DRAFT

REPUBLIC OF SOUTH AFRICA

REVENUE LAWS AMENDMENT BILL

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

(MINISTER OF FINANCE)

[B - 2005]

GENERAL EXPLANATORY NOTE:

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

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

BILL

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

Amendment of section 2 of Act 40 of 1949

1. Section 2 of the Transfer Duty Act, 1949, is hereby amended by the insertion after subsection (1) of the following subsection:

"(2) If the Minister of Finance has announced any—

(a) change in the rate of the transfer duty contemplated in subsection (1); or

(b) any other change to the provisions of this Act which has the effect that the acquisition of certain property will no longer be subject to transfer duty,

with effect from a date preceding the date on which the legislation giving effect to that change is promulgated, that change in the rate or to the provisions of this Act so announced applies with effect from the date determined by the Minister until the earlier of the date on which that legislation is promulgated or 6 months after that date so determined.".

Amendment of section 9 of Act 40 of 1949

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

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

"(*m*) any person in respect of the transfer of a property from a superannuation fund created and operated mainly for employees of the Governments of the territories which formerly formed part of the Republic and other similar funds into the Government Employees' Pension Fund."; and

(b) by the insertion after section 9(15) of the following section:

"(15A) No duty shall be payable in respect of the acquisition of any property under a company formation transaction as contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962) where?

(a) the supplier and recipient of that property are deemed to be one and the same person in terms of section 8(25) of the Value-Added Tax Act. 1991; and

(b) the public officer of the company as contemplated in section 101 of the Income Tax Act, 1962, has made a sworn affidavit or solemn declaration that such acquisition of property complies with the provisions of paragraph *(a)*.";

(c) by the deletion of subsections (16) and (17).

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of any property acquired or interest or restriction in any property renounced on or after that date.

Substitution of section 20 of Act 40 of 1949

3. (1) The following section hereby substitutes section 20 of the Transfer Duty Act, 1949:

"**Refunds**

20. (1) If any amount of duty, additional duty or interest paid to the Commissioner by any person in terms of this Act is in excess of the amount of duty, additional duty or interest, as the case may be, which is properly chargeable under this Act, that excess amount is refundable to that person.

(2) No refund shall be made if—

(a) the claim for the refund is received by the Commissioner after five years from the date of acquisition of the property concerned; or

(b) the Commissioner is satisfied that the payment was made in accordance with the practice generally prevailing at the date of payment and no objection was lodged by that person as contemplated in section 18.

(3) Where any refund contemplated in subsection (1) is due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under this Act or any other Act administered by the Commissioner within the period prescribed for payment of the amount, the Commissioner may set off against the amount which the person has failed to pay, any amount which has become refundable to the person under this section.".

(2) Subsection (1) shall come into operation on the date of promulgation and applies in respect of any amount which is in excess of the amount properly chargeable in terms of the Transfer Duty Act, 1949, on or after that date.

Amendment of section 1 of Act 45 of 1955

4. Section 1 of the Estate Duty Act, 1955, is hereby amended—

(a) by the substitution in subsection (1) for the definition of "fair market value" of the following definition:

"**'fair market value',** means—

(a) the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm's length in an open market; or

(b) in relation to immovable property on which a *bona fide* farming undertaking is being carried on in the Republic, the farming value of that property;"; and

(b) by the insertion in subsection (1) after the definition of "Master" of the following definition:

"**'farming value'** in relation to immovable property on which a *bona fide* farming undertaking is being carried on in the Republic means the amount determined by reducing the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm's length in an open market by 30 per cent;";

(b) by the deletion of subsection (2).

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of the estate of any person who dies on or after that date.

Amendment of section 3 of Act 45 of 1955

5. (1) Section 3 of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (3) for paragraph *(b)* of the following paragraph:

"*(b)* any property donated **[under a donation *mortis causa*]** by the deceased in terms of a donation which was exempt from donations tax under section 56(1)*(c)* or *(d)* of the Income Tax Act, 1962 (Act No. 58 of 1962), if that property is not otherwise included as property of the deceased for purposes of this Act;".

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of the estate of any person who dies on or after that date.

Amendment of section 4 of Act 45 of 1955

6. (1) Section 4 of the Estate Duty Act, 1955, is hereby amended—

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

"*(b)* all debts due by the deceased to persons ordinarily resident within the Republic (other than any debt which constitutes a claim by such a person to property donated by the deceased in terms of a donation which was exempt from donations tax under section 56(1)*(c)* or *(d)* of the Income Tax Act, 1962 (Act No. 58 of 1962)), which it is proved to the satisfaction of the Commissioner have been discharged from property included in the estate;";

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

"*(f)* any debts due by the deceased to persons ordinarily resident outside the Republic (other than any debt which constitutes a claim by such a person to property donated by the deceased in terms of a donation which was exempt from donations tax under section 56(1)*(c)* or *(d)* of the Income Tax Act, 1962 (Act No. 58 of 1962)), which have been discharged from property included in the estate to the extent that the amount of such debts is proved to the satisfaction of the Commissioner to exceed the value of any assets of the deceased outside the Republic and not so included;".

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of the estate of any person who dies on or after that date.

Amendment of section 8 of Act 45 of 1955

7. Section 8 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If the Commissioner on receipt of any return referred to in section **[*seven*]** 7 —

(*a*) is dissatisfied with any value at which any property **[other than property whereof the fair market value has been determined in accordance with the provisions of subsection (2) of section *one*]** is shown in any such return; or

(*b*) is of the opinion that the amount claimed to represent the dutiable amount as disclosed in the return does not represent the correct dutiable amount,

he or she shall adjust such value or amount and determine the dutiable amount accordingly.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of the estate of any person who dies on or after that date.

Amendment of section 1 of Act 58 of 1962

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

(a) by the substitution for the definition of "average exchange rate" of the following definition:

"**'average exchange rate'** in relation to a year of assessment means**[—**

(*a*)] the average determined by using the closing spot rates at the end of daily**[, weekly]** or monthly intervals during that year of assessment**[; or**

(*b*) **the weighted average determined by using the closing spot rates at the end of daily, weekly or monthly intervals during that year of assessment during which income is received or accrued or expenditure is incurred, which average must be based on—**

(i) **the net amount of receipts and accruals (excluding those of a capital nature) and deductible expenditure during each such period; and**

(ii) the net amount of capital gains or capital losses determined in respect of any disposal of assets during that period,]

which must be consistently applied within that year of assessment;";

(b) by the insertion after the definition of "average exchange rate" of the following definition:

"'beneficiary' in relation to a trust means a person who has a vested or contingent interest in the whole or portion of the receipts or accruals or the assets of that trust;";

(c) by the deletion in the definition of "connected person" of the words following paragraph *(e)*;

(d) by the substitution in the definition of "dividend" for paragraph *(a)* of the following paragraph:

"(*a*) in relation to a company that is being wound up, **[or]** liquidated**[,]** or deregistered or the corporate existence of which is finally terminated, any profits **[distributed, whether in cash or otherwise,]** (other than those of a capital nature earned before or during the winding-up, **[or]** liquidation, deregistration or final termination from the disposal of any asset before 1 October 2001) **[(any such profits distributed by the liquidator of the company being deemed for the purposes of this definition to have been distributed by the company)]** which are distributed, whether in cash or otherwise, in the course or in anticipation of the winding up, liquidation, deregistration or final termination of that company: Provided that—

(i) any profits distributed by the liquidator of the company is deemed for purposes of this definition to have been distributed by the company; and

(ii) the amount of any capital profits **[so]** distributed which are attributable to the disposal of any asset on or after 1 October 2001, but which was acquired by that company before that date **[shall]** must, for the purposes of this definition 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 as contemplated in paragraph 29 of the Eighth Schedule;".

(e) by the insertion after the definition of **"foreign equity instrument"** of the following definition:

"**'government grant'** means an appropriation, grant in aid, subsidy or contribution, in cash or kind, paid by a department listed in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), (other than a provincial administration), but does not include any amount paid in respect of the supply of any goods or services to that department;";

(f) by the deletion of paragraph *(l*B*)* of the definition of "gross income";

(g) by the substitution in the definition of "gross income" for paragraph *(n)* of the following paragraph:

"*(n)* any amount which in terms of any other provision of this Act is specifically required to be included in the taxpayer's income and that amount must—

(i) for the purposes of this paragraph **[all amounts which in terms of subsection (4) of section eight are required to be included in the taxpayer's income shall]** be deemed to have been received by or to have accrued to the taxpayer; and

(ii) in the case of any amount required to be included in the taxpayer's income in terms of section 8(4), be deemed to have been received or accrued from a source within the Republic notwithstanding that such amounts may have been recovered or recouped outside the Republic:";

(h) by the substitution for the definition of "group of companies" of the following definition:

"**'group of companies'** means two or more companies in which one company (hereinafter referred to as the **'controlling group company'**) directly or indirectly holds shares in at least one other company (hereinafter referred to as the **'controlled group company'**), to the extent that—

(*a*) at least **[75]** 70 per cent of the equity shares of each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and

(*b*) the controlling group company directly holds **[75]** at least 70 per cent **[or more]** of the equity shares in at least one controlled group company;";

(i) by the substitution in the definition of "resident" for items *(aa)* and *(bb)* of subparagraph (ii) of paragraph *(a)* of the following items:

"*(aa)* for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate during each of the **[three]** five years of assessment preceding such year of assessment; and

(bb) for a period or periods exceeding **[549]** 915 days in aggregate during **[such three]** those five preceding years of assessment,";

(j) by the insertion after the definition of "specified period" of the following definition:

"'spot rate' means the appropriate quoted exchange rate at a specific time for the delivery of currency;".

(2)*(a)* Subsection (1)*(d)* shall come into operation on the date of promulgation of this Act and applies in respect of any dividend declared on or after that date.

(b) Subsection (1)*(h)* shall come into operation on 8 November 2005.

(b) Subsection (1)*(i)* shall—

(a) in respect of any person who by virtue of paragraph *(a)*(ii) of the definition of "resident" was a resident on 28 February 2005, come into operation on 1 March 2006 and applies in respect of any year of assessment commencing on or after that date; and

(b) in respect of any other person, is deemed to have come into operation on 1 March 2005 and applies in respect of any year of assessment commencing on or after that date.

Amendment of section 6 of Act 58 of 1962

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

(a) by the insertion after subsection (2) of the following subsection:

"(3) There shall be deducted from the normal tax payable by any public benefit organisation approved by the Commissioner in terms of section 30(3) by way of a rebate, an amount of R10 800.";

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

"(4) Where the period assessed is less than 12 months, the amount to be allowed by way of a rebate under subsection (2) or (3) shall be such amount as bears to the full amount of such rebate, the same ratio as the period assessed bears to 12 months unless**[, where such period terminates at the death of the taxpayer or commences at the death of the spouse of the taxpayer,]** the Commissioner in the special circumstances of the case otherwise directs.".

(2) Subsection (1) shall come into operation on 1 April 2006 and shall apply in respect of any year of assessment commencing on or after that date.

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

10. Section 6*quat* of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion in subsection (1B) of the following subparagraph after subparagraph (iA) of the proviso to paragraph *(a)*:

"(iB) the taxes contemplated in subsection (1A)*(a)*(iii) which are attributable to any taxable capital gain in respect of an asset which is not attributable to a permanent establishment of the resident outside the Republic, must in aggregate be limited to the amount of normal tax which is attributable to that taxable capital gain;";

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

"(ii) where the sum of any such taxes proved to be payable (excluding any taxes contemplated in **[paragraph]** paragraphs (iA) and (iB) of this proviso) exceeds the rebate as so determined (hereinafter referred to as the excess amount), that excess amount may—".

Amendment of section 7 of Act 58 of 1962

11. (1) Section 7 of the Income Tax Act, 1962, is hereby amended—

(a) by the renumbering in subsection (8) of the existing wording as paragraph *(a)*; and

(b) by the addition to subsection (8) of the following paragraph:

"*(b)* So much of any expenditure or loss incurred by the person contemplated in paragraph *(a)* as does not exceed the amount included in the income of the resident in terms of that paragraph and which would be allowable as a deduction under this Act in the determination of the taxable income derived from that amount had that person been a resident, is deemed to be an expenditure or loss incurred by that resident for purposes of the determination of the taxable income of that resident from that amount.".

(2) Subsection (1) shall be deemed to have come into operation on 24 January 2005 and applies in respect of any year of assessment ending on or after that date.

Amendment of section 8A of Act 58 of 1962

12. (1) Section 8A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for paragraph *(b)* of the following paragraph:

"*(b)* any gain made by the taxpayer (other than a gain in respect of which section 8C applies or will apply) by the exercise, cession or release of the second right, shall be determined and included in the taxpayer's income as though such gain had been made by the exercise, cession or release of the first right, and for the purpose of determining such gain, the amount to be deducted under subsection (2)(*a*) or (3) in respect of the amount or value of the consideration given by the taxpayer for the second right shall be deemed to be the consideration given by the taxpayer for the first right or the grant of such right, less so much of the amount or value of that consideration as has been offset by any consideration other than the consideration consisting of the second right.".

(2) Subsection (1) is deemed to have come into operation on 26 October 2004.

Amendment of section 8B of Act 58 of 1962

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

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

"(1) There must be included in the income of **[an employee]** a person for a year of assessment any **[amount received by or accrued to]** gain made by that **[employee]** person during that year from the disposal of any qualifying equity share or any right or interest in a qualifying equity share, which**[—**

(*a*) was acquired by that employee in terms of a broad-based employee share plan; and

(*b*)] is disposed of by that **[employee]** person within five years from the date of grant of that qualifying equity share, otherwise than—

(a) in exchange for another qualifying equity share as contemplated in subsection (2);

(b) on the death of that person; or

(c) on the insolvency of that person.";

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

"(2) If **[an employee]** a person as a result of a subdivision, consolidation, conversion or restructuring of the equity share capital of the employer or any company in the same group of companies as that employer disposes of a qualifying equity share in exchange solely for any other equity share in that employer or any company in the same group of companies as the employer, that other equity **[instrument]** share acquired in exchange is deemed to be—

(a) a qualifying equity share which was acquired by that **[employee]** person on the date of grant of the qualifying equity share disposed of in exchange; and

(b) acquired for a consideration equal to any consideration given for the qualifying equity share disposed of in exchange.";

(c) by the insertion after subsection (2) of the following subsection:

"(2A) If a person acquires any equity share by virtue of any qualifying equity share held by that person, that other equity share so acquired is deemed to be a qualifying equity share which was acquired by that person on the date of grant of the qualifying equity share so held by that person.".

(d) by the substitution in subsection (3) for paragraph *(c)* of the definition of "broad-based employee share plan" of the following paragraph:

"*(c)* the **[employees]** persons who acquire the equity shares as contemplated in subsection (1)*(a)* are entitled to all dividends and full voting rights in relation to those equity shares; and";

(e) by the substitution in subsection (3) for subparagraph (ii) and (iii) of paragraph *(d)* of the definition of "broad-based employee share plan" of the following subparagraphs:

"(ii) a right of any person to acquire those equity shares from the **[employee]** person who acquired the equity shares as contemplated in subsection (1)*(a)* at market value; or

(iii) a restriction in terms of which **[that employee]** the person who acquired the equity shares as contemplated in subsection (1)*(a)* may not dispose of those equity shares for a period, which may not extend beyond five years from the date of grant;";

(f) by the insertion in subsection (3) of the following definition after the definition of "date of grant":

"**'gain'** in relation to the disposal by a person of a qualifying equity share or a right or interest in a qualifying equity share, means the amount by which any amount received by or accrued to that person from that disposal exceeds the consideration (otherwise than in the form of services rendered or to be rendered or anything done or to be done or not to be done) given by him or her for that qualifying equity share, right or interest;";

(g) by the substitution in subsection (3) for the definition of "qualifying equity share" of the following definition:

"**'qualifying equity share"** in relation to a person means an equity share acquired in a year of assessment in terms of a broad-based employee share plan, where the market value of all equity shares (as determined on the relevant date of grant of each equity share and excluding the market value of any qualifying equity share acquired in the circumstances contemplated in subsection (2A)), which were acquired by that person in terms of that plan in that year and the two immediately preceding years of assessment, does not in aggregate exceed R9 000.".

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of any qualifying equity share disposed of on or after that date.

Amendment of section 8C of Act 58 of 1962

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

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

"(*a*) Notwithstanding section 9B and section 23(*m*), a taxpayer must include in or deduct from his or her income for a year of

assessment any gain or loss determined in terms of subsection (2) in respect of the vesting during that year of any equity instrument, if that equity instrument was acquired by that taxpayer—

(i) by virtue of his or her employment or office of director of any company or from any person by arrangement with the taxpayer's employer; or

(ii) by virtue of any other restricted equity instrument held by that taxpayer in respect of which this section will apply upon vesting thereof.".

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

"(i) was acquired **[in exchange for the disposal]** by the exercise or conversion of, or in exchange for the disposal of, any other equity instrument **[which had already vested in terms of]** where this section applied in respect of the vesting of that other equity instrument before that **[disposal]** exercise, conversion or exchange; or";

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

"(2)(*a*) The gain to be included in the income of a taxpayer **[is]**—

(i) in the case of—

(aa) a disposal contemplated in subsection (5)(*c*); or

(bb) a disposal by way of release, abandonment or lapse of an option or financial instrument contemplated in paragraph *(a)* or *(b)* of the definition of 'equity instrument',

is the amount received or accrued in respect of that disposal which exceeds the sum of any consideration in respect of that equity instrument; or

(ii) in any other case, is **[the sum of—**

(*aa*)] the amount by which the market value of the equity instrument determined **[on the date on which]** at the time that it vests in that taxpayer exceeds the sum of any consideration in respect of that equity instrument**[; and**

(*bb*) the amount (if any) determined in terms of subsection (4)(*b*)].

(*b*) The loss to be deducted from the income of a taxpayer **[is]**—

(i) in the case of—

(aa) a disposal contemplated in subsection (5)(*c*); or

(bb) a disposal by way of release, abandonment or lapse of an option or financial instrument contemplated in paragraph *(a)* or *(b)* of the definition of 'equity instrument',

is the amount by which the sum of any consideration in respect of that equity instrument exceeds the amount received or accrued in respect of that disposal; or

(ii) in any other case is the amount by which the consideration in respect of the equity instrument exceeds the market value of that equity instrument determined **[on the date]** at the time that it vests in that taxpayer.";

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

"(iii) **[when]** immediately after that equity instrument, which is an option contemplated in paragraph (*a*) of the definition of "equity instrument", terminates (otherwise than by the exercise of that equity instrument); and

(iv) immediately before that taxpayer dies, if all the restrictions relating to that equity instrument are or may be lifted on or after death.";

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

"(4)(*a*) If a taxpayer disposes of a restricted equity instrument which was acquired in the manner contemplated in subsection (1) for **[a consideration]** an amount which consists of or includes any other restricted equity instrument which is acquired from the employer, associated institution or other person by arrangement with the employer, that other restricted equity instrument acquired in exchange is deemed to be acquired by that taxpayer by virtue of his or her employment or office of director of any company.

(*b*) If the **[consideration contemplated in subsection (*a*) includes an amount other than restricted equity instruments and that amount exceeds the consideration]** amount received or accrued

in respect of the restricted equity instrument which is disposed of as contemplated in paragraph (*a*) includes any payment in a form other than restricted equity instruments, **[the excess]** that payment less any consideration attributable to that payment must be deemed to be a gain or loss which must be included in or deducted from the income of the taxpayer in the year of assessment during which that restricted equity instrument is so disposed of.":

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

"(*c*) Paragraph (*a*) does not apply where a taxpayer disposes of any restricted equity instrument (including by way of forfeiture, lapse or cancellation) to his or her employer, an associated institution or other person by arrangement with the employer in terms of a restriction imposed in relation to that equity instrument for an amount **[not exceeding the consideration in respect]** which is less than the market value of that restricted equity instrument.";

(g) by the substitution in subsection (7) for the proviso to the definition of "consideration" of the following proviso:

"Provided that where a taxpayer acquires—

(a) an equity instrument in exchange for any other equity instrument, as contemplated in subsection (4)(*a*), the market value of the equity instrument given in exchange must not be taken into account in determining the consideration in respect of the equity instrument so acquired; or

(b) a right to acquire any marketable security in exchange for any other such right, as contemplated in section 8A(5), and the right so acquired constitutes an equity instrument acquired in the manner contemplated in subsection (1), the consideration for that equity instrument must be determined as if it was acquired in the manner contemplated in subsection (4)*(a)*;";

(h) by the substitution in subsection (7) for paragraph *(b)* of the definition of "restricted equity instrument" of the following paragraph:

"*(b)* which is subject to any restriction that could result in the taxpayer forfeiting ownership or the right to acquire ownership of that equity instrument otherwise than at market value;";

(i) by the deletion in subsection (7) of the word "or" at the end of paragraph *(e)* of the definition of "restricted equity instrument";

(j) by the substitution in subsection (7) for the words in the definition of "restricted equity instrument" following subparagraph (ii) of paragraph *(f)* of the following words:

"if there is a decline in the value of the equity instrument after that acquisition; **[and]** or";

(k) by the addition in subsection (7) of the following paragraph to the definition of "restricted equity instrument":

"*(g)* which is not deliverable to the taxpayer until the happening of an event, whether fixed or contingent, other than the requirement to pay the consideration in respect of that equity instrument; and";

(l) by the substitution in the definition of "consideration" for paragraph *(b)* of the following paragraph:

"(*b*) by the taxpayer in respect of any other restricted equity instrument which had been disposed of by that taxpayer in exchange for that equity instrument, reduced by any amount **[received or accrued in respect of that disposal which consisted of something other than that equity instrument to the extent that it has not been included in the income of the taxpayer]** attributable to the gain or loss determined in terms of subsection (4)*(b)*; and".

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of any equity instrument held on or acquired on or after that date.

Amendment of section 9 of Act 58 of 1962

15. Section 9 of the Income Tax Act, 1962, is hereby amended—

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

"*(b)* in the case of any other asset **[other than immovable property or any interest or right to or in immovable property]**—

(i) that person is a resident and—

(aa) that asset is not attributable to a permanent establishment of that person which is situated outside the Republic; and

(bb) the proceeds from the disposal of that asset is not subject to any taxes on income proved to be payable to any sphere of government of any country other than the Republic; or";

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

"Provided that for the purpose of this subsection, an interest in immovable property held by a person includes any equity shares in a company or ownership or the right to ownership of any other entity **[where]** or a vested right in any assets of any trust, if—

(*aa*) 80 per cent or more of the market value **[of the net assets of that company or other entity, determined on the market value basis,]** of those equity shares, ownership or right to ownership or vested right, as the case may be, at the time of disposal thereof, is attributable directly or indirectly to immovable property **[(other than immovable property]** held **[by that company or entity]** otherwise than as trading stock**[)]**; and

(*bb*) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person) directly or indirectly, holds at least

20 per cent **[in]** of the equity share capital of that company or ownership or right to ownership of that other entity.".

