* of the following paragraph:

"*(c)* Whenever a court amends or orders the Commissioner to amend any determination made under subsection (9)*(a)* or *(d)* or any determination is amended or a new determination is made under paragraph *(d)* or section 77F, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph *(b)*(i) for any period during which such determination remained in force.", and;

(j) by the substitution in subsection (9) for subparagraph *(bb)* of paragraph *(d)*(i) of the following subparagraph:

"*(bb)* except when an internal administrative appeal has been lodged in terms of the provisions of Part A of Chapter XA, or if lodged, before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).".

(2)*(a)* The amendments in subsection (1)*(a)* and *(b)* shall come into operation on the date Chapter VA comes into operation.

(b) The amendments in subsection (1)*(c)*, *(d)*, *(e)* and *(f)* shall come into operation on the date of promulgation of this Act.

(c) The amendments in subsection (1)*(g)*, *(h)*, *(i)* and *(j)* shall come into operation when Chapter XA comes into operation.

Insertion of Chapter VA in Act 91 of 1964

142. The following Chapter is hereby inserted in the Customs and Excise Act, 1962, after Chapter V:

"**Chapter VA**

Environmental Levies

Imposition of Environmental Levy

47C. (1) A levy known as the environmental levy shall be leviable on such imported goods and goods manufactured in the Republic as may be specified in any item of Part 3 of Schedule No. 1.

Rate of Environmental Levy

47D. (1) The environmental levy shall be levied at a rate as may be specified in any item of Part 3 of Schedule No. 1 and the rate so specified in such item shall be payable in addition to any duty prescribed in respect of the goods concerned in any heading or subheading of Part 1 of Schedule No. 1.

(2) Notwithstanding anything to the contrary contained in this Act, the environmental levy shall, subject to the provisions of this Chapter and except for the purposes of any customs union agreement contemplated in section 51 or any other law, be deemed to be a duty leviable under this Act.

Application of other provisions of this Act

47E. (1) Subject to such exceptions and adaptations as may be prescribed in this Chapter, any Schedule or any rule, the provisions of this Act relating to—

(a) the importation of goods and imported goods;

(b) (i) the manufacture of excisable goods; and

(ii) entry for home consumption, removal from any customs and excise manufacturing warehouse and payment of duty contemplated in section 19A,

shall apply *mutatis mutandis* to environmental levy goods imported into or manufactured in the Republic.

Rebates, Refunds and Drawbacks

47F. The Minister may, notwithstanding anything to the contrary contained in this Act, provide under section 75 (15) for a rebate, refund or drawback of any environmental levy in an item of a separate Part of Schedule No. 3, 4, 5 or 6, which shall be deemed to be an amendment of such Schedule, in the circumstances and for the purposes and on compliance with any conditions that may be specified in such Part or item.

Licensing

47G.(1) From the date this Chapter comes into operation, no environmental levy goods may be manufactured in the Republic except in a customs and excise manufacturing warehouse licensed in terms of this Act.

(2) The applicant for such a license must apply on the form prescribed by rule and must comply with all the provisions of this Act and any requirements the Commissioner may prescribe in each case.

(3) The application must be supported by the agreement and other documents as may be prescribed by rule.

(4) Before such warehouse is licensed the applicant for a license must —

(a) furnish such security as contemplated in section 60*(c)*(i); and

(b) pay the licence fee prescribed in Schedule No. 8.

(5) The provisions of section 60 (2) shall apply *mutatis mutandis* in respect of any application for a licence or the suspension or cancellation of a licence.

Rules

47H. The Commissioner may prescribe by rule—

(a) any procedure in addition to or in substitution of any existing rule regulating procedures in respect of the importation of goods and imported goods or excisable goods in order to provide for any necessary exception or adaptation in administering the provisions of

this Chapter;

(b) *mutatis mutandis* for the purposes of this Chapter, any procedure to which section 19 A and its rules relate;

(c) the form of agreement to be entered into between the applicant and the Commissioner;

(d) the accounts and other documents to be kept and to be submitted when payment is made;

(e) all matters which are required or permitted in terms of this Chapter to be prescribed by rule;

(f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this Chapter.".

(2) Subsection (1) shall come into operation on a date to be determined by the President by notice in the *Gazette.*

Amendment of section 48 of Act 91 of 1964

143. Section 48 of the Customs and Excise Act, 1964 is hereby amended—

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

"(2) The Minister may from time to time by like notice amend or withdraw or, if so withdrawn, insert Part 2, Part 3, Part 4 or Part 5 of Schedule No. 1, whenever he deems it expedient in the public interest to do so: Provided that the Minister may, whenever he deems it expedient in the public interest to do so, reduce any duty specified in the said Parts with retrospective effect from such date and to such extent as may be determined by him in such notice."; and

(b) by the substitution in subsection (2A) for paragraphs *(a)* and *(b)* of the following paragraphs:

"(2A)*(a)*(i) The Minister may from time to time by like notice, whenever he deems it expedient in the public interest to do so, authorize the International Trade Administration Commission or the Commissioner to withdraw, with or without retrospective effect, and subject to such conditions as the said Commission or Commissioner may determine, any duty specified in Part 2 or Part 4 of Schedule No. 1;

(ii) The International Trade Administration Commission or the Commissioner may at any time cancel, amend or suspend any withdrawal referred to in subparagraph (i);

(b) Any application for such withdrawal, with retrospective effect, shall be submitted to the said International Trade Administration Commission or Commissioner, as the case may be, not later than six months from the date of entry for home consumption as provided in section 45 (2).".

Substitution of section 54 of Act 91 of 1964

144. Section 54 of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) The Commissioner may prescribe by rule—

(a) the sizes and types of containers in which cigarettes may be imported into the Republic;

(b) distinguishing marks or numbers in addition to the stamp impression referred to in subsection (2) which must or must not appear on containers of imported cigarettes;

(c) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section.

(2) No person may import any cigarettes unless—

(a) if entered for home consumption, a stamp impression determined by the Commissioner has been made on their containers; or

(b) if entered for storage in a customs and excise warehouse for export such stamp impression does not appear on the containers; and

(c) the cigarettes otherwise comply with the requirements prescribed by rule.".

Substitution of section 57A of Act 91 of 1964

145. Section 57A of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) Whenever the International Trade Administration Commission publishes a notice in the *Gazette* to the effect that it is investigating the imposition of an anti-dumping, countervailing or safeguard duty on goods imported from a supplier or originating in a territory specified in that notice, the Commissioner shall, in accordance with any request by the Commission, by notice in the *Gazette* impose a provisional payment in respect of those goods for such period and for such amount as the Commission may specify in such request.

(2) The Commissioner shall, in accordance with any request by the Commission, by further notice in the *Gazette* extend the period for which the provisional payment mentioned in subsection (1) is imposed or withdraw or reduce it with or without retrospective effect and to such extent as may be specified in the request.".

Insertion of section 64G in Act 91 of 1964

146. The following section is hereby inserted in the Customs and Excise Act, 1964 after section 64F:

"**Licensing of degrouping depot**

64G.(1)*(a)* Any reference in this section to a—

'degrouping depot' shall mean a licensed degrouping depot for air cargo defined in section 1 for the purposes and activities contemplated in section 6 (1) (hc) and such other purposes and activities as the Commissioner may prescribe by rule;

'degrouping operator' shall mean the licensee of a degrouping depot.

(b) No person shall perform any act in connection with, or be in possession of, any air cargo for the purposes and activities contemplated in paragraph *(a)* unless such person has obtained the appropriate licence for a degrouping depot in accordance with the requirements of section 60, this section, any note to Schedule No. 8, any relevant rule, the application form and any conditions the Commissioner may impose in each case.

(2)*(a)*(i) Application for such a licence shall be made on the form prescribed by the Commissioner by rule and the applicant shall furnish such information and supporting documents as may be specified in such form and comply with all requirements contemplated in subparagraph (1) *(b)*.

(ii) The Commissioner may require the degrouping operator to enter into an agreement with the Commissioner and may prescribe such agreement by rule.

(b) Before any licence is issued, the applicant must furnish security; and such security may be altered, as contemplated in section 60(1)*(c)*.

(3) The degrouping operator shall be liable for duty on all goods received in the degrouping depot and liability for duty shall cease as provided in section 44(5C).

(4) Goods in a degrouping depot shall be deemed to be under customs control and the degrouping operator shall comply with any requirement in respect thereof specified in this section, and any other relevant provision of this Act including any rule made in terms of this section or any agreement entered into between the degrouping operator and the Commissioner or any condition specified by or directive issued by the Commissioner.

