The draft **Revenue Laws Amendment Bill, 2006**, is hereby released for public comment.

It would be appreciated if comments on the draft legislation could be furnished by 17 October 2006. Please submit policy and technical comments separately. Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.

Comments must be submitted to either:

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DRAFT

REPUBLIC OF SOUTH AFRICA

REVENUE LAWS AMENDMENT BILL

(As introduced in the National Assembly as a money Bill)

(The English text of the Bill is the official text of the Bill)

(MINISTER OF FINANCE)

[B – 2006]

GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Transfer Duty Act, 1949, so as to provide for the exemption from duty of municipalities; to provide for the exemption from duty of water service providers; and to delete an obsolete provision in relation to the exemption of public benefit organizations from duty; to amend the Estate Duty Act, 1955, so as to provide for the declaration of an agent; to regulate the rights and duties of that agent; and to provide for the exemption of property bequeathed to a municipality; and to amend the Income Tax Act, 1962, so as to amend the definition of a company; to amend the definition of a connected person; to amend the definition of dividend; to insert a definition of a government scrapping allowance; to delete the definition of local authority; to substitute the definition of "mining" and "mining asset"; to insert a definition of municipality; to amend the definition of municipality; to insert a definition of regional electricity distributor; to amend the definition of municipality; to amend the definition of retirement annuity fund; to amend the definition of shareholder; to insert a definition of water services provider; to provide for the delegation powers and performance of duties by the Minister; to provide that the Commissioner may deem the portion of an allowance actually expended in respect of travel expenses; to further regulate the recoupment of amounts previously allowed as a deduction; to provide for the valuation of shares in a private company; to further regulate the taxation of residents in relation to foreign companies controlled by the resident; to amend the exemption of foreign states and their agencies and other multinational organizations and their employees; to regulate the exemption of regional electricity distributors, water services providers, mining rehabilitation funds, recreational clubs, interest received or accrued by non residents, the remuneration of the crew and officers of a ship, scholarships and bursaries, amounts paid by Government in respect of assets that are to be discarded and amounts paid

in terms of an official development assistance agreement; to further regulate the deduction of amounts paid to mining rehabilitation funds; to provide for increased deductions and allowances in respect of research and development; to further regulate the taxation of small business corporations; to further regulate the tax treatment of co-operatives and Friendly Societies; to further regulate the deduction of amounts donated to public benefit organisations; to further regulate the deduction of expenditure and allowances and base cost in respect of assets funded by government; to further regulate the double deduction of expenditure for tax purposes; to further regulate the incurral or accrual of interest; to regulate the tax treatment of mining for oil and gas; to delete obsolete provisions in relation to the long term insurance industry; to amend the regulation of public benefit organizations, recreational clubs and mining rehabilitation funds; to amend the definition of foreign financial instrument holding company; to further regulate the treatment of company formation and share for share transactions; to further regulate the disposal by a holding company of a share in a liquidating company; to amend the regulation of reportable arrangements; and to further regulate the issuing of additional assessments; to insert General Anti-avoidance Rules; to regulate the payment of tax in the case of objection and appeal against an assessment; to regulate certain administrative provisions of the Act; to regulate the taxation of lump sum benefits in relation to retirement funds; to further regulate the treatment of personal service entities; to exclude public benefit organizations and recreational clubs as provisional taxpayers; to clarify the definition of the tax threshold; to insert a definition of share in the Eighth Schedule; to regulate the treatment of capital gains in relation to deceased estates; to further regulate the capital gains tax treatment of assets disposed of which are used to produce exempt amounts; to provide for the treatment for capital gains tax purposes of assets disposed of for discarding by the government; to provide for the treatment of the disposal of assets by recreational clubs; to provide for the disposal of assets of a deceased estate in terms of a redistribution agreement; to amend the valuation date to cater for recreational clubs and public benefit organizations that are not exempt; to provide for an extension for the submission of valuations based on market value; to provide that a portion of a capital gain may be attributed to a beneficiary of a trust; to amend certain activities which are classified as public benefit activities; to confirm that donations and bequests to public benefit organizations continue to be disregarded; and to effect certain textual and consequential amendments and to delete certain obsolete provisions; to amend the Customs and Excise Act, 1964, so as to insert certain definitions and to amend the definition of container; to provide for powers and duties of the Director-General: Agriculture; to further regulate the circumstances in which the Commissioner or any officer may disclose information; to provide that goods may be examined by using an X-ray scanner or other non-intrusive inspection methods and matters relating thereto; to further provide for

places that may be appointed or prescribed where imported goods may be landed or from where goods may be exported; to further regulate reporting of the arrival and departure of a foreign-going ship or aircraft; to further regulate provisions relating to cargo reports; to amend provisions relating to the landing of imported goods and the loading of goods for export; to provide for seals and sealing of containers, sealing of packages and vehicles and goods to be secured by other fastenings and matters incidental thereto; to further regulate the removal of goods in bond by a container operator or pilot of an aircraft or airline; to further regulate the storage and entry of goods free of duty in a customs and excise warehouse; to amend definitions and delete a reference to a CCA enterprise permit in provisions for the administration of a customs controlled area in an industrial development zone; to delete section 31; to amend provisions in respect of biofuel so as to allow the Commissioner to exempt by rule any person or class of persons from licensing and to exempt a registered manufacturer from payment of duty as may be prescribed by rule; to amend the provisions relating to the time of entry of goods for export and to require that the Controller must be informed concerning a change in mode of transport of goods as may be prescribed by rule; to delete an obsolete appeal provision; to amend and to specify provisions relating to liability for duty of the master, pilot, any other carrier, terminal operator, combination terminal operator, bulk goods terminal operator, road vehicle terminal operator, transit shed operator, container operator and the container depot operator; to amend provisions regarding the amendment of anti-dumping, countervailing and safeguard duties and to provide for safeguard measures and the imposition of quotas; to provide for licensing of container terminals, combination terminals, road vehicle terminals, bulk goods terminals, container operators and transit shed operators; to amend the references to items of Schedule No. 6 in respect of refunds of distillate fuel, to delete references to Schedule No. 5 and items of that Schedule and to provide for deductions from the dutiable quantity of unmarked illuminating kerosene or unmarked specified aliphatic hydrocarbon solvents; to effect a textual amendment to a refund provision; to provide for a penal provision; to provide that notice must be delivered where any person applies to the High Court for the sale of arrested property under the Admiralty Jurisdiction Regulations Act 105 of 1983; to delete fine from the order in which instalments paid must be utilized; to provide for the licensing of an agent of a master, pilot or other carrier and to define airline and shipping line; to further regulate the handling and dealing with goods; to delete fine from the provisions relating to liens on goods and the order in which amounts recovered must be utilized; to further regulate provisions empowering the Commissioner to make rules; to deem that certain amendments in respect of section 69 came into operation on 1 July 2001; and to effect certain textual and consequential amendments; to amend the Stamp Duty Act, 1968, to delete obsolete references to sections in the Income Tax Act, 1962, which have been

deleted; to amend the Finance and Financial Adjustments Consolidations Act, 1977, so as to delete section 9 thereof; to amend the Value-Added Tax Act, 1991, so as to amend definitions in respect of foreign donor funded project; to amend and insert certain deeming provisions; to provide for zero-rating of fixed property located in a customs controlled area, and other supplies made to an Industrial Development Zone operator, and payments made by public authorities in respect of the Animal Diseases Act, 1984; to extend the list of vendors who may account for VAT on the payments basis; to further regulate the circumstances where input tax deductions may be claimed; to regulate the adjustments to be made by a customs controlled area enterprise and Industrial Development Zone operator in a customs controlled area; to regulate the provisions of bad debts; to further regulate the issuing of additional assessments; to amend and further provide for the issuing of binding VAT rulings; to effect certain textual and consequential amendments and to delete certain obsolete provisions; to amend the Uncertificated Securities Tax Act, 1998, so as to provide for the payment of uncertificated securities tax through a participant or member by the person liable for such payment; and to clarify the provisions regulating the recovery by the member or participant; and to effect certain textual and consequential amendments and to delete certain obsolete provisions; to amend the Revenue Laws Amendment Act, 2001, so as to repeal section 42 thereof; to amend the Unemployment Insurance Act, 2001, so as to repeal section 3(1)(e) thereof; and to repeal section 14(a)(i) thereof; to amend the Revenue Laws Amendment Act, 2003, so as to bring certain provisions thereof into operation; to amend the Revenue Laws Amendment Act, 2004, so as to delete the Advance Tax Ruling provisions from the VAT Act; to amend the Taxation Laws Amendment Act, 2005, so as to extend the date for the conversion of exchanges; and to provide for date of coming into operation of certain provisions; to amend the Taxation Laws Second Amendment Act, 2005, so as to delete the Advance Tax Ruling provisions from the VAT Act; to amend the Revenue Laws Second Amendment Act, 2005, so as to further regulate a request for reasons; to amend the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, so as to make textual amendments; to further regulate travel allowances in respect of overseas travel; and to provide for the rates of taxation in respect of recreational clubs or public benefit organizations; to amend the Second Small Business and Taxation Laws Amendment Act, 2006, so as to make certain textual amendments; to provide that the rules relating to objection and appeal apply to the amnesty for small business; to delete section 11 thereof; and to effect certain textual and consequential amendments and to delete certain obsolete provisions.

BE it enacted by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 9 of Act 40 of 1949

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

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

"*(b)* any **[rural council, municipal council, town council, village council, town board, local board, village management board, health committee or any district council or the Far West Rand Dolomitic Water Association formed on the 6 July, 1964, or the Rand Water Board, or the council established under section 2 of the Local Government Affairs Council Act (House of Assembly), 1989 (Act No. 84 of 1989), or the Local Authorities Loans Fund Board established by section 4 of the Local Authorities Loans Fund Act, 1984 (Act No. 67 of 1984), or any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985), or any joint services board established under section 4 of the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990)]** municipality as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);";

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

"(*b*B) any **[irrigation board established under Chapter VI, any water board established under Chapter VII or any body established under Chapter VIIA of the Water Act, 1956 (Act No. 54 of 1956), and any regional water services corporation constituted under section 7 of the Water Services Ordinance, 1963 (Ordinance No. 27 of 1963), of**

Natal] water services provider as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);"; and

(c) by the substitution for subsection (1A) of the following subsection:

"(1A) No duty shall be payable in respect of the registration of any property transferred by any public benefit organisation contemplated in paragraph (*a*) of the definition of "public benefit organisation" in section 30(1) that has been approved by the Commissioner in terms of section 30(3) **[which is exempt from tax in terms of the provisions of section 10(1)(*c*N)]** of the Income Tax Act, 1962 (Act No. 58 of 1962), to any other entity which is controlled by that public benefit organisation **[in order to comply with the provisions of the proviso to subsection (3) of section 30 of that Act]**;".

Amendment of section 4 of Act 45 of 1955

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

"(iii) the State or any **[local authority]** municipality as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962) **[within the Republic]**; or".

Insertion of section 12A and section 12B in Act 45 of 1955

3. The Estate Duty Act, 1955, is hereby amended by the insertion after section 12 of the following sections:

"**12A. Power to appoint agent.—**For purposes of this Act, the Commissioner may declare any person to be the agent of any other person, and the person so declared an agent—

(*a*) shall for the purposes of this Act be the agent of that other person in respect of the payment of any amount of duty or interest under this Act; and

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

Provided that a person so declared an agent who is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

12B. Remedies of Commissioner against agent or trustee.—The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property of any person liable to pay any duty or interest and in such a full and ample manner.".

Amendment of section 1 of Act 58 of 1962

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

(a) by the insertion in the definition of **"company"** after paragraph *(b)* of the following paragraph:

"*(c)* any co-operative; or";

(b) by the deletion in the definition of **"connected person"** of subparagraphs (i), (ii) and (iii) of paragraph *(d)*;

(c) by the insertion in the definition of **"connected person"** after subparagraph (*v*A) of paragraph (*d)* of the following subparagraph:

"(*v*B) any other company that would be part of the same group of companies as that company if the words "at least 70 per cent" in paragraph (*a*) and (*b*) of the

definition of **"group of companies"** in this section were substituted by the words "more than 50 per cent;";

(d) by the insertion after the definition of **"controlled foreign company"** of the following definition:

"**"co-operative"** means a co-operative as defined in section 1 of the Co-operatives Act, 1981 (Act No. 91 of 1981);

(e) by the substitution in the definition of **"dividend"** for paragraph (*c*) of the following paragraph:

"(*c*) in the event of the partial reduction or redemption of the capital of a company, (other than a portfolio, arrangement or scheme contemplated paragraph (*e*) of the definition of **"company"**), including the acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973)**[,]**—

(i) so much of the sum of any cash and the value of any asset given to a shareholder as exceeds the cash equivalent of—

[i](*aa*) the amount by which the nominal value of the shares of that shareholder is reduced; or

[ii](*bb*) the nominal value of the shares so acquired from such shareholder,

as the case may be; or

(ii) if the reduction or redemption is pursuant to that company acquiring its own shares by means of a distribution from its subsidiary, the amount of any reduction of the profits of that company as are available for distribution to shareholders; and";

(f) by the insertion after the definition of **"government grant"** of the following definition:

"**"government scrapping payment"** means any amount, in cash or otherwise, paid to any person by any department listed in Schedule 1 to the Public Service Act, 1994, (Proclamation No. 103 of 1994), (other than a provincial administration), or any such amount paid by any agency established by any such department, in respect of an asset of that person supplied to that department or agency solely for purposes of the scrapping, demolition, destruction or discarding of those assets;";

(g) by the deletion of the definition of **"local authority"**;

(h) by the substitution for the definition of **"mining operations"** and **"mining"** of the following definitions:

"**"mining operations"** and **"mining"** include every method or process by which any mineral **[(including natural oil)]** is won from the soil or from any substance or constituent thereof;";

(i) by the insertion after the definition of **"Minister"** of the following definition:

"**"municipality"** means a municipality which is within a category listed in section 155 (1) of the Constitution of the Republic of South Africa, 1996, and which is an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);";

(j) by the substitution in the definition of **"pension fund"** for subparagraph (ii) of paragraph (*a*) of the following subparagraph:

"(ii) any superannuation, pension, provident or dependants' fund or pension scheme established for the benefit of the employees of any municipality or of any local authority (as defined in the definition of **"local authority"** in section 1 prior to the coming into operation of section 4*(g)* of the Revenue Laws Amendment Act, 2006, that was established prior to the date that section so came into operation); or";

(k) by the substitution in the definition of **"pension fund"** for the words preceding item (*aa*) of subparagraph (iii) of paragraph (*a*) of the following words:

"(iii) any fund contemplated in subparagraph (ii), which includes as members employees of any municipal entity created in accordance with the provisions of the Municipal Systems Act, 2000 (Act No. 32 of 2000), over which one or more municipalities or local authorities (as defined in section 1 prior to the coming into operation of section 4(*g*) the Revenue Laws Amendment Act, 2006, and that was established prior to the date that section so came into operation) as exercise ownership control as contemplated by that Act, where such fund was established—";

(l) by the substitution in the definition of **"pension fund"** for item (*aa*) of subparagraph (iii) of paragraph (*a*) of the following item:

"(*aa*) on or before 14 November 2000, and such employees were employees of a local authority (as defined in section 1 prior to the coming into operation of section 4(*e*) of the Revenue Laws Amendment Act, 2006, and that was established prior to the date that section so

came into operation) immediately prior to becoming employees of such municipal entity; or";

(m) by the insertion after the definition of **"Public Private Partnership"** of the following definition:

"**"regional electricity distributor"** means an electricity distribution services provider established after 31 December 2005 that is regulated under the Public Finance Management Act, 1999 (Act No. 1 of 1999) or the Local Government: Municipal Systems Act, (No. 32 of 2000);";

(n) by the substitution for the definition of **"Republic"** of the following definition:

"Republic" means the **[Republic of South Africa]** territory of the Republic of South Africa, including the territorial waters, the contiguous zone and the continental shelf referred to respectively in sections 4, 5 and 8 of the Maritime Zones Act, 1994, (Act No. 15 of 1994);";

(o) by the substitution in the definition of **"retirement annuity fund"** for subparagraph (x) of paragraph (*b*) of the following subparagraph:

"(*x*) that a member who discontinues his contributions prematurely shall be entitled to—

(*aa*) an annuity (payable from the date on which he would have become entitled to the payment of an annuity if he had continued his contributions) determined in relation to his actual contributions; or

(*bb*) **[to]**be reinstated as a full member under conditions prescribed in the rules of the fund; or

(*cc*) the payment of one or more lump sum benefits, where that member's interest in the fund is less

than an amount determined by the Minister by notice in the *Gazette* from time to time;";

(p) by the substitution in the definition of **"retirement annuity fund"** for item (*aa*) of subparagraph (*x*ii) of paragraph (*b*) of the following item:

"(*aa*) as is contemplated in subparagraph (ii); **[or]**";

(q) by the insertion in the definition of **"retirement annuity fund"** after item (*bb*) of subparagraph (*x*ii) of paragraph (*b*) of the following items:

"(*cc*) for the benefit contemplated in paragraph (*b*) (*x*) (*cc*); or

(*dd*) as contemplated by Part V of the Policyholder Protection Rules promulgated pursuant to the Long-term Insurance Act, 1998 (Act No. 52 of 1998),";

(r) by the insertion in the definition of **"shareholder"** after paragraph (*c*) of the following paragraph:

"(*d*) in relation to any co-operative, means a member of such co-operative;"; and

(s) by the insertion after the definition of **"trustee"** of the following definition:

"**"water services provider"** means a water services provider regulated under the Public Finance Management Act, 1999 (Act No. 1 of 1999), or the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and any wholly owned subsidiary thereof that is such a water services provider;".

(2) Paragraphs (*o*), (*p*) and (*q*) of subsection (1) shall come into operation on date to be determined by the Minister by notice in the *Gazette*.

Amendment of section 3 of Act 58 of 1962

5. (1) Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) Any decision of the Commissioner under the definitions of 'benefit fund', 'pension fund', 'provident fund', 'retirement annuity fund' and 'spouse' in section 1, section 6, section 8(4)*(b)*, *(c)*, *(d)* and *(e)*, section 9D, section 10(1)*(c*H*)*, *(c*K*)*, *(e)*, *(i*A*)*, *(j)* and *(n*B*)*, section 11*(e)*, *(f)*, *(g)*, *(g*A*)*, *(j)*, *(l)*, *(t)*, *(u)* and *(w)*, section 12C, section 12E, section 12G, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 30, section 31, section 35(2), section 38(4), section 41(4), section 57, section 76A, section 80B, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph *(b)* of the definition of 'formula A' in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 24 and 27 of the Fourth Schedule, paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule and paragraphs 29(2A), 29(7), 31(2), 65(1)*(d)* and 66(1)*(e)* of the Eighth Schedule, shall be subject to objection and appeal.".

(2) Subsection (1) shall come into operation when Part IIA of Chapter III of the Income Tax Act, 1962, comes into operation.

Insertion of section 4A of Act 52 of 1968

6. The Income Tax Act, 1962, is hereby amended by the insertion after section 4 of the following section:

"**4A. Delegation of powers and performance of duties by Minister.—** The powers conferred and the duties imposed upon the Minister by or under the provisions of this Act may be exercised or performed by the Minister personally, or delegated by the Minister to the Director-General of the National Treasury or any officer or person under the Director-General's control, direction or supervision.".

Amendment of section 5 of Act 58 of 1962

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

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

"(2) Subject to the provisions of subsections **[(2A) and]**(3) to (7), inclusive, and the provisions of the Fourth Schedule, the rates of tax chargeable in respect of taxable income shall be fixed annually by Parliament, but the rates fixed by Parliament in respect of any year of assessment or financial year or, if the rates so fixed have been varied by the Minister of Finance by way of an amendment made under subsection (3) which is still in force, the rates as so varied, shall be deemed to continue in force until the next such determination or variation of rates and shall be applied for the purposes of calculating the tax payable in respect of any such taxable income received by or accrued to or in favour of any person during the next succeeding year of assessment or financial year, as the case may be, if in the opinion of the Commissioner the calculation and collection of the tax chargeable in respect of such taxable income cannot without risk of loss of revenue be postponed until after the rates for that year have been determined."; and

(b) by the deletion in section 5 of subsection (2A).

Amendment of section 8 of Act 58 of 1962

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

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

"(ii) for each day or part of a day in the period during which that recipient is absent from his or her usual place of residence, an amount in respect of meals and other incidental costs, or incidental costs only, as **[determined by the Minister]** the Commissioner may determine for a country or region for the relevant year of assessment by way of notice in the *Gazette*, but limited to the amount of the allowance paid or granted to meet those expenses:"; and

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

"(*k*) For the purposes of paragraph (*a*), where during any year of assessment any person has—

(i) donated any asset;

(ii) in the case of a company, transferred in whatever manner or form any asset to any shareholder of that company; or

(iii) disposed of any asset to a person who is a connected person in relation to that person,

in respect of which a deduction or an allowance has been granted to such person in terms of any of the provisions referred to in that paragraph, **[such]** that person shall be deemed to have **[recovered or recouped]** disposed of that asset for an amount equal to the market value of **[such]** that asset as at the date of **[such]** that donation, transfer or disposal.''.

Amendment of section 8B of Act 58 of 1962

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

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

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

(b) 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 person who acquired the equity shares as contemplated in **[subsection (1)]** paragraph (*a*) at market value; or

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

(2) Subsection (1) is deemed to have 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

10. Section 8C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (7) for the definition of **"market value"** of the following definition:

"**"market value"** means in relation to an equity instrument **[means]**—

(*a*) of a private company as contemplated in section 20 of the Companies Act, 1973, (Act No. 61 of 1973) or a company which would be regarded as a private company if it was incorporated under that Act, an amount determined as its value in terms of a method of valuation—

(i) prescribed in the rules relating to the acquisition and disposal of that equity instrument;

(ii) which is regarded as a proxy for the market value of that equity instrument for the purpose of those rules;

(iii) and used consistently to determine both the consideration for the acquisition of that equity instrument and the price of the equity instrument repurchased from the taxpayer after it has vested in that taxpayer; or

(*b*) of any other company, the price which could be obtained upon the sale of that equity instrument between a willing buyer and a willing seller dealing freely at arm's length in an open market and, in the case of a restricted equity instrument, had the restriction to which that equity instrument is subject not existed;".

Amendment of section 9 of Act 58 of 1962

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

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

"(*e*) any services rendered by such person to or work or labour done by such person for or on behalf of any employer in the national or provincial sphere of government or any **[local authority]** municipality in the Republic or any national or provincial public entity if not less than 80 per cent of the expenditure of such entity is defrayed directly or indirectly from funds voted by Parliament, notwithstanding that such services are rendered or that such work or labour is done outside the Republic, provided such services are rendered or such work or labour is done in accordance with a contract of employment entered into with the government or **[local authority]** municipality or national or provincial public entity; or";

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

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

"(i) by the Government, any provincial administration, or by any **[local authority]** municipality in the Republic; or".

Amendment of section 9D of Act 58 of 1962

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

(a) by the deletion in subsection (1) of the definition of **"business establishment"**;

(b) by the insertion in subsection (1) after the definition of **"controlled foreign company"** of the following definition:

"**"country of residence"**, in relation to a controlled foreign company means the country where that company has its place of effective management;";

(c) by the insertion in subsection (1) after the definition of "**country of residence"** as inserted by this Act of the following definition:

"**"foreign business establishment"**, in relation to a controlled foreign company, means—

(*a*) a place of business with an office, shop, factory, warehouse or other structure which is used or will continue to be used by that controlled foreign company for a period of not less than one year, whereby the business of such company is carried on, and where that place of business—

(i) is suitably staffed with on-site managerial and operational employees of that controlled foreign company, or of any other company that is a resident of the same country of residence as that controlled foreign company and that forms part of the same group of companies as that controlled foreign company, and which management and employees are required to render services on a full time basis for the purposes of conducting the primary operations of that business; and

(ii) is suitably equipped and has proper facilities for such purposes; and

(iii) is located in any country other than the Republic and is used for a *bona fide* business purpose (other than the avoidance, postponement or reduction of any liability for payment of any tax, duty or levy imposed by this Act or by any other Act administered by the Commissioner);

(*b*) any place outside the Republic where prospecting or exploration operations for natural resources are carried on, or any place outside the Republic where mining or production operations of natural resources are carried on, where that controlled foreign company carries on those prospecting, exploration, mining or production operations;

(*c*) a site for the construction or installation of buildings, bridges, roads, pipelines, heavy machinery or other projects of a comparable magnitude in any place other than the Republic which lasts for a period of not less than six months, where that controlled foreign company carries on those construction or installation activities;

(*d*) agricultural land in any country other than the Republic used for *bona fide* farming activities directly carried on by that controlled foreign company; or

(*e*) a vessel, vehicle or aircraft used for purposes of transportation or fishing, or prospecting or exploration for natural resources, or mining or production of natural resources, where that vessel, vehicle or aircraft is used solely outside the Republic for such purposes and is operated directly by that controlled foreign company;";

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

"(*b*) any **[financial]** instrument **[which constitutes a loan, advance or debt]** as defined in section 24J (1) entered into between companies which form part of the same associated group of companies;";

(e) 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 (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 where that controlled foreign company and that other controlled foreign company form part of the same group of companies **[, as contemplated in subsection (9) (*f*A)]**, unless—

(i) 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; or

(ii) that interest, rental, royalty or other income is included in the net income of that other controlled foreign company;";

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

"(*b*) is attributable to any foreign business establishment (including the disposal or deemed disposal of any assets forming part of that foreign business establishment) of that controlled foreign company **[in any country other than the Republic]**:";

(g) by the substitution in subsection (9) for subitems (C) and (D) of item (*bb*) of subparagraph (ii) of paragraph (*b*) of the following items:

"(C) the products are sold by that controlled foreign company to persons who are not connected persons in relation to that controlled foreign company, for physical delivery to the premises of clients situated within the country of residence of that controlled foreign company; or

(D) products of the same or similar nature are sold by that controlled foreign company mainly to persons who are not connected persons in relation to that controlled foreign company for physical delivery to the premises of clients situated within the country of residence of that controlled foreign company;";

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

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

(i) by the substitution in subsection (9) for subitem (B) of item (*cc*) of subparagraph (ii) of paragraph (*b*) of the following item:

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

(j) by the insertion in subsection (9) after subitem (B) of item (*cc*) of subparagraph (ii) of paragraph (*b*) of the following subitems:

"(C) is rendered mainly in the country of residence of the controlled foreign company for the benefit of clients that have premises situated in that country; or

(D) to the extent no deduction is allowed of any amount paid by that connected person to that controlled foreign company in respect of those services;";

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

"(*aa*) to the extent that any income and capital gains attributable to those amounts (other than income or capital gains in respect of which any of the provisions contained in paragraphs (*e*) to (*f*B) apply) do not in total exceed ten per cent of the income and capital gains of the controlled foreign company attributed

to that foreign business establishment other than income or capital gains—";

(l) by the deletion in subsection (9) of subitem (B) of item (*cc*) of subparagraph (iii) of paragraph (*b*);

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

"(*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 (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 company and any other controlled foreign company are parties, where that controlled foreign company and that other controlled foreign company form part of the same group of companies: Provided that any such amount may, at the election of any resident contemplated in subsection (2), be so taken into account;";

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

"(*f*B) is attributable to 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 foreign business establishment of any other controlled foreign company, where that company and that other controlled foreign company form part of the same group of companies; or"; and

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

"(10) **[For the purposes of subsection (9) (b) (ii) the Minister may]**The Commissioner may grant exemption to any person

from the application of subsection (9)(*b*)(ii) in respect of any sale of goods or service rendered by a controlled foreign company in which that person holds participation rights if—

(a) (i) **[by notice in the *Gazette* determine that one or more foreign countries be treated as one if such foreign countries comprise a single economic market and such treatment will not lead to an unacceptable erosion of the tax base]**the income from that sale or service is subject to tax in one or more other countries that is equal to at least two-thirds of the normal tax that would have been payable by that person in connection with that sale or service had subsection 9(b)(ii) applied in respect of that sale or service, after taking into account—

(aa) any applicable agreements for the prevention of double taxation, and

(bb) any assessed loss, credit, rebate or other right of recovery to which that person or any connected person in relation to that person may be entitled; or

[*b*] (ii) **[in consultation with the Minister grant exemption to any person from the application of subsection (9) (b) (ii), to the extent that its application will unreasonably prejudice national economic policies or South African international trade and such exemption will not lead to an unacceptable erosion of the tax base]**the foreign business establishment of the controlled foreign

company situated in that company's country of residence serves as a central location for business conducted in at least two contiguous countries;"; and

(*b*) such exemption will not lead to an unacceptable erosion of the tax base.".