Amendment of section 9D of Act 58 of 1962

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

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

"'controlled foreign company' means any foreign company where more than 50 per cent of the total participation rights in that foreign company are held, or voting rights in that foreign company are exercisable, by one or more residents whether directly or indirectly: Provided that a person who holds less than five per cent of the participation rights of a foreign company and who may not exercise at least five per cent of the voting rights in that foreign company which is either a listed company or a scheme or arrangement contemplated in paragraph (*e*)(ii) of the definition of 'company' in section 1, shall be deemed not to be a resident in determining whether residents directly or indirectly hold more than 50 per cent of the participation rights or voting rights in—

(*a*) that foreign company; or

(*b*) any other foreign company in which that person indirectly holds any participation rights as a result of the interest in that listed company or scheme or arrangement,

unless more than 50 per cent of the participation rights or voting rights of that foreign company or other foreign company are held by persons who are connected persons in relation to each other;";

(b) by the substitution in subsection (1) for the proviso to the definition of "foreign financial instrument holding company" of the following proviso:

"Provided that in determining whether **[more than half of the market value or two-thirds of actual cost]** the prescribed proportion of all the assets of the company and all **[controlled group]** influenced companies consist of financial instruments, the following assets must be wholly disregarded—

(a) any share in any other company in the same associated group of companies; and

(b) any financial instrument which constitutes a loan, advance or debt entered into between companies which form part of the same associated group of companies;";

(c) by the substitution in subsection (1) for the definition of "participation rights" of the following definition:

"**'participation rights'** in relation to a foreign company means—

(a) the right to participate directly or indirectly in the share capital, share premium, current or accumulated profits or reserves of that **[foreign]** company, whether or not of a capital nature; or

(b) in the case where no person has any right in that foreign company as contemplated in paragraph *(a)* or no such rights can be determined for any person, the right to exercise any voting rights in that company.";

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

"(1A) For purposes of determining the extent of the voting rights of a resident for purposes of this section, any voting rights in a foreign company, which can be exercised directly by any other controlled foreign company in which that resident (together with any connected person in relation to that resident) can directly or indirectly exercise more than 50 per cent of the voting rights, are deemed to be exercisable directly by that resident;";

(e) by the substitution in subsection (2) for the words in the proviso following subparagraph (ii) of paragraph (A) of the following words:

"in aggregate holds less than 10 per cent of the participation rights and less than 10 per cent of the voting rights in that controlled foreign company; or";

(f) by the substitution in subsection (2A) for paragraph *(c)* 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 either the resident or any other resident in the same group of companies as 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;";

(g) by the deletion in subsection (2A) of paragraph *(h)*;

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

"(6) The net income of a controlled foreign company, shall be determined in the currency used by that controlled foreign company for purposes of financial reporting and shall, for purposes of determining the amount to be included in the income of any resident during any year of assessment under the provisions of this section, be translated to the currency of the Republic by applying the average exchange rate for that year of assessment**[, as contemplated in section 25D]**: Provided that—

(*a*) in respect of the disposal of any asset contemplated in paragraph 43(4) of the Eighth Schedule which is not attributable to any permanent establishment of that controlled foreign company, any capital gain or capital loss of that controlled foreign company **[shall]** must, when applying paragraph 43(4) of the Eighth Schedule, be determined in the currency of the Republic and that

capital gain or capital loss shall be translated to the currency used by that controlled foreign company for purposes of financial reporting by applying that average exchange rate; **[and]**

(*b*) in respect of the disposal of any foreign equity instrument which constitutes trading stock and which is not attributable to any permanent establishment of that controlled foreign company, the **[any]** amount to be taken into account in determining the net income of that controlled foreign company **[in respect of the disposal of any foreign equity instrument shall, when applying section 9G,]** must be determined in the currency of the Republic and that amount shall be translated to the currency so used by that controlled foreign company by applying that average exchange rate; and

(c) for the purposes of section 24I, **'local currency'** in relation to an exchange item of a controlled foreign company which is not attributable to any permanent establishment of that company, means the currency of the Republic and any exchange difference determined must be translated to the currency so used by that controlled foreign company by applying that average exchange rate.";

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

"(9) **[The provisions of subsection (2) shall not apply to the extent that]** In determining the net income of the controlled foreign company in terms of subsection (2A), there must not be taken into account any amount which—";

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

"(*b*) is attributable to any business establishment (including the disposal or deemed disposal of any assets forming part of that

business establishment) of that controlled foreign company in any country other than the Republic:";

(k) by the substitution in subsection (9) for subitem (A) of item *(bb)* of subparagraph (ii) of paragraph *(b)* of the following subitem:

"(A) those goods or tangible intermediary inputs thereof purchased from connected persons (in relation to such controlled foreign company) who are residents amount to an insignificant portion of the total goods or tangible intermediary inputs of those goods";

(l) by the substitution in subsection (9) for the words in subparagraph (iii) of paragraph *(b)* preceding item *(aa)* of the following words:

"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 or deemed disposal of any asset from which any such amounts are 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 (other than foreign currency gains which arise in the normal course of business of that controlled foreign company which is not a foreign financial instrument holding company), except—";

(m) by the addition in subsection (9) to subparagraph (iii) of paragraph *(b)* of the following item:

"(*cc*) where those amounts arise from the disposal or deemed disposal of any intangible asset as defined in paragraph 16(2) of the Eighth Schedule (other than an intangible asset created, devised or developed in the Republic), if that intangible asset—

(A) formed an integral part of any business conducted by that controlled foreign company;

(B) was not acquired by that controlled foreign company within a period of 18 months prior to that disposal; and

(C) was so disposed of as part of the disposal of that business as a going concern";

(n) by the insertion in subsection (9) after paragraph *(b)* of the following paragraph:

"*(c)* is attributable to any policyholder that is not a resident or a controlled foreign company in relation to a resident in respect of any policy issued by a company licensed to issue any long-term policy as defined in the Long-term Insurance Act, 1998 (Act No. 52 of 1998), in its country of residence;";

(o) by the substitution in subsection (9) for paragraphs *(f*A*)* and *(f*B*)* of the following paragraphs:

"*(f*A*)* is attributable to any interest, royalties, rental or income of a similar nature, which is paid or payable or deemed to be paid or payable to that company by any other controlled foreign company in relation to either the resident or any other resident in the same group of companies as 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 **[that]** any other controlled foreign company in relation to the resident are parties**[, where that controlled foreign company and that other foreign company form part of the same group of companies]**;

(*f*B) is attributable to **[any capital gain of that company, which is determined in respect of]** the disposal of any asset, as defined in the Eighth Schedule, (other than any financial instrument or intangible asset as defined in paragraph 16 of the Eighth Schedule), where that asset was attributable to any business establishment of **[that controlled foreign company or]** any other controlled foreign company**[, where that controlled foreign company and that other foreign company form part of the same group of companies]** in relation to the resident; or";

(p) by the substitution for subsections (12) and (13) of the following subsections:

"(12) A resident who together with any other resident who is a connected person in relation to that resident, in aggregate holds at least 10 per cent but not 20 per cent or more **[than 25 per cent]** of the

participation rights and voting 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.

(13) Any resident who together with any other resident who is a connected person in relation to that resident, in aggregate holds at least 10 per cent but not 20 per cent or more **[than 25 per cent]** of the participation rights and voting rights of a 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".

(2)*(a)* Subsection (1)*(a)* to *(o)* shall come into operation on the date of promulgation of this Act and applies in respect of any foreign tax year which ends during any year of assessment ending on or after that date.

(b) Subsection (1)*(p)* shall come into operation on 8 November 2005 and applies in respect of any foreign tax year which ends on or after that date.

Amendment of section 9G of Act 58 of 1962

17. Section 9G of the Income Tax Act, 1962, is hereby amended—

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

"(2) 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 acquired during any year of assessment ending before 1 January 2006 and which constitutes trading stock, shall be 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.".

Amendment of section 10 of Act 58 of 1962

18. (1) Section 10 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:

"(1) There shall be exempt from **[the]** normal tax—";

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

"*(c*N*)* the receipts and accruals of any public benefit organisation **[which has been]** approved by the Commissioner in terms of section 30(3), to the extent that the receipts and accruals are derived—

(i) otherwise than from carrying on any business undertaking or trading activity; or

(ii) from any business undertaking or trading activity of that public benefit organisation, if—

(aa) the undertaking or activity—

(A) is integral and directly related to the sole objective of that public benefit organisation;

(B) is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and

(C) does not result in unfair competition in relation to taxable entities;

(bb) the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or

(cc) the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to—

(A) the scope and benevolent nature of the undertaking or activity;

(B) the direct connection and interrelationship of the undertaking or activity with the sole purpose of the public benefit organisation;

(C) the profitability of the undertaking or activity; and

(D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity;";

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

"*(g*B*)* any—

(i) compensation paid in terms of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), or the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); or

(ii) pension paid in respect of the death or disablement caused by any occupational injury or disease sustained or contracted by an employee before 1 March 1994 in the course of employment—

(aa) where that employee would have qualified for compensation under the Compensation for Occupational Injuries and Diseases Act, 1993, had that injury or disease been sustained or contracted on or after 1 March 1994; and

(bb) to the extent that the pension does not exceed the limits specified in that Act;";

(d) by the substitution in subsection (1) for the words in item *(dd)* of subparagraph (ii) of paragraph *(k)* preceding the proviso of the following words:

"*(dd)* 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]** at least 20 per cent of the total equity

share capital and voting rights in the company declaring the dividend:";

(e) by the substitution in subsection (1) for paragraph (A) of the proviso to item *(dd)* of subparagraph (ii) of paragraph *(k)* of the following paragraph:

"(A) in determining the total equity share capital of a company, there shall not be taken into account any share which would have constituted **[an affected]** a hybrid equity instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; and".

(f) by the insertion in subsection (1) after paragraph *(l)* of the following paragraph:

"*(l*A) any amount received by or accrued to any person who is not a resident if that amount is subject to tax on non-resident entertainers and sportspersons in terms of Part IIIA of this Chapter;";

(g) by the substitution in subsection (1) for the words in paragraph *(n*E*)* preceding subparagraph (i) and subparagraphs (i) and (ii) of the following words and subparagraphs:

"*(n*E*)* any amount (including any taxable benefit determined under the provisions of the Seventh Schedule, but excluding any gain or loss as a result of any transaction in respect of which section 8C applies or the cancellation of any such transaction) received by or accrued to an employee, as so defined, under a share incentive scheme operated for the benefit of employees of the taxpayer's employer, as so defined, which was derived—

(i) upon the cancellation of a transaction under which the taxpayer purchased shares under **[such]** that scheme**[, and in respect of which section 8A applies]**; or

(ii) upon the repurchase from the taxpayer, at a price not exceeding the selling price to him or her, of shares purchased by him or her under **[such]** that scheme**[, and in respect of which section 8A applies]**,";

(h) by the insertion in subsection (1) after paragraph *(x)* of the following paragraph:

"*(y)* any government grant received by or accrued to or in favour of a person in terms of any programme or scheme which has been approved in terms of the national annual budget process and has been identified by the Minister by notice in the *Gazette* with effect from a date specified by the Minister in that notice for purposes of this paragraph, having regard to—

(i) whether the programme or scheme meets government policy priorities and objectives with respect to—

(aa) the encouragement of economic growth and investment;

(bb) the promotion of employment creation;

(cc) the development of public infrastructure and transport;

(dd) the promotion of public health;

(ee) the development of innovation and technology;

(ff) the provision of housing and basic services; or

(gg) the provision of relief in the case of natural disasters;

(ii) the extent to which the programme or scheme will support the policy priorities and objectives contemplated in subparagraph (i);

(iii) the financial implications for government should government grants in terms of that programme or scheme be exempt from tax; and

(iv) whether the tax implications were taken into account in determining the appropriation in respect of that programme or scheme;";

(i) by the deletion in subsection (1) of paragraph *(z*C*)*;

(j) by the substitution in subsection (1) for paragraph *(z*G*)* of the following paragraph:

"*(z*G*)* any amount **[which on or after 15 May 1989 was]** received by or accrued to a **[film owner (as defined in section 24F)]**

person by way of a subsidy payable by the State under any scheme designed to promote the production of films (as defined in **[the said]** section 24F);"; and

(k) by the substitution in subsection (1) for subparagraph (ii) of paragraph *(z*I*)* of the following subparagraph:

"(ii) that person is required in terms of that Public Private Partnership to expend an amount at least equal to that amount in respect of any improvements on land or to buildings owned by any sphere of government or over which any sphere of government holds a servitude;".

(2)*(a)* Subsection (1)*(b)* shall come into operation on 1 April 2006 and shall apply in respect of any year of assessment commencing on or after that date.

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

(c) Subsection (1)*(d)* shall come into operation on 8 November 2005 and applies in respect of any dividend received or accrued on or after that date.

(d) Subsection (1)*(f)* shall come into operation on a date to be fixed by the President by proclamation in the *Gazette.*

(e) Subsection (1)*(g)* shall be deemed to have come into operation on 24 January 2005.

(f) Subsection (1)*(j)* is deemed to have come into operation on 1 April 2004 and shall apply in respect of any subsidy received or accrued on or after that date.

(g) Subsection (1)*(k)* is deemed to have come into operation on 24 January 2005.

Amendment of section 10A of Act 58 of 1962

19. Section 10A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (11) of the following subsection:

"(11) Any cash consideration given by the purchaser under the annuity contract shall be converted to the currency of the Republic **[by applying the average exchange rate for the year of assessment during which the consideration is actually paid]** in accordance with the provisions of section 25D.".

Amendment of section 11 of Act 58 of 1962

20. Section 11 of the Income Tax Act, 1962, is hereby amended—

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

"*(e)* save as provided in paragraph 12(2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B, 12C or 12E) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and used by **[the taxpayer]** him or her for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment:";

(b) by the insertion in paragraph *(e)* of the following paragraph in the proviso after paragraph (i) of the following paragraph:

"(iA) no allowance may be made in respect of any machinery, plant, implement, utensil or article the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991;".

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

"*(j)* **[such]** an allowance as may be made each year by the Commissioner in respect of **[such]** so much of any debts due to the taxpayer as **[he]** the Commissioner considers to be doubtful, if those debts would have been allowed as a deduction under any other provisions of this Act had they become bad:";

(d) by the substitution in paragraph *(l*A*)* for the words preceding the proviso of the following words:

"*(l*A*)* an amount equal to the market value of any qualifying equity share granted to an employee of that person as contemplated in section 8B, as determined on the date of grant as defined in that section less any consideration given by that employee for that qualifying equity share, which applies in lieu of any other deduction which may otherwise be allowed to that person or any other person in respect of the granting of that share:";

(e) by the substitution in paragraph *(o)* for the words following subparagraph (ii)) preceding the proviso of the following words:

"exceeds the sum of the amount received or accrued from the alienation, loss or destruction, 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 or which was deemed to have been allowed in terms of section 12B(4B) or 12C(4A) or taken into account in terms of section 11*(e)*(ix), as the case may be:".

Amendment of section 12B of Act 58 of 1962

21. Section 12B of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the heading of the following heading:

"**Deduction in respect of certain machinery, plant, implements, utensils and articles used in farming or production of renewable energy**";

(b) by the deletion in subsection (1) of paragraphs *(a)*, *(b)*, *(c)*, *(d)* and *(e)*;

(c) by the substitution in subsection (1) for paragraphs *(f)* and *(g)* of the following paragraphs:

"*(f)* machinery, implement, utensil or article (other than livestock) which is **[on or after 1 July 1988]** owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and brought into use for the first time by **[any]** that taxpayer and used by him or her in the carrying on of his or her farming operations, except any motor vehicle the sole or primary function of which is the conveyance of persons or any caravan or any aircraft (other than an aircraft used solely or mainly for the purpose of crop-spraying) or any office furniture or equipment; or

(g) machinery, plant, implement, utensil or article owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use for the first time by the taxpayer for the purpose of his or her trade to be used for the production of bio-diesel or bio-ethanol,";

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

"*(h)* machinery, plant, implement, utensil or article acquired by the taxpayer and which was or is brought into use for the first time by that taxpayer for the purpose of his or her trade to be used by that taxpayer in the generation of electricity from—

(i) wind;

(ii) sunlight;

(iii) gravitational water forces to produce electricity of not more than 30 megawatts; and

(iv) biomass comprising organic wastes, landfill gas or plants.";

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

"(3) For the purposes of this section the cost to a taxpayer of any asset acquired by that taxpayer shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he or she had acquired the asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8(4)*(e)*, whether in the current or any previous year of assessment.";

(f) by the deletion in subsection (4) of paragraph *(e)*;

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

"*(f)* any asset the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991;";

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

"*(c)* a deduction under this section, section 12(1) or section 27(2)*(d)* was previously granted to **[such]** that connected person, whether in the current or any previous year of assessment,";

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

"(6) Where a lessor of any asset under a lease contemplated in **[paragraph *(a)* of]** subsection (4)*(a)* has within the period contemplated in subparagraph (ii) of that paragraph, reckoned from the commencement of the period for which the asset is let under **[such]** that lease, disposed of the whole or a portion of **[his]** that lessor's interest in the lease or of his or her right to receive rent under the lease, there **[shall]** must be included in **[his]** that lessor's income for the year of assessment during which the disposal is made a sum equal

to the aggregate of any deductions allowed to **[him]** that lessor under this section, section 12(1) or section 27(2)*(d)*, less such amount as the Commissioner may allow in respect of the expired portion of the lease or any portion of **[such]** that interest or right which has not been disposed of by the lessor.".

Amendment of section 12C of Act 58 of 1962

22. Section 12C of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the heading of the following heading:

"**Deduction in respect of [certain machinery, plant, implements, utensils and articles] aircraft, ships or assets used by manufacturers or hotelkeepers or used for storage and packing of agricultural products**";

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

"*(a)* machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (*b*) or section 12E) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use for the first time by the taxpayer for the purposes of his trade (other than mining or farming) and is used by him directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Commissioner is of a similar nature; or

(*b*) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (*a*)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in

section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is let by **[any]** the taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee's trade (other than mining or farming) and is used by the lessee directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Commissioner is of a similar nature; or

(*c*) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (*a*)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use for the first time by any agricultural co-operative incorporated or deemed to be incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), and is used by it directly for storing or packing pastoral, agricultural or other farm products of its members (including any person who is a member of another agricultural co-operative which is itself a member of such agricultural co-operative) or for subjecting such products to a primary process as defined in section 27(9); or

(*d*) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (*e*)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use for the first time by **[any]** the taxpayer for the purposes of his trade as hotelkeeper and is used by him in a hotel, except any vehicle or equipment for offices or managers' or servants' rooms; or

(e) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (*d*)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is let by **[any]** the taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee's trade as hotelkeeper and used by him in a hotel, except any vehicle or equipment for offices or managers' or servants' rooms; or

(*f*) aircraft owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use **[on or after 1 April 1995]** for the first time by the taxpayer for the purposes of his or her trade (other than an aircraft in respect of which an allowance has been granted to the taxpayer under section 12B or 14*bis*)*;* or

(*g*) ship owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use **[on or after l April 1995]** for the first time by the taxpayer for the purposes of his or her trade (other than a ship in respect of which an allowance has been granted to the taxpayer in terms of section 14(1)(*a*) or (*b*)),";

(c) by the substitution in subsection (1) of the words following paragraph *(g)* but preceding the proviso of the following words:

"a deduction equal to 20 per cent of the cost **[of such]** to that taxpayer to acquire that machinery, plant, implement, utensil, article, ship or aircraft (hereinafter referred to as **[an]** the asset) shall, subject to the provisions of subsection (4), be allowed in

the year of assessment during which the asset is so brought into use and in each of the four succeeding years of assessment:";

(d) by the deletion in subsection (1) of paragraph *(b)* of the proviso;

(e) by the substitution in subsection (1) for the words in paragraph *(c)* of the proviso following subparagraph (ii) of the following words:

"the deduction under this subsection shall be increased to 40 per cent of the cost to that taxpayer of **[such]** that machinery or plant in respect of the year of assessment during which the plant or machinery was or is so brought into use for the first time and shall be 20 per cent in each of the three subsequent years of assessment.";

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

"(2) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer to acquire that asset or the cost which a person would, if he had acquired **[the said]** that asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of **[the said]** that asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, **[such]** that cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8(4)*(e)*, whether in the current or any previous year of assessment.";

(g) by the addition to subsection (3) of the following paragraph:

"*(d)* any asset the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991";

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

"*(c)* a deduction under this section, section 12(1), section 12B, section 14(1)*(a)* or *(b)* or section 14*bis* or section 27(2)*(d)* was previously granted to such connected person, whether in the current or any previous year of assessment,".

Amendment of section 12E of Act 58 of 1962

23. Section 12E 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:

"(1) Where any plant or machinery (hereinafter referred to as an asset) **[of]** owned by a taxpayer which qualifies as a small business corporation or acquired by such a taxpayer as purchaser in terms of an agreement contemplated in paragraph *(a)* of an 'instalment credit agreement' as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991),—";

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

"(2) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer to acquire that asset or the cost which a person would, if he had acquired the said asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8 (4) (*e*), whether in the current or any previous year of assessment.".

Amendment of section 12H of Act 58 of 1962

24. Section 12H of the Income Tax Act, 1962, is hereby amended—

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

"*(b)* a learner **[during that year of assessment]** employed by that employer completed any registered learnership agreement during that year of assessment which was entered into by that employer (or by any company which forms part of the same group of companies as that employer) with that learner during that year or any previous year of assessment in the course of any trade carried on by that employer or company, as the case may be.";

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

"*(aa)* **[70 per cent of]** in the case of a learnership with a duration of—

(A) less than 12 months, 70 per cent of the total amount of the remuneration of that learner for the period of that learnership as stipulated in the agreement of employment between that learner and employer; or

(B) 12 months or more, 70 per cent of the annual equivalent of the remuneration of that learner stipulated in the agreement of employment between that learner and employer; or";

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

"*(aa)* in the case of a learnership with a duration of—

(A) less than 12 months, the total amount of the remuneration of that learner for the period of that learnership as stipulated in the agreement of employment between that learner and employer; or

(B) 12 months or more, the annual equivalent of the remuneration of that learner stipulated in the agreement of employment between that learner and employer; or";

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

"(i) in the case of a learnership with a duration of—

(aa) less than 12 months, the total amount of the remuneration of that learner for the period of that learnership as stipulated in the agreement of employment between that learner and employer; or

(bb) 12 months or more, the annual equivalent of the remuneration of that learner stipulated in the agreement of employment between that learner and employer; or".

Amendment of section 13*quat* of Act 58 of 1962

25. Section 13*quat* of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following paragraph:

"(2) There shall be allowed to be deducted from the income of the taxpayer an 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 an urban development zone owned by the taxpayer and to be used solely for purposes of that taxpayer's trade—";

Amendment of section 15 of Act 58 of 1962

26. Section 15 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph *(a)* of the following paragraph:

"*(a)* an amount to be ascertained under the provisions of section 36, in lieu of the allowances in section 11(*e*), (*f*), (*g*A), *(g*C*)* and (*o*);".

Amendment of section 18 of Act 58 of 1962

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

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

"(1) Notwithstanding the provisions of section 23, there **[shall]** must be allowed to be deducted from the income of any taxpayer who is a natural person an allowance in respect of—

(a) any contributions made by **[him]** that taxpayer during the year of assessment in respect of that taxpayer, his or her spouse and any dependant of that taxpayer to—

(i) any **[medical scheme registered under the provisions of the Medical Schemes Act, 1998 (Act No. 131 of 1998),]** fund contemplated in paragraph *(b)* of the definition of 'benefit fund'; or

(ii) any fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered; **[and]**

(*b*) any amounts (other than amounts recoverable by the taxpayer, **[or]** his or her spouse) which were paid by the taxpayer during the year of assessment to any duly registered—

(i) medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthoptist for professional services rendered or medicines supplied to the taxpayer, his or her spouse or his or her children or stepchildren; or

(ii) nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency in respect of the services of such a nurse, midwife or nursing assistant) in respect of the illness or confinement of the taxpayer, his or her spouse or his or her children or stepchildren; or

(iii) pharmacist for medicines supplied on the prescription of any person mentioned in subparagraph (i) for the

taxpayer, his or her spouse or his or her children or stepchildren**[,**

the taxpayer or his spouse or his children or stepchildren]; and

(*c*) any amounts (other than amounts recoverable by the taxpayer or his or her spouse) which were paid by the taxpayer during the year of assessment in respect of expenditure incurred outside the Republic on services rendered or medicines supplied to the taxpayer or his or her spouse or his children or stepchildren and which are substantially similar to the services and medicines in respect of which a deduction may be made under paragraph (*b*) of this subsection; and

(*d*) any expenditure (other than expenditure recoverable by the taxpayer or his or her spouse) necessarily incurred and paid by the taxpayer in consequence of any physical disability suffered by the taxpayer, his or her spouse or child or stepchild**[:**

[Provided that any amount paid by the estate of a deceased taxpayer which would, if it had been paid by the taxpayer, have been taken into account for a deduction under this section, shall for the purposes of this section be deemed to have been paid by the taxpayer on the day before his death].

(2) The allowance under subsection (1) **[shall be]** is equal to—

(*a*) where the taxpayer is entitled to a rebate under section 6(2)*(b)*, the sum of the amounts referred to in **[that]** subsection (1); **[or]**

(*b*) where the taxpayer, his or her spouse, child or stepchild is a handicapped person, the sum of the amounts referred to in subsection (1); or

(c) in any other case—

(i) so much of the contributions made by the taxpayer during the relevant year of assessment as contemplated in subsection (1)*(a)*, as does not exceed—

(aa) R500 for each month in that year in respect of which those contributions were made solely with respect to the benefits of that taxpayer;

(bb) R1 000 for each month in that year in respect of which those contributions were made with respect to the benefits of that taxpayer and one dependant; or

(cc) where those contributions are made with respect to the taxpayer and more than one dependant, R1 000 plus R300 for every additional dependant for each month in that year in respect of which those contributions were made,

reduced by any amount contributed by the employer of the taxpayer to any such fund which has by virtue of paragraph 12A of the Seventh Schedule not been included in his or her remuneration;

(ii) so much of—

(aa) any contributions contemplated in paragraph *(a)* as have not been allowed as a deduction under subparagraph (i); and

(bb) the sum of all amounts contemplated in subsection (1)*(b)*, *(c)* and *(d)*,

as exceeds 7,5 per cent of the taxpayer's taxable income as determined before allowing any other amount under this section.

[where the taxpayer or his spouse, child or stepchild referred to in subsection (1)*(d)* is a handicapped person and the taxpayer is not entitled to a rebate under section 6(2)*(b)*, so much of the sum of the amounts referred to in subsection (1) as exceeds R500; or

(*c*) in any other case, so much of the sum of such amounts as exceeds 5 per cent of the taxpayer's taxable income as determined before granting an allowance under this section.]";

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

"(*a*) a blind person as contemplated in the Blind Persons Act, 1968

(Act No. 26 of 1968), prior to the repeal of that Act;";

(c) by the addition of the following subsection:

"(5) For purposes of this section, any amount contemplated in subsection (1), which has been paid by—

(a) the estate of a deceased taxpayer is deemed to have been paid by the taxpayer on the day before his death; or

(b) an employer of the taxpayer must, to the extent that the amount has been included in the income of that taxpayer as a taxable benefit in terms of the Seventh Schedule, be deemed to have been paid by that taxpayer.".

(2) Subsection (1) shall come into operation on 1 March 2006 and applies in respect of any year of assessment commencing on or after that date.