(5) The Controller may require any consolidated or other package to be detained in the degrouping depot for examination of the package or its contents.

(6)*(a)* The Commissioner may refuse any application for a degrouping depot licence or cancel or suspend such licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph *(a)*.

(7) The Commissioner may prescribe by rule—

(a) the application form and any other form required for the purposes of any customs procedure;

(b) the documents to be furnished in support of the application form or to be completed and kept in respect of any activity relating to the operation of the degrouping depot;

(c) any procedure or obligation or standards of conduct to be observed n the operation of the degrouping depot;

(d) all matters that are required or permitted in terms of this section to be prescribed by rule;

(e) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of the air cargo and a degrouping depot as contemplated in this section; and

(f) subject to section 3 (2), any delegation of powers or duties as contemplated in that section.".

Amendment of section 65 of Act 91 of 1964

147. (1) Section 65 of the Customs and Excise Act, 1964, is hereby amended—

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

"*(i)* Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under subsection (5), any amount due in terms thereof shall, notwithstanding **[an internal administrative appeal has been filed as contemplated in section 95Aor]** that any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the administrative appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal.";

(b) by the substitution in subsection (4) for subparagraph *(cc)* of paragraph *(c)*(ii) of the following subparagraph:

"(cc) any amendment of a determination or new determination is made effective under subsection (5). **[or section 95A]** ";

(c) by the substitution in subsection (4) for subparagraph (iii) of paragraph *(c)* of the following subparagraph:

"*(iii)* Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (5) **[or section 95A]** or any determination is amended or a new determination is made under subsection (5) the Commissioner shall not be liable to pay interest on any

amount which remained payable in terms of the provisions of paragraph *(c) (i)* for any period during which such determination remained in force.";

(d) by the substitution in subsection (5) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"*(ii)* **[except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed before it has been considered,]** amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).";

(e) by the substitution in subsection (4) for subparagraph *(i)* of paragraph *(c)* of the following subparagraph:

"(i) Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under subsection (5), any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the administrative appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal;";

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

"*(cc)* any amendment of a determination or new determination is made effective under subsection (5) or section 77F.";

(g) by the substitution in subsection (4) for subparagraph (iii) of paragraph *(c)* of the following subparagraph:

"(iii) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (5) or any determination is amended or a new determination is made under subsection (5) or section 77F, the Commissioner shall not be liable to pay interest on any

amount which remained payable in terms of the provisions of paragraph *(c)*(i) for any period during which such determination remained in force;"; and

(h) by the substitution in subsection (5) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"*(bb)* except when an internal administrative appeal has been lodged in terms of the provisions of Part A of Chapter XA, or if lodged before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).".

(2)*(a)* Subsection (1)*(a)*, *(b)*, *(c)* and *(d)* shall come into operation on the date of promulgation of this Act.

(b) Subsection (1)*(e)*, *(f)*, *(g)* and *(h)* shall come into operation on the date Parts A and B of Chapter XA comes into operation.

Substitution of section 69 of Act 91 of 1964

148. (1) Section 69 of the Customs and Excise Act, 1964 is hereby amended—

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

"*(d)* For the purposes of assessing the excise duty on any goods manufactured in the Republic and specified in any items of Section B of Part 1 of Schedule No. 1 other than those specified in paragraph *(a)* and contemplated in paragraph *(dA)*, the value thereof shall be the 'invoice price' which shall mean—"; and

(b) by the insertion of the following paragraph:

"*(dA)*(i) The provisions of this paragraph apply to digital video discs (DVD's), recorded compact discs, audio tapes and video tapes dutiable in terms of item 124.65 of Section B of Part 2 of Schedule No. 1.

(ii) Subject to such limitations, adaptations and requirements as the Commissioner may prescribe by rule, the value for assessing the excise duty on such goods shall be in the case of—

(aa) recorded compact discs and audio tapes, the contract price of the manufacturer thereof to the retailer, plus, to the extent that may be prescribed in such rule, a maximum of 15 per cent of such price;

(bb) recorded video tapes and digital video discs (DVD's), the manufacturers' duplicating costs, plus, to the extent that may be prescribed by rule, a maximum of 10 per cent of such costs

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

"*(c)* Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under subsection (4), any amount due in terms thereof shall, notwithstanding that **[an administrative appeal has been filed as contemplated in section 95A or]** any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner maysuspend such payment until the date the administrative appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal.";

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

"*(iii)* any amendment of a determination or new determination is made effective under subsection (4). **[or section 95A]**";

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

"(e) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (4) or any determination is amended or a new determination is made under subsection (4) **[or section 95A]** the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph *(c)* for any period during which such determination remained in force.";

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

"*(ii)* **[except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed before it has been considered,]** amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).";

(g) by the substitution in subsection (3) for paragraph *(c)* of the following paragraph:

"*(c)* Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under subsection (4), any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the date the administrative appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal;";

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

"(iii) any amendment of a determination or new determination is made effective under subsection (4) or section 77F.";

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

"*(e)* Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (4) or any determination is amended or a new determination is made under subsection (4) or section 77F, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph *(c)* for any period during which such determination remained in force;"; and

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

"(ii) except when an internal administrative appeal has been lodged in terms of the provisions of Part A of Chapter XA, or if lodged, before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).".

(2)*(a)* Subsection (1)*(a)*, *(b)*, *(c)*, *(d)*, *(e)* and *(f)* shall come into operation on the date of promulgation of this Act.

(b) Subsection (1)*(g)*, *(h)*, *(i)* and *(j)* shall come into operation when Chapter XA comes into operation.

Amendment of section 75 of Act 91 of 1964

149. Section 75 of the Customs and Excise Act, 1964 is hereby amended—

(a) by the substitution for paragraph *(c)* of subsection (2) of the following paragraph:

"*(c)* only in respect of goods entered for use in such industry in a factory, mine, works or activity which complies with such requirements in respect of quantity of material used or quantity of goods produced or manufactured as the Commissioner may impose in consultation with the International Trade Administration Commission."; and

(b) by the addition to subsection (11A) of the following paragraph:

"*(c)* Notwithstanding anything to the contrary in this section or in any other provision of this Act contained but subject to the provisions of this subsection, any amount duly refundable in terms of any item of Schedule No. 6 may be an amount that may be set off, if such item so provides, by a licensee of a customs and excise warehouse in terms of section 77 where the goods have been entered or are deemed to have been entered for home consumption and payment of duty in accordance with the provisions of this Act.".

Insertion of Chapter XA in Act 91 of 1964

150. (1) The following Chapter is hereby inserted in the Customs and Excise Act, 1964 after Chapter X:

"**Chapter XA – Internal Administrative Appeal; Alternative Dispute Resolution; Dispute Settlement**

Part A: Internal Administrative Appeal

Definitions

77A.*(a)* For the purposes of this Chapter—

'Commissioner' includes, depending on the context, the delegated officer who made the decision in dispute against which an appeal is lodged;

'day' means any day other than a Saturday, Sunday or a public holiday: Provided that the days between 16 December of a year and 15 January of the following year, both inclusive, shall not be taken into account in determining days or the period allowed for complying with any provision in this Part or the rules;

'decision' includes—

(a) any determination or other act of an administrative nature for the purposes of this Act;

(b) any amendment or withdrawal of a decision; and

(c) any refusal to take a decision;

'officer' includes, depending on the context, an officer who is delegated by the Commissioner and acts on behalf of the Commissioner as contemplated in section 3 (2);

'SARS' means the South African Revenue Service.

(b) Any decision made by the Commissioner or an officer under the provisions of this Act, including any amendment or withdrawal thereof, shall be deemed to be effective from the date any notice or communication in respect of such decision is issued in writing or the date specified in such notice or

communication.

Persons who may appeal

77B. (1) Any person who may institute judicial proceedings in respect of any decision by an officer may, before or as an alternative to institute such proceedings—

(a) lodge an appeal against a decision or withdrawal and making of a new decision by the Commissioner; or

(b) appeal to the appeal committee contemplated in this Part in respect of those matters and decisions of officers that the appeal committee is authorized by rule to consider and decide upon or make recommendations to the Commissioner.

(2) If dissatisfied with a final decision as contemplated in *(a)* or *(b)* and the Commissioner thinks the matter is appropriate, make use of the alternative dispute procedure contemplated in section 77I.

Submission of appeal

77C.*(a)* Any person who intends submitting an appeal as provided in this Part must do so—

(i) within 90 days from the date such person was notified of such decision;

(ii) within 90 days after the date any such person became aware or the date such person might reasonably be expected to have become aware of such decision; or

(iii) where the Commissioner on good cause shown is satisfied that such person was prevented from submitting an appeal as required in paragraphs (i) and (ii), within a further period of 90 days.