Amendment of section 10 of Act 58 of 1962

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

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

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

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

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

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

"(*b*A) the receipts and accruals of—

(i) any sphere of government of any country other than the Republic;

(ii) any agency to the extent that agency is established by a foreign government that has been appointed by that government to administer its responsibilities and functions in terms of an official development assistance agreement which is binding in terms of section 231 (3) of the Constitution of the Republic of

South Africa Act, 1996 (Act No. 108 of 1996); or

(iii) any multinational organisation providing foreign donor funding in terms of an official development assistance agreement that is binding in terms of section 231 (3) of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996), to the extent—

(*aa*) the receipts and accruals are derived pursuant to the organisation supplying goods or rendering services in relation to projects that are approved by the Minister after consultation with the Minister of Foreign Affairs,

(*bb*) that agreement provides that those receipts and accruals of that organisation must be exempt; and

(*cc*) the Minister announces that those receipts and accruals are exempt by Notice in the *Gazette*.";

(d) by the insertion in subsection (1) after subparagraph (v) of paragraph (*c*) of the following subparagraph:

"(vi) any salary and emoluments payable to any person that is a subject of a foreign state and who is not a resident to the extent that salary or emoluments are paid by—

(aa) an agency contemplated in subsection (1)(*b*A)(ii) in respect of any agreement contemplated therein; or

(*bb*) an organisation contemplated in subsection (1) (*b*A)(iii) in respect of services rendered in relation to a project contemplated therein.";

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

"(i) any institution, board or body (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), or under any law repealed by that Act and any co-operative **[formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981)]**, and any close corporation and any trust), and any regional electricity distributor, and any water services provider, and any Black tribal authority, community authority, Black regional authority or Black territorial authority contemplated in section 2 of the Black Authorities Act, 1951 (Act No. 68 of 1951)) established by or under any law and which, in the furtherance of its sole or principal object—";

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

"(*c*B) the receipts and accruals of a fund contemplated in section 37A;";

(g) by the deletion in subsection (1) of paragraph (*c*H);

(h) by the substitution in subsection (1) for subparagraph (v) of paragraph (*c*M) of the following subparagraph:

"(v) the business directly connected with the sole or principal object was previously carried on by a **[municipal council]** municipality and the control of

the company is exercised by such **[municipal council]** municipality; and";

(i) by the substitution in subsection (1) for item (*bb*) of subparagraph (vi) of paragraph (*c*M) of the following item:

"(*bb*) a **[local authority]** municipality to utilize such assets for the same objects as the aforesaid company:";

(j) by the substitution in subsection (1) for paragraph (*b*) of the proviso to subparagraph (vi) of paragraph (*c*M) of the following paragraph:

"(*b*) where the Commissioner has withdrawn his approval of such company, it shall, within two months from the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any company which is exempt from tax under this paragraph or to a **[local authority]** municipality to utilize such assets for the same objects as the aforesaid company;";

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

"(*c*O) the receipts and accruals of any recreational club approved by the Commissioner in terms of section 30A, derived—

(i) in the form of membership fees or subscriptions paid by its members;

(ii) in the form of payments by members in respect of any social or recreational facilities, amenities or services provided directly to the members;

(iii) from any fundraising activities of that club, which are of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;

(iv) from any other source if the receipts and accruals derived from that other source do not in total exceed R20 000.";

(l) by the deletion in subsection (1) of item *(aa)* of subparagraph (iv) of paragraph *(d)*;

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

"(*h*) interest as defined in section 24J (1), which is received or accrued during any year of assessment by or to any person who is not a resident, unless that person—";

(n) by the substitution in subsection (1) for item (*bb*) of subparagraph (i) of paragraph (*o*) of the following item:

"(*bb*) in the prospecting, exploration, mining or production (including surveys and other **[exploratory]** work of a similar nature) for**[, or the mining of,]** any minerals (including natural oils) from the seabed outside the Republic **[continental shelf of the Republic as contemplated in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994)]**, where such officer or crew member is employed on board such ship solely for purposes of the "passage" of such ship, as defined in the Marine Traffic Act, 1981 (Act No. 2 of 1981),";

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

"(*p*) any amount received by or accrued to any person who is not a resident, for services rendered or work or labour done by him outside the Republic for or on behalf of any employer in the national or provincial sphere of Government or any **[local authority]**

municipality in the Republic or any national or provincial public entity if not less than 80 per cent of the expenditure of such entity is defrayed directly or indirectly from funds voted by Parliament, if such amount is chargeable with income tax in the country in which he is ordinarily resident and the income tax so chargeable is borne by himself and is not paid on his behalf by the Government, the **[local authority]** municipality concerned or such public entity;";

(p) the substitution in subsection (1) for paragraph (*q*) of the following paragraph:

"(*q*) any *bona fide* scholarship or bursary granted to enable or assist any person to study at a recognized educational or research institution: Provided that if any such scholarship or bursary has been so granted by an employer or an associated institution (as respectively defined in paragraph 1 of the Seventh Schedule) to an employee (as defined in the said paragraph) or to a relative of such employee **[in circumstances indicating that the scholarship or bursary concerned would not have been granted had that employee not been an employee of that employer]**, the exemption under this paragraph shall not apply—

(i) **[if any remuneration to which the employee was entitled or might in the future have become entitled was in any manner whatsoever reduced or forfeited as a result of the grant of such scholarship or bursary]** in the case of a scholarship or bursary granted to so enable or assist any such employee,

unless the employee agrees to reimburse the employer for any scholarship or bursary granted to that employee if that employee fails to complete his or her studies for reasons other than death, ill-health or injury;

(ii) in the case of a scholarship or bursary granted to enable or assist any such relative of an employee so to study—

(*aa*) if the remuneration derived by the employee during the year of assessment exceeded R60 000; and

[(iii)] (*bb*) to so much of any scholarship or bursary contemplated in this subparagraph **[(ii)]** as in the case of any such relative exceeds R2 000 during the year of assessment;";

(q) by the insertion in subsection (1) after subparagraph (vi) of paragraph (*t*) of the following subparagraphs:

"(vii) of any traditional council as contemplated in the Communal Land Rights Act, 2004 (Act No. 11 of 2004), during any year of assessment commencing before a date that may be determined by the Minister by Notice in the *Gazette*;

(viii) of any regional electricity distributor during any year of assessment commencing before 1 January 2014, or a before a later date that may be determined by the Minister by notice in the *Gazette*;";

(ix) of any water services provider;";

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

"(*y*) any government grant or government scrapping payment 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—";

(s) by the substitution in subsection (1) for subparagraph (iii) of paragraph (*y*) of the following subparagraph:

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

(t) by the substitution in subsection (1) for paragraph (iv) of paragraph (*y*) of the following subparagraph:

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

(u) by the insertion in subsection (1) after paragraph (*y*) of the following paragraphs:

"(*y*A) any amount received by or accrued to any person in respect of goods and services provided to beneficiaries in terms of an official development assistance agreement that is binding in terms of section 231 (3) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) to the extent—

(*aa*) that amount is received or accrued in relation to projects that are approved by the Minister

after consultation with the Minister of Foreign Affairs,

(bb) that agreement provides that those receipts and accruals of that organisation must be exempt; and

(cc) the Minister announces that those receipts and accruals are exempt by Notice in the *Gazette*.".

(2) Paragraphs (*f*) and (*g*) of subsection (1) come into operation on 2 November 2006 and apply in respect of any year of assessment commencing on or after that date.

(3) Paragraphs (*k*) and (*l*) of subsection (1) come into operation on 1 April 2007 and apply in respect of any year of assessment commencing on or after that date.

Amendment of section 11 of Act 58 of 1962

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

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

"(*g*B) expenditure (other than expenditure which has qualified in whole or in part for deduction or allowance under any of the other provisions of this section) actually incurred by the taxpayer during the year of assessment in obtaining the grant of any patent or the restoration of any patent, or the extension of the term of any patent under the Patents Act, 1978 (Act No. 57 of 1978), or the registration of any copyright, or the extension of the registration period of any copyright, or the registration of any design, or the extension of

the registration period of any design under the Designs Act, 1993 (Act No. 195 of 1993), or the renewal of the registration of any trade mark under the Trade Marks Act, 1993 (Act No. 194 of 1993), or under similar laws of any other country, if such patent, copyright, design, or trade mark is used by the taxpayer in the production of his income or income is derived by him therefrom**[:Provided that no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004]**;"; and

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

"(*h*A) so much of any amount (other than an amount in respect of which any deduction or allowance has been or will be granted under any other provision of this Act) paid in cash during any year of assessment commencing before 2 November 2006 by a taxpayer engaged in mining, prospecting, quarrying or similar operations to a company, society, association of persons or trust referred to in section 10(1)(*c*H) to be used for the purposes contemplated in that section as does not exceed an amount determined in accordance with the formula:

$$\frac{A - B = C}{D}$$

in which formula in respect of each mine—

"A" represents the amount determined by a person designated by the Minister of Minerals and Energy of the estimated costs to be incurred at the time that or

after operations on the mine or part of the mine are discontinued in order to discharge the obligations imposed in terms of any law which regulates mining operations (other than costs which were required in terms of any law to be incurred on an ongoing basis during the life of that mine or part of that mine;

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

"C" means the amount paid in cash by that taxpayer to such company, such association company, society or trust at any time before the date contemplated in symbol "B" which has not been allowed as a deduction in terms of this paragraph in any year of assessment; and

"D" represents the estimated remaining life of that mine in number of years as determined by a person contemplated in symbol "A":

Provided that so much of the amount so paid in cash by that taxpayer as exceeds the deduction allowable in terms of this paragraph shall, for the purposes of this paragraph, be deemed to be an amount paid by the taxpayer in cash to that company, society, association or trust in the immediately succeeding year of assessment to be used for the purpose contemplated in sections 10(1)(*c*H) or 37A;".

(2) Paragraph (*a*) of subsection (1) is deemed to have come into operation on 2 November 2006 and will be deemed to apply in respect of expenditure incurred and buildings, machinery, plant, implements, utensils and articles of a capital nature that are brought

into use during any year of assessment commencing on or after that date.

(3) Paragraph (*b*) of subsection (1) will be deemed to have come into operation on 2 November 2006 and will be deemed to apply in respect of any year of assessment commencing on or after that date.

Amendment of Section 11B of Act 58 of 1962

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

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

(b) by the insertion after subsection (6) of the following subsection:

"(7) Notwithstanding any other provision of this section, no deduction shall be allowed under this section in respect of any expenditure contemplated in subsection (2), or any cost contemplated in subsection (3), if the expenditure was incurred during any year of assessment commencing on or after 2 November 2006, of if the building, machinery, plant, implement, utensil and article of a capital nature was brought into use for the first time during any year of assessment commencing on or after that date.".

Insertion of section 11D in Act 58 of 1962

16. The Income Tax Act, 1962, is hereby amended by the insertion after section 11C of the following section:

(1) "**11D. Deductions in respect of scientific or technological research and development.—**(1) There shall be allowed as a deduction during any year of assessment–

(a) an amount equal to 150 per cent of so much of any expenditure actually incurred by a taxpayer in that year of assessment (other than costs contemplated in subsection (2)) directly in respect of activities undertaken in the Republic for purposes of –

(i) the discovery of novel, practical and non obvious information of a scientific or technological nature; or

(ii) the devising, developing, or creating of any invention as defined in section 1 of the Patents Act, 1978 (Act no. 57 of 1978), any design as defined in section 1 of the Designs Act, 1993, (Act No. 195 of 1993) or any computer program as defined in section 1 of the Copyright Act, 1978 (Act No. 98 of 1978), or other similar property, of a scientific or technological nature;

(2) There shall be allowed as a deduction by a taxpayer in respect of any building, machinery, plant, implement, utensil and article of a capital nature brought into use by that taxpayer for purposes contemplated in subsection (1), an allowance equal to 50 per cent of the cost to the taxpayer of that building, machinery, plant, implement, utensil and article in the year of assessment that it is brought into use for the first time by that taxpayer and 30 per cent in the first succeeding year of assessment and 20 per cent in the second succeeding year of assessment: Provided that where any building was used partly for those purposes and partly for other purposes in the same year of assessment, the allowance for that year of assessment shall be limited to an amount which bears

to the full amount of the allowance for that year, the same ratio as the use of that building for those purposes bears to the total use of that building in that year of assessment.

(3) Notwithstanding any other provision of this section, any building, or any part thereof, shall be deemed not to have been used for purposes contemplated in subsection (2) unless such building or part is regularly used for those purposes and is specifically equipped for such use.

(4) Notwithstanding any other provision of this section, no deduction shall be allowed in terms of subsections (1) or (2) in respect of expenditure or costs relating to –

(*a*) exploration or prospecting;

(*b*) management or internal business processes;

(c) trade marks;

(*d*) the social sciences or humanities; or

(e) market research, sales or marketing promotion

(5) No deduction shall be allowed under subsection (1) or (2) unless control of that new information, or beneficial ownership of that invention, patent, design, copyright or other property, as the case may be, will vest wholly in that taxpayer.

(6) The allowance contemplated in this section shall apply in lieu of any other deduction or allowance granted under any other provision of this Act, unless the taxpayer elects in the year of assessment that the building, machinery, plant, equipment, utensil or article is brought into use for the first time by that taxpayer that the deduction or allowance granted under that other provision shall apply, in which case

subsection (2) shall not apply in respect of that building, machinery, plant, implement, utensil or article, as the case may be.

(7) Where any government grant is received by or accrues to any taxpayer to fund expenditure incurred or to be incurred for purposes as contemplated in subsection (1), the deduction of 150 per cent of expenditure in terms of that subsection shall be allowed only to the extent of expenditure for those purposes that exceeds an amount equal to twice the amount of that government grant, and, notwithstanding any other provision of this Act—

(*aa*) the balance of the expenditure incurred shall not be allowed as a deduction if the grant was not subject to tax; and

(bb) an amount equal to 100% of the balance of the expenditure incurred shall be allowed as a deduction if the grant was subject to tax".

(8) In respect of each year of assessment during which any taxpayer is eligible for any deduction contemplated in subsections (1) or (2), or would be so eligible were it not for the provisions of subsection (6), that taxpayer must submit to the Minister of Science and Technology such information as that Minister may require and shall be submitted in such form and manner (including electronically) and at such place as that Minister may from time to time prescribe.

(9) The Minister of Science and Technology shall annually and in anonymous form submit to Parliament a report advising Parliament of the direct benefits of the activities contemplated in subsection (1) in terms

of economic growth, employment and other broader government objectives and the aggregate expenditure in respect of such activities.

(10) Other than as may be required by subsection (9), every person employed or engaged by the Minister of Science and Technology in carrying out the provisions of this section shall preserve and aid in preserving secrecy with regard to all matters that may come to his or her knowledge in the performance of his or her duties in connection with those provisions, and shall not communicate any such matter to any person whatsoever other than the Commissioner or the taxpayer concerned or his or her lawful representative nor suffer or permit any such person to have access to any records in the possession of that Minister except in the performance of his or her duties as required by the laws of the Republic or by order of a competent court.

(11) Every person employed or engaged as contemplated in subsection (10) shall, before acting under this section, take and subscribe before a magistrate or justice of the peace or a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed as contemplated in section 4 (1) (*a*).