Amendment of section 18A of Act 58 of 1962

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

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

"*(b)* any public benefit organisation approved by the Commissioner under section 30, which**[—**

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

(b) by the deletion in subsection (1) of subparagraph (ii) of paragraph *(b)*;

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

"(i) that donation is made by that person on or after 1 August 2002, but before **[1 August 2005]** 31 March 2010; and";

(d) by the substitution in subsection (2A) for paragraphs *(a)* and *(b)* of the following paragraphs:

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

(b) in the case of a public benefit organisation contemplated in subsection (1)(*b*)—

(i) that organisation will within 12 months after the end of the relevant year of assessment distribute or incur the obligation to distribute at least 75 per cent of all funds received by way of donation during that year in respect of which receipts were issued: 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; and

(ii) **[which]** if that public benefit organisation 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; or";

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

"(5) If the Commissioner has reasonable grounds for believing that any person who is in a fiduciary capacity responsible for the management or control of the income or assets of any public benefit organisation, institution, board or body **[has with intent]** (other than an institution, board or body in respect of which subsection (5B) applies)—

(a) has in any material way failed to ensure that the objects for which the public benefit organisation, institution, board or body was established are carried out or has expended moneys belonging to the public benefit organisation, institution, board or body for the purposes not covered by such objects; **[or]**

(b) has issued or allowed a receipt to be issued to any taxpayer for the purposes of this section in respect of any fees or other emoluments payable to **[such]** that organisation, institution, board or body by **[such]** that taxpayer; or

(c) has issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection,";

the Commissioner may by notice in writing addressed to that person direct that [**donations to such fund shall not qualify for deduction under the provisions of this section in respect of]**—

(i) any donation in respect of which a receipt was issued by that public benefit organisation, institution, board or body during any year of assessment specified in **[such]** that notice, **[and any claim by any taxpayer for such deduction shall accordingly be disallowed]** will be deemed to be taxable income which accrued to that public benefit organisation, institution, board or body in that year; and

(ii) if corrective steps are not taken by that public benefit organisation, institution, board or body within a period stated by the Commissioner in that notice, any receipt issued by that public benefit organisation, institution, board or body in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).";

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

"(5A) If the Commissioner has reasonable grounds for believing that any regulating or co-ordinating body of a group of public benefit

organisations, institutions, boards or bodies contemplated in section 30(3A) or subsection (6)—

(a) **[with intent or negligently]** fails to take any steps contemplated in **[that]** section 30(3A) or subsection (6), to exercise control over any public benefit organisation, institution, board or body in that group; or

(b) fails to notify the Commissioner where it becomes aware of any material failure by any public benefit organisation, institution, board or body over which it exercises control to comply with any provision of this section,

the Commissioner may by notice in writing addressed to that regulating or co-ordinating body direct that **[donations to]** if corrective steps are not taken by that regulating or co-ordinating body within a period stated by the Commissioner in that notice, any receipt issued by public benefit organisations, institutions, boards or bodies in that group in respect of any donation made on or after the date specified in that notice shall not qualify **[for deduction under the provisions of this section in respect of any year of assessment specified in such notice and any claim by any taxpayer for such deduction shall accordingly be disallowed]** as a valid receipt for purposes of subsection (2).";

(g) by the insertion after subsection (5A) of the following subsections:

"(5B) If the Commissioner has reasonable grounds for believing that any accounting officer or accounting authority contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies, has issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection, the Commissioner—

(a) must notify the National Treasury and the Provincial Treasury (if applicable) of the contravention; and

(b) may by notice in writing addressed to that accounting officer or accounting authority direct that, if corrective steps are not taken

by that accounting officer or accounting authority within a period stated by the Commissioner in that notice, any receipt issued by that institution in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).".

(2)*(a)* Subsection (1)*(a)*, *(b)*, *(d)*, *(e)* and *(f)* shall come into operation on 1 April 2006 and applies in respect of any year of assessment of a public benefit organisation commencing on or after that date.

(b) Subsection (1)*(c)* is deemed to have come into operation on 1 August 2005.

Amendment of section 20A of Act 58 of 1962

29. (1) Section 20A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

"(2) Subsection (1) applies where the sum of the taxable income of a person for a year of assessment (**[before taking into account the set-off of]** determined without having regard to the other provisions of this section) and the absolute values of any assessed **[losses incurred in carrying on any trade during that year]** loss and **[the]** balance of assessed loss **[carried forward from the preceding year]** which were set off in terms of section 20 in determining that taxable income, 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—".

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

Amendment of section 23 of Act 58 of 1962

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

(a) by the deletion in paragraph *(m)* of the word "and" at the end of subparagraph (ii) and the addition of the word "and" at the end of subparagraph (iii);

(b) by the addition to paragraph *(m)* of the following subparagraph:

"(iv) any deduction which is allowable under section 11*(a)* in respect of any rent of or cost of repairs of or expenses in connection with any dwelling house or domestic premises, to the extent that it is not prohibited under paragraph *(b)*;";

(c) by the substitution in paragraph *(m)* for subparagraph (iii) of the following subparagraph:

"(iii) any deduction which is allowable under section 11(*a*) in respect of any premium paid by that person in terms of an insurance policy, to the extent that—

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

(*bb*) **[in respect of which all]** the amounts payable in terms of that policy as contemplated in item *(aa)* constitutes or will constitute income as defined;";

(d) by the substitution in paragraph *(n)* for subparagraph (i) of the following subparagraph:

"(i) is **[exempt from]** not subject to tax; and";

(e) by the addition of the following paragraph:

"*(o)* any expenditure incurred—

(i) where the payment of that expenditure or the agreement or offer to make that payment constitutes an activity contemplated in Chapter 2 of the Prevention and Combating of Corrupt Activities Act (Act No. 12 of 2004); or

(ii) which constitutes a fine charged or penalty imposed as a result of an unlawful activity carried out in the Republic or

in any other country if that activity would be unlawful had it been carried out in the Republic.".

(2)*(a)* Subsection (1)*(a)*, *(b)* and *(c)* is deemed to have come into operation on 1 March 2005 and applies in respect of any year of assessment commencing on or after that date.

(b) Subsection (1)*(e)* shall come into operation on 1 January 2006 and applies in respect of any year of assessment commencing on or after that date.

Amendment of section 23D of Act 58 of 1962

31. Section 23D of the Income Tax Act, 1962, is hereby amended—

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

"*(a*A*)* any invention, patent, design, trade mark, copyright, or any other property which is of a similar nature, contemplated in section 11*(g*A*)* or 11*(g*C*)*;";

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

"and a deduction was previously granted to such lessee, such connected person or such sublessee under section 11(*e*), 11(*g*A), 11*(g*C*),* 12B, 12C, 13, 14 or 14*bis* or section 12 prior to the repeal thereof by section 16 of the Income Tax Act, 1991 (Act No. 129 of 1991), or section 27(2)(*d*) prior to the deletion thereof by section 28(*b*) of that Act, whether in the current or any previous year of assessment, any deduction or allowance claimed by such lessor in respect of such asset in terms of section 11(*e*), (*g*A)*, (g*C*)* or (*o*), 12C, 13, 14 or 14*bis* shall be calculated on an amount not exceeding the lesser of the cost or adjustable cost, as the case may be, of such asset to such lessee, such connected person or such sublessee or the market value thereof as determined on the date upon which the asset was acquired by the taxpayer.".

Amendment of section 23G of Act 58 of 1962

32. Section 23G of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph *(b)* of the following paragraph:

"such lessor shall, notwithstanding the provisions of this Act, not be entitled to any deduction in terms of section 11(*e*), (*f*) or (*g*A), *(g*C), 12B, 12C or 13 in respect of an asset which is the subject matter of such sale and leaseback arrangement.".

Amendment of section 24 of Act 58 of 1962

33. Section 24 of the Income Tax Act, 1962, is hereby amended by the deletion of subsections (3), (4), (5) and (6).

Amendment of section 24F of Act 58 of 1962

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

(a) by the substitution for the heading of the following heading:

"**Allowance in respect of films**";

(b) by the substitution in subsection (1) for the definition of "completion date" of the following definition:

"'completion date', in relation to—

(a) the production of a film, means the date on which **[the cut master negative and conforming sound track of the film are married in an answer print, or, where such film is not a cinematographic film, the date on which the film is completed to an equivalent production stage]** it is first in a form in which it can be regarded as ready for copies of it to be made and distributed, for presentation to the general public; or

(b) the acquisition of a film, means the date it was acquired;"

(c) by the deletion in subsection (1) of the definitions of “export”, “export country”, “film manufacturer”, “marketing expenditure” and “South African export film”;

(d) by the addition in subsection (1) of the following proviso to the definition of “production cost”:

“Provided that where a film owner acquired the film directly or indirectly from a connected person the total expenditure incurred by the film owner in respect of the acquisition of the film must be limited to the total expenditure incurred by the connected person in respect of the acquisition or production cost for the production of the film;”;

(e) by the substitution in subsection (2) for paragraphs *(a)* and *(b)* of the following paragraphs:

“*(a)* There must be allowed as a deduction from the income of any film owner—

(i) the total amount of all production costs or post-production costs actually incurred by that film owner in connection with any film used by that film owner in the production of income, if at least 75 per cent of the total amount of those production costs and post-production costs is incurred and paid or payable in the Republic in respect of services rendered or goods supplied in the Republic;

(ii) the total amount of all production costs or post-production costs actually incurred by that film owner in connection with any film used by that film owner in the production of income where the film is approved as a co-production in terms of an agreement on audiovisual or film co-production between the South African Government and any other government; or

(iii) in any other case, so much of any production costs or post-production costs actually incurred by that film owner in the Republic in connection with any film used by that film owner in the production of income, as is or will be paid by that film owner in the Republic in respect of services rendered or goods supplied in the Republic.

(*b*) The film allowance which may be granted in respect of any film **[shall]** may not in the aggregate exceed the production cost and post-production cost thereof and shall be in lieu of any deduction or allowance in respect of such production cost or postproduction cost which may otherwise be allowable in terms of the provisions of this Act.";

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

"(3) Subject to the provisions of subsection (4), the amount of the film allowance which may be granted in respect of any one film **[shall be]** is the sum of—";

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

"(4) The film allowance which may be granted in respect of any one film in any year of assessment **[shall]** must, together with the total film allowances granted in respect of that film in any preceding years of assessment, not exceed the sum of—

(*a*) the amounts of production cost and post-production cost in respect of the film which have been paid by the film owner: Provided that where any loan or credit has been used by **[him]** the film owner for the payment or financing of the whole or any portion of such production cost or post-production cost and any portion of such loan or credit is owed by **[him]** the film owner on the last day of the year of assessment, the amount which may be taken into account under this paragraph **[shall]** must be reduced by any portion of such loan or credit so owed by **[him]** the film owner for which the film owner is not under the provisions of subsection (8) deemed to be at risk on the last day of the year of assessment; and";

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

"(5) An amount incurred in respect of production or post-production costs of a film shall not be allowed as a deduction in terms of this section unless there is a binding, unconditional obligation to pay

that amount within a period of 18 months from the completion date of that film.";

(i) by the deletion of subsection (7); and

(j) by the substitution for subsection (8) of the following subsection:

"(8) For the purposes of **[subsections]** subsection (4) **[and (7)]**, a film owner shall be deemed to be at risk to the extent that the payment of the production cost or post-production cost**[, print cost or marketing expenditure]** incurred by **[him]** the film owner, or the repayment of any loan or credit used by **[him]** the film owner for the payment or financing of any such production cost or post-production cost**[, print cost or marketing expenditure,]** would (having regard to any transaction, agreement, arrangement, understanding or scheme entered into before or after such production cost or post-production cost**[, print cost or marketing expenditure]** is incurred) result in an economic loss to **[him]** the film owner were no income to be received by or accrue to **[him]** the film owner in future years from the exploitation by **[him]** the film owner of the film: Provided that where the full amount of the loan or credit is not repayable within a period of ten years from the completion date, the film owner is deemed not to be at risk for purposes of this section to the extent the loan or credit is not repayable within a period of ten years from the completion date of the film.".

(2) Subsection (1) shall come into operation on 1 April 2006 and applies in respect of any film with a completion date on or after that date.

Amendment of section 24I of Act 58 of 1962

35. Section 24I of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph *(a)* of the definition of "ruling exchange rate" of the following subparagraphs:

"(i) transaction date, the spot rate on such date**[, or in the case where a related or matching forward exchange contract has**

been entered into to hedge such loan, advance or debt and the forward rate has been used to record for accounting purposes such loan, advance or debt in accordance with generally accepted accounting practice, the forward rate in terms of such forward exchange contract];

(ii) the date it is translated, the spot rate on such date**[, or in the case where a related or matching forward exchange contract has been entered into to hedge such loan, advance or debt and the forward rate has been used to translate for accounting purposes such loan, advance or debt in accordance with generally accepted accounting practice, the forward rate in terms of such forward exchange contract]**; or";

(b) by the substitution in subsection (1) for subparagraph (ii) of paragraph *(b)* of the definition of "ruling exchange rate" of the following subparagraph:

"(ii) the date it is translated, the market-related forward rate available for the remaining period of such forward exchange contract**[, or in the case where the forward rate in terms of such forward exchange contract has been used to translate a loan, advance or debt as contemplated in paragraph (*a*) (ii), the forward rate in terms of such contract, or in respect of a forward exchange contract which is an affected contract, the forward rate in terms of such forward exchange contract]**;";

(c) by the substitution in subsection (7) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"(ii) the devising, developing, creation, production, acquisition or restoration of any invention, patent, design, trade mark, copyright or other similar property or knowledge contemplated in section 11(*g*A) or *(g*C*)*, as the case may be;".

(d) by the substitution in subsection (7A) for the words in paragraph *(a)* preceding subparagraph (i) of the following words:

"*(a)* Subject to subsection 10, where any exchange difference is to be included in or deducted from the income of any company in terms of subsection (3), there shall, in lieu of such deduction or inclusion, be included in or deducted, as the case may be, from the income of such company during any year of assessment an amount equal to 10 per cent of the deferred amount of such exchange difference arising from a loan or advance obtained or granted during any year of assessment ending before 1 January 2006 owing by such company to any other company or a loan or advance owing by any other company to such company (such a loan or advance referred to as a qualifying exchange item for the purposes of this subsection), if—";

(e) by the deletion of subsection (9);

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

"(10) No amount shall in terms of this section be included in or deducted from the income of—

(a) any resident **[in terms of this section]** in respect of any exchange difference determined on the translation of an exchange item to which that resident and any company are parties, where that company is—

(i) a controlled foreign company in relation either to that resident or to any other company, which is a resident, and which forms part of the same group of companies as that resident; or

(ii) a connected person in relation to that resident;

(b) any controlled foreign company in relation to any exchange item contemplated in paragraph *(a)*; or

(c) any controlled foreign company in relation to a resident in respect of any exchange difference determined on the translation of an exchange item to which that controlled foreign company and any other controlled foreign company in relation either to that resident or to any other company, which is a

resident are party, and which forms part of the same group of companies as that resident:".

Amendment of section 24M of Act 58 of 1962

36. Section 24M of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

"*(a)* cannot be quantified in that year must for purposes of this Act be deemed not to have **[been]** accrued to that person in that year; and".

Substitution of section 25D of Act 58 of 1962

37. The following section hereby substitutes section 25D of the Income Tax Act, 1962:

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

25D. (1) Subject to subsection (2) and (3), any amount received by or accrued to, or expenditure or loss incurred by, a person during any year of assessment in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the spot rate on the date on which that amount was so received or accrued or expenditure or loss was so incurred.

(2) Any amounts received by or accrued to, or in respect of expenditure incurred by, a person in any currency other than the currency of the Republic which are attributable to a permanent establishment of that person outside the Republic must be determined 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) and be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.

(3) Notwithstanding subsection (1), a natural person or a trust (other than a trust which carries on any trade) may elect that all amounts received by or accrued to, or expenditure or losses incurred by that person or trust in any currency other than the currency of the Republic, be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.".

Amendment of section 30 of Act 58 of 1962

38. (1) Section 30 of the Income Tax Act, 1962, is hereby amended—

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

"*(aa)* with a 'financial institution' as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), other than an institution contemplated in paragraph *(a)*(xii) of that definition;";

(b) by the deletion in subsection (3) of subparagraph (iv) of paragraph *(b)*; and

(c) by the substitution in the proviso to subsection (3) of the words "seven years" for the words "five years";

(d) by the deletion in subsection (3) of the proviso;

(e) by the addition to subsection (3A) of the following proviso:

"Provided that where any organisation within that group derives any amounts from any business undertaking or trading activity which is not exempt from tax under section 10(1)*(c*N*)*(ii), that organisation must apply separately to the Commissioner for approval under subsection (3).";

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

"*(a)* satisfied that any public benefit organisation approved under subsection (3) or (3A) has during any year of assessment in any material respect; or";

(g) by the substitution in subsection (5A) for the words following paragraph *(b)* of the following words:

"the Commissioner shall after due notice withdraw the approval of the group of public benefit organisations (other than the approval of any public benefit organisation which applied separately for approval under subsection (3)) with effect from the commencement of that year of a assessment, where corrective steps are not taken by that **[organisation]** regulating or co-ordinating body within a period stated by the Commissioner in that notice.";

(h) by the deletion of subsection (12).

(2)*(a)* Subsection (1)*(a)* shall come into operation on 8 November 2005 and applies in respect of any investment made on or after that date.

(b) Subsection (1)*(b)*, *(d)*, *(e)*, *(f)* and *(g)* shall come into operation on 1 April 2006 and shall apply in respect of any year of assessment commencing on or after that date.

(b) Subsection (1)*(c)* shall come into operation on 8 November 2005.

Amendment of section 35 of Act 58 of 1962

39. Section 35 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (2) of paragraph *(f)*.

Amendment of section 35A of Act 58 of 1962

40. (1) Section 35A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (10) of the following subsection:

"(10)*(a)* The Commissioner may having regard to the circumstances of the case remit the whole or any part of the penalty imposed under subsection (9)*(b)*.

(b) Any decision by the Commissioner under paragraph *(a)* shall be subject to objection and appeal.".

(2) Subsection (1) shall come into operation on the date that section 35A of the Income Tax Act, 1962, comes into operation.

Amendment of section 41 of Act 58 of 1962

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

(a) by the insertion in subsection (1) after the definition of "asset" of the following definition:

"**'associated group of companies'** means two or more companies in which one company (hereinafter referred to as the **'influencing company'**) directly or indirectly holds shares in at least one other company (hereinafter referred to as the **'influenced company'**), to the extent that—

(i) at least 20 per cent of the equity shares and voting rights of each influenced company are directly held by the influencing company, one or more influenced companies or any combination thereof as assets of a capital nature; and

(ii) the influencing company directly holds at least 20 per cent of the equity shares and voting rights in at least one influenced company as assets of a capital nature;";

(b) by the substitution in subsection (1) for the definition of "disposal" of the following definition:

"**'disposal'** means a disposal as defined in paragraph 1 of the Eighth Schedule and any deemed disposal in terms of this Part;";

(c) by the substitution in subsection (1) for the definition of "domestic financial instrument holding company" of the following definition:

"**'domestic financial instrument holding company'** means any company which is a resident, where more than **[half of the market value or two-thirds of the actual cost]** the prescribed proportion of all the assets of that company, together with the assets of all **[controlled group]** influenced companies in

relation to that company, consist of financial instruments, other than—

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

(i) the amount of that debt is or was included in the income of that company or **[controlled group]** influenced company, as the case may be (or in the case of a foreign **[controlled group]** influenced company, would have been so included were that foreign company a resident); and

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

(*b*) any financial instrument held by that company or by any **[controlled group]** influenced company in relation to that company, where that company or **[controlled group]** influenced company, as the case may be, is—

(i) a bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990);

(ii) an authorised user regulated in terms of the Securities Services Act, 2004;

(iii) an insurer regulated in terms of the Long Term Insurance Act, 1998 (Act No. 52 of 1998);

(iv) an insurer regulated in terms of the Short Term Insurance Act, 1998 (Act No. 53 of 1998); or

(v) . . . . . .

(vi) a collective investment scheme regulated in terms of the Unit Trusts Control Act, 1981), or its

successor the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002); or

(*c*) any financial instrument held by any **[controlled group]** influenced company in relation to that company if that **[controlled group]** influenced company is a foreign company as contemplated in paragraph (*b*) of the definition of 'foreign financial instrument holding company':

Provided that in determining whether more than **[half of the market value or two-thirds of the actual cost]** the prescribed proportion of the assets of the company and **[controlled group]** influenced companies consist of financial instruments, the following assets must be wholly disregarded—

(i) any share of an **[controlled group]** influenced company in relation to that company; **[and]**

(ii) any financial instrument which constitutes a loan, advance or debt entered into between—

(aa) that company and any **[controlled group]** influenced company in relation to that company; or

(bb) **[controlled group]** influenced companies in relation to that company; and

(iii) any financial instrument the market value of which is equal to its base cost;";

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

"**'foreign financial instrument holding company'** means any foreign company as defined in section 9D, where more than **[half of the market value or two-thirds of the actual cost]** the prescribed proportion of all the assets of that company, together with the assets of all **[controlled group]** influenced companies in relation to that foreign company, consist of financial instruments, other than—

(*a*) any financial instrument that constitutes a debt due to that foreign company, or to any **[controlled group]**

influenced company in relation to that foreign company, in respect of goods sold or services rendered by that foreign company or **[controlled group]** influenced company, as the case may be, where—

(i) the amount of that debt is or was included in the income of that foreign company or **[controlled group]** influenced company, as the case may be (or would have been so included were that foreign company or **[controlled group]** influenced company a resident); and

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

(*b*) any financial instrument arising from the principal trading activities of that foreign company or of any **[controlled group]** influenced company in relation to that foreign company which is a bank or financier, insurer, dealer or broker **[with a licence or registration that allows that foreign company or controlled group company to operate in the same manner as a company]** that mainly conducts business **[with clients who are residents]** in the **[same]** country of residence **[**as**]** of that company and that **[foreign]** company **[or controlled group company in relation to that foreign company either]**—

(i) regularly accepts deposits or premiums or makes loans, issues letters of credit, provides guarantees or effects similar transactions for the account of clients **[from the general public]** who are not connected persons in relation to that company; **[or]** and

(ii) derives more than 50 per cent of its income or gains from principal trading activities with respect to **[persons who are not connected persons in**

relation to that foreign company] those clients; or

(*c*) any financial instrument held by any **[controlled group]** influenced company in relation to that foreign company if that **[controlled group]** influenced company is a **[controlled group]** influenced company as contemplated in paragraph (*b*) of the definition of 'domestic financial instrument holding company':

Provided that in determining whether more than more than **[half of the market value or two-thirds of the actual cost]** the prescribed proportion of the assets of the company and all **[controlled group]** influenced companies consist of financial instruments,—

(i) the following assets must be wholly disregarded—

[(i)]*(aa)* any share in any other influenced company in the same associated group of companies;

[ii]*(bb)* any financial instrument which constitutes a loan, advance or debt entered into between—

[*(aa)*](A) that company and any **[controlled group]** influenced company in relation to that company; or

[*(bb)*](B) **[controlled group]** influenced companies in relation to that company; and

(cc) any financial instrument the market value of which is equal to its base cost;

(ii) paragraph *(b)* will not apply to a foreign company that is potentially eligible for tax treatment in its country of residence if a prerequisite of that tax treatment is that?

(aa) the company is prohibited from conducting business with clients who are residents of that country; or

(bb) ownership of that company must be held by persons who are not residents of that country;";

(e) by the insertion in subsection (1) after the definition of "market value" of the following definition:

"**'prescribed proportion'** in relation to the assets of a company and influenced companies (if any), means—

(a) half of the market value or two-thirds of the actual cost of all assets; or

(b) where shares in the equity share capital of that company are to be disposed of between members of the same group of companies, either—

(i) the proportion determined in the manner contemplated in paragraph *(a)*; or

(ii) half of the book value (as determined for purposes of that company's most recent audited financial statements) of all assets or two-thirds of the actual cost of all assets:

Provided that in determining the value or cost of all the assets of an influenced company in relation to a company, only such percentage of the value or cost of all those assets, as is equivalent to the percentage of the effective shareholding of that company in that influenced company, must be taken into account; or";

(f) by the substitution in subsection (1) for paragraph *(b)* of the definition of "qualifying interest" of the following paragraph:

"(*b*) in any other case, constitute **[more than 25]** at least 20 per cent of the equity shares and voting rights of that company**[;]**:";

(g) by the deletion of subsections (3) and (6); and

(h) by the addition of the following subsections:

"(7) An amount contemplated in paragraph *(j)* of the definition of 'gross income' in section 1 must for purposes of this Part be deemed to be an amount that must be recovered or recouped.

(8)*(a)* This subsection applies where a capital distribution in respect of any share as contemplated in paragraph 76(1)*(b)* of the Eighth Schedule has been received by or has accrued to any person, and that person has disposed of that share, after that receipt or

accrual, in terms of a disposal or distribution in respect of which the provisions of section 42, 43, 44, 45 or 47 apply.

(b) Where paragraph *(a)* applies, that capital distribution must for purposes of paragraph 76(1)*(b)* of the Eighth Schedule be deemed to have been received by or to have accrued to—

(i) the person to whom that share is so disposed of or distributed (other than an acquiring company contemplated in section 43(2)*(b)*) in respect of that share; and

(ii) the person so disposing of that share, in respect of any share acquired in consequence of that disposal;".

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of any disposal on or after that date.

Amendment of section 42 of Act 58 of 1962

42. (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 other than an asset which constitutes a restraint of trade or personal goodwill, the market value of which is equal to or exceeds—";

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

"to a company which is a resident, in exchange for an equity share or shares of that company and that person**[,]**—

(aa) at the close of the day on which that asset is disposed of, holds a qualifying interest in that company; or

(bb) is a natural person who will be engaged on a full-time basis in the business of that company of rendering any service;";

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

"(6) Where a person disposed of any asset in terms of a company formation transaction and that person ceases to hold a qualifying interest in that company, as contemplated in paragraph (*b*) of the definition of "qualifying interest", within a period of 18 months after the date of the disposal of that asset (whether or not by way of the disposal of any shares in that company), or ceases within that period to be engaged on a full-time basis in the business of the company of rendering the service contemplated in subsection (1)*(a)*(ii)*(bb)*, that person must for purposes of subsection (5), section 22 or the Eighth Schedule be deemed to have—";

(d) by the substitution in subsection (8) for the words in paragraph *(a)* preceding subparagraph (i) of the following words:

"*(a)* any asset which secures any debt **[(other than a debt contemplated in paragraph 20(3)*(c)* of the Eighth Schedule)]** to a company in terms of a company formation transaction and that debt was incurred by that person—";

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

"*(b)* any business undertaking as a going concern to a company in terms of a company formation transaction and that disposal includes any amount of any debt that is attributable to, and arose in the normal course of that business undertaking **[(other than any debt that has been taken into account as contemplated in paragraph 20(3)(*c*) of the Eighth Schedule in determining the base cost of any asset so disposed of as part of that business undertaking)]**,"; and

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

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of any disposal on or after that date.