(b) The appeal may be brought by the person concerned or a duly authorized representative.

(c) Such appeal must be in writing and must set forth the particulars and be supported by the documents prescribed by rule.

Time within which appeal must be considered

77D.*(a)* An appeal shall be considered within 90 days after the date of the lodging of a notice of appeal and the Commissioner shall notify the person who lodged the appeal of the final determination or decision in writing.

(b)(i) No appeal shall be considered later than 180 days after the date of the decision, unless the period is on good cause shown extended by the Commissioner.

(ii) Where the Commissioner refuses to extend the said period it may be extended on application by the person concerned by the High Court.

Appointment and function of appeal committee

77E. (1) The Commissioner may appoint a committee of officers or a committee of officers and other persons to consider and decide appeals or make recommendations in relation to such appeals to the Commissioner.

(2) An appeal committee may—

(a) consider decisions and decide in respect of the matters prescribed by rule; or

(b) recommend to the Commissioner to—

(i) confirm the decision appealed against; or

(ii) amend any such decision or withdraw it or withdraw it and make a new decision from a date specified—

(aa) in sections 47(9)*(d)*, 65(5) and 69(4);

(bb) in respect of any other relevant procedure in this Act; or

(cc) the date in section 3(2).

(3) Any decision signed by the chairperson of the appeal committee shall be regarded as a decision of the committee and to have been made by an officer.

(4) The chairperson of the appeal committee must maintain a record of the proceedings prescribed by rule.

Decision of Commissioner

77F. (1) The Commissioner may—

(a) refer the matter back to the committee for further consideration;

(b) reject or accept or, notwithstanding section 77E *(b)*, accept and vary the recommendation of the committee;

(c) confirm or amend the decision or withdraw it and make a new decision.

(2) Whenever any representations or an appeal has been considered by the Commissioner any period within which any person may prosecute an appeal against or institute any judicial proceedings in connection with such decision, shall commence on the date on which the Commissioner in writing advises the person concerned of the final decision of the appeal.

Obligation to pay amount demanded

77G. Notwithstanding anything to the contrary contained in this Act, the obligation to pay and right to receive and recover any amount demanded in terms of any provision of this Act, shall not, unless the Commissioner so directs, be suspended by an appeal in terms of this section or pending a decision by court.

Rules

77H. The Commissioner may make rules—

(a) to prescribe at which office any appeal committee shall be constituted, and the composition of such committee;

(b) to prescribe which decisions or categories of decisions of officers may be appealed against to the appeal committee;

(c) to prescribe appeal procedures, conduct of meetings of committees and such forms as may be required for the purpose of this Part;

(d) in respect of all matters which are required or permitted in terms of this Part to be prescribed by rule;

(e) in respect of any matter relating to the appointment of persons other than officers to an appeal committee which may include requirements relating to qualifications, conduct, resignation, removal from office and remuneration;

(f) to delegate, subject to subsection 3 (2), any of the powers that may be

exercised or shall be performed by the Commissioner in accordance with the provisions of this Part or any other relevant provision of this Act;

(g) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this Part.

Part B

Alternative Dispute Resolution

77I. (1) The Minister may, after consultation with the Minister of Justice, promulgate rules to provide for—

(a) alternative dispute resolution procedures in terms of which the Commissioner and the person aggrieved by a decision may resolve a dispute; and

(b) categories of decisions which are or are not suitable for alternative dispute resolution.

(2) The rules so published shall be part of this Act.

Part C: Settlement of dispute

Definitions

77J. (1) For the purposes of this Part—

'dispute' means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law;

'settle' means to resolve a dispute by compromising any disputed liability, otherwise than by way of either the Commissioner or the person concerned accepting the other party's interpretation of the facts or the law applicable to those facts, or of both the facts and the law, and 'settlement' shall be construed accordingly.

Purpose of this Part

77K. (1) The basic principle in law is that it is the duty of the Commissioner to assess and collect taxes, duties, levies, charges and other amounts according to the laws enacted by Parliament and not to forgo any such taxes, duties, levies, charges or other amounts properly chargeable and payable.

(2) Circumstances may, however, require that the strictness and rigidity of this basic principle be tempered where it would be to the best advantage of the state.

(3) The purpose of this Part is to prescribe the circumstances whereunder it would be inappropriate and whereunder it would be appropriate that the basic rule be tempered and for a decision to be taken to settle a dispute.

Circumstances where inappropriate to settle

77L. (1) It will be inappropriate and not to the best advantage of the state to settle a dispute, where, in the opinion of the Commissioner,—

(a) the action on the part of the person concerned which relates to the dispute, constitutes intentional tax evasion or fraud and no circumstances contemplated in section **77M** exist;

(b) the settlement would be contrary to the law or a clearly established practice of the Commissioner on the matter, and no exceptional circumstances exist to justify a departure from the law or practice;

(c) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose;

(d) the pursuit of the matter through the courts will significantly promote compliance of the tax laws and the case is suitable for this purpose; or

(e) the person concerned has not complied with the provisions of any Act administered by the Commissioner and the Commissioner is of the opinion that the non-compliance is of a serious nature.

Circumstances where appropriate to settle

77M. (1) The Commissioner may, where it will be to the best advantage of the state, settle a dispute, in whole or in part, on a basis that is fair and equitable to both the person concerned and SARS, having regard to *inter alia*—

(a) whether that settlement would be in the interest of good management of the tax system, overall fairness and the best use of the Commissioner's resources;

(b) the cost of litigation in comparison to the possible benefits with reference to—

(i) the prospects of success in a court;

(ii) the prospects of the collection of the amounts due; and

(iii) the costs associated with collection;

(c) whether there are any—

(i) complex factual or quantum issues in contention; or

(ii) evidentiary difficulties,

which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative dispute resolution procedures or the courts;

(d) a situation where a participant or a group of participants in a tax avoidance arrangement has accepted the Commissioner's position in the dispute, in which case the settlement may be negotiated in an appropriate manner required to unwind existing structures and arrangements; or

(e) whether the settlement of the dispute will promote compliance of the tax laws by the person concerned or a group of taxpayers or a section of the public in a cost-effective way.

Power to settle and conduct of officials

77N. (1) A dispute may be settled, as contemplated in this Part, by the Commissioner personally or any official delegated by the Commissioner for that purpose.

(2) The Commissioner or the relevant delegated official must ensure that he or she does not have, or did not at any stage have, a personal, family, social, business, professional, employment or financial relationship with the person concerned.

Procedure for settlement

77O. (1) The person concerned should at all times disclose all relevant facts in discussions during the process of settling a dispute.

(2) Any settlement will be conditional upon full disclosure of material facts known to the person concerned at the time of settlement.

(3) All disputes settled in whole or in part, as contemplated in this Part, must be evidenced by a written agreement between the parties in the format as may be prescribed by the Commissioner and must include details on—

(a) how each particular issue was settled;

(b) relevant undertakings by the parties;

(c) treatment of that issue in future years;

(d) withdrawal of objections and appeals; and

(e) arrangements for payment.

(4) The written agreement will represent the final agreed position between the parties and will be in full and final settlement of all or the specified aspects of the dispute in question between the parties.

(5) The Commissioner must, where the dispute is not ultimately settled, explain the further rights of appeal to the person concerned.

(6) Subject to section **77P**, the Commissioner and delegated official must adhere to the secrecy provisions with regard to the information relating to the person concerned and may not disclose the terms of any agreement to third parties unless authorised by law or by the person concerned.

(7) The Commissioner must adhere to the terms of the agreement, unless it emerges that material facts were not disclosed to it or there was fraud or misrepresentation of the facts.

(8) The Commissioner has the right to recover any outstanding amounts in full where the person concerned fails to adhere to any agreed payment arrangement.

Register of settlements and reporting

77P. (1)The Commissioner must—

(a) maintain a register of all disputes settled in the circumstances contained in this Part; and

(b) fully document the process in terms of which each dispute was settled, which document must be signed on behalf of the Commissioner and the person concerned.

(2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister of Finance a summary of all disputes which were settled in whole or in part during the period of 12 months covered by that summary, which must—

(a) be in such format which, subject to section **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

(b) contain details of the number of disputes settled or part settled, the amount of revenue forgone and estimated amount of savings in costs of litigation, which must be reflected in respect of main classes of taxpayers or sections of the public.".

(2) Subsection (1) shall, to the extent that it inserts –

(a) Parts A and B come into operation on the date fixed by the President by proclamation in the *Gazette*;

(b) Part C come into operation on the date of Promulgation of this Act.