(12) The provisions of subsection (11) shall not apply in respect of information relating to any person, where that person has consented in writing that such information may be published or made known to any other person.

(13) Any person who contravenes the provisions of section (10) or (11) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.".

(2) Subsection (1) will be deemed to have come into operation on 2 November 2006 and will be deemed to apply in respect of expenditure incurred, or buildings, machinery, plant, implements, utensils and articles of a capital nature brought into use for the first time, during any year of assessment commencing on or after that date.

Amendment of section 12E of Act 58 of 1962

17. Section 12E of the Income Tax Act, 1962, is hereby amended—

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

"**"small business corporation"** means any close corporation, co-operative or company registered as a private company in terms of the Companies Act, 1973 (Act No. 61 of 1973), all the **[entire shareholding]** shareholders of which **[is]** are at all times during the year of assessment **[held by shareholders or members that are]** natural persons, where—";

(b) by the insertion in subsection (4) after item (*cc*) of subparagraph (ii) of paragraph (*a*) of the following subitems:

"(*dd*) a social or consumer co-operative or a co-operative burial society as defined in section 1 of the Co-operatives Act, 2005 (Act No. 14 of 2005) or any other similar co-operative if all of the income derived from the trade of that co-operative during any year of assessment is solely derived from its members; or

(*ee*) any friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956);";

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

"(*c*) any income in the form of dividends, royalties, rental derived in respect of immovable property, annuities or income of a similar nature;"; and

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

"(ii) that company or close corporation does not throughout the year of assessment employ **[at least four]** three or more full-time employees (other than any employee who is a shareholder of the company or member of the close corporation, as the case may be, or who is a connected person in relation to a shareholder or member), who are on a full-time basis engaged in the business of that company or close corporation of rendering that service.".

Amendment of section 15 of Act 58 of 1962

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

"(*b*) any expenditure incurred by the taxpayer during the year of assessment on prospecting operations (including surveys, boreholes, trenches, pits and other prospecting **[exploratory]** work preliminary to the establishment of a mine) in respect of any area within the Republic together with any other expenditure which is incidental to such operations:".

Amendment of section 18A of Act 58 of 1962

19. Section 18A of the Income Tax Act, 1962, is hereby amended—

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

"(i) public benefit organisation contemplated in paragraph (*a*)(i) of the definition of **"public benefit organisation"** in section 30 (1) approved by the Commissioner under section 30; or";

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

"(*b*) any public benefit organisation contemplated in paragraph (*a*)(i) of the definition of **"public benefit organisation"** in section 30 (1) approved by the Commissioner under section 30, which provides funds or assets to any public benefit organisation, institution, board or body contemplated in paragraph (*a*); or";

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

"(*c*) the Government, any provincial administration or **[local authority]** municipality as contemplated in section 10 (1) (*a*) or (*b*) to be used for the purpose of any activity contemplated in Part II of the Ninth Schedule,";

(d) by the substitution for subsection (1A) of the following subsection:

"(1A) The Minister may, by regulation, prescribe additional requirements with which a public benefit organisation, institution, board or body or the government, provincial administration or **[local authority]** municipality carrying on any specific public benefit activity identified by the Minister in the regulations, must comply before any donation made to that public benefit organisation, institution, board or body or the government, provincial administration or **[local**

authority] municipality shall be allowed as a deduction under subsection (1).";

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

"(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by a receipt issued by the public benefit organisation, institution, board or body or the government, provincial administration or **[local authority]** municipality concerned, on which the following details are given, namely—";

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

"(*c*) the name of the public benefit organisation, institution, board or body or the government, provincial administration or **[local authority]** municipality which received the donation, together with an address to which enquiries may be directed in connection therewith;";

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

"(*f*) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board or body concerned or, in the case of the government, provincial administration or **[local authority]** municipality in carrying on the relevant public benefit activity.";

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

"(2A) A public benefit organisation, institution, board, body, government, provincial administration or **[local authority]** municipality may only issue a receipt contemplated in

subsection (2) in respect of any donation to the extent that—
";

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

"(*c*) in the case of the government, provincial administration or **[local authority]** municipality, that donation will be utlised solely in carrying on activities contemplated in Part II of the Ninth Schedule."; and

(j) by the substitution for subsection (2C) of the following subsection:

"(2C) The Accounting Authority contemplated in the Public Finance Management Act, **[1997]** 1999, (Act No. 1 of 1999) for the government, provincial administration or **[local authority]** municipality which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).".

Amendment of section 23 of Act 58 of 1962

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

(a) by the deletion of paragraph (*j*);

(b) by the substitution in paragraph (*k*) for the words after subparagraph (iii) of the following words:

"other than any expense which constitutes an amount paid or payable to any employee of such labour broker, company or trust for services rendered by such employee, which is or will be taken into account in the determination of the taxable income of such employee or in the case of such personal service company or personal service trust, any expense, deduction or contribution

contemplated in paragraphs (*c*), (*i*) and (*l*) of section 11, expenses in respect of premises, finance charges, insurance, repairs and fuel and maintenance in respect of assets, if such premises or assets are used wholly and exclusively for purposes of trade;"; and

(c) by the substitution for paragraph (*n*) of the following paragraph:

"(*n*) any deduction or allowance in respect of any asset or expenditure to the extent that **[an]** amount—

(i) is granted or paid to the taxpayer and is exempt from tax in terms of section 10 (1) (*y*) or (*y*A) [**is granted to the taxpayer by the Government, which—**

(i) is not subject to tax;] and

(ii) is so granted or paid for purposes of the acquisition of that asset or funding of that expenditure:

Provided that the provisions of this paragraph shall not apply if the grant or payment is in respect of programmes or schemes that the Minister has identified by notice in the *Gazette* for purposes of this paragraph;".

Amendment of section 23B of Act 58 of 1962

21. Section 23B of the Income Tax Act, 1962, is hereby amended—

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

"(1) Where, but for the provisions of this subsection, an amount—

(*a*) qualifies or has qualified for a deduction or an allowance; or

(*b*) is otherwise taken into account in determining the taxable income of any person,

under more than one provision of this Act, **[such]** that amount or any portion thereof, shall not be allowed or taken into account more

than once **[as a deduction or allowance]** in the determination of the taxable income of any person."; and

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

"(3) No deduction shall be allowed under section 11(*a*) in respect of any expenditure or loss of a type for which a deduction or allowance may be granted under any other provision of this Act, notwithstanding that—

(*a*) such other provision may impose any limitation on the amount of such deduction or allowance; or

(*b*) that deduction or allowance in terms of that other provision may be granted in a different year of assessment.".

Amendment of section 24J of Act 58 of 1962

22. Section 24J of the Income Tax Act, 1962, is hereby amended—

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

"(5) Where any **[interest]** amount actually—";

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

"(*a*) paid by any person in terms of an instrument is to be taken into account in the determination of any accrual amount in relation to **[such an]** that instrument or any other amount determined in accordance with an alternative method in relation to **[such]** that instrument which accrual amount or other amount is to be dealt with in terms of the provisions of subsection (2), no account shall for the purposes of section 11 be taken of any such **[interest]** amount so actually paid, save by way of the operation of such subsection; "; and

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

"(*b*) received by any person in terms of an income instrument is to be taken into account in the determination of any accrual amount in relation to **[such]** that income instrument or any other amount determined in accordance with an alternative method in relation to **[such]** that income instrument which accrual amount or other amount is to be dealt with in terms of the provisions of subsection (3), no account shall for the purposes of the definition of "gross income" in section 1 be taken of any such **[interest]** amount so actually received, save by way of the operation of such subsection.".

Insertion of section 26B in Act 58 of 1962

23. The Income Tax Act, 1962, is hereby amended by the insertion after section 26A of the following section:

"**26B. Determination of taxable income derived by an oil and gas company.**— The taxable income of any oil and gas company, as defined in the Tenth Schedule, carrying on any oil and gas operations shall, in so far as it is derived from such operations, be determined in accordance with the provisions of this Act but subject to the provisions of that Schedule.

Repeal of section 29 of Act 58 of 1962

24. Section 29 of the Income Tax Act, 1962, is hereby repealed.

Amendment of section 29A of Act 58 of 1962

25. Section 29A of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion of the proviso to subsection (3);

(b) by the deletion of subsection (15); and

(c) by the deletion of subsection (16).

Amendment of Section 30 of Act 58 of 1962

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

(a) by the substitution in subsection (1) for paragraph (*a*) of the definition of **"public benefit organisation"** of the following paragraph:

"(*a*) which is—

(i) a company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or a trust or an association of persons that has been incorporated, formed or established in the Republic; or";

(ii) any agency or branch within the Republic of any company, association or trust incorporated, formed or established in terms of the laws of any country other than the Republic that is exempt from tax in that other country;";

(b) by the substitution in subsection (1) for the words preceding subparagraph (i) in paragraph (*b*) of the definition of **"public benefit organisation"** of the following words:

"(*b*) of which the sole object is carrying on one or more public benefit activities **[(including any undertakings or activities which are not prohibited under subsection (3) (*b*) (iv))]**, where—";

(c) by the deletion in subsection (1) of subparagraphs (ii) and (iii) of paragraph (*c*) of the definition of **"public benefit organisation"**;

(d) by the substitution in subsection (3) for the words preceding the proviso to subparagraph (ii) of paragraph (*b*) of the following words:

"(ii) prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established, **[or to invest such funds—]** and prohibited from investing those funds in any financial instrument issued by, or other property held by, a person that is not a resident.";

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

(bb) in any listed financial instrument of a company contemplated in paragraph (a) of the definition of "listed company"; or

(cc) in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations:]";

(e) by the substitution in item (iii) of paragraph (*b*) of subsection (3) for the words preceding subparagraph (*aa*) of the following words:

"(iii) in the case of a public benefit organisation contemplated in paragraph (*a*) (i) of the definition of **"public benefit organisation"** in subsection (1), is required on dissolution to transfer its assets to—";

(f) by the insertion in subsection (3) after subparagraph (iii) of paragraph (*b*) of the following subparagraph:

"(iv) in the case of an agency or branch of a public benefit organisation contemplated in paragraph (*a*) (ii) of the definition of **"public benefit organisation"** in subsection (1), is required on termination of its activities in the Republic to transfer the assets of such agency or branch to—

(*aa*) any public benefit organisation contemplated in paragraph (*a*) (i) of the definition of **"public benefit organisation"** in subsection (1) which has been approved in terms of this section;

(*bb*) any institution, board, body, department or administration contemplated in section (3) (*b*)(iii), (*bb*) and (*cc*).";

(g) by the deletion of subsection (3) (*g*);

(h) by the insertion after subsection (3B) of the following subsection:

"(3C) Notwithstanding any other provision of this section, the Director of Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997, (Act No. 71 of 1997) may, in respect of any organization that has committed an offence under that Act, request the Commissioner to withdraw the approval of that organisation in terms of subsection (5) and the Commissioner may pursuant to that request withdraw such approval.";

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

"(4) Where the constitution, will or other written instrument does not comply with the provisions of subsection (3) (*b*), it shall be deemed to so comply**[-]**";

(j) by the deletion of subsection (4) (*a*) and (b); and

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

"(7) **[Where any such]** If the organisation fails **[so]** to transfer, or **[so]** to take reasonable steps to transfer, its **[remaining]** assets**[, the accumulated net revenue which has not been distributed in terms of this section shall]** as contemplated in subsection (6) the market value of those assets which have not been transferred must for **[the]** purposes of this Act be deemed to be an amount of taxable income which accrued to such organisation during the year of assessment **[referred to in subsection (5)]** in which approval was withdrawn.".

(2) Subsection (1) will be deemed to have come into operation on 2 November 2006 and will be deemed to apply in respect of any year of assessment commencing on or after that date.

Insertion of section 30A in Act 58 of 1962

27. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 30 of the following section:

"30A. Recreational clubs

(1) For purposes of this Act, **"recreational club"** means any company contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), society or other association of persons established solely to provide social and recreational

amenities or facilities for the members of that company, society or other association.

(2) The Commissioner must approve a recreational club for the purposes of section 10(1)(*c*O), if—

(*a*) that club has submitted to the Commissioner a copy of the constitution or other written instrument in terms of which it is established and which provides that—

(i) its activities must be carried on in a non-profit manner;

(ii) it is prohibited from directly or indirectly distributing any surplus funds to any person, other than in terms of subparagraph (iii);

(iii) it is required on dissolution to transfer its assets and funds to any other recreational club which is approved by the Commissioner in terms of this section or to a public benefit organisation contemplated in paragraph (*a)*(i) of the definition of a **"public benefit organisation"** in section 30 (1) which has been approved in terms of section 30 (3);

(iv) it may not pay any remuneration to any person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered, nor may any remuneration be determined as a percentage of any amounts received or accrued to that recreational club;

(v) all members must be entitled to membership for at least one year; and

(vi) members are not allowed to sell their membership rights or any entitlement in terms thereof;

(*b*) the club undertakes to submit to the Commissioner a copy of any amendment to the constitution or other written instrument under which it is established;

(*c*) the Commissioner is satisfied that the club is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner.

(3) Where the constitution or other written instrument under which the club is established does not comply with the provisions of paragraph (*a*) of subsection (2), it shall be deemed to so comply if a person responsible in a fiduciary position for the funds and assets of such club furnishes the Commissioner with a written undertaking that such club will be administered in compliance with the provisions of this section.

(4) Where a club applies for approval before the later of 31 March 2011 or the last day of its first year of assessment, then the Commissioner may approve that club for purposes of this section, or for the purposes of any provision contained in section 10 prior to its amendment by section 11 of the Revenue Laws Amendment Act, 2006.

(5) If the Commissioner—

(*a*) is satisfied that a recreational club approved under subsection (2) has during any year of assessment in any respect failed to comply with any provision that is required by this section to be contained in its constitution or other written instrument in terms of which it was established or with any undertaking or other requirement contemplated in subsection (2) or (3); or

(*b*) during any year of assessment becomes satisfied that any club has on a continuous or repetitive basis failed to comply with such a provision, undertaking or requirement,

the Commissioner must give that club notice that it intends withdrawing its approval if no corrective steps are taken by that club within a period stated in that notice.

(6) If no corrective steps are taken by a recreational club as contemplated in subsection (4), the Commissioner must withdraw approval of that club with effect from the commencement of the year of assessment contemplated in subsection (5).

(7) If the Commissioner has withdrawn the approval of a recreational club, that club must within three months after the date of that withdrawal (or such longer period as the Commissioner may allow), transfer or take reasonable steps to transfer its remaining assets to another recreational club approved in terms of this section or to a public benefit organisation approved in terms of paragraph (*a*)(i) of the definition of public benefit organisation and exempt from normal tax in terms of section 10(1)(*c*N) and which club or organisation is not a connected person in relation to that club.