Amendment of section 43 of Act 58 of 1962

43. (1) Section 43 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 equity share, the market value of which is equal to or exceeds—"; and

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

"*(c)* where **[the acquiring company]**—

(i) in the case where that target company is a listed company, the acquiring company after that disposal and any other share-for-share transaction entered into in terms of any offer made on the same terms as that transaction and which is accepted within a period of 90 days after that disposal, holds—

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

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

(ii) **[where the target company is not a company as contemplated in subparagraph (i)]** in any other case, the acquiring company after that disposal holds more than 50 per cent of the equity shares of the target company; and";

(c) by the deletion of subsection (8).

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of any disposal on or after that date.

Amendment of section 44 of Act 58 of 1962

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

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

"(*b*) the assumption by that resultant company of a debt of that amalgamated company that was incurred by that amalgamated company—

(i) more than 18 months before that disposal; or

(ii) within a period of 18 months before that disposal, to the extent that the debt—

(aa) constitutes the refinancing of any debt incurred as contemplated in subparagraph (i); or

(bb) is attributable to and arose in the normal course of a business undertaking disposed of, as a going concern, to that resultant company as part of that amalgamation transaction.";

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

"(6)*(a)* Subject to subsection (7), this subsection applies where—

(i) a person disposes of any equity shares in an amalgamated company in return for equity shares in the resultant company as part of an amalgamation transaction in respect of which subsection (2) or (3) applied, which equity shares in the resultant company are acquired—

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

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

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

(b) The person contemplated in paragraph *(a)* is deemed to have—

(i) disposed of the equity share in that amalgamated company for an amount equal to the expenditure incurred by that person in respect of that equity share which is or was 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;

(ii) acquired the equity shares in the resultant company on the date on which that person acquired the equity share in the amalgamated company for a cost equal to the expenditure incurred by that person as contemplated in subparagraph (i); and

(iii) to have incurred the cost contemplated in subparagraph (ii) on the date on which that person incurred the expenditure in respect of the equity share in the amalgamated company, which cost must be treated as—

(aa) 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, if those equity shares in the resultant company are acquired as capital assets; or

(bb) 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), if those equity shares in the resultant company are acquired as trading stock.

(c) Any valuation of the equity share in the amalgamated company which was done by the person contemplated in paragraph *(a)* within the period contemplated in paragraph 29(4) of the Eighth Schedule, is deemed to have been done by that person in respect of the equity shares in the resultant company.".

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

"(10) For purposes of section 64B 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.";

(d) by the substitution in subsection (11) for the words preceding paragraph *(a)* of the following words:

"Where a person disposed of any equity share in an amalgamated company in terms of a qualifying transaction contemplated in subsection **[(7)]** (6) and that person ceases to hold an interest in the resultant company, as contemplated in the definition of 'qualifying interest' in subsection (1), within a period of 18 months after the disposal in terms of that qualifying transaction (whether or not by way of the disposal of any shares in the resultant company), that person must for purposes of section 22 or the Eighth Schedule be deemed to have—";

(e) by the addition of the following subsection:

"(14) The provisions of this section do not apply in respect of any transaction in which the resultant company holds at least 70 per cent of the equity shares in the amalgamated company immediately before the amalgamation, conversion or merger".

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of any disposal on or after that date.

Amendment of section 45 of Act 58 of 1962

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

(a) by the substitution in subsection (4) for subparagraphs (i) and (ii) of paragraph *(b)* of the following subparagraphs:

"(i) except as provided for in subparagraph (ii), be deemed to have disposed of that asset on the day immediately before the date on which that transferee company ceased to form part of that group of companies for an amount equal to the market value of the asset as at **[that]** the date of acquisition of that asset by that

transferee company as contemplated in paragraph *(a)* and as having immediately reacquired that asset for an amount equal to the market value of that asset as at that date; and

(ii) for purposes of determining a deduction or allowance to which that transferee company may be entitled as contemplated in the definition of "allowance asset" in section 41, be deemed as having immediately reacquired that asset for an amount equal to the lower of the market value of that asset as at that date or the base cost of that asset immediately prior to that disposal;";

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

"*(c)* Where the transferor company or transferee company contemplated in paragraph *(b)* is liquidated, wound up or deregistered at a time when a company which is a resident (hereinafter referred to as the 'holding company') holds at least 75 per cent of the equity shares of that liquidating company, the holding company and the liquidating company must be deemed to be one and the same company for purposes of paragraph *(b)*.";

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

"*(c)* Where the transferor company or transferee company contemplated in paragraph *(b)* is liquidated, wound up or deregistered at a time when a company which is a resident (hereinafter referred to as the 'holding company') holds at least **[75]** 70 per cent of the equity shares of that liquidating company, the holding company and the liquidating company must be deemed to be one and the same company for purposes of paragraph *(b)*.";

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

"(iv) that financial instrument constitutes an equity share in a controlled group company in relation to that transferor company and that controlled group company is not a domestic financial instrument holding company or foreign financial instrument holding company immediately prior to that disposal: **[Provided that for purposes of determining whether that controlled**

group company is a domestic financial instrument holding company or a foreign financial instrument holding company, no regard shall be had to any financial instrument the market value of which is equal to its base cost]; or".

(2)*(a)* Subsection (1)*(a)*, *(c)* and *(d)* shall come into operation on 8 November 2005 and applies in respect of any disposal on or after that date.

(b) Subsection (1)*(b)* shall be deemed to have come into operation on 26 October 2004.

Amendment of section 46 of Act 58 of 1962

46. (1) Section 46 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:

"(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]** distributed 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, but only to the extent to which those shares are so **[disposed of]** distributed—";

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

"(i) where that unbundled company is a listed company immediately before that **[disposal]** distribution—";

(c) by the substitution in subsection (1) for paragraph (ii) of the proviso of the following paragraph:

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

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

"(2) Where an unbundling company **[disposes of]** distributes 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.";

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

"(3)*(a)* If a shareholder acquires equity shares (hereinafter referred to as 'unbundled shares') in terms of an unbundling transaction—

(i) that shareholder must—

(aa) allocate a portion of the expenditure and any market value attributable to the equity shares held in the unbundling company (hereinafter referred to as the 'unbundling shares') to the unbundled shares in accordance with subparagraph (v); and

(bb) reduce the expenditure and market value attributable to the unbundling shares by the amount so allocated to the unbundled shares;

(ii) the unbundled shares must be deemed to have been acquired on the same date as the unbundling shares;

(iii) the unbundled shares must be deemed to have been acquired as—

(aa) trading stock, if the unbundling shares were held as trading stock;

(bb) capital assets, if the unbundling shares were held as capital assets;

(iv) any expenditure allocated to the unbundled shares must be deemed to have been incurred on the date on which the expenditure was incurred in respect of the unbundling shares; and

(v) the proportionate amount of the expenditure and market value to be allocated to the unbundled shares in terms of subparagraph (i)*(aa)* must be determined in accordance with the ratio that the market value of the unbundled shares, as at the end of the day after that distribution, bears to the sum of the market value, as at the end of that day, of the unbundling shares and of the unbundled shares.

(b) For the purposes of this subsection—

'expenditure' means—

(i) in relation to unbundled shares acquired as trading stock, the amount taken into account prior to the unbundling transaction in respect of the unbundling shares for the purposes of section 11*(a)* or 22(1) or (2); and

(ii) in relation to unbundled shares acquired as capital assets, the expenditure incurred prior to the unbundling transaction in respect of the unbundling shares that is allowable in terms of paragraph 20 of the Eighth Schedule;

'market value' in relation to unbundling shares acquired prior to the valuation date as defined in paragraph 1 of the Eighth Schedule, means any market value adopted or determined by the shareholder in respect of those shares within the period contemplated in paragraph 29(4) of the Eighth Schedule.";

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

"(4) Where those shares are **[disposed of]** <u>distributed</u> 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—";

(g) by the substitution for subsections (5), (6) and (7) of the following subsections:

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

(*a*) the **[disposal]** distribution by that unbundling company of the 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 shares acquired by a company in terms of that **[transaction]** distribution must be deemed not to be a dividend which accrued to that company for the purposes of section 64B (3).

(6) Any shares **[disposed of]** distributed 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.

(7) The provisions of this section do not apply—

(*a*) where the unbundling company or the unbundled company is a domestic financial instrument holding company immediately **[prior to]** after that disposal; or

(*b*) in respect of any **[disposal]** distribution of shares in terms of an unbundling transaction to a shareholder—

(i) who is not subject to normal tax **[(as defined in this Act]** or 'tax' as defined in the Tax on Retirement Funds Act, 1996), in the Republic or who is subject to such tax in the Republic at a reduced rate as a result of the application of any agreement for the avoidance of double taxation**]**; and

(ii) **[where that shareholder]** who acquires more than five per cent of those shares.".

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of any disposal on or after that date.

Amendment of section 47 of Act 58 of 1962

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

(a) by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph *(a)* of the following subparagraphs:

"(i) is subject to normal tax (**[as defined in this Act]** or the Tax on **[Retirements]** Retirement Funds Act, 1996) in the Republic, unless that company is **[taxed]** subject to tax in the Republic at a reduced rate **[in the Republic]** as a result of the application of any agreement for the avoidance of double taxation; and

(ii) on the date of that disposal holds at least **[75]** 70 per cent of the equity shares and voting rights of that liquidating company; and".

(b) by the insertion after subsection (3) of the following subsection:

"(3A) The provisions of subsections (2) and (3) apply to a disposal of an asset by a liquidating company to its holding company in terms of a liquidation distribution only to the extent that—

(*a*) equity shares held by that holding company in that liquidating company are cancelled; and

(*b*) that holding company has not assumed any debt of that liquidating company which was incurred by that liquidating company within a period of 18 months before that disposal, unless that debt—

(i) constitutes the refinancing of any debt incurred incurred more than 18 months before that disposal; or

(ii) is attributable to and arose in the normal course of a business undertaking disposed of, as a going concern, to that holding company as part of that liquidation distribution.".

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of any distribution on or after that date.

Insertion of Part IIIA in Act 58 of 1962

48. (1) The following Part is hereby inserted in Chapter II of the Income Tax Act, 1962, after Part III:

"***PART IIIA***

Taxation of non-resident entertainers and sportspersons

Definitions

47A. For purposes of this Part—

'entertainer or sportsperson' includes any person who is not a resident and who for reward—

(a) performs any activity as a theatre, motion picture, radio or television artiste or a musician;

(b) takes part in any type of sport; or

(c) takes part in any other activity which is usually regarded as of an entertainment character;

'specified activity' means any personal activity exercised or to be exercised by a person as an entertainer or sportsperson, whether alone or with any other person or persons.

Imposition of tax

47B. (1) Subject to subsection (3), there must be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the tax on non-resident entertainers and sportspersons, in respect of any amount received by or accrued to any entertainer or sportsperson or any other person who is not a resident (in this Part referred to as the 'taxpayer') in respect of any specified activity in the Republic.

(2) The tax on non-resident entertainers and sportspersons is a final tax and is levied at a rate of 15% on all amounts received by or accrued to a taxpayer as contemplated in subsection (1).

(3) Subsection (1) does not apply in respect of any person who is not a resident, if that person—

(a) is an employee of an employer who is a resident; and

(b) is physically present in the Republic for a period or periods exceeding 183 full days in aggregate during any 12 month period commencing or ending during the year of assessment in which the specified activity is exercised.

Liability for payment of tax

47C. (1) A taxpayer must, within 30 days (or within such further period as the Commissioner may approve) after an amount contemplated in section 47B is received by or accrues to that taxpayer, pay to the Commissioner the amount of tax which is leviable in terms of this Part in respect of that amount.

(2) This section does not apply to any amounts received by or accrued to the taxpayer—

(a) from which the full amount of tax has been withheld by a resident in terms of section 47D; or

(b) in respect of which the tax has been recovered from a resident in his or her personal capacity in terms of section 47G(1).

Withholding of amounts of tax

47D. (1) Any resident who is liable to pay to a taxpayer any amount contemplated in section 47B(1) must deduct or withhold from that payment the amount of tax for which the taxpayer is liable under that section in respect of that amount.

(2) A taxpayer from whom an amount has been deducted or withheld in terms of this section is deemed to have received the amount so deducted or withheld.

Payment of amounts of tax withheld

47E. (1) A resident must pay any amount deducted or withheld in terms of section 47D to the Commissioner before the end of the month following the month during which that amount was so deducted or withheld.

(2) The payment contemplated in subsection (1) is a payment made on behalf of the taxpayer in respect of his or her liability under section 47B in respect of that amount.

Submission of return

47F. (1) A taxpayer must, together with the payment contemplated in section 47C(1), submit to the Commissioner a return in the manner and form and containing the information as may be prescribed by the Commissioner.

(2) A resident who pays to the Commissioner any amount in terms of section 47E, must together with that payment submit to the Commissioner a return in the manner and form and containing the information as may be prescribed by the Commissioner.

Personal liability of resident

47G. (1) A resident who—

(a) fails to deduct or withhold an amount of tax in terms of section 47D from any payment made to a taxpayer; or

(b) deducts or withholds an amount of tax but fails to pay that amount over in terms of section 47E,

is personally liable for payment of that amount of tax, which can be recovered from that resident in terms of this Act as if it is a tax due by that resident.

(2) Any amount recovered from a resident in terms of subsection (1) is an amount of tax which is paid on behalf of that taxpayer in respect of his or her liability under section 47B.

(3) Subsection (1)*(a)* does not apply where the taxpayer has in terms of section 47C(1) paid to the Commissioner the amount of tax payable under this Part in respect of the payment from which the resident has so failed to deduct or withhold the tax.

Recovery of amounts paid to Commissioner

47H. (1) A taxpayer on whose behalf an amount deducted or withheld has been paid to the Commissioner under this Part, is not entitled to recover from the resident the amount so deducted or withheld.

(2) A resident who, in terms of section 47G, has in his or her personal capacity paid any amount of tax for which a taxpayer is liable under this Part, may recover the amount of tax so paid from the taxpayer.

Application of certain provisions

47I. The provisions contained in Chapter III of this Act apply *mutatis mutandis* in respect of any tax on non-resident entertainers and sportspersons payable in terms of this Part.

Currency of payments made to Commissioner

47J. If an amount deducted or withheld by a resident in terms of section 47D is denominated in any currency other than the currency of the Republic, the amount so withheld and paid to the Commissioner must be translated to the currency of the Republic at the spot rate on the date on which that amount was so deducted or withheld.

Notification of specified activity

47K. Any resident who is primarily responsible for founding, organising, or facilitating a specified activity in the Republic and who

will be rewarded directly or indirectly for that function of founding, organising or facilitating must, in the manner and form prescribed by the Commissioner—

(a) notify the Commissioner within 14 days after the agreement relating to that founding, organising or facilitating of that specified activity has been concluded of that specified activity; and

(b) provide to the Commissioner such other details relating thereto as may be prescribed by the Commissioner.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette* and applies in respect of any specified activity performed on or after that date.

Amendment of section 55 of Act 58 of 1962

49. (1) Section 55 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the definition of "fair market value" of the following definition:

"**'fair market value',** means—

(a) the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm's length in an open market; or

(b) in relation to immovable property on which a *bona fide* farming undertaking is being carried on in the Republic, the farming value of that property;"; and

(b) by the insertion in subsection (1) after the definition of "property" of the following definition:

"**'farming value'** in relation to immovable property on which a *bona fide* farming undertaking is being carried on in the Republic means the amount determined by reducing the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm's length in an open market by 30 per cent;";

(b) by the deletion of subsection (2).

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of any donation which takes effect on or after that date.

Amendment of section 56 of Act 58 of 1962

50. (1) Section 56 of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subsection (1) of subparagraphs (iv) and (v) of paragraph *(g)*;

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

"*(k)* as a voluntary award—

(i) the value of which is required to be included in the gross income of the donee in terms of paragraph (*c*), (*d*) or (*i*) of the definition of 'gross income' in section 1; or

(ii) the gain in respect of which must be included in the income of the donee in terms of section 8A, 8B or 8C;".

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of any donation which takes effect on or after that date.

Amendment of section 62 of Act 58 of 1962

51. (1) Section 62 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) If the Commissioner is of the opinion that the amount shown in any return as the fair market value of any property **[other than property whereof the fair market value has been determined in accordance with the provisions of subsection (2) of section *fifty-five*,]** is less than the fair market value of **[such]** that property, he or she may fix the fair market value of that property, and the value so fixed **[shall]** is, subject to the provisions of section **[*sixty-three*]** 63,

[be] deemed for the purposes of this Part to be the fair market value of such property.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of any donation which takes effect on or after that date.

Amendment of section 64B of Act 58 of 1962

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

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

"**'declared',** in relation to any dividend (including a dividend *in specie*), means the approval of the payment or distribution thereof by the directors of the company or by some other person under authority conferred by the memorandum and articles of association of the company or, in the case of the liquidation of a company, by the liquidator thereof;";

(b) by the addition to subsection (1) of the following definition:

"**'profits'** includes any amount deemed in terms of the definition of 'dividend' in section 1 to be a profit available for distribution;";

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

"(3) Subject to subsection (3A), the net amount of any dividend referred to in subsection (2) **[shall be]** is the amount by which **[such]** the dividend declared by a company exceeds the sum of any dividends (other than any dividends contemplated in subsection (5)*(c)*) which have accrued to that company during the dividend cycle in relation to **[such]** that firstmentioned dividend:";

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

"*(b)* in the determination of the net amount of any dividend distributed in the course or in anticipation of the liquidation, **[or]**

winding up, **[or]** deregistration or final termination of the corporate existence of a company, there shall be allowed as a deduction any dividend contemplated in subsection (5)*(c)* which has during the current or any previous dividend cycle accrued to the company.";

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

"*(a)* any dividend contemplated in subsection (5)(*b*) **[, (*c*)]** or (*f*);";

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

"*(c)* so much of any dividend **[distributed]** declared in the course or in anticipation of the liquidation, **[or]** winding up, **[or]** deregistration or final termination of the corporate existence of a company, as is shown by the company to be a—";

(g) by the deletion in subsection (5) of subparagraph (ii) of paragraph *(f)*;

(h) by the substitution in subsection (5) for paragraphs *(a)* and *(b)* of the proviso to paragraph *(f)* of the following paragraphs:

"*(a)* to have been in existence from the date on which the controlling group company in relation to that shareholder was formed; and

(b) to have been the controlling group company in relation to the company declaring the dividend from the date on which that company declaring the dividend formed part of the same group of companies as the controlling group company in relation to the shareholder;";

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

"Provided further that this exemption shall not apply to the extent to which that dividend—

(aa) is derived, directly or indirectly, from any profit that arose in any company forming part of that group of companies during a period when that company and that shareholder did not form part of that group of companies; or

(bb) consists of any shares in that shareholder;";

(j) by the deletion in subsection (5) of paragraph *(k)*.

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of any dividend declared on or after that date.

Amendment of section 64C of Act 58 of 1962

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

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

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

(b) by the deletion in subsection (2) of the word "or" at the end of paragraphs *(f)* and *(g)*;

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

"*(b*A*)* **[where the amount constitutes cash or an asset which is transferred by the company in terms of a disposal or acquisition of an asset for consideration which reflects an arm's length price]** to the extent of any consideration received by that company in exchange for—

(i) the cash or asset distributed, transferred or otherwise disposed of; or

(ii) any other benefit granted in terms of subsection (2);";

(d) by the substitution in subsection (4) for paragraph *(k)* of the following paragraph:

"*(k)* to any amount contemplated in subsection (2) (*a*), (*b*), (*c*), (*d*), or (*g*) distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available for the benefit of any

shareholder **[which is a resident]** or any connected person in relation to that shareholder **[which is a resident]**—

(i) if that shareholder is a company that is a member of the same group of companies as the company which is deemed to have declared that dividend and that shareholder or connected person, as the case may be, would be subject to secondary tax on companies should that shareholder or connected person—

(aa) declare a dividend from profits other than a dividend received by that shareholder or connected person; and

(bb) not elect that the exemption provided for in section 64B(5)*(f)* must apply in respect of that dividend declared; and

(ii) to the extent that the amount does not exceed the company's profits **[and reserves]** available for distribution that arose during the period that the shareholder was a member of the same group of companies as the company which is deemed to have declared that dividend: Provided that any profits **[and reserves]** taken into account for purposes of this paragraph may not be taken into account in applying this paragraph in respect of any future amounts distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available;".

(2) Subsection (1) shall come into operation on 8 November 2005 and applies in respect of any amount distributed, transferred, released, relieved, paid, settled, used, applied or made available on or after that date.

Substitution of section 65 of Act 58 of 1962

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

"**Returns and payment 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]** and all payments required to be made in terms of this Act must be in such form and be submitted in such manner (including in electronic format) and at such place as may be prescribed by the Commissioner **[from time to time]**.".

Amendment of section 66 of Act 58 of 1962

55. (1) Section 66 of the Income Tax Act, 1962, is hereby amended—

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

"(1) The Commissioner must annually give public notice that all persons who are personally or in a representative capacity liable to taxation under this Act or who are required by the Commissioner to furnish returns for the assessment of tax, must furnish returns within the period prescribed in that notice, or such longer period as the Commissioner may allow, for the purposes of assessments in respect of the years of assessment specified in that notice.";

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

"(1A) The Commissioner may, in the notice given in terms of subsection (1), exempt any person who would otherwise be required to furnish a return for the assessment of tax, from furnishing such a return.".

(2) Subsection (1) is deemed to have come into operation on 1 January 2005 and applies in respect of any year of assessment ending on or after that date.

Amendment of section 67A of Act 58 of 1962

56. (1) Section 67A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs *(a)* and *(b)* of the following paragraphs:

"*(a)* provides advice or completes or assists in completing any document, as contemplated in subsection (1), solely for no consideration to that person or his or her employer or a connected person in relation to that employer or that person;

(b) provides advice contemplated in subsection (1) solely in anticipation of or in the course of any litigation to which the Commissioner is a party**[, or in the course of such litigation]** or where the Commissioner is a complainant;".

(2) Subsection (1) is deemed to have come into operation on 24 January 2005.

Amendment of section 72A of Act 58 of 1962

57. Section 72A 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:

"(1) Every resident who on the last day of the foreign tax year of a controlled foreign company 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 (otherwise than indirectly through a company which is a resident), must submit to the Commissioner together with the return contemplated in section 66 in respect of that year of

assessment, a return containing such information as may be prescribed by the Commissioner.

(b) by the deletion in subsection (1) of paragraphs *(a)* to *(f)*;

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

"(2) A resident must **[together with the return contemplated in subsection (1), submit]** have available for submission to the Commissioner when so requested, a copy of the financial statements of the controlled foreign company **[(prepared in accordance with generally accepted accounting practice)]** for the relevant foreign tax year, as defined in section 9D, of that controlled foreign company **[in respect of which there is an inclusion in the income of that resident in terms of section 9D]**.";

(d) by the deletion in subsection (3) of paragraph *(a)*.

Amendment of section 75 of Act 58 of 1962

58. Section 75 of the Income Tax Act, 1962, is hereby amended—

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

"*(a*C*)* fails to withhold any amount of tax on non-resident entertainers and sportspersons and pay that amount over in terms of section 47D and 47E;

*(a*D*)* fails to inform the Commissioner of any specified activity as contemplated in section 47K.";

(b) by the addition in subsection (1) of the word "or" at the end of paragraph *(j)*; and

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

(k)(i) is in a fiduciary capacity responsible for the management or control of the income and assets of any approved public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 18A; or

(ii) is the accounting officer or accounting authority contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999),

or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies,

who intentionally fails to comply with any provision of section 18A or 30, as the case may be, or a provision of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of section 18A or 30,".

Amendment of section 76A of Act 58 of 1962

59. Section 76A of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words in paragraph *(a)* of the definition of "reportable arrangement" following subparagraph (iii) of the following words:

"but does not include any arrangement contemplated in subsection (1A) or any arrangement identified by the Minister by notice in the *Gazette*, which is not likely to lead to any undue tax benefit;";

(b) by the substitution in subsection (1) for paragraph *(b)* of the definition of "reportable arrangement" of the following paragraph:

"*(b)* any arrangement contemplated in subsection (1B) or which has certain characteristics identified by the Minister by notice in the *Gazette* which are likely to lead to an undue tax benefit;";

(c) by the insertion after subsection (1) of the following subsections:

"(1A) Paragraph *(a)* of the definition of 'reportable arrangement' does not include any arrangement which constitutes—

(a) a loan, advance or debt in terms of which—

(i) the borrower receives an amount of cash and agrees to repay at least the same amount of cash to the lender at a determinable future date; or

(ii) the borrower receives a fungible asset and agrees to return an asset of the same kind and of the same or equivalent quantity and quality to the lender at a determinable future date;

(b) a lease*;*

(c) a transaction undertaken through an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004);

(d) a transaction in participatory interests in a scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002):

Provided that—

(i) the arrangement is—

(aa) undertaken on a stand-alone basis and is not directly or indirectly connected to, or directly or indirectly dependent upon, any other arrangement (whether entered into between the same or different parties); or

(bb) an arrangement that would have qualified as having been undertaken on a stand-alone basis as required by paragraph *(aa)*, were it not for a connected arrangement that is entered into for the sole purpose of providing security and no tax benefit is obtained or enhanced by entering into such security arrangement; and

(ii) that arrangement is not entered into—

(aa) with the main purpose of obtaining or enhancing a tax benefit; or

(bb) in a specific manner or form with the main purposes of obtaining or enhancing a tax benefit.