Amendment of section 80 of Act 91 of 1964

151. Section 80 of the Customs and Excise Act, 1964, is hereby amended by the insertion of the following paragraph:

"*(r)* without lawful cause fails to comply with a notice of appointment as agent in terms of section 114A within the period specified in such notice.".

Amendment of section 89 of Act 91 of 1964

152. (1) Section 89 of the Customs and Excise Act, 1964, is hereby amended–

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

"(2) Any litigant must give notice to the Commissioner in writing before serving any process for instituting any proceedings as contemplated in section 96 (1) *(a)* within 90 days after the date of seizure. **[or]**"

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

"(4) Whenever goods are seized and in consequence of the seizure –

(a) delivery thereof under section 93 is refused or the terms of delivery thereunder are not accepted;

[*(b)* no internal administrative appeal under section 95A is filed or is filed and is not successful;]

(b) no proceedings are instituted as contemplated in this section or have been instituted and have been dismissed in a final judgment of the High Court or a judgment by the Supreme Court of Appeal,

the goods concerned shall, subject to the provisions of section 90, be deemed to be condemned and forfeited."

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

"(2) Any litigant must give notice to the Commissioner in writing before serving any process for instituting any proceedings as contemplated in section 96 (1) *(a)* –

(a) within 90 days after the date of seizure; **[or]**

(b) in the case of an internal administrative appeal, where such appeal is unsuccessful, within 90 days from the date contemplated in **[subsection 95A (7)]** section 77F."

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

"(4) Whenever goods are seized and in consequence of the seizure –

(a) delivery thereof under section 93 is refused or the terms of delivery thereunder are not accepted;

[*(b)* no internal administrative appeal under section 95A is filed or is filed and is not successful;]

(b) no internal administrative appeal contemplated in Part A of Chapter XA is lodged or is lodged and is not successful;

(c) no proceedings are instituted as contemplated in this section or have been instituted and have been dismissed in a final judgment of the High Court or a judgment by the Supreme Court of Appeal,

the goods concerned shall, subject to the provisions of section 90, be deemed to be condemned and forfeited."

(2) *(a)* Subsection (1) *(a)* and *(b)* shall come into operation on the date of promulgation of this Act.

(b) Subsection (1) *(c)* and *(d)* shall come into operation when Chapter XA comes into operation.

Substitution of section 93 of Act 91 of 1964

153. The following section is substituted for section 93 of the Customs and Excise Act, 1964:

"**Remission or mitigation of penalties and forfeiture**

93.(1) The Commissioner may, on good cause shown by the owner thereof, direct that any ship, vehicle container or other transport equipment, plant, material or goods detained or seized or forfeited under this Act be delivered to such owner, subject to—

(a) payment of any duty that may be payable in respect thereof;

(b) payment of any charges that may have been incurred in connection with the detention or seizure or forfeiture thereof; and

(c) such conditions as the Commissioner may determine, including conditions providing for the payment of an amount not exceeding the value for duty

purposes of such ship, vehicle container or other transport equipment, plant, material or goods plus any unpaid duty thereon.

(2) The Commissioner may, on good cause shown mitigate or remit any penalty incurred under this Act on such conditions as the Commissioner may determine.

(3)*(a)* Any person who, for the purposes contemplated in this section alleges ownership of any ship, vehicle, container or other transport equipment, plant material or goods shall have the burden of proving such ownership to the satisfaction of the Commissioner; and

(b) where two or more persons claim ownership of the same goods, ownership must be decided by a competent court and the Commissioner shall only grant release thereof to the person or persons as ordered by such court.".

Amendment of section 101 of Act 91 of 1964

154. Section 101 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2B) of the following subsection:

"(2B) Any person referred to in subsection (1) shall keep and produce on demand any **[data created by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983), including data in the electronic form in which it was originally created or in which it is stored for the purposes of backing up such data]** electronic representations of information in any form.".

Amendment of section 101A of Act 91 of 1964

155. Section 101A of the Customs and Excise Act, 1964 is hereby amended by the insertion in subsection (10) of the following paragraph:

"*(d)*(i) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit, as prescribed by rule, any person who is registered as a user and has entered into a user agreement as contemplated in subsection (3), to submit electronically any report referred to in paragraph *(a)*,

by using the Internet.

(ii) Subject to such exceptions, adaptations or additional requirements as the Commissioner may prescribe by rule, the provisions of this section shall apply to the submission of such report.

(iii) 'Internet' shall have the meaning assigned thereto in the Electronic Communications and Transactions Act, 2002 (Act. No. 25 of 2002).".

Insertion of sections 114A and 114B in Act 91 of 1964

156. The following sections are hereby inserted in the Customs and Excise Act, 1964, after section 114:

"**Power to appoint agent**

114A. The Commissioner may, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared an agent—

(a) shall for the purposes of this Act be the agent of such other person in respect of the payment of any amount of duty, interest, fine, penalty or forfeiture payable by such other person under this Act, and

(b) may be required to make payment of such amount from any moneys which may be held by him or her for or be due by him or her to the person whose agent he or she has been declared to be:

Provided that a person so declared an agent who, is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of Commissioner against agent or trustee

114B. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or person acting in a fiduciary capacity as the Commissioner would have against

the property of any person liable to pay any duty, interest, fine, penalty or forfeiture payable under this Act and in as full and ample a manner.".

Substitution of Part 3 of Schedule No. 1 to Act 91 of 1964

157. Part 3 of Schedule No. 1 of the Customs and Excise Act, 1964 is hereby substituted for the following Part:

"PART 3

ENVIRONMENTAL LEVY

NOTES:

1. Any rate of environmental levy specified in this Part in respect of any goods shall apply to any such goods which are manufactured in the Republic or imported into the Republic.
2. Any environmental levy payable in terms of this Part in respect of any goods specified therein shall be additional to any customs or excise duty payable in terms of Part 1 or 2 in respect of goods of the same class or kind.
3. Imported goods shall not be declared on separate bills of entry for the purpose of Parts 1, 2, 3 and 5 of this Schedule.
4. Whenever the tariff heading or subheading under which any goods are classified in Part 1 of this Schedule is expressly quoted in any environmental levy item of this Part in which such goods are specified, the goods so specified in such environmental levy item shall be deemed not to include goods which are not classified under the said tariff heading or subheading.
5. Appropriation for own use for any purpose by the manufacturer or owner of any goods specified in this Part shall render such goods liable to entry for home consumption and payment of any environmental levy.

Environ= mental Levy Item	Tariff Heading	Description	Environmental Levy	Anno= tations
147.00	3923.2	**PLASTICS AND ARTICLES THEREOF; RUBBER AND ARTICLES THEREOF** Carrier and flat bags or sacks, of polymers of ethylene or propylene, of a thickness exceeding 24 µm, printed with a single resin system ink based on a co-solvent polyamide with a mass of dry solid content not exceeding 2,25 per cent of the mass of the unprinted bag or printed with other inks with a mass of the solid content exceeding 1,125 per cent of the mass of the unprinted bag (excluding bags for use as immediate packing, refuse bags or sacks and refuse bin liners)	1 000c/kg"	

Amendment of section 4 of Act 77 of 1968

158. Section 4 of the Stamp Duties Act, 1968, is hereby amended—

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

"(i) public benefit organisation which is exempt from tax in terms of section 10(1)*(c*N*)* of the Income Tax Act, 1962 (Act 58 of 1962), or which continues to enjoy exemption under section 21(2)*(a)* of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000); or"; and

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

"*(h)* any instrument transferred by any public benefit organisation, which is exempt from tax in terms of section 10(1)*(c*N*)* of the Income Tax Act. 1962, or which continues to enjoy exemption under section 21(2)*(a)* of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000), to any other entity which is controlled by such public benefit organisation in

order to comply with the provisions of the proviso to section 30(3) of that Act.".

Amendment of section 7 of Act 77 of 1968

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

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

"*(g)* in the case of the original issue of a marketable security or of a negotiable certificate of deposit, the company or corporate bodyissuing the marketable security or negotiable certificate of deposit;"; and

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

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

Amendment of section 23 of Act 77 of 1968

160. Section 23 of the Stamp Duties Act 1968 is hereby amended—

(a) by the deletion in subsection (1) of the definition of "lending arrangement";

(b) by the deletion in subsection (4) of subparagraph (viiB) of paragraph *(b)*; and

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

"(6) Any instrument of transfer referred to in subsection (4) shall at all reasonable times during a period of **[three]** five years after the date of registration of the relevant transfer be open for inspection by any person acting under the authority of the Commissioner.".