(8) If the recreational club fails to transfer, or to take reasonable steps to transfer its assets, as contemplated in subsection (7) the market value of those assets which have not been transferred must for purposes of this Act be deemed to be an amount of taxable income which accrued to that club during the year of assessment in which approval was withdrawn.".

(2) Subsection (1) will come into operation on the 1 April 2007 and will apply in respect of any year of assessment commencing on or after that date.

Amendment of section 36 of Act 58 of 1962

28. Section 36 of the Income Tax Act, 1962, is hereby amended—

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

"(*a*) expenditure (other than interest or finance charges) on shaft sinking and mine equipment (other than expenditure referred to in paragraph (*d*)) **[and, in the case of a natural oil mine, the cost of laying pipelines from the mining block to the marine terminal or the local refinery, as the case may be]**; and";

(b) by the substitution in subsection (11) for the words in paragraph (c) preceding subparagraph (i) of the following words:

"(*c*) in the case of any post-1973 gold mine, any other deep level gold mine**[,]** or any post-1990 gold mine **[or any natural oil mine]**, a capital allowance calculated at the rate of 10 per cent per annum in the case of a post-1973 gold mine or any other deep level gold mine or 12 per cent per annum in the case of any post-1990 gold mine **[or any natural oil mine]** on the amount of the aggregate of—";

(c) by the substitution in subsection (11) for subparagraph (i) of paragraph (c) of the following subparagraph:

(i) the expenditure referred to in paragraphs (*a*) and (*b*), excluding any interest and other charges on loans referred to in paragraph (*b*), if the mine is a post-1973 gold mine**[,]** or a post-1990 gold mine **[or a natural oil mine]**, or the expenditure referred to in paragraph (*a*), if the mine is any other deep level gold mine;"; and

(d) by the substitution in subsection (11) for the words after subparagraph (v) preceding the proviso of the following words:

"if the mine is a post-1973 gold mine, a post-1990 gold mine **[or a natural oil mine]**, for the period from the end of the month in which the expenditure is actually incurred up to the end of the year of assessment immediately preceding the first year of assessment in respect of which the determination of the taxable income derived from the working of such mine does not result in an assessed loss or nil, and, if the mine is any other deep level gold mine:".

Insertion of section 37A of Act 58 of 1962

29. The Income Tax Act, 1962, is hereby amended by the insertion after section 37 of the following section:

"37A. Closure rehabilitation company or trust.— (1) For purposes of determining the taxable income derived by a person carrying on any trade, any cash paid during any year of assessment commencing on or after 2 November 2006 by that person to a company or trust shall be deducted from that person's income if—

(*a*) the sole object of that company or trust is to apply its property solely for rehabilitation upon premature closure, decommissioning and final closure, and post closure coverage of any latent and residual environmental impacts of

the area covered with respect to an old order right or OP26 right as defined in item 1 or a reservation or permission for or right to the use of the surface of land as contemplated in item 9 of Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) in order to restore that area to its natural or predetermined state, or to a land use which conforms to the generally accepted principle of sustainable development;

(*b*) that company or trust holds assets solely as permitted in subsection (2);

(*c*) that company or trust makes distributions solely as permitted in subsection (3); and

(*d*) that person—

(i) (*aa*) holds—

(A) an old order right or OP26 right as defined in item 1 or a reservation or permission for the right to the use of the surface of land as contemplated in item 9 of Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); or

(B) a permit or right in respect of prospecting, exploration, mining or production as contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

(*bb*) is engaged in prospecting, exploration, mining or production in terms of any permit or right as contemplated in subparagraph (*aa*); or

(ii) after approval by the Commissioner, paid any cash to that company or trust and that payment was not part of any transaction, operation or scheme designed solely or mainly for purposes of shifting the deduction contemplated in this subsection from another person to that person.

(2) The company or trust contemplated in subsection (1) may only hold—

(*a*) financial instruments issued by any—

(i) pension fund organisation registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956);

(ii) collective investment scheme as defined in section (1) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

(iii) scheme as defined in section 1 of the Participation Bonds Act, 1981 (Act No. 55 o f 1981);

(iv) exchange or central securities depository as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

(v) registered insurer as defined in section 1(1) of the Insurance Act, 1943 (Act No. 27 of 1943);

(vi) bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990); or

(vii) mutual bank as defined in section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993);

(*b*) shares (or depository receipts in respect of shares) of a company listed on an exchange that is licensed under section 10 of the Securities Services Act, 2004 (Act No. 36 of 2004), unless—

(i) those shares (or depository receipts) are issued by a person contemplated in subsection (1)(b); or

(ii) those shares (or depository receipts) are issued by a person that is a connected person with respect to a person contemplated in subsection (1)(b);

(*c*) financial instruments issued by any sphere of government in the Republic; or

(*d*) in any other investments which were made by that company or trust before 18 November 2003.

(3) The company or trust contemplated in subsection (1) may only make distributions from that company or trust solely for purposes contemplated in subsection 1(*a*).

(4) To the extent that the Minister of Minerals and Energy is satisfied that the area contemplated in subsection 1(*a*) has been rehabilitated pursuant to that subsection, the company or trust with respect to that area must be wound-up or liquidated and its assets remaining after the satisfaction of its liabilities must be transferred to—

(*a*) another company or trust established for the benefit of a person contemplated in subsection (1)(*d*); or

(*b*) if no such company or trust has been established, to an account or trust prescribed by the Minister of Minerals and Energy and approved by Commissioner for purposes of this section.

(5) The constitution of a company or the instrument establishing a trust contemplated in this section must incorporate the provisions of this section and any amendments thereto.

(6) If a company or trust contemplated in this section contravenes any provision of subsection (2) during any year of assessment by holding property other than property contemplated in that subsection, an amount of taxable income is deemed to accrue to a person contemplated in subsection (1)(*d*) equal to the market value of that other property on the first date that company or trust held

that other property to the extent that other property is (directly or indirectly) derived from the cash paid by that person to that company or trust.

(7) If the company or trust contemplated in this section contravenes any provision of subsection (3) during any year of assessment by distributing property from that company or trust for a purpose other than—

(*a*) rehabilitation upon premature closure;

(*b*) decommissioning and final closure;

(*c*) post closure coverage of any latent or residual environmental impacts; or

(*d*) another company, trust, or account contemplated in subsection (4),

an amount of taxable income is deemed to accrue to a person contemplated in subsection (1)(*d*) equal to the market value of that distributed property on the date of distribution of that property to the extent that property is (directly or indirectly) derived from the cash paid by that person to that company or trust.

(8) Where the Commissioner is satisfied that a company or trust contemplated in this section has contravened any provision of this section during any year of assessment, the Commissioner may deem an amount of taxable income to accrue to a person contemplated in subsection (1)(*d*) equal to twice the market value of all of the property held in that company or trust on the date of that contravention to the extent that property is (directly or indirectly) derived from the cash paid by that person to that company or trust: Provided that the Commissioner may remit any amount of accrued taxable income imposed under this subsection as the Commissioner may think fit.".

Amendment of section 41 of Act 58 of 1962

30. Section 41 of the Income Tax Act, 1962, is hereby amended—

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

"(*b*) any financial instrument arising from the principal trading activities of that foreign company or of any influenced company in relation to that foreign company which is a banker or financier, insurer**[, dealer]** or broker that **[mainly]** conducts more business in the country of residence of that company than in any other single country and that company—";

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

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

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

"(ii) derives more than 50 per cent of its income or gains from principal trading activities with respect to those clients; **[or]**";

(d) by the insertion in subsection (1) after subparagraph (ii) of paragraph (*b*) of the definition of **"foreign financial instrument holding company"** of the following:

"Provided that in determining whether a controlled foreign company conducts more business in the country of residence than in any

other single country, the Commissioner may disregard business conducted in another country if attributable to a permanent establishment within that other country and subject to tax by that other country as income from that permanent establishment (after taking into account any applicable agreements for the prevention of double taxation);";

(e) by the substitution in subsection (1) for subparagraph (*cc*) of paragraph (i) of the proviso to paragraph (*c*) of the definition of **"foreign financial instrument holding company"** of the following subparagraph:

"(*cc*) any financial instrument, other than an instrument defined in section 24J (1) that has a term of less than 12 months, **[the market value of which is equal to its base cost]**;"; and

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

"(2) The provisions of this Part must, subject to subsection (5), apply in respect of a company formation transaction, a share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections 24B (2) and (3), 103 and Part IIA of Chapter III.".

Amendment of section 42 of Act 58 of 1962

31. Section 42 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for the words after paragraph (*b*) of the following words:

"that person must be deemed to have disposed of that share as trading stock to the extent that any amount received by or accrued to that person

in respect of the disposal of that share is less than or equal to the market value of that share at the beginning of such period of 18 months.".

Amendment of section 43 of Act 58 of 1962

32. Section 43 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (ii) of paragraph (*c*) of the following subparagraph:

"(ii) in any other case, 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 more than 50 per cent of the equity shares of the target company; and".

Amendment of section 47 of Act 58 of 1962

33. Section 47 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) Where a holding company disposes of any equity share in a liquidating company as a result of the liquidation, winding up or deregistration of that liquidating company, that holding company must disregard that disposal for purposes of determining its taxable income **[or]**, assessed loss, aggregate capital gain or aggregate capital loss.".

Amendment of section 64B of Act 58 of 1962

34. Section 64B of the Income Tax Act, 1962, is hereby amended—

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

"and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been **[distributed]** declared as contemplated in section **[64C (2)]** 64C (6);";

(b) by the substitution in subsection (13) for paragraph (*a*) of the following paragraph:

"(a) where the company has established or deemed to have established separate funds as contemplated in section **[29 or]** 29A, to dividends accrued on shares constituting an asset in its corporate fund; or";

(c) by the deletion in subsection (13) of paragraph (*b*); and

(d) by the deletion of subsection (14).

Amendment of section 76A of Act 58 of 1962

35. Section 76A of the Income Tax Act, 1962, is hereby deleted.

Amendment of section 79 of Act 58 of 1962

36. Section 79 of the Income Tax Act, 1962, is hereby amended—

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

"he shall raise an assessment or assessments in respect of the said amounts, notwithstanding that an assessment or assessments may have been made upon the person concerned in respect of the year or years of assessment in respect of which the amount or amounts in question is or are assessable, and notwithstanding the provisions of sections 81 (5), **[and]** 83 (18) and 83A (12):"; and

(b) by the substitution in subsection (1) for paragraph (iv) of the proviso of the following paragraph:

"(iv) in respect of any amount, if any previous assessment made on the person concerned has in respect of that amount been amended or reduced pursuant to **[any order made by a special court for hearing income tax appeals constituted under the provisions of this Act,]**—

(*aa*) any decision made by the Tax Board constituted under this Act;

(*bb*) any order, excluding any order made in terms of section 83(13)(*a*)(iii) made by the tax court constituted under this Act;

(*cc*) the Commissioner conceding an appeal as prescribed in terms of the rules contemplated in section 107A(2) of this Act;

(*dd*) a dispute being resolved in terms of the alternative dispute resolution procedures prescribed in the rules contemplated in section 107A(2) of this Act; or

(*ee*) the settlement of a dispute in terms of Part IIIA of Chapter III of this Act,

unless the Commissioner is satisfied that the decision, order, concession or resolution of the dispute or settlement in question was obtained by fraud or misrepresentation or non-disclosure of material facts; or".

Insertion of Part IIA in Chapter III of Act 58 of 1962

37. The Income Tax Act, 1962, is hereby amended by the insertion in Chapter III after Part II of the following Part:

"***Part IIA* – Impermissible tax avoidance arrangements**.

80A. An avoidance arrangement is an impermissible avoidance arrangement if its sole or main purpose was to obtain a tax benefit and—

(*a*) in the context of business—

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

(ii) it lacks commercial substance, in whole or in part, taking into account the provisions of section 80C;

(b) in a context other than business, it was entered into or carried out by means or in a manner which would not normally be employed for a *bona fide* purpose, other than obtaining a tax benefit; or

(c) in any context—

(i) it has created rights or obligations that would not normally be created between persons dealing at arm's length; or

(ii) it would frustrate the purpose of any provision of this Act (including the provisions of this Part).

Tax consequences of impermissible tax avoidance.

80B. (1) The Commissioner may determine the tax consequences under this Act of any impermissible avoidance arrangement for any party by—

(a) disregarding, combining, or recharacterising any steps in or parts of the impermissible avoidance arrangement;

(b) disregarding any accommodating or tax-indifferent party or combining that party with any other party;

(c) deeming persons who are connected persons in relation to each other to be a single person for purposes of determining the tax treatment of any amount;

(d) reallocating any gross income, receipt or accrual of a capital nature, expenditure or rebate amongst the parties;

(e) recharacterising any gross income, receipt or accrual of a capital nature or expenditure; or

(f) treating the impermissible avoidance arrangement as if it had not been entered into or carried out, or in such other manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of the relevant tax benefit.

(2) The Commissioner may make appropriate compensating adjustments that are necessary to ensure the consistent treatment of all parties to the impermissible avoidance arrangement.

Lack of commercial substance

80C. (1) For purposes of this Part, an avoidance arrangement lacks commercial substance if it fails to have a significant effect upon a party's—

(a) business or commercial risks;

(b) net cash flows; or

(c) beneficial ownership of any asset involved in the avoidance arrangement,

apart from any effect attributable to the tax benefit that would be obtained but for the provisions of this Part.

(2) For purposes of this Part, characteristics of an avoidance arrangement that are indicative of a lack of commercial substance include but are not limited to—

(a) the legal or economic effect resulting from the avoidance arrangement as a whole that is inconsistent with, or differs significantly from, the legal form of its individual steps;

(b) the inclusion or presence of—

(i) round trip financing as described in section 80D; or

(ii) an accommodating or tax indifferent party as described in section 80E; or

(iii) elements that have the effect of offsetting or cancelling each other without a significant change in the economic position of any one or more of the parties; or

(c) an inconsistent characterisation of the avoidance arrangement for tax purposes by the parties.

Round trip financing

80D. (1) Round trip financing includes any avoidance arrangement in which—

(a) funds are transferred between or among the parties (round tripped amounts); and

(b) the round tripped amounts—

(i) would result, directly or indirectly, in a tax benefit but for the provisions of this Part; and

(ii) significantly reduce, offset or eliminate any business or commercial risk incurred by any party in connection with the avoidance arrangement.

(2) This section applies to any round tripped amounts without regard to—

(a) whether or not the round tripped amounts can be traced to funds transferred to or received by any party in connection with the avoidance arrangement;

(b) the timing or sequence in which round tripped amounts are transferred or received; or

(c) the means by or manner in which round tripped amounts are transferred or received.