(1B) Paragraph *(b)* of the definition of 'reportable arrangement' includes—

(a) any arrangement which would have qualified as a hybrid equity instrument as defined in section 8E, if the prescribed periods in that section had been five years; or

(b) any arrangement which would have qualified as a hybrid debt instrument as defined in section 8F, if the prescribed periods in that section had been five years,

but does not include any instrument listed on an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004).".

Amendment of section 88 of Act 58 of 1962

60. Section 88 of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection:

"(3) The provisions of section 102(3) apply *mutatis mutandis* in respect of any amount refundable and any interest payable by the Commissioner under subsection (1).".

Insertion of section 91A in Act 58 of 1962

61. The following section is hereby inserted in the Income Tax Act, 1962, after section 91:

"**Waiver, write off or compromise of amounts payable**

91A. (1) The Minister may by regulation prescribe the circumstances under which the Commissioner may waive, write off or compromise in whole or in part any amount of tax, duty, levy, charge or other amount payable by a person in terms of any Act administered by the Commissioner, where that waiver, write off or compromise would be to the best advantage of the state.

(2) The Minister must in the regulations contemplated in subsection (1) prescribe—

(a) the procedures to be followed by the Commissioner in waiving, writing off or compromising any amount; and

(b) the requirements for reporting by the Commissioner of any amounts which have been waived, written off or compromised.".

Amendment of section 93 of Act 58 of 1962

62. Section 93 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph *(b)* of the following paragraph:

"*(b)* if such person fails to comply with the notice or in answer to the notice denies his liability for the said amount or for any part thereof, and the President of the **[special]** tax court has certified that he has afforded the person concerned an opportunity of presenting his case, and that on the information submitted to him by the Commissioner and by such person (if any), the amount specified in the certificate appears to be payable by such person in terms of a final determination under the income tax laws of such other country,".

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

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

(a) by the substitution in the definition of "remuneration" for subitem (ii) of item *(b*A*)* of the following subitem:

"(ii) an allowance or advance paid or granted to that person in respect of accommodation, meals or other incidental costs while that person is by reason of the duties of his or her office obliged to spend at least one night away from his or her usual place of residence in the Republic: Provided that where—

(aa) such an allowance or advance was paid or granted to a person during any month in respect of a night away from his or her usual place of residence; and

(bb) that person has not by the last day of the following month either spent the night away from his or her usual place of residence or refunded that allowance or advance to his or her employer,

that allowance or advance is deemed not to have been paid or granted to that person during that firstmentioned month in

respect of accommodation, meals or other incidental costs, but is deemed to be an amount which has become payable to that person in that following month in respect of services rendered by that person;";

(b) by the substitution in the definition of "remuneration" for paragraph *(d)* of the following paragraph:

"*(d)* **[the market value of any qualifying equity share contemplated]** any gain determined in terms of section 8B, **[determined on the date of disposal, which has been disposed of by that person and where the receipts and accruals from that disposal]** which must be included in that person's income under that section;";

(c) by the addition of the word "and" at the end of the definition of "representative employer";

(d) by the insertion after the definition of "representative employer" of the following definition:

"'tax threshold' in relation to a natural person means the maximum amount of taxable income of that person in respect of a year of assessment which would result in no tax payable when the rates of tax contemplated in section 5 of this Act for that year of assessment is applied to the taxable income of that person.";

(e) by the substitution in the definition of "provisional taxpayer" for item *(a)* of the following item:

"*(a)* any person (other than a company **[or a person referred to in sub-paragraph (1) of paragraph 18]**) who derives by way of income any amount which does not constitute—

(i) remuneration in terms of the definition of that expression in this paragraph; or

(ii) an allowance or advance contemplated in section 8(1);";

(f) by the deletion in the definition of "provisional taxpayer" of items *(b)* and *(b*A*)*.

(2)*(a)* Subsection (1)*(a)* shall come into operation on the date of promulgation of this Act and applies in respect of any allowance or advance paid or granted on or after that date.

(b) Subsection (1)*(b)* shall come into operation on 1 January 2006.

(c) Subsection (1)*(e)* and *(f)* shall come into operation on 1 March 2006 and applies in respect of any year of assessment commencing on or after that date.

Amendment of paragraph 11A of Fourth Schedule to Act 58 of 1962

64. (1) Paragraph 11A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"*(b)* **[the market value]** any gain made from the disposal of any qualifying equity share as **[defined]** contemplated in section 8B; or";

(b) by the substitution in subparagraph (1) for the words following item *(c)* of the following words:

"the amount of that gain **[or that market value]** must for the purposes of this Schedule be deemed to be an amount of remuneration which is payable to that employee by the employer by whom that right was granted or from whom that equity instrument or qualifying equity share was acquired, as the case may be.";

(c) by the substitution for subparagraph (3) of the following subparagraph:

"(3) The provisions of this Schedule apply in relation to the amount of employees' tax deducted or withheld under subparagraph (2) as though that amount had been deducted or withheld from the amount of the gain **[or in respect of the market value, as the case may be,]** referred to in subparagraph (1).";

(d) by the substitution for subparagraph (5) of the following subparagraph:

"(5) If that employer is, by reason of the fact that the amount to be deducted or withheld by way of employees' tax exceeds the amount from which the deduction or withholding is to be made, unable to deduct or withhold the full amount of

employees' tax during the year of assessment during which the gain arises **[or the qualifying equity share is disposed of, as the case may be]**, he or she must immediately notify the Commissioner of the fact.";

(e) by the substitution for subparagraph (6) of the following subparagraph:

"(6) Where an employee has under any transaction to which the employer is not a party made any gain or an employee has disposed of any qualifying equity share as contemplated in subparagraph (1), that employee must immediately inform the employer thereof and of the amount of that gain **[or the market value of that qualifying equity share, as the case may be]**.".

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of any disposal on or after that date.

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

65. (1) Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subparagraph (1) of item *(a)*; and

(b) by the insertion in subparagraph (1) after item *(b)* of the following item:

"*(c)* any natural person who on the last day of that year will be below the age of 65 years and who does not derive any income from the carrying on of any business, if—

(i) the taxable income of that person for the relevant year of assessment will not exceed the tax threshold; or

(ii) the taxable income of that person for the relevant year of assessment which is derived from interest, dividends and rental from the letting of fixed property will not exceed R10 000.".

(2) Subsection (1) shall come into operation on 1 March 2006 and applies 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

66. (1) Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for item *(a)* of the following item:

"(*a*) Every provisional taxpayer (other than a company or a person contemplated in paragraph 18) shall, during every period within which provisional tax is or may be payable by him as provided in this Part, or any extension of such period granted in terms of paragraph 25 (2), submit to the Commissioner, in such form as the Commissioner may prescribe, an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment in respect of which provisional tax is or may be payable by him.";

(b) by the substitution in subparagraph (1) for subitem (i) item *(d)* of the following subitem:

"(i) as respects an estimate submitted by a provisional taxpayer (other than a company) under item (*a*), the taxpayers' taxable income, as assessed by the Commissioner, for the latest preceding year of assessment in relation to such estimate, less—

(aa) the amount of any taxable capital gain included therein in terms of section 26A; and

(bb) the taxable portion of any lump sum contemplated in section 7A(4A) and paragraph *(d)* of the definition of 'gross income'; or".

(2) Subsection (1) shall come into operation on 1 March 2006 and applies in respect of any year of assessment commencing on or after that date.

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

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

(a) by the substitution for item *(e)* of the following item:

"*(e)* any service (other than a service to which the provisions of subitem *(j)* or paragraph 9(4)*(a)* apply) has at the expense of the employer been rendered to the employee (whether by the employer or by some other person), **[such]** where that service has been utilized by the employee for his or her private or domestic purposes and no consideration has been given by the employee to the employer in respect of **[such]** that service or, if any **[such]** consideration has been given, the amount thereof is less than the amount of the lowest fare referred to in item *(a)* of subparagraph (1) of paragraph 10, or the cost referred to in item *(b)* of **[the said]** that subparagraph, as the case may be; or";

(b) by the substitution for the words in item *(h)* preceding the proviso of the following words:

"*(h)* the employer has, whether directly or indirectly, paid any amount owing by the employee to any third person (other than an amount in respect of which item *(i)* or *(j)* applies), without requiring the employee to reimburse the employer for the amount paid or the employer has released the employee from an obligation to pay any amount owing by the employee to the employer:";

(c) by the substitution for item *(i)* of the following item:

"*(i)* the employer has during any period, directly or indirectly, made any contribution or payment to any fund contemplated in paragraph *(b)* of the definition of 'benefit fund' in section 1 **[of this Act]**, for the benefit of any employee or the dependants of any **[such]** employee which exceeds **[two thirds of the total contribution or payment in relation to such employee or dependants to such fund during such period]** the amount contemplated in paragraph 12A;";

(d) by the addition of the following item:

"*(j)* the employer has, directly or indirectly, incurred any amount (other than a contribution or payment contemplated in item (i)) in respect of any medical, dental and similar services, hospital services, nursing services or medicines provided to the employee.".

(2) Subsection (1) shall come into operation on 1 March 2006 and applies in respect of any year of assessment commencing on or after that date.

Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962

68. (1) Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

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

"*(a)* as respects each such month, be an amount equal to **[1,8]** 2,5 per cent of the determined value of such motor vehicle:";

(b) by the substitution in subparagraph (4) for paragraph (i) of the proviso to item *(a)* of the following paragraph:

"(i) where more than one motor vehicle is made available by an employer to a particular employee at the same time and the provisions of subparagraph (6) are not applicable in the case of such vehicles, the said value shall be an amount equal to **[1,8]** 2,5 per cent of the determined value of the motor vehicle having the highest determined value and 4 per cent of the determined value of every other such motor vehicle; and";

(c) by the substitution in subparagraph (4) for the second proviso to item *(a)* preceding subitem (i) of the following proviso:

"Provided further that where the employee does not receive an allowance or advance contemplated in section 8(1)*(b)* in respect of that vehicle and that employee—

(i) bears the cost of all fuel used for the purposes of the private use of the vehicle (including travelling between the employee's place of residence and his place of employment), the value of private use for each **[such]** month **[as determined in accordance with the foregoing provisions of this subparagraph]** shall be **[reduced by an amount of R120]** determined by deducting 0.22 from the amount of the percentage to be applied to the determined value of that motor vehicle; or

(ii) bears the full cost of maintaining the vehicle (including the cost of repairs, servicing, lubrication and tyres), the value of private use for each month **[as determined in accordance with the foregoing provisions of this subparagraph]** shall be **[reduced by an amount of R85]** determined by deducting 0.18 from the amount of the percentage to be applied to the determined value of that motor vehicle; and".

(2) Subsection (1) shall come into operation on 1 March 2006 and applies in respect of any year of assessment commencing on or after that date.

Amendment of paragraph 9 of Seventh Schedule to Act 58 of 1962

69. Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in subparagraph (1) of paragraph *(c)* of the definition of "remuneration".

Amendment of paragraph 12A of Seventh Schedule to Act 58 of 1962

70. (1) Paragraph 12A of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2*(i)* **[shall be]** is the amount by which the

contribution or payment made by the employer during the year of assessment, directly or indirectly, to any fund contemplated in paragraph *(b)* of the definition of 'benefit fund' in section 1 **[of this Act]** for the benefit of any employee or dependants of **[such]** that employee**, [for any period, exceeds two thirds of the total contribution or payment in relation to such employee or dependants of such employee to such fund during such period]** exceeds—

(a) R500 for each month in that year in respect of which those contributions were made solely with respect to the benefits of that employee;

(b) R1 000 for each month in that year in respect of which those contributions were made with respect to the benefits of that employee and one dependant; or

(c) where those contributions are made with respect to the employee and more than one dependant, R1 000 plus R300 for every additional dependant for each month in that year in respect of which those contributions were made.

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

"(2) Where any contribution or payment made by an employer contemplated in subparagraph (1) is made in such a manner that an appropriate portion thereof cannot be attributed to the relevant employee or his or her dependants **[of such employee for whose benefit it is made, the cash equivalent of the value of the taxable benefit contemplated in paragraph *2(i)*]**, the amount of that contribution or payment in relation to **[such]** that employee **[shall be]** and his or her dependants is deemed, for purposes of subparagraph (1), to be an amount equal to the total contribution or payment by the employer to the fund during the relevant period for the benefit of all employees and their dependants divided by the number of employees in respect of whom the contribution or payment is made.";

(c) by the substitution for subparagraph (3) of the following subparagraph:

"(3) If the Commissioner is in any case satisfied that the apportionment of the **[cash equivalent of the value of the benefit]** contribution or payment amongst all **[members of any fund]**

employees in accordance with **[the formula contemplated in]** subparagraph (2) does not reasonably represent a fair apportionment of **[such value]** that contribution or payment amongst the **[members]** employees, he or she may direct that **[such]** the apportionment be made in such other manner as to him or her appears fair and reasonable.";

(d) by the addition to subparagraph (5) of the following item:

"*(d)* a person who during the relevant year of assessment is entitled to a rebate under section 6(2)*(b)*.".

(2) Subsection (1) shall come into operation on 1 March 2006 and applies in respect of any year of assessment commencing on or after that date.

Insertion of paragraph 12B in Seventh Schedule to Act 58 of 1962

71. (1) The following paragraph is hereby inserted in the Seventh Schedule to the Income Tax Act, 1962, after paragraph 12A:

"INCURRAL OF COSTS RELATING TO MEDICAL SERVICES

12B. (1) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2*(j)* is the amount incurred by the employer during any month, directly or indirectly, in respect of any medical, dental and similar services, hospital services, nursing services or medicines in respect of that employee or his or her spouse or dependants.

(2) Where the payment of any amount contemplated in subparagraph (1) is made in such a manner that an appropriate portion thereof cannot be attributed to the relevant employee and his or her spouse and dependants, the amount of that payment in relation to that employee and his or her spouse and dependants is, for purposes of subparagraph (1), deemed to be an amount equal to the total amount incurred by the employer during the relevant period in respect of all

medical, dental and similar services, hospital services, nursing services or medicines for the benefit of all employees and their spouses and dependants divided by the number of employees who are entitled to make use of those services.

(3) No value must be placed in terms of this paragraph on any taxable benefit—

(a) resulting from the provision of medical treatment listed in any category of the prescribed minimum benefits determined by the Minister of Health in terms of section 67(1)*(g)* of the Medical Schemes Act, 1998 (Act No. 131 of 1998), which is provided to the employee or his or her spouse, child or step-child in terms of a scheme or programme of that employer—

(i) which constitutes the carrying on of the business of a medical scheme if that scheme or programme has been approved by the Registrar of Medical Schemes as being exempt from complying with the requirements of medical schemes in terms of that Act); and

(ii) where all employees of that employer are entitled to participate equally in that scheme or programme;

(b) derived from an employer by——

(i) by a person who by reason of superannuation, ill-health or other infirmity retired form the employ of that employer;

(ii) the dependants of a person after that person's death, if that person was in the employ of that employer on the date of death;

(iii) the dependants of a person after that person's death, if that person retired from the employ of that employer by reason of superannuation, ill-health or other infirmity; or

(iv) a person who during the relevant year of assessment is entitled to a rebate under section 6(2)*(b)*; or

(c) where the services are rendered by the employer to its employees in general at their place of work for the better performance of their duties.".

(2) Subsection (1) shall come into operation on 1 March 2006 and applies in respect of any year of assessment commencing on or after that date.

Amendment of paragraph 13 of Seventh Schedule to Act 58 of 1962

72. (1) Paragraph 13 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in subparagraph (2) of item *(a)*.

(2) Subsection (1) shall come into operation on 1 March 2006 and applies in respect of any year of assessment commencing on or after that date.

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

73. Paragraph 16 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

"(2) Any liability for employees' tax or interest on employees' tax or any penalty imposed under this Part of any person who in terms of the definition of 'employer' in paragraph 1 is an employer by virtue of his having paid or become liable to pay remuneration in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor, or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund, or **[from the]** <u>as a</u> representative employer, shall be limited to the extent only of any assets belonging to the person, body, trust, estate or fund represented or administered by him which may be in his possession or under his management, disposal or control.".

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

74. Paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the insertion in the definition of "recognised exchange" of the word "or" at the end of paragraph *(a)*;

(b) by the substitution in the definition of "recognised exchange" of paragraph *(c)* of the following paragraph:

"*(c)* an exchange in a country other than the Republic which is similar to an exchange contemplated in paragraph *(a)* **[or *(b)*]** and which has been recognised by the Minister for the purposes of the Schedule by notice in the *Gazette*;".

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

75. (1) Paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

"(2) For purposes of subparagraph (1)*(b)*(i), an interest in immovable property situated in the Republic includes **[a direct or indirect interest of at least 20 per cent held by a person (alone or together with any connected person in relation to that person) in the equity share capital of a company or in any other entity, where 80 per cent or more of the value of the net assets of that company or other entity, determined on the market value basis, is, at the time of disposal of shares in that company or interest in that other entity, attributable directly or indirectly to immovable property situated in the Republic, other than immovable property held by that company or other entity as trading stock]** any equity shares held by a person in a company or ownership or the right to ownership of a person in any other entity or a vested right of a person in any assets of any trust, if—

(aa) 80 per cent or more of the market value of those equity shares, ownership or right to ownership or vested right, as the case may be, at the time of disposal thereof is attributable directly or indirectly to immovable property held otherwise than as trading stock; and

(bb) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person), directly or indirectly, holds at least 20 per cent of the equity share capital of that company or ownership or right to ownership of that other entity.".

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

Substitution of paragraph 8 of Eighth Schedule to Act 58 of 1962

76. The following paragraph hereby substitutes paragraph 8 of the Eighth Schedule to the Income Tax Act, 1962:

"**Net capital gain**

8. A person's net capital gain for the year of assessment is the sum of—

(a) the amount by which that person's aggregate capital gain for that year exceeds that person's assessed capital loss for the previous year of assessment; and

(b) where paragraph 64B(3) becomes applicable during that year of assessment, the amount of the capital gain which was disregarded in terms of paragraph 64B(2) during that year or any previous year, as contemplated in paragraph 64B(3).".

Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962,

77. (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act is hereby amended by the addition to subparagraph (2) of the following item:

"*(k)* by a person on the cession or release of a right to acquire a marketable security in whole or in part for a consideration which consists of or includes another right to acquire a marketable security in the circumstances contemplated in section 8A(5).".

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

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962

78. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the addition to item *(a)* of subparagraph (2) of the following subitem:

"(iv) any right to acquire any marketable security contemplated in section 8A;";

(b) by the deletion in subparagraph (5) of the word "or" at the end of subitem *(aa)* of item *(a)* and the addition of the word "or" at the end of subitem *(bb)*;

(c) by the addition in subparagraph (5) of the following subitem in item *(a)*:

"*(cc)* that person is a company which is a connected person in relation to that creditor and that reduction or discharge was made in the course or in anticipation of the liquidation, winding up, deregistration or final termination of the existence of that company to the extent that the amount of that reduction or discharge did not exceed the amount of the creditor's expenditure contemplated in paragraph 20 of the debt at the time of that reduction or discharge: Provided that this item will not apply—

(A) if that person became a connected person in relation to that creditor after that debt (or any substituted debt) arose; and

(B) these transactions were part of a scheme to avoid any tax otherwise imposed by virtue of this subparagraph.";

(d) by the addition to subparagraph (5) of the following items:

"*(c)* The exclusion contemplated in item *(a)(cc)* does not apply where that company—

(i) has not within six months of that reduction or discharge taken such steps as contemplated in section 41(4) to liquidate, wind up or deregister;

(ii) has at any stage withdrawn any step taken to liquidate, wind up or deregister; or

(iii) does anything to invalidate any such step so taken with the result that the company is or will not be liquidated, wound up or deregistered.

(d) Any tax which becomes payable as a result of the application of item *(c)* in respect of a company, must be recovered from that company and the creditor contemplated in this subparagraph who shall be jointly and severally liable for that tax.".

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

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962,

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

(a) by the deletion in subparagraph (1) of the word "or" at the end of item *(h)*(ii)*(bb)* and the addition of the word "or" at the end of item *(h)*(ii)*(cc)*;

(b) by the addition in subparagraph (i) of the following sub-subitem to subitem (ii) of item *(h)* of the following sub-subitem.

"*(dd)* where an amount has been included in that person's gross income in terms of paragraph *(c)* of the definition of 'gross income' in section 1, the value placed on the asset for the purposes of determining the amount so included in that person's gross income;".

(c) by the substitution in subparagraph (3) for items *(a)* and *(b)* of the following items:

"*(a)* is or was allowable as a deduction or is or was otherwise taken into account, in determining the taxable income of that person before the inclusion of any taxable capital gain; or

(b) has for any reason been reduced or recovered or become recoverable from or has been paid by any other person (whether prior to or after the incurral of the expense to which it relates), to the extent which such amount**[—**

(i)] is not taken into account as a recoupment in terms of section 8(4)*(a)* or paragraph *(j)* of the definition of "gross income" of an amount contemplated in item *(a)*; **[or**

(ii) does not represent the recovery or reduction of an amount contemplated in item *(c)*]".

(2) Subsection (1) shall come into operation on the date of promulgation and applies in respect of any disposal on or after that date.

Amendment of paragraph 30 of Eighth Schedule to Act 58 of 1962

80. (1) Paragraph 30 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)* 'B' represents the amount of expenditure incurred prior to the valuation date in respect of that asset that is allowable before, on or after the valuation date in terms of paragraph 20 **[in respect of that asset that is attributable to the period from the date that the asset was acquired to the day before valuation date]**;";

(b) by the substitution in subparagraph (2) for item *(d)* of the following item:

"*(d)* 'B' represents the amount of expenditure incurred prior to the valuation date in respect of that asset that is allowable before, on or after the valuation date in terms of paragraph 20 **[in respect of that asset that is incurred before valuation date]**;";

(c) by the substitution for subparagraph (3) of the following subparagraph:

"(3) **[Despite the provisions of paragraph 20(3)*(a)* and 35(3)*(a)*, where in respect of a pre-valuation date asset]** A person must determine the time-apportionment base cost of a pre-valuation date asset in terms of subparagraph (4) where—

(a) **[a]** that person has incurred expenditure contemplated **[allowable]** in **[terms of]** paragraph 20(1)*(a)*, *(c)* or *(e)* on or after the valuation date;

(b) any part of the expenditure **[allowable]** contemplated in **[terms of]** paragraph 20(1)*(a)*, *(c)* or *(e)* is or was allowable as a deduction in determining the taxable income of that person before the inclusion of any taxable capital gain; and

(c) the proceeds in respect of the disposal of that asset exceed the expenditure allowable in terms of paragraph 20 incurred before, on and after the valuation date in respect of that asset,

[that person must determine the time-apportionment base cost of that asset in terms of subparagraph (4)].";

(d) by the substitution in subparagraph (4) for items *(b)*, *(c)* and *(d)* of the following items:

"*(b)* 'P_1' represents the proceeds attributable to the expenditure in B_1, **[disregarding the provisions of paragraph 35(3)*(a)*]**;

(c) 'A_1' represents the **[amount of]** sum of the expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date, and any amount of that expenditure that has been recovered or recouped as contemplated in paragraph 35(3)*(a)* **[disregarding the provisions of paragraph 20(3)*(a)*]**;

(d) 'B_1' represents the sum **[amount]** of the expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred before valuation date, and any amount of that expenditure that has been recovered or recouped as contemplated in paragraph 35(3)*(a)* **[disregarding the provisions of paragraph 20(3)*(a)*]**;";

(e) by the substitution in subparagraph (4) for item *(f)* of the following item:

(*f*) "R_1" represents the sum of the **[total amount of]** proceeds and any amount contemplated in paragraph 35(3)*(a)* in respect of that asset **[as determined in terms of paragraph 35 in respect of the disposal of the pre-valuation date asset, disregarding the provisions of paragraph 35(3)*(a)]***.";

(f) by the addition of the following subparagraph:

"(5) For purposes of this paragraph—

(a) the proceeds in respect of the disposal of an asset must be reduced by any selling expenses incurred on or after the valuation date;

(b) to the extent that those selling expenses have reduced those proceeds they must be disregarded for the purposes of paragraph 20; and

(c) 'selling expenses' means expenditure—

(i) contemplated in paragraph 20(1)*(c)*(i) to (iv) incurred directly for the purposes of disposing of that asset; and

(ii) which would, but for the provisions of item *(b)*, have constituted expenditure allowable in terms of paragraph 20.".

(2) Subsection (1) shall come into operation on 8 November 2005 and shall apply in respect of any asset disposed of during any year of assessment ending on or after that date.

Amendment of paragraph 33 of Eighth Schedule to Act 58 of 1962,

81. (1) Paragraph 33 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subparagraph (3) of the word "or" at the end of item *(b)*;

(b) by the addition in subparagraph (3) of the following item:

"*(c)* the improvement or enhancement of immovable property which that person leases from a lessor; or".

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of any improvement or enhancement effected on or after that date.

Amendment of paragraph 38 of the Eighth Schedule to Act 58 of 1962

82. (1) Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item *(d)* of the following item:

"(d) an equity instrument contemplated in section 8C **[in respect of which that section applies and which]** to an employee or a director, where that equity instrument had not yet vested as contemplated in that section, in that employee or director at the time of that disposal; or".

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

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

83. (1) Paragraph 39 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3) for item *(b)* of the following item:

"*(b)* a fund of an insurer contemplated in section 29A does not include another such fund of that insurer in respect of the disposal of an asset **[in terms of section 29A (6), or (7)]** by such fund to another such fund.".

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

Amendment of paragraph 42 of Eighth Schedule to Act 58 of 1962

84. (1) Paragraph 42 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3) for item *(b)* of the following item:

"*(b)* a fund of an insurer contemplated in section 29A does not include another such fund of that insurer in respect of the disposal of an asset **[in terms of section 29A (6), or (7)]** by such fund to another such fund.".