Insertion of section 30A in Act 77 of 1968

161. The following sections are hereby inserted in the Stamp Duties Act, 1968, after section 30:

"**Power to appoint agent**

30A. The Commissioner may, if he deems it necessary, declare any person to be the agent of any other person, and the person so declared an agent—

(a) shall for the purposes of this Act be the agent of such other person in respect of the payment of any amount of duty or penalty payable by such other person under this Act; and

(b) may be required to make payment of such amount from any moneys which may be held by him for or be due by him to the person whose agent he has been declared to be:

Provided that a person so declared an agent who, is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of the Commissioner

30B. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property of any person liable to pay any duty and in as full and ample a manner.".

Amendment of section 31 of Act 77 of 1968

162. Section 31 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "information" of the following definitions:

"'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of**

1983)] printout of information generated, sent, received, stored, displayed or processed by electronic means;

'information' includes any **[data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983]** electronic representations of information in any form;".

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

163. Item 7 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion of subitem (5);

(b) by the substitution for paragraph *(c)* of *"Exemptions"* of the following paragraph:

"*(c)* any cession or substitution of debtors in respect of any bond."; and

(d) by the deletion of paragraph *(d)* of *"Exemptions".*

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

164. Item 13 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in the introductory paragraph of Item 13 for the expression "*Fixed deposit receipt*" of the following paragraph:

"*Fixed deposit receipt*, **[including any certificate or other instrument whereby any fixed deposit is acknowledged or is expressed to have been received, deposited or paid:]**";

(b) by the substitution after the introductory paragraph "*Fixed deposit receipt*" of the following paragraph:

"In respect of the original issue or transfer of any fixed deposit made with any bank, company or association, whether corporate or unincorporated: for every R200 (or part thereof) of the amount of the fixed deposit and for every period of twelve months (or part thereof) for which the deposit is made .....0 10;";

(c) by the substitution for the paragraph preceding the *Exemption* of the following paragraph:

"For the purposes of this item **[a share certificate issued in respect of any "paid-up share" as defined in the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), in any legally established mutual building society shall be deemed to be a fixed deposit receipt in respect of a fixed deposit of an amount equal to the amount stated in the certificate, and such deposit shall be deemed to have been made for a period of twenty-four months]** fixed deposit receipt means any negotiable certificate of deposit."; and

(d) by the deletion of paragraph *(a)* of the *Exemptions*.

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

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

(a) by the addition of the following subitem:

"(xviii) a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980).";

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

"in respect of the original issue within the Republic of any such shares, stock or debentures which constitute marketable securities:";

(c) by the substitution in paragraph (2) for the words preceding subparagraph *(a)* of the following words:

"In respect of the issue within the Republic of any certificate or other like instrument representing any interest in respect of such shares, stock or debentures which constitute marketable securities, whether called unit or fixed trust certificates or by any other name:";

(d) by the deletion of sub-items *(b)*, *(c)*, *(e)* and *(h) Exemptions from the duty under paragraph* (1) *or* (2);

(e) by the substitution in *Exemptions from the duty under paragraph (1) or (2)* for paragraph *(g)* of the following paragraph:

"*(g)* the original issue of any share by a company to any other company in terms of an intra-group transaction contemplated in section 45 of the Income Tax Act, 1962 (Act No. 58 of 1962), or in terms of any transaction which would have constituted an intra-group transaction regardless of whether or not an election has been made for the provisions of that section to apply and regardless of whether or not those shares were acquired in terms of that transaction as a capital asset or as trading stock, where the public officer of that company has made a sworn affidavit or solemn declaration that such intra-group transaction complies with the provisions contained in section 45 of that Act.";

(f) by the addition to the *Exemptions from duty under paragraph (1) or (2)* of the following paragraph:

"*(i)* where the securities are interest-bearing debentures, including debenture stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not, unless convertible into shares or similar equity interest or eligible to participate in dividends;";

(g) by the deletion of sub-items *(b)* to *(g)* inclusive of *Paragraph (3)*;

(h) by the substitution of sub-item *(h)* of *Paragraph (3)* of the following paragraph:
"if the marketable security was sold or disposed of (whether conditionally or not) after 31 March 1997 and the date of sale or disposal is noted on the relevant instrument of transfer referred to in section 23 of this Act by the transferee or his agent and such note is signed by the transferee or his agent—";

(i) the deletion of sub items (*c*), (*d*), (*d*A), (*n*B), *(p)* and (*v*) of the *Exemptions from the duty under paragraph* (3); and

(j) 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;";

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

"(vii) in terms of any transaction which would have constituted a transaction

or distribution contemplated—

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

(bb) in subparagraph (i), (ii) or (iii) regardless of the market value of the asset disposed of in exchange for that marketable security; or

(cc) in subparagraphs (i) to (vi) regardless of whether or not that person acquired that marketable security as a capital asset or as trading stock,

where the public officer of the relevant company has made a sworn affidavit or solemn declaration that the transfer of that marketable security complies with the provisions of this paragraph.";

(l) by the addition to the *Exemption from duty under paragraph (3)* of the following paragraph:

"*(y)* where the securities are interest-bearing debentures, including debenture stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not, unless convertible into shares or similar equity interest or eligible to participate in dividends;";

(m) by the deletion of sub items (i) to (vi) inclusive of *Paragraph (5)*.

(2)*(a)* Subsection (1)*(d)* shall in so far as it deletes sub-item *(c)* come into operation on 1 December 2004.

(b) Subsection (1)*(i)* and *(j)* 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 transaction which takes effect on or after that date.

Amendment of section 1 of Act 89 of 1991

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

(a) by the insertion before the definition of "ancillary transport expenses" of the following definition:

"'adjusted cost', means the cost of any goods, services or capital goods where

tax has been charged or would have been charged if this Act had been applicable prior to the commencement date, in respect of the supply of goods and services or if the vendor was or would have been entitled to an input tax deduction in terms of paragraph *(b)* of the definition of 'input tax';";

(b) the substitution in the definition of "consideration" for the words preceding the proviso of the following words:

"'consideration', in relation to the supply of goods or service to any person, includes any payment made or to be made (including any deposit on any returnable container and tax), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include—

(a) any payment made by any person as an unconditional gift to any association not for gain;

(b) any grant other than a grant received by or accrued to a designated public body or public private partnership;";

(c) by the insertion after the definition of "customs secured area" of the following definition:

"'designated public body or public private partnership' means a vendor—

(i) notified in terms of *(b)*(i) of the definition of 'enterprise' that its supplies of goods and services are to be treated as supplies made in the course or furtherance of an enterprise;

(ii) which is a major public entity, national government business enterprise or provincial government business enterprise listed in Schedule 2 or Part B or D of Schedule 3 of the Public Finance Management Act, 1999 (Act No.1 of 1999), respectively; or

(iii) which is a 'Public Private Partnership' as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);";

(d) by the substitution in the definition of "enterprise" for item (i) of paragraph *(b)* of the following item:

"(i) the making of supplies by any public authority or any national public entity or provincial public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999),

respectively, of goods or services which the Minister, having regard to the circumstances of the case, is satisfied are of the same kind or are similar to taxable supplies of goods or services which are or might be made by any person other than such public authority or such public entity in the course or furtherance of any enterprise, if the Commissioner, in pursuance of a decision of the Minister under this subparagraph, has notified such public authority or such public entity that its supplies of such goods or services are to be treated as supplies made in the course or furtherance of an enterprise;";

(e) by the substitution in the definition of "enterprise" for item *(aa)* of subparagraph (iii) of the proviso:

"*(aa)* the rendering of services by an employee to his employer in the course of his employment or the rendering of services by the holder of any office in performing the duties of his office, shall not be deemed to be the carrying on of an enterprise to the extent that any amount constituting remuneration as contemplated in the definition of "remuneration" in paragraph 1 of the Fourth Schedule to the Income Tax Act **[(disregarding paragraphs (i) and (vii) of that definition)]** is paid or is payable to such employee or office holder, as the case may be;";

(f) by the insertion in the definition of "enterprise" of the following paragraph to the proviso:

"(viii) the making of supplies by a constitutional institution listed in Schedule 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), shall be deemed not to be the carrying on of an enterprise;";

(g) by the insertion after the definition of "goods" of the following definition:

"'grant' means the amount of any payment, including any appropriation, grant-in-aid, subsidy, contribution and financial assistance granted or paid to a vendor by a public authority or local authority, but does not include a payment made for any goods or services supplied or to be supplied to such public authority or local authority;";

(h) by the insertion after the definition of "money" of the following definition:

"'month' means any of the twelve portions into which any calendar year is divided;";

(i) by the deletion in the definition of "second-hand goods" of the word "and" at the end of paragraph (ii) and the addition of the word "and" at the end of paragraph (ii);

(j) by the addition to the definition of "second-hand goods" of the following paragraph:

"(iii) any prospecting right, mining right, exploration right or production right as defined in Schedule I of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), issued or renewed pursuant to the same Schedule or received upon conversion pursuant to Schedule II;"; and

(k) by the deletion of the definition of "transfer payment".