(3) For purposes of this section, the term 'funds' includes any cash, cash equivalents or any right or obligation to receive or pay the same.

Accommodating or tax-indifferent parties

80E. (1) A party to an avoidance arrangement is an accommodating or tax-indifferent if—

(a) any amount derived by it in connection with the avoidance arrangement is either—

(i) not subject to normal tax; or

(ii) significantly offset either by any expenditure or loss incurred by it in connection with that avoidance arrangement or any assessed loss of that party; and

(b) the participation of that party would directly or indirectly involve or result in any of the following—

(i) an amount which would have constituted gross income of that party (including the recoupment of any amount) being shifted to another party;

(ii) the character of any amount being converted from—

(A) revenue to capital;

(B) one that would not have been deductible to one that would be deductible; or

(C) one that would have given rise to taxable income to one that would either not be included in gross income or would be exempt from normal tax; or

(iii) a prepayment of any expenditure by another party to that party.

(2) A person may be an accommodating or tax-indifferent party whether or not that person is a connected person in relation to any party.

(3) The provisions of this section do not apply if either—

(a) the amounts derived by the party in question are subject to tax in another country which is equal to at least two-thirds of the amount of normal tax which would have been payable in connection with those amounts had they been subject to tax under this Act; or

(b) the party in question continues to engage directly in substantive active trading activities in connection with the avoidance arrangement for a period of at least 18 months:

Provided these activities must be attributable to a business establishment, as defined in section 9D(1), whether or not the party is a controlled foreign company.

(4) For purposes of subsection (3)(a), the amount of tax imposed by another country must be determined after taking into account any assessed loss, credit, rebate or other right of recovery to which that party or any connected person in relation to that party may be entitled.

Treatment of connected persons and accommodating or tax indifferent parties

80F. For purposes of applying section 80C or determining whether or not a tax benefit exists for purposes of this Part, the Commissioner may—

(a) treat parties who are connected persons in relation to each other as a single party; or

(b) disregard any accommodating or tax-indifferent party or combine that party with any other party to the arrangement.

Presumption of purpose

80G. (1) An avoidance arrangement is presumed to have been entered into or carried out for the sole or main purpose of obtaining a tax benefit unless and until that party proves that, reasonably considered in light of the relevant facts and circumstances, obtaining a tax benefit was not the sole or main purpose of the avoidance arrangement.

(2) The purpose of a step in or part of an avoidance arrangement may be different from a purpose attributable to the avoidance arrangement as a whole.

Application to steps in or parts of an arrangement

80H. The Commissioner may apply the provisions of this Part to steps in or parts of an arrangement.

Use in the alternative

80I. The Commissioner may apply the provisions of this Part in the alternative for or in addition to any other basis for raising an assessment.

Notice

80J. (1) The Commissioner must, prior to determining any liability of a taxpayer for tax under section 80B, give the taxpayer notice that he or she believes that the provisions of this Part may apply in respect of an arrangement, setting out the reasons therefor.

(2) A taxpayer who receives notice in terms of subsection (1) may, within 30 days after the receipt thereof, submit reasons to the Commissioner why the provisions of this Part should not be applied.

(3) If a taxpayer fails to submit reasons under subsection (2), or the Commissioner is not satisfied with the reasons so submitted, the Commissioner may—

(a) request additional information in order to determine whether or not this Part applies in respect of an arrangement; or

(b) determine the liability of that taxpayer for tax in terms of this Part.

(4) If at any stage after issuing notice to the taxpayer in terms of subsection (1), additional information comes to the knowledge of the Commissioner, he or she may revise or modify his or her reasons for applying this Part.

Interest

80K. Where the Commissioner has applied this Part in determining a party's liability for tax, the Commissioner may not exercise his or her discretion in terms of section 89*quat*(3) or (3A) to direct that interest is not payable in respect of that portion of any tax which is attributable to the application of this Part.

Definitions

80L. (1) For purposes of this Part—

'arrangement' means any transaction, operation, scheme, agreement or understanding (whether enforceable or not), including all steps therein or parts thereof, and includes any of the foregoing involving the alienation of property;

'avoidance arrangement' means any arrangement that results in a tax benefit;

'impermissible avoidance arrangement' means any avoidance arrangement described in section 80A;

'party' means any—

(a) person;

(b) permanent establishment of a person who is not a resident;

(c) permanent establishment of a person who is a resident;

(d) partnership; or

(e) joint venture,

who participates or takes part in an arrangement;

'tax' includes any tax, levy or duty imposed by this Act or any other law administered by the Commissioner;

'tax benefit' includes any avoidance, postponement or reduction of any liability for tax.".

Insertion of Part IIB in Chapter III of Act 58 of 1962

38. (1) Chapter III of the Income Tax Act, 1962, is hereby amended by the insertion after Part IIA as inserted by this Act of the following Part:

"**Part IIB - Reportable Arrangements**

Reportable arrangements

80M. (1) An arrangement is a reportable arrangement if any tax benefit is or will be derived or is assumed to be derived by any participant by virtue of that arrangement and the arrangement—

(*a*) contains provisions in terms of which the calculation of interest as defined in section 24J, finance costs, fees or any other charges is wholly or partly dependent on the assumptions relating to the tax treatment of that arrangement (otherwise than by reason of any change in the provisions of this Act or any other law administered by the Commissioner);

(*b*) has any of the characteristics, or characteristics which are substantially similar to those contemplated in section 80C(2);

(*c*) is or will be disclosed by any participant as a loan or financial liability for purposes of Generally Accepted Accounting Practice but not for purposes of this Act;

(*d*) does not result in a reasonable expectation of a pre-tax profit for any participant; or

(*e*) results in a reasonable expectation of a pre-tax profit for any participant that is less than the value of that tax benefit to that participant if both are discounted to a present value at the end of the first year of assessment when that tax benefit is or will be derived or is assumed to be derived on a consistent basis and using a reasonable discount rate for that participant.

(2) The following arrangements are reportable arrangements:

(*a*) any arrangement which would have qualified as a hybrid equity instrument as defined in section 8E, if the prescribed period had been ten years; or

(*b*) any arrangement which would have qualified as a hybrid debt instrument as defined in section 8F, if the prescribed period in that section had been ten 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); or

(*c*) any arrangement identified by the Minister by notice in the Gazette as an arrangement which is likely to result in any undue tax benefit.

(3) This section does not apply to any excluded arrangement contemplated in section 80N.

Excluded arrangements

80N. (1) An arrangement is an excluded arrangement if it is—

(*a*) a loan, advance or debt in terms of which—

(i) the borrower receives or will receive 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 or will receive 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); or

(*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).

(2) Subsection (1) applies only to an arrangement that—

(*a*) is 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

(*b*) would have qualified as having been undertaken on a stand-alone basis as required by subsection (2)(*a*), were it not for a connected arrangement that is entered into for the sole purpose of providing security and where no tax benefit is obtained or enhanced by virtue of that security arrangement.

(3) Subsection (1) does not apply to any arrangement that is entered into—

(*a*) with the main purpose of obtaining or enhancing a tax benefit; or

(*b*) in a specific manner or form that enhances or will enhance a tax benefit.

(4) The Minister may determine an arrangement to be an excluded arrangement by notice in the Gazette, if he or she is satisfied that the arrangement is not likely to lead to an undue tax benefit.

Disclosure obligation

80O. (1) The promoter must disclose the information in respect of a reportable arrangement as contemplated in section 80P.

(2) If there is no promoter in relation to an arrangement, or if the promoter is not a resident, all other participants must disclose the reportable arrangement as contemplated in section 80P.

(3) A participant need not disclose the information in respect of a reportable arrangement if that participant obtains a written statement from—

(*a*) the promoter that the promoter has disclosed that reportable arrangement as required by this Part; or

(*b*) any other participant, if section 80O(2) applies, that the other participant has disclosed that reportable arrangement as required by this Part.

(4) The reportable arrangement must be disclosed within 60 days after any amount is received by or accrued to any participant or is paid or actually incurred by any participant in terms of the arrangement.

(5) The Commissioner may grant extension for disclosure for a further 60 days, if reasonable grounds exist for that extension.

Information to be submitted

80P. (1) The promoter or participant, as the case may be, must submit, in relation to the reportable arrangement, in the form and manner (including electronically) and at such place as may be prescribed by the Commissioner—

(i) a detailed description of all its steps and key features;

(ii) a detailed description of the assumed tax benefits for all participants, including but not limited to tax deductions and deferred income;

(iii) the names, registration numbers and registered address of all participants;

(iv) a list of all its agreements; and

(v) any financial model that embodies its projected tax treatment.

Reportable arrangement reference number

80Q. (1) The Commissioner must, after receipt of the information contemplated in section 80P, issue a reportable arrangement reference number to each participant.

(2) The issuing of a reportable arrangement reference number is for administrative purposes only.

Request for additional information

80R. (1) The Commissioner may in relation to any arrangement require a participant or any other person to furnish information (whether orally or in writing), documents or things as the Commissioner may require.

(2) The information, documents or things must be submitted to the Commissioner in the form and manner (including electronically) and at such place as may be prescribed by the Commissioner.

Penalties

80S. (1) Any participant who fails to disclose the information in respect of a reportable arrangement as required by section 80O or section 80R shall be liable to a penalty of R1 million.

(2) The Commissioner may reduce the penalty contemplated in subsection (1), if—

(*a*) there are extenuating circumstances and the participant remedies the non-disclosure within a reasonable time from the date when disclosure should have been made as required by section 80O; or

(*b*) if the penalty is disproportionate to the assumed tax benefit.

Definitions

80T. For purposes of this Part—

'arrangement' means any transaction, operation or scheme;

'financial benefit' means any reduction in the cost of finance, including interest, finance charges, costs, fees, and discounts in the redemption amount;

'participant' in relation to a reportable arrangement means—

(*a*) any promoter; or

(*b*) any company or trust which directly or indirectly derives or assumes that it derives a tax or financial benefit by virtue of a reportable arrangement;

'pre-tax profit' in relation to an arrangement, means the profit of a participant resulting from that arrangement before deducting any normal tax, which profit must be determined in accordance with Generally Accepted Accounting Practice

after taking into account all costs and expenditure incurred by that participant in connection with the arrangement and after deducting any foreign taxes paid or payable by that participant.

'promoter' in relation to a reportable arrangement means any person who is principally responsible for organising, designing, selling, financing or managing that reportable arrangement.

'reportable arrangement' means any arrangement as contemplated in section 80M.

'tax benefit' includes any avoidance, postponement or reduction of any liability for tax of any participant;

'tax' includes any tax, levy, duty or other liability imposed by this Act or any other law administered by the Commissioner.".

(2) Subsection (1) will come into operation on 1 January 2007.

Amendment of section 88 of Act 58 of 1962

39. (1) Section 88 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The obligation to pay and the right to receive and recover any tax chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any objection under section 81 of this Act or any appeal under section 83 of this Act or pending the decision of a court of law under section 86A, but if any assessment is altered after objection or on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the tax board or the tax court or such court of law, a due adjustment shall be made, amounts paid in excess being refunded with interest at the prescribed rate, such interest being calculated from the date proved to the satisfaction of

the Commissioner to be the date on which such excess was received and amounts short-paid being recoverable with interest calculated as provided in section 89.".

(2) Subsection (1) shall come into operation on a date to be fixed by the President by Proclamation in the Gazette.

Amendment of section 102 of Act 58 of 1962

40. Section 102 of the Income Tax Act, 1962 is hereby amended—

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

"(1) Any amount paid by any person in terms of the provisions of this Act shall be refundable, subject to the provisions of section 102A, to the extent that such amount exceeds—";

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

"(*a*) that amount was paid in accordance with the practice generally prevailing at the date of the payment; **[or]**";

(c) by the insertion in subsection (2) after paragraph (*b*) of the following paragraph:

"(c) the amount to be refunded is less than R100 or less than such other amount as the Commissioner may determine by Notice in the Gazette; or";

(d) by the insertion in subsection (2) after paragraph (*c*) as inserted by this Act of the following paragraph:

"(*d*) that person has failed to furnish a return for any year of assessment as required by this Act, until that person has furnished such return as required. "; and

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

"(4) Where the amount that would be refunded under subsection (1) is determined to be less than R100 or less than such other amount as the Commissioner may determine by Notice in the Gazette, the amount so determined shall not be refunded in respect of that year of assessment but shall be carried forward.".

Amendment of section 103 of Act 58 of 1962

41. Section 103 of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion of subsections (1) and (3);

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

"(4) Any decision of the Commissioner under subsection **[(1),]** (2) **[or (3)]** shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the **[transaction, operation, scheme,]** agreement or change in shareholding or members' interests or trustees or beneficiaries of the trust in question would result in the avoidance or the postponement of liability for payment of any tax, duty or levy imposed by this Act or any previous Income Tax Act or any other law administered by the Commissioner, or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved**[—**

(*a*) in the case of any such transaction, operation or scheme, that it was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of such liability or the reduction of the amount of such liability; or

(*b*) in the case of any such agreement or change in shareholding or members' interests or trustees or beneficiaries of such trust], that it has been entered

into or effected solely or mainly for the purpose of utilizing the assessed loss, balance of assessed loss, capital loss or assessed capital loss in question in order to avoid or postpone such liability or to reduce the amount thereof.";

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

"(i) any taxpayer has ceded the right to receive any amount **[of income]** in exchange for any amount of dividends; and"; and

(d) by the deletion of subsection (7).