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

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962

85. (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 in a 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 currency and that capital gain or

capital loss must be translated in accordance with the provisions of section 25D **[(2)]**.";

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

"(2) Where a person disposes of an asset, (other than an asset contemplated in 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 so 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—";.

(c) by the substitution in subparagraph (2) for subitem (ii) of item *(c)* of the following subitem:

"(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 capital loss in accordance with the provisions of section 25D.";

(d) by the substitution in subparagraph (4) for subitems (i) and (ii) of item *(b)* of the following subitems:

"(i) the proceeds into the currency of the Republic **[at the average exchange rate for that year of assessment]** in accordance with the provisions of section 25D; and

(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 in accordance with section 25D at the spot rate or the average exchange rate, as the case may be, for the year of assessment during which that expenditure was incurred:";

(e) by the substitution in subparagraph (6) for item *(a)* of the following item:

"*(a)* contemplated in subparagraph (2)*(b)* and (4), must be translated to the local currency **[of the Republic at the ruling exchange]** by applying the spot rate on valuation date; or".

(2) Subsection (1) shall come into operation on 1 January 2006 and shall apply in respect of any assets acquired during any year of assessment ending on or after that date.

Amendment of paragraph 55 of Eighth Schedule to Act 58 of 1962,

86. (1) Paragraph 55 of the Eighth Schedule to the Income Tax Act is hereby amended by the substitution in subparagraph (1) of the words preceding subitem (i) of item *(c)* 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 shares or similar interest, for the purpose of enabling that other person to acquire, upon the death, disability or severe illness of that person, the whole or part of—".

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

Amendment of paragraph 56 of Eighth Schedule to Act 58 of 1962

87. Paragraph 56 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in the Afrikaans text for item *(a)* of subparagraph (2) of the following item:

"*(a)* 'n kapitaalwins daarstel wat by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie **[skuldeiser]** skuldenaar ingevolge paragraaf 12 (5) ingesluit is;".

Substitution of paragraph 64 of Eighth Schedule to Act 58 of 1962

88. (1) The following paragraph hereby substitutes paragraph 64 of the Eighth Schedule to the Income Tax Act, 1962:

"**Asset used to produce exempt income**

64. A person must disregard any capital gain or capital loss in respect of the disposal of an asset which is used **[solely]** only—

(a) to produce amounts which are exempt from normal tax in terms of section 10, other than receipts and accruals contemplated in paragraphs *(i)*(xv), *(k)* and *(m)* of subsection (1) thereof; or

(b) to carry on a public benefit activity as defined in section 30, where that person is a public benefit organisation which is exempt from normal tax in terms of section 10(1)*(c*N*)* and that asset is not used to produce any amounts other than the amounts contemplated in item *(a)*.".

(2) Subsection (1) shall come into operation on 1 April 2006 and applies in respect of any disposal during any year of assessment commencing on or after that date.

Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962

89. (1) Paragraph 64B 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) A person must disregard any capital gain or capital loss determined in respect of the disposal of any interest in the equity share capital of any foreign company (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2(2)), if—

(*a*) that person (in the case of a company, together with any other company in the same group of companies as that company) immediately before that disposal—

(i) held **[more than 25]** at least 20 per cent of the equity share capital in that foreign company; and

(ii) held the interest contemplated in subitem (i) for a period of at least 18 months prior to that disposal, unless that person is a company and that interest was acquired by that company from any other company which forms part of the same group of companies and that company and other company in aggregate held that interest for more than 18 months:

Provided that 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]** a hybrid equity instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; and

(*b*) **[in the case where that person is a resident,]** that interest is disposed of to a person who is not a resident.";

(b) by the addition of the following subparagraph:

"(3) Paragraph 8*(b)* applies in respect of any capital gain determined in respect of any disposal by a person which is or was disregarded in terms of subparagraph (2) in any year of assessment, if—

(a) the foreign company prior to that disposal was a controlled foreign company in relation to that person or any other company in the same group of companies as that person;

(b) the interest in the equity share capital of that foreign company was disposed of to a connected person in relation to that person either before or after that disposal; and

(c) that person—

(i) disposed of that equity share capital for a consideration which does not reflect an arm's length price; or

(ii) disposed of any proceeds received or accrued from the disposal of that equity share capital (or any amount received in exchange therefor) in terms of any transaction, operation or scheme of which the disposal of the equity share capital forms part—

(aa) for consideration which does not reflect an arm's length price: Provided that any consideration in the form of a loan or shares which are acquired from any company in the same group of companies as that company is deemed for purposes of this sub-subitem not to reflect an arm's length price; or

(bb) as a dividend or as a distribution *in specie* as contemplated in paragraph 75; and

(d) that foreign company ceased in terms of any transaction, operation or scheme of which the disposal of the equity share capital forms part, to be a controlled foreign company in relation to that person or other company in the same group of companies as that person (having regard solely to any rights contemplated in paragraph *(a)* of the definition of 'participation rights' in section 9D and without having regard to any election exercised in terms of section 9D(13)).".

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

Amendment of paragraph 72 of Eighth Schedule to Act 58 of 1962

90. (1) Paragraph 72 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (b) of the following subparagraph:

"*(b)* a capital gain (including any amount that would have constituted a capital gain had that person been a resident) attributable to that donation, settlement or other disposition has arisen during a year of assessment and has during that year vested in or is

treated as having vested in any person who is not a resident (other than a controlled foreign company, in relation to that resident),".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of any capital gain determined in respect of any disposal on or after that date.

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

91. (1) Paragraph 76 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 subparagraph (2), where a capital distribution of cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share, that shareholder must where the date of distribution of that capital distribution occurs—".

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

Amendment of paragraph 4 of Part I of Ninth Schedule to Act 58 of 1962

92. Paragraph 4 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph *(k)* of the following subparagraph:

"*(k)* Career guidance and counseling services provided to persons **[for purposes of]** attending any school or higher education institution as envisaged in subparagraphs (*a*) and (*b*).".

Amendment of paragraph 3 of Part II of Ninth Schedule to Act 58 of 1962

93. Paragraph 3 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph *(m)* of the following subparagraph:

"*(m)* Career guidance and counseling services provided to persons **[for purposes of]** attending any school or higher education institution as envisaged in subparagraphs (*a*) and (*b*).".

Amendment of paragraph 10 of Part I of Ninth Schedule to Act 58 of 1962

94. Paragraph 10 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for items (i) to (iv) of the following items:

"(i) **[any]** public benefit organisation which has been approved in terms of section 30;

(ii) **[any]** institution, board or body contemplated in section 10(1)*(c*A*)*(i), which conducts one or more public benefit activities in this part (other than this paragraph);

(iii) **[any]** association of persons carrying on one or more public benefit activity contemplated in this part (other than this paragraph), in the Republic; or

(iv) **[any]** department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)*(a)* or *(b)*.".

Amendment of section 1 of Act 91 of 1964

95. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for the definition of **"fuel levy"** of the following definition:

"**'fuel levy'** means, subject to subsection (4), any duty leviable under Part **[5]** 5A of Schedule No. 1 on any fuel levy goods which have been manufactured in or imported into the Republic;";

(b) by the substitution for the definition of **"fuel levy goods"** of the following definition:

"**'fuel levy goods'** means, subject to subsection (4), any goods specified in Part **[5]** 5A of Schedule No. 1, except any goods specified in any item of that Part for which a free rate of duty is prescribed as contemplated in section 37A(1)*(a)*, which have been manufactured in or imported into the Republic;";

(c) by the insertion after the definition of **"regulation"** of the following definitions:

"**'Road Accident Fund levy'** means, subject to subsection (4), any duty leviable under Part 5B of Schedule No. 1 on any Road Accident Fund levy goods which have been manufactured in or imported into the Republic;

'Road Accident Fund levy goods' means, subject to subsection (4), any goods specified in Part 5B of Schedule No. 1;"; and

(d) by the insertion after subsection (3) of the following subsection:

"(4)(*a*) Except as otherwise provided in this section or in any other section or as may be provided in any Schedule or rule, any provision in this Act for fuel levy or fuel levy goods shall be deemed to include in that provision, in respect of—

(i) fuel levy, the Road Accident Fund levy; or

(ii) fuel levy goods, Road Accident Fund levy goods.".

(2) Subsection (1)*(a)*, *(b)*, *(c)* and *(d)* shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 17 of Act 91 of 1964

96. Section 17 of the Customs and Excise Act, 1964 is amended by the substitution for subsection (1) of the following subsection:

"(1) (*a*) Whenever any goods are taken to and secured in any State warehouse, the Commissioner may require rent to be paid for such period as the goods remain therein, at the rates fixed by rule.

(*b*) Goods removed from the State Warehouse shall be subject to the rate in force at the time of payment of the rent.".

Amendment of section 18 of Act 91 of 1964

97. Section 18 of the Customs and Excise Act, 1964, is hereby amended—

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

"(3) Subject to the provisions of **[sub-section]** subsection (4), any liability for duty in terms of **[sub-section]** subsection (2) shall cease when it is proved by the person concerned **[-]** within the period and in compliance with such procedures as may be prescribed by rule—";

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

"(*b*) in the case of goods which were destined for a place beyond the borders of the common customs area, that such goods have been duly taken out of that area or **[, in circumstances and in accordance with procedures which the Commissioner may determine by rule,]** that the goods have been duly accounted for in the country of destination.";

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

"(4) If the **[person concerned fails to submit any such proof as is referred to in subsection (3) within a period as may be prescribed by rule, he shall upon demand by the Controller**

forthwith pay the duty due on such] goods **[.]** have been diverted or deemed to have been diverted as contemplated in subsection (13), such person shall upon demand by the Controller pay—

(a) the duty and value-added tax due in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1999) as if the goods were entered for home consumption on the date of entry for removal in bond; and

(b) any amount that may be due in terms of section 88(2).”; and

(d) by the substitution for paragraph *(a)* of subsection (13) of the following paragraph:

“*(a)* (i) No person shall, without the permission of the Commissioner, divert any goods removed in bond to a destination other than the destination declared on entry for removal in bond or deliver such goods or cause such goods to be delivered in the Republic except into the control of the **[department]** Controller at the place of destination; and

(ii) Goods shall be deemed to have been so diverted where—

(aa) no permission to divert such goods has been granted by the Commissioner as contemplated in subparagraph (i) and a person fails to furnish proof as contemplated in section 18(3) to the Controller within the period specified by rule; or

(bb) any such proof is the result of fraud or misrepresentation; or

(cc) such person makes a false declaration for the purpose of this section.

(iii) Where any person fails to comply with or contravenes any provision of this subsection the goods shall be liable to forfeiture in accordance with this Act.”.

Amendment of section 20 of Act 91 of 1964

98. Section 20 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) Subject to the provisions of any item in any Schedule, **[The]** the duty on any deficiency in a customs and excise warehouse shall be paid forthwith on demand after detection of such deficiency. **[: Provided that in the case of goods manufactured in any customs and excise manufacturing warehouse or in the case of goods in the process of manufacture and removal from one customs and excise manufacturing warehouse to another such warehouse, the Commissioner may allow working, pumping, handling, processing and similar losses and losses due to natural causes, between the time when liability for duty first arises and the time of removal of such goods from the warehouse in which the goods are so manufactured or in which such process of manufacture is completed, to the extent specified in Schedule No. 4 or 6, if he is satisfied that no part of such loss was wilfully or negligently caused.]**".

Amendment of section 28 of Act 91 of 1964

99. Section 28 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The quantity must be calculated and may be adjusted by a tolerance of 0,25% in accordance with such procedures as may be prescribed by rule and the quantity so calculated and so adjusted shall be deemed to be the true quantity of such spirits for the purposes of this Act.".

Amendment of section 41 of Act 91 of 1964

100. Section 41 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph *(c)* of subsection (4) of the following paragraph:

"(*c*) If any particulars referred to in paragraph *(a)* of any imported goods are not declared in the prescribed invoice or certificate in respect thereof or if any change in the particulars declared in any prescribed invoice or certificate relating to any imported goods which occurs after the date of issue of any such invoice or certificate is not forthwith reported to the Controller by the importer of such goods or if the Commissioner has reason to believe that an offence referred to in section 86 (*f*) or (*g*) has been committed in respect of any imported goods the Commissioner may determine a transaction value, origin, date of purchase, quantity, description or the characteristics of such goods according to the best information available to him, which shall, subject to the provisions of this Act, **[a right of appeal to the Minister, as contemplated in section 77B of the Act,]** be deemed to be the transaction value, origin, date of purchase, quantity, description or the characteristics of such goods.".

Amendment of section 46A of Act 91 of 1964

101. Section 46A of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for the definition of "circumvention" of the following definition:

"**'circumvention'** includes any circumvention of any provision of an enactment by—

(*a*) trans-shipment, rerouting, false declaration concerning the country or place of origin or falsification of official documents; or

(*b*) making any false declaration concerning fibre content, quantities, description or classification of goods**[,**

as provided in Article 5 of the Agreement on Textiles and Clothing included in Annex 1A of the Agreement established by the World Trade Organisation, **kept by the Commissioner as contemplated in subsection 2]**;".

Amendment of section 47 of Act 91 of 1964

102. (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, and all Road Accident Fund levy goods in accordance with the provisions of Schedule No. 1 at the time of entry 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."; and

(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, Road Accident Fund levy item or item of Part 2, 3, **[5]** 5A, 5B 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, Road Accident Fund levy item or item, the item concerned shall be deemed to include only such goods classifiable under such tariff heading or subheading.".

(2) Subsection (1)*(a)* and *(b)* shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 48 of Act 91 of 1964

103. (1) Section 48 of the Customs and Excise Act, 1964, is hereby amended 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, **[Part 5]** Part 5A or Part 5B 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.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 54 of Act 91 of 1964

104. Section 54 of the Customs and Excise Act, 1964 is hereby amended by the insertion after subsection (3) of the following subsection:

"(4) *(a)* No cigarettes bearing the stamp impression referred to in subsection (2), may be entered for removal in bond as contemplated in section 18 for transit through the Republic.

(b) Any cigarettes bearing such stamp impression so entered for removal in bond shall be liable to forfeiture in accordance with the provisions of this Act.".

Amendment of section 75 of Act 91 of 1964

105. (1) Section 75 of the Customs and Excise Act, 1964, is hereby amended—

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

"*(c)* a drawback or a refund of the **[ordinary]** customs duty, **[anti-dumping duty, countervailing duty, safeguard duty,]** surcharge **[and]**, fuel levy and Road Accident Fund levy actually paid on entry for home consumption on any imported goods described in Schedule No. 5 shall be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified; and";

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

"*(d)* in respect of any excisable goods or fuel levy goods described in Schedule No. 6, a rebate of the excise duty specified in Part 2 of Schedule No. 1 or of the fuel levy and of the Road Accident Fund levy specified respectively in **[Part 5]** Parts 5A and 5B of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof, or if duly entered for export and exported in accordance with such entry, or a refund of the excise duty or fuel levy actually paid at the time of entry for home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule No. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6**[;]**: Provided that any rebate, drawback or refund of Road Accident Fund levy shall only be granted as expressly provided in Schedule Nos. 3, 4, 5, or 6 in respect of any item of such Schedule.";

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

"*(a)*(i) a refund of the fuel levy leviable on distillate fuel in terms of Part **[5]** 5A of Schedule No. 1; and

(ii) a refund of the Road Accident Fund levy leviable on **[diesel as contemplated in section 5 of the Road Accident Fund Act, 1996 (Act No.56 of 1996)]** distillate fuel in terms of Part 5B of Schedule No. 1; or

(iii) only a refund of such Road Accident Fund levy,

shall be granted in accordance with the provisions of this section and of item 540.02 of Schedule No. 5 or item 640.03 of Schedule No. 6 to the extent stated in those items;";

(d) by the insertion after subsection (1C) of the following subsection:

"(1D) The provisions of subsections (1A)*(c)*, (1B)*(b)*, (1B)*(c)* and (1B)*(e)*, shall only apply in respect of refunds paid by the Commissioner on the day before the levying of the Road Accident Fund levy in terms of this Act comes into operation.";

(e) by the deletion of subsection (13);

(f) by the substitution for the proviso preceding paragraph *(a)* in subsection (18) of the following proviso:

"**[Subject to the provisions of the proviso to subsection 20(5) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 615.01, 615.02 and 615.03 of Schedules Nos. 4, 5 and 6 no]** No rebate or refund of duty in respect of any loss or deficiency of any nature of any goods shall be allowed, except as provided for in any item of Schedules Nos. 4, 5 and 6 and the Notes thereto, but the Commissioner may allow the deduction from the dutiable **[quantity]** quantities of the undermentioned goods of a quantity equal to the following percentage stated **[below]** in each case **[,namely]**—";

(g) by the substitution for paragraph *(a)* of subsection (18) of the following paragraph:

"*(a)* in the case of unpacked spirits (ethyl alcohol), imported or manufactured in the Republic, received in and entered for use and used in such a customs and excise manufacturing warehouse for such purposes, and in accordance with such

procedures as the Commissioner may prescribe by rule, 1,5 per cent of the quantity so entered;";

(h) by the substitution for paragraph *(b)* of subsection (18) of the following paragraph:

"*(b)* In the case of unpacked spirits, imported or manufactured in the Republic—

(i) removed between such licensed customs and excise warehouses and received in any such customs and excise warehouse and entered for such purposes and in accordance with such procedures as the Commissioner may prescribe by rule, 0,25 per cent of the quantity so removed; and

(ii) received for such purposes in such customs and excise storage warehouse and entered for such purposes and in accordance with such procedures as the Commissioner may prescribe by rule, 0,25 per cent of the quantity so entered;";

(i) by the deletion of paragraph (*b*A);

(j) by the substitution for paragraph *(c)* of subsection 18 of the following paragraph:

"*(c)* in the case of wine and other fermented beverages manufactured in the Republic, 0,5 per cent of the quantity so manufactured on which duty is paid;";

(k) by the deletion of paragraph (cA); and

(l) by the substitution for subsection (21) of the following subsection:

"(21) Except with the permission of the Commissioner, which shall only be granted in circumstances which he on good cause shown considers to be **[exceptional]** reasonable and subject to such conditions as he may impose in each case, any goods entered under any item of Schedule No. 3, 4 or 6 for manufacturing purposes or such other purpose as may be specified in the notes to such item shall be used for the purpose specified in such item at the time of such entry, or such other purpose, within **[five]** two years from the date of such entry.".

(2) Subsection (1)*(a)*, *(b)*, *(c)* and *(d)* shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 76B of Act 91 of 1964

106. Section 76B of the Customs and Excise Act, 1964, is hereby amended by the substitution for the heading of the following heading:

"76B Limitation on <u>the period for which</u> refund and drawback claims <u>will be considered</u> and the period within which [such claims] <u>applications therefor</u> must be received by the [Commissioner] <u>Controller</u> [-]".

Amendment of section 77C of Act 91 of 1964

107. Section 77C of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (1) of the following:

"<u>(1) Any person who intends submitting an appeal as provided for in this Part must do so within such time as may be prescribed by the Commissioner by rule.</u>".

Amendment of section 77D of Act 91 of 1964

108. Section 77D of the Customs and Excise Act, 1964, is hereby amended—

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

"**<u>Request for reasons and</u> [Time] <u>time</u> within which <u>a request or an</u> appeal must be considered.**";

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

"(1) <u>*(a)* Any person contemplated in section 77B may request reasons for a decision.</u>

(b) The Commissioner may prescribe by rule—

(i) the procedures to be complied with when reasons are requested and the time within which such request must be delivered to the Commissioner;

(ii) the period within which—

(aa) a request for reasons; or

(bb) an appeal,

must be considered.

(c) The Commissioner must notify in writing the person who—

(i) requested reasons, of those reasons; or

(ii) lodged an appeal, of the final decision,

within the periods prescribed in such rule."; and

(c) by the deletion of subsection (2).

Amendment of section 77F of Act 91 of 1964

109. Section 77F of the Customs and Excise Act, 1964, is hereby amended by the deletion of subsection (2).

Amendment of section 91 of Act 91 of 1964

110. Section 91 of the Customs and Excise Act, 1964, is hereby amended by the substitution for the heading of the following heading:

"**[Admission of guilt] Administrative penalties**".

Amendment of section 96 of Act 91 of 1964

111. Section 96 of the Customs and Excise Act, 1964, is hereby amended by—

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

"*(a)* (i) No process by which any legal proceedings are instituted against the State, the Minister, the Commissioner or an officer for anything done in pursuance of this Act may be served before the expiry of a period of one month after delivery of a notice in writing setting forth clearly and explicitly the cause of action, the name and place of abode of the person who is to institute such proceedings (in this section referred to as the "litigant") and the name and address of his or her attorney or agent, if any.

(ii) Such notice shall be in such form and shall be delivered in such manner and at such places as may be prescribed by rule.

(iii) No such notice shall be valid unless it complies with the requirements prescribed in this section and such rules."; and

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

"*(b)* Subject to the provisions of section 89, the period of extinctive prescription in respect of legal proceedings against the State, the Minister, the Commissioner or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall begin to run on the date when the right of action first arose**[.]** : Provided that where any proceedings are instituted concerning any decision defined in section 77A(1), such date shall begin to run on the date—

(i) of a final decision as contemplated in the rules for Part A of Chapter XA;

(ii) when the Commissioner advises the person who made use of the alternative dispute resolution procedures contemplated in the rules for Part B of Chapter XA that

agreement has not been achieved at the conclusion or termination of such procedures; or

(iii) on the date a dispute is not settled and the Commissioner advises the person concerned as contemplated in section 77O(5) of Part C of Chapter XA.".

Amendment of section 105 of Act 91 of 1964

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

"(*d*) any such instalment paid shall be utilized by the Commissioner to discharge any penalty, fine, **[forfeiture,]** interest, forfeiture and duty and **[other amounts due,]** expenses incurred by or charges due to the Commissioner, in that order;".

Amendment of section 114 of Act 91 of 1964

113. Section 114 of the Customs and Excise Act, 1964, is hereby amended—

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

"(iv)*(aa)* (A) Any imported or excisable goods, vehicles, machinery, plant or equipment, any goods in any customs and excise warehouse, any goods in a rebate store room, any goods in the custody or under the control of the Commissioner and any goods in respect of which an excise duty or fuel levy is prescribed, and any materials for the manufacture of such goods, of which such person is the owner, whether imported, exported or manufactured before or after the debt became so due and whether or not such goods are found in or on any premises in the possession or under the control of the

person by whom the debt is due, may be detained in accordance with the provisions of subsection (2) and shall be subject to a lien until such debt is paid.

(B) Whenever a person alleges that he or she is not the owner of goods as contemplated in subitem (A), he or she must furnish proof thereof to the Commissioner within 14 days from the date of the detention of the goods.

(C) Where the person concerned proves that he or she is not the owner of the goods as contemplated in subitem (B) the Commissioner must without delay release such goods from the operation of the lien.

(D) Any person who, without reasonable cause, fails to comply with subitem (B), shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000,00 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(E) In the absence of evidence to the contrary which raises a reasonable doubt, proof by the Commissioner of the failure by the person concerned to comply with subitem (B) shall be sufficient evidence of the absence of reasonable cause.

(bb) Any imported or excisable goods, vehicles, machinery, plant or equipment, in the possession or under the control of such person or in or on any premises in the possession or under the control of such person and in respect of which such person has entered into any credit agreement as contemplated in the Credit Agreements Act, 1980 (Act No. 75 of 1980) and of which the right, title or interest of such person may be readily established and excussed, may be detained in accordance with the provisions of subsection (2) and shall, subject to subparagraph (vi) *(cc)*, be subject to a lien until such debt is paid.";

and

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

"(iv) Where, in addition to any amount of duty which is due or is payable by any person in terms of this Act, any fine, penalty, forfeiture or interest is incurred under this Act and is payable by such person, any payment made by that person or any amount recovered pursuant to any sale of such goods as contemplated in this section shall be utilised by the Commissioner to discharge such payment or amount in the order of—

(aa) any **[duty, interest, fine,]** penalty, fine, interest, forfeiture, duty, expenses incurred by or charges due to the Commissioner; and

(bb) payment of the overplus, on application, if any, to the person by whom the debt was due.".

Amendment of section 116 of the Customs and Excise Act, 1964

114. Section 116 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Notwithstanding anything to the contrary in this Act contained, the Commissioner may, in respect of any excisable goods **[(except ethyl alcohol)]** manufactured by natural persons **[(except under item 604.00 of Schedule No. 6)]** for their own use and not for sale or disposal in any manner—".

Substitution of the long title of the Customs and Excise Act, 1964

115. (1) The long title for the Customs and Excise Act, 1964 is hereby substituted with the following title:

"**To provide for the levying of customs and excise duties and a surcharge; for a fuel levy, for a Road Accident Fund levy, for an air passenger tax and an environmental levy; the prohibition and control of**

the importation, export, manufacture or use of certain goods; and for matters incidental thereto.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 1 of Act 77 of 1968

116. (1) Section 1 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion of the definition of **"die"**;

(b) by the substitution for the definition of **"duly stamped"** of the following definition:

"**'duly stamped'** in relation to any instrument requiring to be stamped under this Act, means that such instrument has been stamped as required by this Act for the proper amount of duty and the amount of any interest, penalty or additional duty incurred under sections 9, 9A and 9B **[and, where adhesive stamps have been used, that such stamps have been defaced as required by this Act]**;"; and

(c) by the deletion in the definition of **"stamp"** of subparagraphs (i) and (ii) of paragraph *(a)*;

(2) Subsections (1)*(a)*, (*b*) and *(c)* shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 3 of Act 77 of 1968

117. Section 3 of the Stamp Duties Act, 1968, is hereby amended by the addition of the following subsection:

"(3) If the Minister has announced any—

(a) change in the duties contemplated in subsection (1); or

(b) other change to the provisions of this Act which has the effect that any instrument is no longer subject to those duties,

with effect from a date preceding the date on which the legislation giving effect to that change is promulgated, the change in the duties or to the provisions of this Act so announced applies with effect from the date determined by the Minister until the earlier of the date on which that legislation is promulgated or 6 months after that date so determined.".