(2)*(a)* Subsection (1)*(b), (c), (d), (f), (g)* and *k)* shall come into operation on a date fixed by the President by proclamation in the *Gazette.*

(b) Subsection (1)*(j)* 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 section 8 of Act 89 of 1991

167. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition in subsection (2) of the following paragraph to the proviso:

"(iv) this subsection shall not apply to a vendor which is a Constitutional Institution or a Public Entity listed in Schedule 1 or 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), respectively, where that vendor ceases to be a vendor as a result of the substitution of paragraph *(b)*(i) and the insertion of paragraph (viii) to the proviso to the definition of 'enterprise' in the Revenue Laws Amendment Act, 2003.";

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

"(5) For the purposes of this Act a **[vendor]** designated public body or public private partnership shall be deemed to supply services to any public authority or local authority to the extent of any payment made by the authority concerned to or on behalf of the **[vendor]** that designated public body or

public private partnership. **[in respect of the taxable supply of goods or services by the vendor to any person.]**"; and

(c) by the substitution for subsection (9) of the following subsection:

"(9) For the purposes of this Act, where any vendor in carrying on an enterprise in the Republic **[transfers]** consigns or delivers goods or provides any service to or for the purposes of his branch or main business outside the Republic in respect of which the provisions of paragraph (ii) of the proviso to the definition of 'enterprise' in section 1 are applicable, the vendor shall be deemed to supply such goods or service in the course or furtherance of his enterprise.".

(2) Subsection (1)*(a)* and *(b)* shall come into operation on the date determined by the President by proclamation in the *Gazette*.

Amendment of section 9 of Act 89 of 1991

168. Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph *(e)* of the following paragraph:

"*(e)* where the provisions of section 8(9) are applicable in respect of **[transfer of]** the consignment or delivery of goods or the provision of any service by a vendor to his branch at the time the goods are **[delivered]** consigned or delivered to such branch or the service is performed, as the case may be.".

Amendment of section 10 of Act 89 of 1991

169. Section 10 of the Value Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (5) for subparagraph (iii) of paragraph *(a)* of the following paragraph:

"Any costs (including tax) incurred by the vendor in respect of the transportation or delivery of such goods or the provision of such services in **[connection with the transfer]** respect of such goods that are consigned or delivered or the provision of such services as contemplated in section 8(9);

and"; and

(b) by the substitution in subsection (9) for item *(aa)* of subparagraph (i) of symbol "A" of the formula of the following item:

"*(aa)* the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply or would in terms of that section have been deemed to be the open market value of the supply were it not for the fact that the recipient would have been entitled under section 16(3) to make a deduction of the full amount of tax in respect of that supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or".

Amendment of section 11 of Act 89 of 1991

170. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition in subsection (1) of the following paragraph:

"*(n)* the goods consist of—

(i) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), continuing in force or converted into a new right pursuant to the same Schedule; or

(ii) any prospecting right, mining right, exploration right or production right as defined in Schedule I of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), renewed pursuant to the same Schedule:";

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

"*(n)* the services comprise the carrying on by a welfare organization of the activities referred to in the definition of "welfare organization" in section

1 and any consideration in respect of those services is paid to **[in terms of section 8(5) deemed to be supplied by]** that organisation **[to]** by a public authority or local authority; or";

(c) by the substitution in subsection (2) for paragraph *(o)* of the following paragraph:

"*(o)* the services are supplied, as contemplated in section 8 (9), by a vendor to or for the purposes of his branch or main business situated in an export country in respect of which the provisions of paragraph (ii) of the proviso to the definition of 'enterprise' in section 1 are applicable to the extent that such services are for use outside the Republic; or";

(d) by the deletion of paragraph *(p)* of subsection (2);

(e) by the substitution for paragraph *(q)* of subsection (2) of the following paragraph:

"*(q)* the services are **[in terms of section 8(5) deemed to be]** supplied by a vendor **[to a public authority or local authority]** to the extent that the consideration for such services **[payment contemplated in that section]** is made from donor funds granted under any international agreement to which the Government of the Republic is a party; or";

(f) by the substitution for subsection (3) of the following subsection:

"(3) Where a rate of zero per cent has been applied by any vendor under the provisions of this section or section 13(1)(ii), the vendor shall obtain and retain such documentary proof substantiating the vendor's entitlement to apply the said rate under **[the]** those provisions as is acceptable to the Commissioner.".

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

(b) Subsection (1)*(b), (d)* and *(e)* shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.

Amendment of section 13 of Act 89 of 1991

171. Section 13 of the Value-Added Tax Act, 1991, is hereby amended by the

substitution in subsection (1) for paragraph (ii) of the proviso of the following paragraph:

"(ii) where any goods have been imported and entered in a licensed Customs and Excise warehouse but have not been entered for home consumption, any supply of such goods before they are entered for home consumption shall be **[disregarded]** zero-rated for the purposes of this Act;".

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2002 and shall apply in respect of any supply made on or after that date.

Amendment of section 14 of Act 89 of 1991

172. (1) Section 14 of the Value-Added Tax Act, 1991, is hereby amended by the addition to subsection (5) of the following paragraph:

"*(c)* the supply of educational services by an educational institution established in an export country which is regulated by an educational authority in that export country.".

(2) Subsection (1) shall be deemed to have come into operation on 1 December 1998.

Amendment of section 16 of Act 89 of 1991

173. Section 16 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (3) of item *(aa)* of subparagraph (i) of symbol "B" in paragraph *(h)* of the following item:

"*(aa)* the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the

extent that it exceeds the consideration in money for that supply; or".

Amendment of section 17 of Act 89 of 1991

174. (1) Section 17 of the Value-Added Tax Act is hereby amended—

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

"(iii) such goods or services consist of a meal or refreshment supplied by the vendor as operator of any conveyance to a passenger and crew members, in such conveyance during a journey, where such meal or refreshment is supplied as part of or in conjunction with the transport service supplied by the vendor, where the supply of such transport service is a taxable supply;";

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

"(vii) such goods or services (where no consideration relating specifically to such supply is payable or where such supply is separately invoiced, shall be deemed to constitute a single supply for purposes of this subsection) are acquired by a vendor for an employee or office holder of such vendor, that are incidental to the admission into a medical care facility."; and

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

"*(e)* in respect of goods and services that were acquired or imported for the purpose of consumption, use or supply in the course of making taxable supplies to the extent that those goods or services were acquired as a result of or in anticipation of the receipt of a grant: Provided that this paragraph shall not apply to a designated public body or a public private partnership to the extent that the supply of goods and services in respect of which the grant is received is a taxable supply.".

(2) Subsection (1)*(c)* shall come into operation on a date fixed by the President by proclamation in the *Gazette.*

Amendment of section 18 of Act 89 of 1991

175. Section 18 of the Value-Added Tax Act is hereby amended—

(a) by the substitution in subsection (4) for subparagraph (i) of symbol "B" of the following subparagraph:

"(i) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or"; and

(b) by the substitution in subsection (5) for item *(aa)* subparagraph (i) of symbol "B" of the following item:

"*(aa)* the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or".

Amendment of section 20 of Act 89 of 1991

176. (1) Section 20 of the Value Added Tax Act, 1991, is hereby amended by the substitution in subsection (4) for paragraph *(c)* of the following paragraph:

"*(c)* the legal or trading name, address and registration number of the recipient.".

(2) Subsection (1) 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 21 of Act 89 of 1991

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

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

"(iii) the legal or trading name, address and registration number of the recipient;"; and

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

"(iii) the legal or trading name, address and registration number of the recipient.".

(2) Subsection (1) 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 22 of Act 89 of 1991

178. Section 22 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (5).

Amendment of section 23 of Act 89 of 1991

179. Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (8).

Amendment of section 28 of Act 89 of 1991

180. Section 28 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (4).

Amendment of section 31 of Act 89 of 1991

181. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the addition to subsection (1) of the following paragraph:

"*(f)* any person who produces, furnishes, authorises, or makes use of any false tax invoice or debit note in obtaining any undue tax benefit or refund under the provisions of an export incentive scheme referred to in paragraph *(d)* of the definition of 'exported' in section 1, to which such person is not entitled,".