Amendment of paragraph 5 of the Second Schedule to Act 58 of 1962

42. Paragraph 5 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) The deduction to be allowed in determining the amount required to be included in the taxpayer's gross income for any year of assessment in terms of paragraph 2 shall, if the lump sum benefits in question—

(*a*) have been derived in consequence of or following upon the taxpayer's retirement;

(*b*) are deemed to have accrued to him immediately prior to his death**[,]**; or

(*c*) accrued subsequent to his retirement and in consequence of or following upon an event contemplated by the rules of the pension fund, provident fund or retirement annuity fund, other than an event contemplated in items (*a*) or (*b*) of this subparagraph,

be an amount (not exceeding the aggregate value of such lump sum benefits)) equal to the greater of the **[following]** amounts contemplated in subparagraph (1A)**[, namely—**

(*a*) an amount determined in accordance with formula B in relation to such taxpayer, but subject to the provisions of sub-paragraph (2); or

(*b*) an amount equal to the sum of the amounts which would have been allowed to be deducted in terms of paragraph (*b*)*ter* of the definition of "gross income in section *seven* of the Income Tax Act, 1941, prior to its amendment by the Income Tax Act, 1961 (Act No. 80 of 1961), if such lump sum benefits had been received by or had accrued to such taxpayer on the fourteenth day of March, 1961, and had been required to be included in his gross income in terms of the said paragraph, less the aggregate of any deductions which may have been allowed to the taxpayer under this subparagraph or sub-paragraph (1) of paragraph 5 of the Fourth Schedule to the Income Tax Act, 1941, in respect of any years of assessment preceding the year of assessment in question].";

and

(b) by the insertion after sub-paragraph (1) of the following sub-paragraph:

"(1A) The deduction to be allowed for purposes of sub-paragraph (1) shall be either—

(*a*) an amount determined in accordance with formula B in relation to such taxpayer, but subject to the provisions of sub-paragraph (2); or

(*b*) an amount equal to the sum of the amounts which would have been allowed to be deducted in terms of paragraph (*b*)*ter* of the definition of "gross income in section *seven* of the Income Tax Act, 1941, prior to its amendment by the Income Tax Act, 1961 (Act No. 80 of 1961), if such lump sum benefits had been received by or had accrued to such taxpayer on the fourteenth day of March, 1961, and had been required to be included in his gross income in terms of the said paragraph, less the aggregate of any deductions which may have been allowed to the taxpayer under this subparagraph or sub-paragraph (1) of paragraph 5 of the Fourth Schedule to the Income Tax Act, 1941, in respect of any years of assessment preceding the year of assessment in question.".

Amendment of paragraph 6 of the Second Schedule to Act 58 of 1962

43. Paragraph 6 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words in sub-paragraph 6 preceding item (i) of the following words:

"6. The deduction to be allowed in determining the amount required to be included in the taxpayer's gross income for any year of assessment in terms of paragraph 2 shall, if the lump sum benefits in question—

(1) have been derived in consequence of or following upon his withdrawal or resignation from any pension funds, provident funds or retirement annuity funds or the winding up of any such fund; or

(2) accrued subsequent to his withdrawal or resignation from any pension funds, provident funds or retirement

annuity funds or the winding up of any such funds and in consequence of or following upon an event contemplated by the rules of any such fund, other than an event contemplated in paragraph (1) of this subparagraph,

be the sum of the following amounts, namely—".

Amendment of paragraph 1 of the Fourth Schedule to Act 58 of 1962

44. Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (*b*) of the definition of **"personal services company"** of the following subparagraph:

"(*b*) such person or such company is subject to the control or supervision of such client as to the manner in which**[, or hours during which,]** the duties are performed or are to be performed in rendering such service and must be mainly performed at the premises of the client; or";

(b) by the deletion of paragraph (*c*) of the definition of **"personal services company"**;

(c) by the substitution for the words after paragraph (*d*) of the definition of **"personal services company"** of the following words:

"except where such company throughout the year of assessment, employs **[more than three]** three or more full-time employees who are on a full-time basis engaged in the business of such company of rendering any such service, other than any employee who is a shareholder or member of the company or is a connected person in relation to such person;"

(d) by the substitution for subparagraph (*b*) of the definition of **"personal services trust"** of the following subparagraph:

"(*b*) such person or such trust is subject to the control or supervision of such client as to the manner in which**[, or hours during which,]** the duties are performed or are to be performed in rendering such service and those duties must be mainly performed at the premises of the client; or";

(e) by the deletion of paragraph (*c*) of the definition of **"personal services trust"**;

(f) by the substitution for the words after paragraph (*d*) of the definition of **"personal services trust"** of the following:

"except where such trust throughout the year of assessment, employs **[more than three]** three or more full-time employees who are on a full-time basis engaged in the business of such trust of rendering any such service, other than any employee who is a connected person in relation to such person or trust;";

(g) by the substitution for paragraph (*a*) of the definition of **"provisional taxpayer"** of the following paragraph:

"(*a*) any person (other than a company) who derives by way of income any amount which does not constitute—

(i) remuneration in terms of the definition of that expression as defined in this paragraph; or

(ii) an allowance or advance contemplated in section 8 (1);

but shall exclude—

(*aa*) any public benefit organisation as contemplated in paragraph (*a*) of the definition of **'public benefit organisation"** in subsection (1) of section 30 that has been approved by the Commissioner in terms of subsection (3) of section 30 for a period of three years as from the first year of assessment commencing on or after 1 April 2007; and

(*bb*) any recreational club as contemplated in the definition of **"recreational club"** in subsection (1) of section 30A that has been approved by the Commissioner in terms of subsection (2) of section 30A for a period of three years as from the first year of assessment commencing on or after 1 April 2007:

Provided that the Commissioner may extend the periods as contemplated in subparagraph (*aa*) and (*bb*) to such later date as he may determine by Notice in the *Gazette*;"; and

(h) by the substitution for the definition of **"tax threshold"** 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 and the rebates contemplated in section 6 of this Act for that year of assessment **[is]** are applied to the taxable income of that person.".

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

45. Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (1) of the following subparagraph:

"(1A) Notwithstanding the provisions of subparagraph (1), an employer shall not be required to deduct or withhold employee's tax solely by virtue of paragraph (*d*) of the definition of **"personal services company"** or paragraph (*d*) of the definition of **"personal services trust"** where the company or trust has provided the employer with an affidavit or solemn declaration stating that those paragraphs do not apply and the employer relied on that affidavit or declaration in good faith.".

Amendment of paragraph 11 of the Fourth Schedule to Act 58 of 1962

46. Paragraph 11 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (*a*) for the words after item (ii) of the following words:

"in order to alleviate hardship to that employee due to circumstances outside the control of the employee **[or where the remuneration constitutes commission]** or to correct any error in regard to the calculation of employees' tax, or in the case of remuneration constituting commission or where the remuneration is received by a personal service company or a personal service trust, the amount of normal tax for that year of assessment and the employer must comply with that directive; or".

Amendment of paragraph 20 of the Eighth Schedule to Act 58 of 1962

47. Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended–

(a) by the insertion after subitem (iv) of item (*h*) of subparagraph (1) of the following subitem:

"(v) an asset which was acquired by a resident by way of inheritance from the deceased estate of a person who at the time of his or her death was not resident—

(*aa*) the market value of that asset immediately before the death of that deceased person; and

(*bb*) any expenditure contemplated in this paragraph incurred by the executor of that deceased estate in respect of that asset in the process of liquidation or distribution of that deceased estate:

Provided that this item does not apply in respect of any asset so acquired which constituted an asset of that deceased person as contemplated in paragraph 2(1)(*b*).";

(b) by the substitution for the proviso to item (*h*) of subparagraph (1) of the following proviso:

”Provided that where subitem (i), (ii)(*bb*) or (*dd*) applies, that person must for purposes of this paragraph disregard any expenditure actually incurred by that person in respect of that asset prior to the date on which—

(*a*) the market value or value placed on the asset under the Seventh Schedule, as the case may be, is determined**[,]**; or

(*b*) the asset was disposed of, where the amount received or accrued from the disposal is taken into account in determining the gain or loss in terms of section 8C.”;

(c) by the substitution for item (*b*) of subparagraph (3) of the following paragraph:

“(*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 is not taken into account as a recoupment in terms of section 8 (4) (*a*) of paragraph (*j*) of the definition of “gross income” of an amount contemplated in item (*a*)**[.]**;”; and

(d) by the insertion after item (*b*) of the following item:

“(c) which is exempt from tax in terms of section 10 (1) (*y*) or (*y*A) and is granted or paid for purposes of the acquisition of that asset:

Provided that the provisions of item (*a*) shall not apply if the grant or payment is provided in respect of programmes or schemes that the Minister has identified by notice in the *Gazette* for purposes of this paragraph.”.

Amendment of paragraph 24 of the Eighth Schedule to Act 58 of 1962

48. Paragraph 24 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (4) of the following subparagraph:

"(4) The provisions of this paragraph do not apply in respect of any asset of a person who became a resident before **[valuation date]** 1 October 2001.".

Amendment of paragraph 29 of the Eighth Schedule to Act 58 of 1962

49. Paragraph 29 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (3) of the following subparagraph:

"(3) For the purposes of this paragraph**[-**

(a) the last price quoted for a specific day means the average of the buying and selling prices quoted at close of business on that day; and

(b)]"controlling interest" in a company, means an interest in more than 35 per cent of the equity share capital of that company.";

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

"(4) For the purposes of paragraphs 26(1)(*a*) and 27(3), a person may only adopt or determine the market value as the valuation date value of that asset if-

(a) in the case where the valuation date is 1 October 2001—

(i) that person has valued that asset **[within two years after valuation date]** on or before 30 September 2004;

(ii) the price of that asset has been published by the Commissioner in terms of this paragraph in the *Gazette*; or

(iii) that person has acquired that asset from that person's spouse as contemplated in paragraph 67 and the transferor spouse had adopted the or determined a market value in terms of this paragraph, and for this purpose the transferee spouse must be treated as having adopted or determined that same market value; or

(b) in the case where the valuation date is after 1 October 2001—

(i) that person has valued that asset within two years after valuation date; or

(ii) that asset is one contemplated in paragraph 31(1)(*a*) or (*c*)(i) and the market value of that asset on valuation date is determined in terms of one of those paragraphs.";

(c) by the substitution in subparagraph (5) for the words after item (*c*) of the following words:

"that person may only adopt the market value as the valuation date value of that asset if that person has furnished proof of that valuation to the Commissioner in the form as the Commissioner may prescribe, with the first return submitted by that person after the period contemplated in subparagraph (4) or within such further period as the Commissioner may allow if proof is submitted that the valuation was performed within the period prescribed."; and

(d) by the insertion after subparagraph (8) of the following subparagraph:

"(9) Where the valuation date of a person is after 1 October 2001 the provisions of subparagraph (1)(*a*), (1)(*b*)(i), (2), (2A), (3), (5), (6)(*a*) and (8) do not apply.".

Amendment of paragraph 30 of the Eighth Schedule to Act 58 of 1962

50. Paragraph 30 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (*b*) of subparagraph (3) of the following item:

"(b) any part of the expenditure contemplated in paragraph 20(1)(*a*), (*c*) or (*e*) incurred before, on or after the valuation date **[which]** is or was allowable as a deduction in determining the taxable income of that person before the inclusion of any taxable capital gain; and''.

Amendment of paragraph 31 of the Eighth Schedule to Act 58 of 1962

51. Paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) The market value of an asset on a specified date is in the case of—";

(b) by the substitution for item (*a*) of subparagraph (1) of the following item:

"(*a*) an asset which is a financial instrument listed on a recognized exchange and for which a price was quoted on that exchange, **[is]** the ruling price in respect of that financial on the last business day before **[disposal of that financial instrument]** that date;"; and

(c) by the substitution in subparagraph (1) for subitems (i) and (ii) of item (*c*) of the following subitems:

"(i) any company contemplated in paragraph (*e*)(i) of the definition of 'company' in section 1 of the Act, or any portfolio comprised in any collective investment scheme in property contemplated in Part V of the Collective Investment Schemes Control Act, 2002, carried on in the Republic, the price at which a participatory interest can be sold to the management company of the scheme on **[the]** that date **[of disposal]**; or

(ii) any arrangement or scheme contemplated in paragraph (*e*)(ii) of the definition of 'company', the price at which a participatory interest can be sold to the management company of the scheme on **[the]** that date **[of disposal]** or where there is not a management company the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market on that date;'.

Amendment of paragraph 40 of the Eighth Schedule to Act 58 of 1962

52. Paragraph 40 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding item (*a*) of subparagraph (2) of the following words:

"(2) Subject to **[subparagraph]** paragraph 12(5), where an asset is disposed of by a deceased estate to an heir or legatee (other than the surviving spouse of the deceased person as contemplated in paragraph 67(2)(*a*) or an approved public benefit organisation as contemplated in paragraph 62) or a trustee of a trust—".

Amendment of paragraph 43 of the Eighth Schedule to Act 58 of 1962

53. Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended 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 (1) or (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 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—".

Amendment of paragraph 62 of the Eighth Schedule to Act 58 of 1962

54. Paragraph 62 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(*b*) a public benefit organisation **[exempt from tax in terms of section 10(1)(*c*N)]** contemplated in paragraph (*a*) of the definition of "public benefit organisation" in section 30(1) that has been approved by the Commissioner in terms of section 30(3);";

(b) by the deletion of the word "or" at the end of subparagraph (*c*) and the addition of the word "or" at the end of subparagraph (*d*); and

(c) by the insertion after subparagraph (*d*) of the following subparagraph:

"(*e*) a recreational club which is a company, society or other organisation as contemplated in the definition of "recreational club" in section 30A(1) that has been approved by the Commissioner in terms of section 30A.".

Insertion of paragraph 63A in the Eighth Schedule to Act 58 of 1962

55. The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 63 of the following paragraph:

"**63A. Public benefit organisations.-** A public benefit organisation approved by the Commissioner in terms of section 30(3) must disregard any capital gain or capital loss in respect of the disposal of an asset where—

(*a*) the use of that asset from valuation date by that public benefit organisation was not for any business undertaking or trading activity; or

(*b*) substantially the whole of the use of that asset from valuation date by that public benefit organisation was in carrying on a public benefit activity.".

Amendment of paragraph 64 of the Eighth Schedule to Act 58 of 1962

56. Paragraph 64 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(*a*) which is used by that person solely to produce amounts which are exempt from normal tax in terms of section 10, other than receipts and accruals contemplated in paragraphs (*c*N), (*c*O), *(i)*(xv), *(k)* and *(m)* of subsection (1) thereof; or"; and

(b) by the deletion of subparagraph (*b*).

Amendment of paragraph 64A of the Eighth Schedule to Act 58 of 1962

57. The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 64A of the following paragraph:

"**64A. Awards in terms of the Restitution of Land Rights Act and government scrapping payments.—**A person must disregard any capital gain or capital loss in respect of the disposal that resulted in that person receiving—

(*a*) restitution of a right to land, an award or compensation in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) ;or

(*b*) a government scrapping payment, if the Minister has by Notice in the *Gazette* identified the programme or scheme for purposes of this paragraph".

Insertion of paragraph 65B to the Eighth Schedule to Act 58 of 1962

58. The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 65 of the following paragraph:

"**65B. Disposal by recreational club.—**A recreational club approved in terms of section 30A may elect that this paragraph applies in respect of the disposal of an asset that was used solely to produce income that was exempt from tax in terms of section 10 (1) (*cO*), (other than a financial instrument), where—

(*a*) proceeds accrue to that club in respect of that disposal;

(*b*) those proceeds are equal to or exceed the base cost of that asset;

(*c*) (i) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more assets all of which will be used solely to produce income

that will be exempt from tax in terms of section 10(1)(*c*O);

(ii) the contracts for the acquisition of the replacement asset or assets have all been or will be concluded within 12 months after the date of the disposal of that asset; and

(iv) the replacement asset or assets will all be brought into use within three years of the disposal of that asset:

Provided that the Commissioner may extend the period within which the contract must be concluded or asset brought into use by no more than six months if all reasonable steps were taken to conclude those contracts or bring those assets into use; and

(*e*) that asset is not deemed to have been disposed of and to have been reacquired by that club.