Amendment of section 5 of Act 77 of 1968

118. (1) Section 5 of the Stamp Duties Act, 1968, is hereby amended—

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

"(1) The payment of any duty, interest, penalty or additional duty incurred under sections 9, 9A or 9B shall, **[save as is otherwise specially provided in this Act,]** be denoted by means of **[adhesive revenue stamps]** a stamp for the amount of that duty, interest, penalty or additional duty**[, and those stamps must be affixed to the instrument chargeable with the duty, interest, penalty or additional duty and be defaced as prescribed by this Act]**:";

(b) by the deletion in subsection (1) of paragraph (i) of the proviso;

(c) by the substitution in subsection (1) for paragraph (ii) of the proviso of the following paragraph:

"(ii) **[the Commissioner may in his discretion, in lieu of the requirement that adhesive stamps be affixed to any such instrument, authorize]** upon the issue of a special receipt for the duty, interest, penalty or additional duty paid in respect of **[such]** an instrument**[,]** and **[upon]** the issue of **[such]** that receipt, the person by whom or under whose supervision **[the said]** that receipt is issued, **[shall]** must endorse upon the instrument concerned a certificate of the due payment of **[the said]** that duty, interest, penalty or additional duty;";

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

"(iii) **[where]** the Commissioner **[is satisfied that any person or class of persons cannot conveniently denote the duty in respect of any instrument in respect of which stamp duty is payable by means of stamps affixed to such instrument**, **he]** may, subject to **[such]** those conditions as he or she may impose and subject to the exercise of such control as he or she considers necessary, agree that payment of **[such]** that duty, interest, penalty or additional duty may be acknowledged by means of the issue of a special receipt, and **[any such]** that an instrument which bears on its face the words 'duty paid', shall for the purposes of this Act be deemed to be duly stamped."; and

(e) by the deletion in subsection (1) of paragraph (v) of the proviso.

(2)*(a)* Subsections (1)*(a)*, (*b*) and (*e*) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(b) Subsection (1)*(c)* shall?

(i) to the extent that it inserts a reference to interest, penalty or additional duty, come into operation on the date of promulgation of this Act.

(ii) to the extent that it amends the rest of paragraph (ii), come into operation on a date fixed by the President by proclamation in the *Gazette.*

(c) Subsection (1)*(d)* shall—

(i) to the extent that it inserts a reference to interest, penalty or additional duty, come into operation on the date of promulgation; and

(ii) to the extent that it amends the rest of paragraph (iii), come into operation on a date fixed by the President by proclamation in the *Gazette.*

Amendment of section 7 of Act 77 of 1968

119. (1) Section 7 of the Stamp Duties Act, 1968, is hereby amended—

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

(b) by the deletion in subsection (1) of paragraph (*j*).

(2) Subsection (1)*(a)* comes into operation on 1 January 2006 and applies in respect of all marketable securities issued on or after that date.

Amendment of section 10 of Act 77 of 1968

120. (1) Section 10 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette.*

Amendment of section 22 of Act 77 of 1968

121. Section 22 of the Stamp Duties Act, 1968, is hereby amended by the deletion of subsection (4).

Amendment of section 23 of Act 77 of 1968

122. (1) Section 23 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion of subsection (1B);

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

(c) by the addition in subsection (4) of the following subparagraph to paragraph *(b)*:

"(ix) where exemption from duty is claimed under paragraph *(a)* of the Exemptions to Item 15(3) of Schedule 1, there is annexed to such instrument a declaration signed by the transferee stating that the aggregate duty payable by the transferee for the purposes of Item 15(3) of Schedule 1, does not exceed an amount of R100 during the six month period calculated from the date of execution of the instrument of transfer.";

(d) by the deletion of subsection (10);

(e) by the substitution for subsection (11) of the following subsection:

"(11) The duty payable under Item 15(4) of Schedule 1 shall be denoted on a copy of any application to court, take-over offer or resolution, as the case may be, required in respect of any **[scheme referred to in subsection (10)]** cancellation or redemption of company shares, and the company of which the shares in question are cancelled or redeemed shall endorse on that copy the market value of those shares and the amount payable in respect of the redemption of those shares, including any premium so payable**[, as determined in accordance with subsection (10)]** and, in the case of any take-over offer, the date of the final acceptance of that offer and must retain that copy, which must at all reasonable times during a period of five years after the relevant date referred to in subsection (13), be open for inspection by any person acting under the authority of the Commissioner.";

(f) by the deletion of subsection (12);

(g) by the substitution in subsection (12A) for the words preceding paragraph *(a)* of the following words:

"(12A) For the purposes of section 7*(h*A*)* and of **[subsections (10),]** subsection (11) **[and (12)]** of this section and Item 15(4) of Schedule 1—";

(h) by the substitution in subsection (12A) for paragraph *(d)* of the following paragraph:

"*(d)* where shares, stock or debentures are cancelled in part as aforesaid, the consideration to be determined **[under subsection (10)]** in respect of such part-cancellation shall be deemed to be the full market value of such shares and the amount payable in respect of the redemption of those shares, including any premium so payable, stock or debentures as determined in accordance with that subsection, less such amount as the Commissioner may determine as the value of such shares, stock or debentures immediately after such part-cancellation."; and

(i) by the deletion in subsection (15) of paragraph (*c*).

(2)*(a)* Subsection (1)*(a), (c), (d), (e), (f), (g)* and *(h)* shall come into operation on 1 January 2006 and applies in respect of all marketable securities issued, acquired, cancelled or redeemed on or after that date.
(b) Subsection (1)*(b)* and *(i)* shall come into operation on a date fixed by the President by proclamation in the *Gazette.*

Amendment of section 26 of Act 77 of 1968

123. (1) Section 26 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for paragraph (*a*) of the following paragraph:

"(*a*) in relation to the stamping of any instrument **[or the defacement of any stamp on any instrument]**, without lawful excuse uses, enters or attests any date other than the true date; or".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 27 of Act 77 of 1968

124. (1) Section 27 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 28 of Act 77 of 1968

125. (1) Section 28 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 28A of Act 77 of 1968

126. (1) Section 28A of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of Item 14 of Act 77 of 1968

127. (1) Item 14 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in paragraph (2) for the words under *Amount of Duty* of the following words:

"An amount of duty calculated in accordance with **[section 22(4)]** Item 14(1) of this Act.";

(b) by the substitution for the *Exemptions from the duty under paragraph (1)* of the following paragraphs:

"*(a)* For the purposes of this Item, no duty shall be payable in the event that the duty calculated on a lease or agreement of lease does not in aggregate exceed R200 over the period of the lease: Provided that this exemption shall not apply where the total consideration payable in respect of a lease or agreement of lease is not quantifiable at the time of execution of that lease.

(b) For the purposes of this Item, where the total consideration payable in respect of a lease or agreement of lease is not quantifiable at the time of execution of that lease, no duty shall be payable in the event that the duty calculated on a lease or agreement of lease on the amount of consideration that has become quantifiable—

(i) during any 'year of assessment' as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), of any lessor who is a 'taxpayer' as defined in that Act; or

(ii) in the 12 months ending on the last day of February each year in the case of any other lessor,

if that amount does not in aggregate exceed R200 during such year of assessment, or 12 month period, whichever is applicable.”; and

(c) by the insertion under paragraph *(b)* in *Exemptions from the duty under paragraph (1)* of the following words:

“Provided the duty payable under this Item, calculated on the aggregate amount of rent and any other consideration payable under any lease or agreement of lease shall not exceed 10 per cent of the value of the property in relation to that lease or agreement of lease, which value shall be determined in accordance with the provisions of sections 5, 6, 7 and 8 of the Transfer Duty Act, 1949 (Act. 40 of 1949).”.

(2)*(a)* Subsection (1)*(b)* shall apply in respect of any lease or agreement of lease where that lease or agreement of lease is executed in the year of assessment, as defined in section 1 of the Income Tax Act 1962 (Act No 58 of 1962), of any lessor who is a taxpayer, as defined in section 1 of the Income Tax Act, 1962, commencing on or after the proclamation of the Act in the *Gazette*, or in the case of any other lessor, on or after 1 March 2006.

(*b*) Subsection (1)(*c*) shall apply in respect of any lease or agreement of lease where that lease or agreement of lease is executed on or after 1 January 2006.

Amendment of Item 15 of Act 77 of 1968

128. (1) Item 15 of the Stamp Duties Act, 1962, is hereby amended—

(a) by the deletion of paragraphs (1) and (2);

(b) by the deletion of *Exemptions from the duty under paragraph (1) or (2)*;

(c) by the insertion in the *Exemptions from the duty under paragraph (3)* of the following paragraph before paragraph *(b)*:

“*(a)* Any registration of transfer of any marketable securities where the aggregate duty which would, but for the provisions of this subitem, be payable by the transferee under this Item during any six month period equals an amount of R100 or less.”;

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

"where the public officer contemplated in section 101 of the Income Tax Act, 1962 (Act No. 58 of 1962), 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.";

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

"(4) In respect of the cancellation or redemption of any **[company shares which any person is in terms of section 23(10) of this Act deemed to have disposed of]** marketable securities: for every R10 or part thereof of the **[value of the consideration referred to in the said section 23(10)]** greater of the market value of those marketable securities immediately prior to the cancellation or redemption and the amount payable in respect of the cancellation or redemption of those marketable securities, including any premium so payable: Provided that the market value must be determined as if those marketable securities had not been and were not about to be cancelled or redeemed.".	0 025

(f) by the insertion after paragraph (4) of the following:

"*Exemptions from the duty under paragraph (4)*:

(a) Any cancellation or redemption of any marketable security in respect of which the provisions of the Uncertificated Securities Tax Act, 1998, apply.

(b) Any cancellation or redemption of any marketable security by a company—

(i) in terms of an amalgamation transaction contemplated in section 44 of the Income Tax Act, 1962;

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

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

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

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

(bb) in subparagraph (i) regardless of the market value of the asset disposed of in exchange for that marketable security; or

(cc) in subparagraphs (i) to (iii) regardless of whether or not that person acquired that marketable security as a capital asset or as trading stock,

where the public officer contemplated in section 101 of the Income Tax Act, 1962 (Act No. 58 of 1962), 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.

(c) Where the securities are 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, and which constitute instruments as contemplated in section 24J of the Income Tax Act, 1962.”; and

(g) by the insertion in the *Exemptions from the duty under paragraph (5)* of the following paragraph after paragraph *(c)*:

“*(d)* The acquisition of any marketable security where the aggregate duty which would, but for the provisions of this subitem, be payable by the transferee under this Item during any six month period equals an amount of R100 or less.”.

(2) Subsection (1)(*a), (b), (c), (e),* (*f*) and (g) shall come into operation on 1 January 2006, and shall apply to all marketable securities issued, acquired, cancelled or redeemed on or after that date.

Amendment to section 1 of Act 89 of 1991

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

(a) by the insertion after the definition of **"consideration in money"** of the following definition:

"**'controller'** has the meaning assigned thereto in section 1 of the Customs and Excise Act;".

(b) by the insertion in paragraph *(b)* of the definition of **"enterprise"** of the following subparagraph:

"(v) the activities of a foreign donor funded project;";

(c) by the insertion after the definition of **"fixed property"** of the following definition:

"**'foreign donor funded project'** means a project established as a result of an international donor funding agreement to which the Government of the Republic is a party, to supply goods or services to beneficiaries;";

(d) by the insertion after the definition of **"invoice"** of the following definition:

"**'licensed customs and excise storage warehouse"** means a warehouse licensed by the Commissioner at any place appointed for that purpose under the provisions of the Customs and Excise Act, which has been approved by the Commissioner for the storage of goods as he may approve in respect of that warehouse;";

(e) by the substitution for the definition of **"person"** 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 and any foreign donor funded project;".

Amendment of section 8 of Act 89 of 1991

130. (1) Section 8 of the Value-Added Tax Act, 1991 is hereby amended?

(a) by the insertion after subsection (5A) of the following subsection:

"(5B) For the purposes of this Act a vendor, being a foreign donor funded project shall be deemed to supply services to the international donor to the extent of the international donor funding received from an international donor.";

(b) by the insertion after subsection (23) of the following subsection:

"(24) For the purposes of this Act, a vendor, being a customs controlled area enterprise, shall be deemed to supply goods in the course or furtherance of an enterprise where movable goods are temporarily removed from a place in a customs controlled area to a place outside the customs controlled area, situated in the Republic, if those goods are not returned to the customs controlled area within 30 days of its removal, or within a period arranged in writing with the Controller."; and

(c) by the insertion after subsection (24) of the following subsections:

"(25) For the purposes of this Act, where any goods and/or services are supplied by a vendor to another vendor, those vendors must for purposes of that supply or subsequent supplies of those goods or services, be deemed to be one and the same person provided the provisions of section 42, 44, 45 or 47 of the Income Tax Act are complied with.

(26) For the purposes of this Act, the supply of goods or services under any warranty agreement shall, for the purposes of section 11(2)(v), be deemed to be a supply of services.".

Amendment of section 9 of Act 89 of 1991

131. Section 9 of the Value-Added Tax Act, 1991 is hereby amended by the insertion after subsection (10) of the following subsection:

"(11) Where any supply of goods is deemed to be made as contemplated in section 8(24), that supply shall be deemed to take place on the last day of the applicable period as contemplated in section 8(24)".

Amendment of section 10 of Act 89 of 1991

132. Section 10 to the Value-Added Tax Act, 1991, is hereby amended by the insertion of the following paragraph:

"(25) Where any goods are deemed by section 8(24) to be supplied to any person, the consideration in money shall be deemed to be the open market value of those goods.".

Amendment of section 11 of Act 89 of 1991

133. Section 11 of the Value-Added Tax Act, 1991 is hereby amended?

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

"*(h)* the goods consist of fuel levy goods **[as defined in section 1 of the Customs and Excise Act]** referred to in Fuel Item Levy numbers 195.10.05, 195.10.06, 195.10.07 and 195.10.17 in Part 5 of Schedule No. 1 to the Customs and Excise Act; or";

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

"*(h*A*)* the goods consist of petroleum oil and oils obtained from bituminous minerals, known as crude, referred to in Heading No. 27.09 in Chapter 27 of Part 1 of Schedule No. 1 to the Customs

and Excise Act when supplied for the purpose of being refined for the production of fuel levy goods as defined in section 1 of the Customs and Excise Act **[and any by-product]**; or"; and

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

"*(l)* the goods consist of illuminating kerosene intended for use as fuel for illuminating or heating, referred to in Fuel Item Levy number 195.10.13 in Part 5 of Schedule No. 1 to the Customs and Excise Act and are not mixed or blended with another substance;".

(d) by the deletion of paragraph *(o)* of subsection (1);

(e) by the insertion in subsection (1) after paragraph *(p)* of the following paragraph:

"*(q)* the goods?

(i) are supplied by a vendor to a person who is not a resident of the Republic and not a vendor and who has contracted with that vendor to deliver goods to a recipient, who is a vendor in the Republic; and

(ii) form part of a supply by the person referred to in paragraph (i) to the recipient; and

(iii) are used by the recipient wholly for the purposes of making taxable supplies.";

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

"**[the services are supplied by a vendor to the extent that the consideration for such services is from donor funds granted under any international agreement to which the Government of the Republic is a party]** the services are deemed to be supplied in terms of section 8(5B);";

(g) by the deletion in subsection (2) of the word "or" after paragraph *(t)* and the addition of the word "or" after paragraph *(u)*; and

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

"*(v)* the services relate to goods under warranty to the extent that the services are—

(i) provided in terms of that warranty;

(ii) supplied to the warrantor for consideration under that warranty given by the warrantor who is -

(*aa)* not a resident of the Republic;

(bb) not a vendor; and

(cc) outside the Republic at the time the services are rendered; and

(iii) in respect of goods that were subject to tax upon importation (in terms of section 7(1)(*b*) of this Act).".

Amendment of section 13 of Act 89 of 1991

134. Section 13 of the Value-Added Tax Act, 1991 is hereby amended?

(a) 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 for storage in a licensed Customs and Excise storage warehouse but have not been entered for home consumption, any supply of **[such]** those goods before they are entered for home consumption shall be zero-rated for the purposes of this Act;"; and

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

"(6) Subject to the provisions of **[section 7(1)(*b*) and this section]** this Act, the provisions of the Customs and Excise Act relating to the importation, transit, coastwise carriage and clearance of goods and the payment and recovery of duty shall *mutatis mutandis* apply as if enacted in this Act, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs and Excise Act.".

Amendment of section 16 of Act 89 of 1991

135. (1) Section 16 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the substitution in subsection (2) for the second proviso of the following proviso:

"Provided further that no deduction of input tax in relation to that supply or importation shall be made in respect of any tax period which ends more than five years after the end of the tax period during which **[the vendor for the first time became entitled to such deduction]**—

(i) in the case of a supply on or after 1 March 2005, the tax invoice for that supply should have been issued as contemplated in section 20(1); or

(ii) in the case of a supply prior to 1 March 2005, the earlier of?

(aa) the first payment of any consideration in respect of that supply was made; or

(bb) any invoice in respect of that supply was issued.";

(b) by the addition in subsection (3) of the following proviso to paragraph *(a)*:

"Provided that this paragraph does not apply where a vendor acquires goods or services that are to be awarded as a prize or winnings and in respect of which that vendor qualifies or will qualify for a deduction in terms of paragraph *(d)*.";

(c) by the addition in subsection (3) of the following proviso to paragraph *(b)*:

"Provided that this paragraph does not apply where a vendor acquires goods or services that are to be awarded as a prize or winnings and in respect of which that vendor qualifies or will qualify for a deduction in terms of paragraph *(d)*.";

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

"*(d)* an amount equal to the tax fraction of any amount paid during the tax period by the supplier of the services contemplated in section 8(13) as a prize or winnings to the recipient of such services: Provided that where the prize awarded constitute either goods or services, input tax must be limited to the tax incurred on the initial cost of acquiring those goods or services;";

(e) by the substitution in subsection (3) for the proviso to paragraph (*h*) of the following proviso:

"Provided that?

(i) where such goods consist of second-hand goods contemplated in the proviso to paragraph (*b*) of the definition of "input tax" in section 1, the amount determined in terms of this subsection shall not exceed the amount of transfer duty or stamp duty, as the case may be, which was or would have been payable, less any amount which has previously been deducted in terms of the provisions of subsection (3)(*a*)(ii) or (*b*)(i) of this section or section 18(4) or (5), in respect of such acquisition, original issue or registration of transfer, as the case may be;

(ii) this subsection does not apply where?

(aa) such goods or services were acquired before 1 April 2005, or an input tax deduction in respect of that acquisition was denied under proviso (*iv*) to section 18(4); and

(bb) the vendor is a public authority which registered prior to 1 April 2005, notwithstanding paragraph (*b*)(*i*) of "enterprise" in section 1, or a public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999); "; and

(f) by the substitution in subsection (3) for the first proviso following paragraph *(l)* of the following proviso:

"Provided that where any vendor is entitled under the preceding provisions of this subsection to deduct any amount in respect of any tax period from the said sum, the vendor may deduct that amount from the amount of output tax attributable to a later tax period which ends no later than five years after the end of the tax period during which **[the vendor for the first time became entitled to such deduction]**—

(i) in the case of a supply on or after 1 March 2005, the tax invoice for that supply should have been issued as contemplated in section 20(1); or

(ii) in the case of a supply prior to 1 March 2005, the earlier of?

(aa) the first payment of any consideration in respect of that supply was made; or

(bb) any invoice in respect of that supply was issued,

and to the extent that it has not previously been deducted by the vendor under this subsection:".

(2) Subsection (1)*(c)* is deemed to have come into operation on 1 April 2005.

Amendment of section 17 of Act 89 of 1991

136. Section 17 of the Value-Added Tax Act, 1991 is hereby amended—

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

"(2) Notwithstanding anything in this Act to the contrary, a vendor, other than a foreign donor funded project, shall not be entitled to deduct from the sum of the amounts of output tax and refunds contemplated in section 16(3), any amount of input tax—";

(b) by the deletion in subsection (2) of the word "or" at the end of subparagraph (vii) of paragraph *(a)* and the addition of the word "or" at the end of subparagraph (viii);

(c) by the insertion in subsection (2) of the following subparagraph to paragraph (*a*):

"(ix) that entertainment is acquired by the vendor for the purpose of awarding that entertainment as a prize contemplated in section 16(3)(d) in consequence of a supply contemplated in section 8(13);";

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

"Provided that—

(i) this paragraph shall not apply where **[such]** that motor car is acquired by the vendor exclusively for the purpose of making a taxable supply of **[such]** that motor car in the ordinary course of an enterprise which continuously or regularly supplies motor cars, whether **[such]** that supply is made by way of sale or under an instalment credit agreement or by way of rental agreement at an economic rental consideration;

(ii) **[Provided further that]** for the purposes of this paragraph a motor car acquired by such vendor for demonstration purposes or for temporary use prior to a taxable supply by such vendor shall be deemed to be acquired exclusively for the purpose of making a taxable supply; and

(iii) this paragraph shall not apply where—

(aa) that motor car is acquired by the vendor for the purposes of awarding that motor car as a prize contemplated in section 16(3)(d) in consequence of a supply contemplated in section 8(13); or

(bb) the supply of that motor car is in the ordinary course of an enterprise which continuously or regularly supplies motor cars as prizes to clients or customers (other than to any employee or office holder of the vendor or any connected

person in relation to that employee, office holder or vendor) to the extent that it is in consequence of a taxable supply made in the course or furtherance of an enterprise; or".

Amendment of section 18 of Act 89 of 1991

137. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended?

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

"Provided that this subsection **[shall]** does not apply to?

(i) **[any]** capital goods or services which have an adjusted cost of less than R40 000 (excluding tax) or where such goods or services were deemed to be supplied to the vendor by subsection (4) if the amount which was represented by "B" in the formula contemplated in that subsection was less than R40 000 when such goods or services were deemed to be supplied to such vendor; or

(ii) capital goods or services acquired by a public authority or public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) if the goods or services were acquired prior to 1 April 2005, or if an input tax deduction in respect thereof was denied under proviso (iv) to section 18(4);"; and

(b) by the substitution in subsection (5) for the first and second provisos of the following proviso:

"Provided that?

(i) this subsection **[shall]** does not apply to?

(aa) **[any]** capital goods or services which cost less than R40 000 (excluding tax) or where such goods or services were deemed to be supplied to the person by subsection (4) if the amount which was represented by "B" in the

formula contemplated in that subsection was less than R40 000 when such goods or services were deemed to be supplied to such person**[:]**; or

(bb) capital goods or services acquired by a public authority or public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) prior to 1 April 2005, or if an input tax deduction in respect thereof was denied under proviso (iv) to section 18(4);

(ii) **[Provided further that]** where **[such]** the capital goods or services consist of second-hand goods contemplated in the proviso to paragraph (b) of the definition of "input tax" in section 1, the amount determined in terms of this subsection shall not exceed the amount of transfer duty or stamp duty, as the case may be, which is or would have been payable, less any amount which has previously been deducted in terms of the provisions of section 16(3)*(a)*(ii) or *(b)*(i), or subsection (4) of this section, in respect of **[such]** that acquisition, original issue or registration of transfer, as the case may be."; and

(c) by the substitution in subsection (10) for the words preceding the formula of the following words:

"(10) Where—

(a) goods or services have been supplied by a vendor at the zero rate in terms of sections 11(1)*(c)*, 11(1)*(m)* or 11(2)*(k)* to a registered vendor who is a customs controlled area enterprise; or

(b) goods have been imported into the Republic by a registered vendor who is a customs controlled area enterprise for use, consumption or supply in that area and those goods are exempt from tax in terms of section 13(3),

and **[those goods or services were acquired for the purposes of entertainment in respect of which]** where a deduction of input tax would have been denied in terms of section 17(2), those goods or services shall be deemed to be supplied by him in the same tax

period in which they were so acquired, in accordance with the formula:".

(2) Subsections (1)*(a)* and *(b)* are deemed to have come into operation on 1 April 2005.

Amendment of section 22 of Act 89 of 1991

138. Section 22 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the substitution in subsection (3) for the proviso of the following proviso:

"Provided that—

(i) the period of 12 months shall, if any contract in writing in terms of which such supply was made provides for the payment of consideration or any portion thereof to take place after the expiry of the tax period within which such deduction was made, in respect of such consideration or portion be calculated as from the end of the month within which such consideration or portion was payable in terms of that contract; or

(ii) where the estate of a vendor is sequestrated, whether voluntarily or compulsorily, the vendor is declared insolvent, or has entered into a compromise or an arrangement in terms of section 311 of the Companies Act, 1973 (Act No. 61 of 1973) or a similar arrangement with creditors, within 12 months after the expiry of the tax period within which that deduction was made, not paid the full consideration, the vendor must account for output tax in terms of this section equal to that portion of the consideration which has not been paid at the time of sequestration, declaration of insolvency or the date on which the compromise or the arrangement or similar arrangement was entered into.".

Amendment to section 23 of Act 89 of 1991

139. Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (3) for paragraph (*a*) of the following paragraph:

"(*a*) that person is carrying on any enterprise as contemplated in paragraph (*b*)(ii), **[or]** (iii) or (v) or (*c*) of the definition of "enterprise" in section 1; or.