Insertion of sections 31A and 31B in Act 89 of 1991

182. The following sections are hereby inserted in the Value-Added Tax Act, 1991, after section 31:

"**Reduced assessments**

31A. (1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal noted in terms of the provisions of Part V of this Act, reduce an assessment—

(a) to rectify any processing error made in issuing that assessment; or

(b) where it is proved to the satisfaction of the Commissioner that in issuing that assessment any amount which—

(i) was taken into account by the Commissioner in determining the liability for tax, should not have been taken into account; or

(ii) should have been taken into account in determining the liability for tax, was not taken into account by the Commissioner:

Provided that such assessment, wherein the amount was so taken into account or not taken into account, as contemplated in subparagraph (i) or (ii), as the case may be, was issued by the Commissioner based on information provided in the vendor's return for the current or any previous tax period.

(2) The Commissioner shall not reduce an assessment under subsection (1)—

(a) after the expiration of three years from the date of that assessment; or

(b) if the amount was assessed in terms of an assessment accepted by the taxpayer and which was made in accordance with the practice generally prevailing at the date of that assessment.

Withdrawal of assessments

31B. (1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal has been noted in terms of Part V, withdraw an assessment, which—

(a) was issued to the incorrect person; or

(b) was issued in respect of the incorrect tax period.

(2) Any assessment withdrawn by the Commissioner in terms of this section shall for all purposes of this Act be deemed not to have been issued.".

Amendment of section 32 of Act 89 of 1991

183. Section 32 of the Value-Added Tax Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The provisions of sections 107A and Part IIIA of Chapter III of the Income Tax Act, 1962 (Act No. 58 of 1962), and any rules under that Act relating to any objection or to the settlements of disputes shall *mutatis mutandis* apply with reference to any objection under this section.".

Amendment of section 39 of Act 89 of 1991

184. Section 39 of the Value-Added Tax Act is hereby amended—

(a) by the insertion of the following subsection:

"(4) Where any importer of goods which are required to be entered under the Customs and Excise Act, fails to pay any amount of tax payable in respect of the importation of the goods on the date on which the goods are entered under the said Act for home consumption in the Republic or the date on which customs duty is payable in terms of the said Act in respect of the importation or, if such duty is not payable, the date on which it would be so payable if it had been payable, whichever date is later, that importer 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 an the said 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."; and

(b) the deletion of subsection (8).

Amendment of section 46 of Act 89 of 1991

185. Section 46 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the words preceding paragraph *(a)* of the following words:

"The natural person who is a resident of the Republic responsible for the duties imposed by this Act—".

Amendment of section 57 of Act 89 of 1991

186. Section 57 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "information" of the following definitions:

"'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as**

defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)] printout of information generated, sent, received, stored, displayed or processed by electronic means;

'information' includes any **[data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983]** electronic representations of information in any form;".

Amendment of section 74 of Act 89 of 1991

187. Section 74 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the heading of the following heading:

"**Schedules and Regulations**"; and

(b) by the addition of the following subsections:

"(3) The Minister may from time to time by notice in the *Gazette* amend the Notes to Schedule No. 1 and the said Schedule—

(a) in order to give effect to any agreement amending any agreement approved by section 2 of the Geneva General Agreement on Tariffs and Trade Act, 1949 (Act No. 29 of 1948), or to any agreement or amendment of any agreement contemplated in section 49 of the Customs and Excise Act and for the purposes of subsection 1(a) or (b) of the said section 49;

(b) in order to give effect to any request by the Minister of Trade and Industry and for Economic Co-ordination;

(c) in order to give effect to any amendment to the Explanatory Notes to the Harmonized system and to the Customs Co-operation Council Nomenclature referred to in section 47(8) of the Customs and Excise Act or to the Nomenclature set out in the annex to the Convention of Nomenclature for the Classification of Goods in Customs Tariffs signed in Brussels in 1950;

(d) by deleting any reference therein to any territory the government of which has cancelled without the consent of the Government of the Republic any preferential customs tariff rate applicable at the commencement of the Customs and Excise Act to any goods produced

or manufactured in the Republic, on their importation into such territory; or

(e) whenever the Commissioner deems it expedient in the public interest otherwise to do so.".

Amendment of Schedule 1 to Act 89 of 1991

188. Schedule 1 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for Item No. 490.40 of paragraph 8 of the following Item:

"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 Board of Trade and Industry,]** may allow by specific permit.".

Amendment of section 1 of Act 31 of 1998

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

(a) by the substitution for the definition of "lending arrangement" of the following definition:

"'lending arrangement' means any arrangement in terms of which—

(a) a person (hereinafter referred to as the lender) lends securities to another person (hereinafter referred to as the borrower) in order to enable that borrower to effect delivery (for any purpose other than for delivery to that lender) of the marketable security within 10 business days after the date that borrower and lender enter into that arrangement;

(b) that borrower in return contractually agrees in writing to deliver securities of the same kind and quality to that lender within a period of

12 months from the date that borrower and that lender entered into that arrangement;

(c) that borrower is contractually required to compensate that lender for any distributions in respect of the securities which that lender would have been entitled to receive during that period had that arrangement not been entered into; and

(d) that arrangement does not affect the lender's benefits or risks arising from fluctuations in the market value of the securities.

Provided that where—

(i) that borrower has not on delivered the securities within the period contemplated in paragraph *(a)*; or

(ii) that borrower has not returned marketable securities as contemplated in paragraph *(b)* to the lender within the period contemplated in that paragraph,

that arrangement shall be deemed not to be a lending arrangement."; and

(b) by the insertion after the definition of "participant" of the following definition:

"'person' includes any public authority, any local authority, any company, any body of persons (corporate or unincorporate), the estate of any deceased or insolvent person and any trust fund;".

(2) Subsection(1)*(a)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any lending arrangement entered into on or after that date.

Amendment of section 6 of Act 31 of 1998

190. (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 item:

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

(b) by the substitution for item *(gg)* of subparagraph (ix) of paragraph *(b)* of the following item:

"*(gg)* in terms of any transaction which would have constituted a transaction or distribution contemplated—

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

(B) in subparagraph (i), (ii) or (iii) regardless of the market value of the asset disposed of in exchange for those securities; or

(C) in subparagraphs (i) to (vi) regardless of whether or not that person acquired those securities as capital assets or as trading stock,

where the public officer of the relevant company has made a sworn affidavit or solemn declaration that the acquisition of those securities 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 a change in beneficial ownership in marketable securities in terms of any transaction which takes effect on or after that date.

Insertion of section 11A in Act 31 of 1998

191. The following sections are hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 11:

"**Power to appoint agent**

11A. The Commissioner may, if he deems it necessary, declare any person to be the agent of any other person, and the person so declared an agent—

(a) shall for the purposes of this Act be the agent of that other person in respect of the payment of any amount of tax or penalty payable by that other person under this Act; and

(b) may be required to make payment of that amount from any moneys which may be held by that agent for or be due by that agent to the

person whose agent he or she has been declared to be: Provided that a person so declared an agent who is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of the Commissioner

11B. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property ofany person liable to pay any tax and in as full and ample a manner.".

Amendment of section 13 of Act 31 of 1998

192. Section 13 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for the definitions of "documents"and "information" of the following definitions:

"'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)]** printout of information generated, sent, received, stored, displayed or processed by electronic means;";

'information' includes any **[data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983]** electronic representations of information in any form;".

Insertion of section 14A in Act 31 of 1998

193. (1) The following section is hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 14:

"**Records**

14A. Any issuer, member or participant must keep such records of every issue of, or change in beneficial ownership in, any securities issued by the issuer or in respect of which a change in beneficial ownership has been effected by the member, or any transfer of securities by the participant for a period of five years as may be required to enable the issuer, member or participant, as the case may be, to observe the requirements of this Act and to enable the Commissioner to be satisfied that those requirements have been observed.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any records relating to the issue of, or change in beneficial ownership in, any securities on or after that date.

Amendment of section 4 of Act 9 of 1999

194. Section 4 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for paragraph *(c)* of the following paragraph:

"*(c)* any public benefit organisation contemplated in section 10(1)*(cN)* of the Income Tax Act, which—

(i) solely carries on any public benefit activity contemplated in paragraphs 1, 2 *(a)*, *(b)*, *(c)* and *(d)* and 5 of Part I of the Ninth Schedule to that Act; or

(ii) **[any public benefit organisation which]** solely provides funds **[solely]** to **[such]** public benefit **[organisation which so carries on any such public benefit activity]** organisations contemplated in subparagraph (i); or".