Amendment of section 28 of Act 89 of 1991

140. Section 28 of the Value-Added Tax Act, 1991, is hereby amended—

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

"*(a)* furnish the Commissioner with a return **[(in such form as the Commissioner may prescribe)]** reflecting such information as may be required for the purpose of the calculation of tax in terms of section 16; and";

(b) by the addition in subsection (1) of the following paragraph to the proviso:

"(v) the Commissioner may prescribe the form and manner (including in electronic format) in which returns must be submitted and payments must be made by a vendor.".

Amendment of section 31 of Act 89 of 1991

141. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (*a*) of the following paragraph:

"(*a*) any person fails to furnish any return as required by section 28, 29 or 30 or fails to furnish any declaration as required by section **[13(4) or]** 14; or".

Amendment of section 38 of Act 89 of 1991

142. (1) Section 38 of the Value-Added Tax Act, 1991 is hereby amended—

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

"(1) Subject to the provisions of section 7(3)(*d*) and section 13(5) and (6), the tax payable under this Act must be paid in full within the time allowed by **[section 13(4) or]** section 14 or section 28 or section 29, whichever is applicable.";

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

"(2) Where the Commissioner is satisfied that due to circumstances beyond the control of the person liable for the payment of the tax the amount of tax due cannot be accurately calculated within the time allowed by **[section 13(4) or]** section 14 or section 28 or section 29, whichever is applicable, the Commissioner may in his <u>or her</u> discretion and subject to such conditions as he <u>or she</u> may impose, agree to accept a payment of a deposit by such person of an amount equal to the estimated liability of such person for such tax.".

Amendment of section 41 of Act 89 of 1991

143. Section 41 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph (*d*) for subparagraph (ii) of the following paragraph:

"(ii) any amount of tax chargeable under this Act in respect of the importation of goods was not paid**[—**

(*A*) **. . . . . .**

(*B*) **if payment of such amount was required to be made within the period allowed in terms of section 13(4), within that period]**; or".

Amendment of section 46 of Act 89 of 1991

144. Section 46 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after paragraph *(i)* of the following paragraph:

"*(j)* on a foreign donor funded project shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such foreign donor funded project;".

Amendment of section 58 of Act 89 of 1991

145. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (*d*) of the following paragraph:

"(*d*) fails to comply with the provisions of **[section 13(4) or]** section 14 or section 28(1) or (2), section 29 or section 30; or".

Amendment of paragraph 1 of Schedule 1 to Act 89 of 1991

146. Paragraph 1 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the words preceding subparagraph (i) of the following words:

"**1.** Any of the following items imported into the Republic in respect of which the Controller **[of Customs and Excise]** has, in terms of the proviso to section 38(1)(a) of the Customs and Excise Act and which shall apply also to imports from or via Botswana, Lesotho, Namibia or Swaziland, granted permission that entry need not be made:";

(b) by the substitution for subparagraph (v) of the following paragraph:

"(v) goods of a value for customs duty purposes not exceeding R500.00, and on which no such duty is payable in terms of Schedule No. 1 to the said Act.".

Substitution of paragraph 4 of Schedule 1 to Act 89 of 1991

147. The following paragraph hereby substitutes paragraph 4 of Schedule 1 to the Value-Added Tax Act, 1991:

"**4.** Goods temporarily exported from the Republic which are, at the time of export, registered as such with the Controller **[of Customs and Excise]**, in such form as the Commissioner may prescribe, and thereafter returned to the exporter, no change of ownership having taken place, and which can be identified on re-importation.".

Substitution of paragraph 5 of Schedule 1 to Act 89 of 1991

148. The following paragraph hereby substitutes paragraph 5 of Schedule 1 to the Value-Added Tax Act, 1991:

"**5.** Goods permitted under conditions prescribed by the International Trade Administration Commission which are forwarded unsolicited and free of charge by a non-resident to—

(a) a public authority or a local authority; or

(b) any association not for gain, which satisfies the Commissioner that such goods will be used by that association exclusively—

(i) for educational, religious or welfare purposes; or

(ii) in the furtherance of that association's objectives directed to the provision of educational, medical or welfare services or medical or scientific research; or

(iii) for issue to, or treatment of, indigent persons.

Provided that the recipient of the goods responsible for the distribution has furnished an undertaking that?

(a) such goods are for the exclusive use by the organisation or for free distribution;

(b) such goods will not be sold, leased, hired or otherwise disposed of for gain; and

(c) no consideration or other counter-performance may be accepted by any person in respect of such goods.".

Substitution of paragraph 6 of Schedule 1 to Act 89 of 1991

149. The following paragraph hereby substitutes paragraph 6 of the Value-Added Tax Act, 1991:

"**6.** Goods which are shipped or conveyed to the Republic for **[transhipment]** trans-shipment or conveyance to any export country: Provided that the Controller **[of Customs and Excise]** ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01(c) of Chapter XIIA of the Rules under the Customs and Excise Act. If proof is not furnished to the Commissioner that the goods have been duly taken out of the Republic within a period of 30 days or within such further period as the Commissioner may in exceptional circumstances allow, this exemption shall be withdrawn and tax, penalty and interest must be paid.".

Substitution of paragraph 7 of Schedule 1 to Act 89 of 1991

150. The following paragraph hereby substitutes Schedule 1 to the Value-Added Tax Act, 1991:

"**7.** Goods consisting of ?

(a) **[such]** foodstuffs **[as are]** set forth in Part B of Schedule 2 to this Act, but subject to such conditions as may be prescribed in the said Part; or

(b) goods referred to in section 11(1)(f), but provided that such goods are supplied to and imported by the South African

Reserve Bank, the South African Mint Company (Proprietary) Limited or any bank registered under the Banks Act, 1990 (Act No. 94 of 1990); or

(c) (i) fuel levy goods referred to in fuel levy item no.—

(aa) 195.10.05 Petrol, unleaded, as defined in Additional Note 1(b) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act, put up as 93 octane;

(bb) 195.10.06: Petrol, unleaded, as defined in Additional Note 1(b) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act, excluding that put up as 93 octane;

(cc) 195.10.07 Petrol, leaded, as defined in Additional Note 1(c) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act; and

(dd) 195.10.17 Distillate fuel, as defined in Additional Note 1(g) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act,

in Part 5 of Schedule No. 1 to the Customs and Excise Act; or

(ii) petroleum oil and oils obtained from bituminous minerals, known as crude, referred to in tariff heading no. 27.09 in Part 1 of Schedule No. 1 to the Customs and Excise Act, when supplied and imported for the purpose of being refined for the production of fuel levy goods as defined in section 1 of the Customs and Excise Act; or

(iii) anti-knock preparations referred to in tariff heading no. 3811.11 in Part 1 of Schedule No. 1 to the Customs and Excise Act; or

(iv) illuminating kerosene as defined in Additional Note *1(f)* to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act, referred to in fuel levy item no. 195.10.13 in Part 5 of Schedule No. 1 to the Customs and Excise

Act and which are not mixed or blended with another substance.".

Amendment of paragraph 8 of Schedule 1 to Act 89 of 1991

151. Paragraph 8 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the substitution for Note 1 and the words following Note 1 but preceding Item 406.00 of the following:

"**NOTES:**

1. The following exemptions, identified by subheadings, shall be subject to the Notes as contemplated in Schedule No. 1 to the Customs and Excise Act.

[2709.00	**Petroleum oils and oils obtained from bituminous minerals, crude**
2710.11.03	**Petrol, unleaded**
2710.11.05	**Petrol, leaded**
2710.11.30	**Distillate fuel**
3811.11	**Anti-knock preparations based on lead compounds]**
4907.00.30	Travellers' cheques and bills of exchange, denominated in a foreign currency
4911.10.20	Publications and other advertising matter, relating to fairs, exhibitions and tourism in foreign countries".

Amendment of Item 406.00 of Schedule 1 to Act 89 of 1991

152. Item 406.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the heading to item no. 406.00 of the following heading:

"**406.00 GOODS IMPORTED FOR DIPLOMATIC AND OTHER FOREIGN REPRESENTATIVES:**";

(b) by the substitution for paragraphs 2, 3, 4, 5 and 6 of the Notes to item no. 406.00 of the following paragraphs:

"2. This exemption (excluding item no. 406.03) is allowed only if the Director-General: Foreign Affairs or an official acting under his or her authority has certified that a person requiring this exemption is listed in the register maintained by the Department of Foreign Affairs in accordance with the Diplomatic Immunities and Privileges Act, **[1989]** 2001.

3. For the purposes of item no. 406.03, 'an organisation or institution' means an organisation which the Director-General: Foreign Affairs or an official acting under his or her authority has certified as an organisation or institution with which the Republic has concluded a formal agreement, which provides, *inter alia*, for the granting of such exemption.

4. This exemption is not allowed to South African citizens or permanent residents of the Republic, unless the Government of the Republic has, by agreement with an organisation or institution contemplated in Note no. 3, undertaken to grant an exemption to a South African citizen who is a representative, member, agent or officer, but excluding a delegate, with or to such organisation or institution.

5. A motor vehicle exempted in terms of item**[s]** no.'s 406.02, 406.03, 406.05 or 406.07, may not be offered, advertised, lent, hired, leased, pledged, given away, exchanged, sold or otherwise disposed of within a period of two years from the date of importation: Provided that any one of the foregoing acts with this vehicle within a period of two years from the date of importation renders the importer of the vehicle liable to pay tax as determined by the Commissioner in consultation with the Director-General: Foreign Affairs.

6. For the purposes of item**[s]** no.'s 406.02, 406.03 and 406.05 'members of their families' means the spouse, any unmarried child

under the age of 21 years, any unmarried child between the ages of 21 and 23 years who is undertaking full-time studies at an educational institution, and any unmarried child who is due to physical or mental disability incapable of self-support, and any other relative specially approved by the Minister of Foreign Affairs, who forms part of the household of any such member or person, as the case may be, or who joins any such household during visits to the Republic.";

(c) by the substitution in paragraph 7 of the Notes to item no. 406.00 for the words preceeding subparagraph *(a)* of the following words:

"7. For the purposes of Note no. 6 'spouse' means the partner of **[such]** that person—";

(d) by the substitution of item no. 406.00 for the following item:

"406.05/00.00/01.00 Goods for the official use by a consular mission and goods for the personal or official use by consular representatives accredited to a consular mission and foreign representatives (excluding those referred to in item**[s]** no.'s 406.02 and 406.03), and members of their families".

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

153. Item 407.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for paragraphs 1, 2 and 3(a) and (b) of the Notes to item no. 407.00 of the following paragraphs:

"1. The exemption in terms of item no. 407.01/00.00/01.02 is allowed only if the goods can be identified as being the same goods which were taken from the Republic.

2. The exemption in terms of item no. 407.02 is not allowed for firearms acquired abroad or at any duty-free shop and imported by residents of the Republic returning after an absence of less than 6 months.

3.*(a)* The exemption in terms of item no. 407.02 is allowed only once per person during a period of 30 days and is not allowed for goods imported by persons returning after an absence of less than 48 hours.

(b) The exemption in terms of item no. 407.02, with the exception of the exemption in respect of tobacco and alcoholic products, is allowed to children under 18 years of age, whether or not they are accompanied by their parents or guardians, provided the goods are for use by the children themselves.";

(b) by the substituition for paragraph 4 of the of the Notes to item no. 407.00 of the following paragraph:

"4. A member of the crew of a ship or aircraft (including the master or pilot) is, subject to the conditions laid down by the Commissioner—

[*(a)* only entitled to the exemptions in terms of item no.'s 407.02/22.00/01.00, 407.02/22.00/02.00, 407.02/24.02/01.00, 407.02/24.03/01.00 and 407.02/33.03/01.00 if such member returns to the Republic permanently; and]

(b) only entitled to the exemption in terms of item no. 407.02/00.00/01.00 provided the total value of the goods declared under this item does not exceed R500 (or such other amount as the Minister may fix by notice in the *Gazette*); and

(c) only entitled to the exemption in terms of item no. 407.02/00.00/02.00 provided the total value of the goods declared under this item does not exceed R2 000 (or such other amount as the Minister may fix by notice in the *Gazette*).";

(c) by the substitution for paragraphs 4A, 4B, 4C, 5, 6, and 7 of the Notes to item no. 407.00 of the following paragraphs:

"4A. The exemption in item no. 407.02/00.00/02.00 is only applicable if the total value of the goods declared under item no. 407.00 (excluding goods provided for in item no. 407.01) does not exceed **[R12 000]** R15 000 (or such other amount as the Minister may fix by way of a notice in the *Gazette*).

4B. If the person concerned so desires and indicates accordingly before the goods are cleared, the goods in respect of which the exemption in item no. 407.02/00.00/02.00 is applicable, may be cleared at the rates of duty specified in Schedule No. 1 to the Customs and Excise Act and with payment of VAT at the standard rate.

4C. If a person contravenes any provision of this Act, the Customs and Excise Act or any other law relating to the importation of goods, the Commissioner may refuse to grant any exemption provided for in item no. 407.02.

5. For the purposes of item no. 407.04/87.00/01.00(i) the vehicle in question shall not be deemed to be personally owned and used personally by the importer unless such importer was, at all reasonable times, personally present at the place where the vehicle was used by him or her, and the importer shall be deemed to have used that vehicle from the date on which he or she took physical delivery of the vehicle until the date on which the vehicle was delivered by him or her shippers or other agent for the purpose of shipment or dispatch.

6. For the purposes of item no. 407.04, the importer shall, if he or she is absent for a continuous period of longer than 3 months from the place where the vehicle is usually used in the Republic, not be deemed to have imported the vehicle for his personal or own use, and tax as determined by the Commissioner is payable as from the date of such absence.

7. The exemption in terms of item no. 407.04 is allowed only once per family during a period of 3 years.";

(d) by the insertion of the following item no.'s after Note 7 to item no. 407.00:

"**407.01** **Personal effects, sporting and recreational equipment, new or used:**

407.02 **Goods imported as accompanied passengers' baggage either by non-residents or residents of the**

Republic and cleared at the place where such persons disembark or enter the Republic:";

(e) by the insertion before item no. 407.02/22.00/01.00 of the following item:

"407.02/00.00/01.00	New or used goods, of a total value not exceeding R3 000 per person (or such other amount as the Minister may fix by notice in the *Gazette*)
407.02/00.00/02.00	Additional goods, new or used, of a total value not exceeding R12 000 per person (or such other amount as the Minister may fix by way of a notice in the *Gazette*), excluding goods of a class or kind specified in item no's. 407.02/22.00, 407.02/24.02, 407.02/24.03 and 407.02/33.03";

(f) by the substitution for item no. 407.02/24.02/01.00 of the following item:

"407.02/24.02/01.00	Cigarettes not exceeding **[400]** 200 and cigars not exceeding **[50]** 20 per person";

(g) by the deletion of item no's. 407.02/00.00/01.00 and 407.02/00.00/02.00;

(h) by the insertion of the following item no. before item no. 407.04/87.00/01.00:

"**407.04**	**Motor vehicles imported by natural persons for own use on change of permanent residence to the Republic:**";

(i) by the insertion of the following item no. before item no. 407.06/00.00/01.00:

"**407.06**	**Goods imported by natural persons for own use on change of residence to the Republic:**".

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

154. Item 409.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for paragraph 2 of the Notes to item no. 409.00 of the following paragraph:

"2. This exemption (excluding item no. 409.07) is allowed only if the goods can be identified as being the same goods which were exported.";

(b) by the substitution for the words preceeding subparagraph (a) in paragraph 3 of the Notes to item no. 409.00 of the following words:

"3. For the purposes of item no. 409.07—"; and

(c) by the substitution in item no. 409.07/00.00/01.00 for the words preceding paragraph (i) of the following words:

"409.07/00.00/01.00 Compensating products (excluding goods liable to the duties specified in Part 2 of Schedule No. 1 of the Customs and Excise Act) obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the International Trade Administration Commission, provided—".

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

155. Item 412.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraphs 1 and 2 of the Notes to item no. 412.00 of the following paragraphs:

"1. For the purposes of item**[s]** no.'s 412.03 and 412.04, the bill of entry or other document prescribed in terms of the Customs and Excise Act must be supported by an inventory of the goods and documentary proof that the goods qualify for exemption under these items.

2. For the purposes of item**[s]** no.'s 412.26 and 412.27, such exemptions are subject to compliance with sections 39 and 40 of

the Customs and Excise Act and which shall apply also to imports from or via Botswana, Lesotho, Namibia or Swaziland.".

Amendment of Item 470.00 of Schedule 1 of Act 89 of 1991

156. Item 470.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for paragraphs 2*(a)* and *(b)* of the Notes to item no. 470.00 of the following paragraph:

"2. *(a)* The exemption in terms of item**[s]** no's 470.01 or 470.03 is allowed only for goods to be used for the processing or manufacture of goods for export and the processed or manufactured goods must be exported within 12 months from the date of importation thereof.";

(b) The exemption in terms of item no. 470.02 is allowed only for parts to be used and the goods submitted for repair, cleaning or reconditioning must be exported within 6 months from the date of importation thereof:";

(b) by the substitution for paragraph 3 of the Notes to item no. 470.00 of the following paragraph:

"3. This exemption is allowed only if the Controller **[of Customs and Excise]** ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01 (c) of Chapter XIIA of the Rules under the Customs and Excise Act.".

Amendment of Item 480.00 of Schedule 1 to Act 89 of 1991

157. Item 480.00 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution of the words preceeding subparagraph (a) in paragraph 1 of the Notes to item no. 480.00:

"1. The exemption in terms of item no. 480.35 is allowed—";

(b) by the substitution for subparagraph (c) of paragraph 1 of the Notes to item no. 480.00 of the following subparagraph:

"*(c)* only if each sample is an article representative of a particular category of goods already produced or to be produced abroad, imported solely for the purpose of being shown or demonstrated free of charge to prospective customers."; and

(c) by the substitution for paragraphs 2, 3, and 4 of the Notes to item no. 480.00 of the following paragraphs:

"2. **[Goods]** All goods shall be re-exported—

(a) in the case of goods under an international carnet within the period of validity of such carnet; and

(b) in the case of other goods within 6 months from the date of importation, thereof or within such further period as the Commissioner may in exceptional circumstances, allow.

3. This exemption is allowed only if the Controller **[of Customs and Excise]** ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01 (c) of Chapter XIIA of the Rules under the Customs and Excise Act.

4. If proof is not furnished to the Commissioner that the goods have been duly re-exported within the time period prescribed in Note **[number]** no. 2, this exemption shall be withdrawn and tax, penalty and interest must be paid.".

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

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

(a) by the substitution for paragraphs 2 and 3 of the Notes to item no. 490.00 of the following paragraphs:

"2. This exemption is allowed only if the Controller **[of Customs and Excise]** ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01 (c) of Chapter XIIA of the Rules under the Customs and Excise Act.

3. If proof is not furnished to the Commissioner that the goods have been duly re-exported within the time period prescribed in Note **[number]** no. 1, this exemption shall be withdrawn and tax, penalty and interest must be paid."; and

(b) by the substitution for item no. 490.90/00.00/02.00 of the following item:

"490.90/00.00/02.00	Goods not specified in item**[s]** no.'s 470.00, 480.00 or 490.00, temporarily admitted for purposes approved by the Commissioner".

Amendment of section 1 of Act 38 of 1996

159. Section 1 of the Tax on Retirement Funds Act, 1996, is hereby amended by the substitution in the definition of "rental income" for paragraph *(d)* of the following paragraph:

"*(d)* any consideration payable by a borrower to the lender in respect of any "lending arrangement" as defined in section **[23 (1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968)]**1 of the Uncertificated Securities Tax Act, 1998 (Act No. 31 of 1998), as consideration for the use of any **[marketable]** security, in so far as such amount is not included in paragraph *(a)* of the definition of "interest";

Amendment of section 1 of Act 56 of 1996

160. (1) Section 1 of the Road Accident Fund Act, 1996 is hereby amended by the deletion of the definition of "fuel".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 5 of Act 56 of 1996

161. (1) Section 5 of the Road Accident Fund Act, 1996, is hereby amended—

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

"*(a)* by way of a **[fuel levy]** Road Accident Fund levy **[of all fuel sold within the Republic]** as contemplated in the Customs and Excise Act, 1964; and";

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

"(2) The Road Accident Fund levy paid into the National Revenue Fund in terms of the provisions of section 47(1) of the Customs and Excise Act, 1964, is a direct charge against the National Revenue Fund for the credit of the Fund."; and

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

(2) Subsection (1)*(c)* shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Substitution of the long title of Act 31 of 1998

162. The following long title hereby substitutes the long title of the Uncertificated Securities Tax Act, 1998:

"To provide for the levying of an uncertificated securities tax in respect of **[the issue of, and]** every change in beneficial ownership

in**[,]** any securities which are transferable without a written instrument and are not evidenced by a certificate; and to provide for matters connected therewith.".

Amendment of section 1 of Act 31 of 1998

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

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

"**'change in beneficial ownership'** in relation to a security includes the cancellation or redemption of that security but does not include any issue of that security;"; and

(b) by the deletion of the definition of "issuer".

(2) Subsections (1)*(a)* and *(b)* shall come into operation on 1 January 2006 and shall apply in respect of the issue of any security, and the cancellation or redemption of any security on or after that date.

Substitution of section 2 of Act 31 of 1998

164. (1) The following section hereby substitutes section 2 of the Uncertificated Securities Tax Act, 1998:

"**Imposition of tax**

2. (1) There shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the uncertificated securities tax, in respect of **[the issue of, and]** every change in beneficial ownership in any securities, at the rate of 0,25 per cent of the taxable amount of such securities determined in terms of this Act.

(2) If the Minister of Finance has announced any—

(a) change in the rate of uncertificated securities tax contemplated in subsection (1); or

(b) other change to the provisions of this Act which has the effect that the transfer of beneficial ownership in any security is no longer subject to uncertificated securities tax,

with effect from a date preceding the date on which the legislation giving effect to that change is promulgated, the change in the rate or to the provisions of this Act so announced applies with effect from the date determined by the Minister until the earlier of the date on which that legislation is promulgated or 6 months after that date so determined.".

(2) Subsection (1) shall—

(a) to the extent that it inserts subsection (2), come into operation on the date of promulgation of this Act; and

(b) to the extent that it amends the rest of section 2, come into operation on 1 January 2006 and applies in respect of the issue of any security on or after that date.

Repeal of section 3 of Act 31 of 1998

165. (1) Section 3 of the Uncertificated Securities Tax Act, 1998, is hereby repealed.

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of the issue of any security on or after that date.

Amendment of section 5 of Act 31 of 1998

166. (1) Section 5 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution for the heading of the following heading:

"**[Other transactions]** **Change in beneficial ownership in securities effected by a participant**".

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of every change in beneficial ownership in any security on or after that date.

Insertion of section 5A into Act 31 of 1998

167. (1) The following section is hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 5:

"**Other transactions**

5A.(1) The taxable amount in respect of every change of the beneficial ownership in securities shall be—

(a) the amount declared by the person who acquires beneficial ownership of those securities as the consideration paid for such securities; or

(b) if no amount referred to in paragraph *(a)* is declared, or if the amount so declared is less than the lowest price of the securities on the date of the relevant transaction or other manner of acquisition, the closing price of those securities on the date of the relevant transaction or other manner of acquisition:

Provided that this section shall not apply in respect of any change in beneficial ownership in securities in respect of which section 4 or 5 applies.

(2) The person who acquires the beneficial ownership of the securities shall be liable for the tax payable as contemplated in this section.".

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of every change in beneficial ownership in any security on or after that date.

Amendment of section 6 of Act 31 of 1998

168. (1) Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the deletion in subsection (1) of paragraph *(a)*.

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of the issue of any security on or after that date.

Amendment of section 7 of Act 31 of 1998

169. (1) Section 7 of the Uncertificated Securities Tax Act, 1998, is hereby amended—

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

(b) by the addition of the word "and" in subsection (1) after paragraph *(b); and*

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

"*(c)* referred to in section 5A is payable, by the person acquiring the beneficial ownership of the securities, to the Commissioner by the 14th day of every month in respect of changes in beneficial ownership in securities during the previous month, and that person shall by the same date submit a declaration, in the form and containing the information prescribed by the Commissioner, stating the amount of tax (if any) payable by that person.".

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of every change in beneficial ownership in any security on or after that date.

Amendment of section 13 of Act 31 of 1998

170. (1) Section 13 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the definition of "**administration of this Act**" of the following paragraph:

"*(a)* obtaining of full information in relation to **[the issue of, or]** every change in beneficial ownership in**[,]** any security;".

(2) Subsection (1) shall come into operation on 1 January 2006 and applies in respect of the issue of any security on or after that date.

Substitution of section 14A of Act 31 of 1998

171. The following section hereby substitutes section 14A of the Uncertificated Securities Tax Act, 1998:

"**Records**

14A. Any **[issuer,]** member, **[or]** participant or person who acquires the beneficial ownership in securities, 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, or by the person that has acquired the beneficial ownership in the securities, for a period of five years as may be required to enable the **[issuer,]** member, **[or]** participant**[,]**or the person that has acquired the beneficial ownership in the securities, 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 1 January 2006 and applies in respect of every change in beneficial ownership in any security on or after that date.

Amendment of section 54 of Act 45 of 2003

172. Section 54 of the Revenue Laws Amendment Act, 2003, is hereby amended by the substitution for subsection (2) of the following subsection:

"(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: Provided that where an unbundling transaction took effect after 6 November 2002 but before 22 December 2003, the unbundling company may elect that the provisions of section 46 of the Income Tax Act, 1962, prior to the amendments by this Act, should apply.".

Amendment of section 30 of Act 34 of 2004

173. Section 30 of the Second Revenue Laws Amendment Act, 2004 is hereby amended—

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

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

"(2) Subsection (1) shall come into operation on the date of promulgation of this Act.".

Short title and commencement

174. (1) This Act is called the Revenue Laws Amendment Act, 2005.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2006.