Amendment of section 12 of Act 9 of 1999

195. (1) Section 12 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to subsection (2) if **[any levy remains unpaid after]** an employer fails to pay the levy by the last day for payment thereof as contemplated in section 6(2) or 7(4), that employer shall—

(a) where the Commissioner or the chief executive officer of the SETA or its approved body, as the case may be, is satisfied that the employer's failure was due to an intent to postpone payment of the levy or otherwise evade that employer's obligations under this Act, pay a penalty not exceeding an amount equal to twice the amount of the levy which that employer so fails to pay; or

(b) in any other case, pay a penalty of 10 per cent of that unpaid amount **[is payable]**,

in addition to the interest contemplated in section 11.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any failure by an employer to pay any amount which becomes payable on or after that date.

Amendment of section 21 of Act 30 of 2000

196. Section 21 of the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution in subsection (2) for the first proviso to paragraph *(a)* of the following proviso:

"Provided that any company, society, trust, institution, union, chamber, exchange, other association of persons or fund whose receipts and accruals were exempt from tax in terms of the provisions of paragraphs *(c*B*)*, *(c*C*)*, *(c*D*)*, *(c*F*)*, *(c*I*)*, *(c*J*)*, *(f)* and *(f*A*)* of section 10(1) of the Income Tax, 1962, prior to the amendment thereof by this section, which company, society, trust, institution, union, chamber, exchange, other association of persons or fund applies for approval by the Commissioner in terms of section 10(1)*(d)*(iii) or (iv) of that Act before 31 December 2004 or in terms of section 30 of that Act before 31 December 2003, or submit a written undertaking as provided for in the said section 30 before that date, shall continue to enjoy exemption until

written notification by the Commissioner of his decision in terms of the said section 10(1)*(d)*(iii) or (iv) or section 30:".

Amendment of section 113 of Act 60 of 2001

197. Section 113 of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the deletion of paragraphs (a) to (d) and (f) to (i) of subsection (1) and paragraph (b) of subsection (2).

Amendment of section 116 of Act 60 of 2001

198. Section 116 of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the deletion of paragraph *(d)* of subsection (1) and paragraph *(b)* of subsection (2).

Repeal of sections 117 and 118 of Act 60 of 2001

199. Sections 117 and 118 of the Second Revenue Laws Amendment Act, 2001 are hereby repealed.

Amendment of section 121 of Act 60 of 2001

200. Section 121 of the Second Revenue Laws Amendment Act, 2001 is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(a)* of the proposed section 21A of the following paragraph:

"*(a)* For the purposes of this Act, Industrial Development Zone or the abbreviation IDZ, and any other expression relating thereto shall, unless otherwise specified in this Act or the context of any provision of this Act otherwise indicates, have the meaning assigned thereto in the regulations

made by the Minster of Trade and Industry under section 10(1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993), and published in Government Notice R.1224 of 1 December 2000 (Regulation *Gazette* No. 6936) or in any amendment of such regulations;";

(b) by the substitution in subsection (1) for subparagraph (i) of paragraph *(b)* of the proposed section 21A of the following subparagraph:

"*(b)*(i) Any reference in this section and its rules to 'the regulations' or any regulation, shall, unless otherwise specified, be a reference to the regulations or a regulation published in Government Notice R.1224 of 1 December 2000, as amended;";

(c) by the substitution in subsection (2) for subparagraph (i) of paragraph *(a)* of the proposed section 21 A of the following subparagraph:

"(i) The customs secured area (CSA) of an IDZ shall, notwithstanding anything to the contrary contained in this Act or any regulation, and subject to the provisions of this section or any Schedule or any exemption or adaptation as the Commissioner may prescribe by rule, be deemed to be a special customs and excise warehouse contemplated in section 21.";

(d) by the substitution for paragraph (d) of subsection (2) of the proposed section 21 A of the following paragraph:

"*(d)* The person who actually brings the goods into the CSA, including the IDZ enterprise, and the IDZ operator shall be jointly and severally liable for the duty on such goods and the provisions of section 44 A shall apply *mutatis mutandis* to such liability.";

(e) by the substitution for subparagraph *(ee)* of paragraph *(e)*(i) of the following subparagraph:

"*(ee)* the goods have been removed and received in any other premises licensed or registered under the provisions of this Act;" and

(f) by the substitution in subsection (6) for paragraph *(e)* of the proposed section 21A of the following paragraph:

"*(e)* requiring the registration and prescribing conditions and procedures regulating such registration in respect of any enterprise or any other person operating in or having access to the CSA.".

Repeal of section 125 of Act 60 of 2001

201. Section 125 of the Second Revenue Laws Amendment Act, 2001, is hereby repealed.

Repeal of section 135 of Act 60 of 2001

202. Section 135 of the Second Revenue Laws Amendment Act, 2001 is hereby repealed.

Repeal of section 137 of Act 60 of 2001

203. Section 137 of the Second Revenue Laws Amendment Act, 2001 is hereby repealed.

Amendment of section 190 of Act 60 of 2001

204. Section 190 of the Second Revenue Laws Amendment Act, 2001, is hereby amended by the deletion of subsection (2).

Amendment of section 1 of Act 4 of 2002

205. (1) Section 1 of the Unemployment Insurance Contributions Act, 2002,is hereby amended by the deletion of the definition of "seasonal worker".

(2) Subsection (1) shall come into operation on the date that section 1 of the Unemployment Insurance Amendment Act, 2003 (Act No. ?? of 2003), comes into operation.

Amendment of section 4 of Act 4 of 2002

206. (1) Section 4 of the Unemployment Insurance Contributions Act, 2002, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs *(b)* and *(c)* of the following paragraphs:

"*(b)* **[an employee and his or her employer, where that employee receives remuneration under a learnership agreement registered in terms]** employees under a contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act 97 of 1998), and their employers;

(c) **[employers and]** employees in the national and provincial spheres of government who are officers or employees as defined in section 1(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and their employers; and"; and

(b) by the deletion of subsection (2).

(2) Subsection (1) shall come into operation on the date that section 2 of the Unemployment Insurance Amendment Act, 2003 (Act No. ?? of 2003), comes into operation.

Amendment of section 7 of Act 4 of 2002

207. (1) Section 7 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the insertion after subsection (4) of the following subsection:

"(4A) Where an amount of an employee's contribution which has been deducted or withheld by an employer which is a company (other than a listed company) in terms of this section has not been paid over to the Commissioner or the Unemployment Insurance Commissioner, as the case may be, the public officer and every director and shareholder of that company shall be personally liable for the payment of that amount to the Commissioner or the Unemployment Insurance Commissioner and for any penalty contemplated in section 13(2) which may be imposed in respect of that payment.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount deducted or withheld on or after that date.

Repeal of section 73 of Act 30 of 2002

208. Section 73 of the Taxation Laws Amendment Act, 2002 is hereby repealed.

Repeal of section 76 of Act 30 of 2002

209. Section 76 of the Taxation Laws Amendment Act, 2002 is hereby repealed.

Amendment of section 33 of Act 74 of 2002

210. Section 33 of the Revenue Laws Amendment Act, 2002, is hereby amended—

(a) by numbering the existing wording of the English text as subsection (1); and

(b) by the addition in the English text of the following subsection:

"(2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.".

Amendment of section 36 of Act 74 of 2002

211. (1) Section 36 of the Revenue Laws Amendment Act, 2002, is hereby amended by the deletion in subsection (1) of paragraph *(b)*.

(2) Subsection (1) shall be deemed to have come into operation on 13 December 2002.

Amendment of section 113 of Act 74 of 2002

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

"(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 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

213. 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 **[the date of promulgation of this Act]** 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.".

Repeal of section 128 of Act 74 of 2002

214. Section 128 of the Revenue Laws Amendment Act, 2002, is hereby repealed.

Amendment of section 1 of Act 12 of 2003

215. (1) Section 1 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, is hereby amended by the substitution for the definition of "Commissioner" of the following definition:

"'Commissioner' means the Commissioner for the South African Revenue Service appointed in terms of section **[13]** 6 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);".

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

Transitional provisions relating to gold bullion and shares acquired from funds transferred to Republic

216. A company contemplated in section 10(1)*(s)* of the Income Tax Act, 1962, must disregard any capital gain or capital loss in respect of the disposal during any year of assessment of that company commencing on or before 1 January 2004 of any asset consisting of gold bullion or shares as contemplated in section 10(1)*(s)*.

Short title and commencement

217. (1) This Act shall be called the Revenue Laws Amendment Act, 2003.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected by this Act to the Income Tax Act, 1962, 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 2004.