(2) Where a club has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5) and (6) be disregarded when determining that club's aggregate capital gain or aggregate capital loss.

(3) Where a club acquires more than one replacement asset as contemplated in subparagraph (1), that club must, in applying subparagraphs (4) and (5), apportion the capital gain derived from the disposal of that asset to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

(4) Where a club during any year of assessment disposes of a replacement asset and any portion of the disregarded capital gain which is apportioned to that asset, has not otherwise been treated as a capital gain in terms of this paragraph, that club must treat that portion of disregarded capital gain as a capital gain from the disposal of that replacement asset in that year of assessment.

(5) Where a club fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in subparagraph (1) (*d*) (iii) or (iv), subparagraph (2) shall not apply and that club must—

(*a*) treat the capital gain contemplated in subparagraph (2) as a capital gain on the date on which the relevant period ends;

(*b*) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (*a*); and

(*c*) treat that interest as a capital gain on the date contemplated in item (*a*) when determining that person's aggregate capital gain or aggregate capital loss."

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

59. Paragraph 67 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for item (*b*) of subparagraph (1) of the following item:

"(b) The transferee must be treated as having—

(i) acquired the asset on the same date that such asset was acquired by the transferor;

(ii) **[acquired the asset for]** incurred an amount of expenditure equal to the expenditure contemplated in paragraph 20 that was incurred by that transferor **[prior to that disposal]** and the executor of the deceased estate of the transferor in respect of that asset;

(iii) incurred that expenditure on the same date and in the same currency that it was incurred by the transferor or the executor of the deceased estate of the transferor; and

(iv) used **[the]** that asset in the same manner that it was used by the transferor **[in respect of the period prior to that disposal]** and the executor of the deceased estate of the transferor."; and

(b) by the substitution for item (*a*) of subparagraph (2) of the following item:

"(*a*) a deceased person must be treated as having disposed of an asset to his or her surviving spouse, if ownership of that asset **[accrues to that surviving spouse upon the death of that person]** is acquired by that surviving spouse by *ab intestato* or testamentary succession or as a result of a re-distribution agreement between the heirs and legatees of that deceased person in the course of liquidation or distribution of the deceased estate of that deceased person; or".

Amendment of paragraph 80 of Eighth Schedule to Act 58 of 1962

60. Paragraph 80 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding item (*a*) of subparagraph (2) of the following words:

"(2) Subject to paragraphs 68, 69, 71 and 72, where a capital gain arises in a trust in a year of assessment during which a trust beneficiary who is a resident has a vested interest or acquires a vested interest (including an interest caused by the exercise of a discretion) in that capital gain but not in the asset, the disposal of which gave rise to the capital gain, the <u>whole or the portion of the capital</u> gain <u>so vested</u>—".

Amendment of paragraph 92 of the Eighth Schedule to Act 58 of 1962

61. Paragraph 92 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (*b*) for the following item:

"(*b*) increasing that amount by any capital loss determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part)<u>, which was taken into account in determining that amount.</u>".

Amendment of Part 1 of the Ninth Schedule to Act 58 of 1962

62. Part 1 of The Ninth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(*a*) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income falls within the housing

subsidy eligibility requirements **[of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997)]** set by the Minister of Finance after consultation with the Minister of Housing."; and

(b) by the substitution in paragraph 3 for subparagraph (*f*) of the following subparagraph:

"(*f*) Granting of loans for purposes of subparagraph (*a*) or (*b*), and the provision of security or guarantees in respect of such loans, subject to such conditions as may be prescribed by the Minister by way of regulation.".

Amendment of Paragraph 4 of Part II of the Ninth Schedule to Act 58 of 1962

63. Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 4 of the following paragraph:

"4. **[The establishment and management of a transfrontier area, involving two or more countries, which—]**

(*a*) **[is or will fall under a unified or coordinated system of management without compromising national sovereignty; and]**Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere.

(*b*) **[has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries within the peace park, and the building of peace and understanding between the nations concerned.]**The care of animals, including the

rehabilitation or prevention of the ill-treatment of animals.

(*c*) The promotion of, and education and training programmes relating to, environmental awareness, greening, clean-up or sustainable development projects.

(*d*) The establishment and management of a transfrontier area, involving two or more countries, which—

(i) does or will fall under a unified or coordinated system of management without compromising national sovereignty; and

(ii) has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries of the peace park, and the building of peace and understanding between the nations concerned.".

Amendment of Paragraph 5 of Part II of the Ninth Schedule to Act 58 of 1962

64. Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in paragraph 5 for subparagraph (*a*) of the following subparagraph:

"(*a*) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income falls within the housing subsidy eligibility requirements **[of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997)]** set

by the Minister of Finance after consultation with the Minister of Housing.".

Insertion of Schedule 10 to Act 58 of 1962

65. (1) The Income Tax Act, 1962, is hereby amended by the insertion of Schedule 9 of the following Schedule:

"Tenth Schedule
OIL AND GAS ACTIVITIES
DEFINITIONS

1. For purposes of this Schedule, unless the context otherwise indicates—

"exploration" means the acquisition, processing and re-processing of new seismic data (including all other analysis of geological and geophysical data) or other related activity for purposes of defining a trap to be tested by drilling together with the drilling, logging and testing (including extended well testing) of a well or wells up to and including a discovery well;

"gas" means any subsoil combustible gas (including condensate of such gas) consisting primarily of hydrocarbons, other than hydrocarbons converted from other stratified deposits of liquid hydrocarbons;

"oil" means any subsoil combustible liquid consisting primarily of hydrocarbons, other than hydrocarbons converted from bituminous shales or other stratified deposits of solid hydrocarbons;

"oil and gas company" means any company that—

(*a*) either—

(i) holds or leases any oil and gas right; or

(ii) engages in exploration, production or refining in terms of any oil and gas right; and

(*b*) engages in no trade other than any of the activities contemplated in item (*a*);

"oil and gas income", in terms of any oil and gas company, means the receipts or accruals derived in respect of any oil and gas right, including the leasing or disposal of that right; and

"oil and gas right" means any reconnaissance permit, technical co-operation permit, exploration right, or production right (or any right or interest therein) as contemplated in Schedule I of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

"production" means all acquisition, processing, re-processing and analysis geological and geophysical data associated with drilling and installation of facilities for the production of oil and gas or other similar activity; and

"refining" means downstream processes (including fractional distillation, chemical processing, conversion, treatment or any combination thereof) in relation to exploration or production.

RATES

2. (1) The rate of normal tax in terms of the oil or gas income of any oil and gas company that—

(a) is a resident will not exceed 29 cents on each rand of taxable income; and

(b) not a resident and carries on a trade through a branch or agency within the Republic may not

exceed 32.38 cents on each rand of taxable income.

SECONDARY TAX ON COMPANIES

3. (1) The rate of tax may not exceed 5 per cent on the net amount of any dividend declared by an oil and gas company derived out of the profits of its oil and gas income.

(2) Notwithstanding subparagraph (1), the rate of tax may not exceed 0 per cent on the net amount of any dividend declared by any oil and gas company derived out of the profits of its oil and gas income if all of its oil and gas rights are solely derived (directly or indirectly) in terms of a converted OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) previously held by that company.

(3) Paragraphs (1) and (2) will not apply to any oil and gas company engaged in refining.

FOREIGN CURRENCY GAINS OR LOSSES

4. (1) The currency gains or losses in relation to any amounts received by or accrued to, or expenditure or loss incurred by, that company (regardless of whether or not those amounts are realised or unrealised) will be determined solely with reference to the currency used by that company for purposes of financial reporting.

(2) For purposes of determining the taxable income of an oil and gas company that determines any amounts received by or accrued to, or expenditure or loss incurred by, that company in a currency as contemplated in subparagraph (1) during any year of assessment, those amounts, expenditure or loss must be translated to the currency of the Republic at the closing spot rate on the last day of that year.

DEDUCTIONS FROM INCOME DERIVED FROM OIL AND GAS ACTIVITIES

5. (1) For purposes of determining the taxable income of an oil and gas company during any year of assessment, there will be allowed as deductions from the oil and gas income of that company derived in that year all expenditure and losses actually incurred (other than any expenditure or loss actually incurred in respect of the acquisition of any oil and gas right) in that year in respect of exploration or production including—

(*a*) expenditures and losses that were actually incurred prior to the commencement of or in preparation for carrying on exploration or production; and

(*b*) any other charges actually incurred in terms of any loan, debt, advance, security, or guarantee (including finance charges or other consideration paid or payable in relation thereto) utilised in relation to that exploration or production.

(2) In addition to any other deductions (as contemplated in subparagraph (1)) allowable in terms of this paragraph, for purposes of determining the taxable income of an oil and gas company during any year of assessment, there will be allowed as deductions from the oil or gas income of that company derived in that year—

(*a*) 100 per cent of all expenditure of a capital nature actually incurred in that year in respect of exploration; and

(*b*) 50 per cent of all expenditure of a capital nature actually incurred in that year in respect of production.

(3) For purposes of determining the taxable income of an oil and gas company during any year of assessment, any assessed losses in respect of exploration or production may only be set-off against the oil and gas income of that company.

(4) To the extent any assessed losses remain after the set-off contemplated in subparagraph (3), an amount equal to 10 per cent of those assessed losses may be set-off against any other income derived by that company.

THIN CAPITALISATION

6. (1) For purposes of determining the taxable income of an oil and gas company during any year of assessment, if that company owes any interest-bearing loan, debt or advance—

(a) to a person that is not a resident and is a connected person in relation to that company; and

(b) on the last day of that year that loan, debt or advance does not exceed an amount equal to three times the greater of—

(i) the total value of that company's equity as of the last day of that company's financial year for that year; or

(ii) the accumulated consideration paid to that company for its equity as of the last day of that company's financial year for that year, that loan, debt or advance will not be considered excessive in terms of section 31 or any other comparable prohibition against deductions in respect of thin capitalisation.

(2) For purposes of subparagraph (1)(*b*), **"equity"** means any share outstanding that does or would participate in any dividends out of the operations and the winding-up or liquidation of any oil and gas company.

(3) If any loan, debt or advance will be or is excessive as contemplated in subparagraph (1) for a temporary duration, the Commissioner may consider that loan, debt or advance not to be excessive to the extent of that duration or a longer period.

DISPOSAL OF OIL AND GAS RIGHT

7. (1) If an oil or gas company disposes of any oil and gas right to another oil and gas company, both companies

may jointly elect that either rollover treatment as contemplated in subparagraph (2) or participation treatment as contemplated in subparagraph (3) applies in respect of that right.

(2) If an oil or gas company disposes of any oil and gas right to another oil and gas company pursuant to an election for rollover treatment as contemplated in subparagraph (1), the market value of which is equal to or exceeds—

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

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

that company is deemed to have disposed of that right for an amount equal to the amount contemplated in items (*a*) or (*b*), as the case may be, and that other company is deemed to have acquired that right—

(i) where that right is so disposed of as a capital asset, for a cost equal to any expenditure in respect of that right incurred by that company that is allowable in terms of paragraph 20 of the Eighth Schedule and to have incurred such cost at the date of incurral by that company of such expenditure, which cost must, where that right is acquired as—

(A) a capital asset, be treated as an expenditure actually incurred and paid by that company in respect of that right

for the purposes of paragraph 20 of the Eighth Schedule; and

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

(ii) where that right is so disposed of as trading stock and that right is acquired as trading stock, for a cost equal to the amount referred to in item (*b*), which cost must be treated as the amount to be taken into account by that company in respect of that right for purposes of section 11 (*a*) or 22 (1) or (2).

(3) (a) If an oil or gas company disposes of any oil and gas right to another oil and gas company pursuant to an election for participation treatment as contemplated in subparagraph (1); and

(i) that right is held as a capital asset; and

(ii) the market value of that right exceeds the base cost of that right on the date of that disposal,

any gain derived by that company in respect of the amount contemplated in sub-item (ii) is deemed to be an amount of gross income, and that other company that acquired that right may deduct from its oil an gas income as contemplated in paragraph 6(1) (but not including 6(2)) an amount of gross income equal to the gross income deemed received by the company that disposed of that right; or

(b) if an oil or gas company disposes of any oil and gas right to another oil and gas company pursuant to an election for participation treatment as contemplated in subparagraph (1); and

(*i*) that right is held as trading stock; and

(*ii*) the market value of that right exceeds the amount taken into account in respect of that right in terms of section 11 (*a*) or 22 (1) or (2),

that other company that acquired that right may deduct from its oil an gas income as contemplated in paragraph 6(1) (but not including 6(2)) an amount of gross income equal to the gross income deemed received by the company that disposed of that right less the applicable deduction allowable as contemplated in section 11 (*a*) or 22 (1) or (2), as the case may be, in respect of that right.

FISCAL STABILITY

8. (1) The Minister, after consultation with the Minister of Minerals and Energy, may enter into agreements that contractually bind the State with any oil and gas company guaranteeing that the provisions of this Schedule as at the date that agreement was entered into will continue to apply for the duration of that company's oil and gas right.

(2) For purposes of this paragraph, as of the date that any oil and gas company enters into an agreement as contemplated in subparagraph (1)—

(*a*) any exploration right or renewal thereof (or any right or interest therein); or

(*b*) the initial production right converted from any exploration right (or any right or interest therein) contemplated in item (*a*),

in respect of any oil and gas right of that company will be deemed to be one and the same right in the hands of that company.

(3) Any oil and gas company that has entered into an agreement as contemplated in this paragraph may at any time unilaterally rescind that agreement, thereby rendering that agreement null and void as of the date of that rescission.".

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

Amendment of section 1 of Act 91 of 1964

66. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended -

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

""**bill of entry**" includes any SAD form, except as otherwise provided in any Schedule, rule or the Schedule to the rules;";

(b) by the insertion in subsection (1) after the definition of "bill of entry" of the following definitions:

""**break bulk goods**" means goods shipped in separate packages stored in or on the carrying ship or vehicle;

"**bulk goods**" means a large quantity of unpacked dry or liquid homogenous goods shipped loose in the hold of a ship or transported loose by a vehicle or in any receptacle;

"**bulk goods terminal**" means any terminal contemplated in section 6(1)(*h*E) and licensed in terms of this Act;

"**bulk goods terminal operator**" means the licensee of a bulk goods terminal;

"**combination terminal**" means any terminal for containerized and break bulk goods contemplated in section 6(1)(*h*D) and licensed in terms of this Act;

"**combination terminal operator**" means the licensee of a combination terminal;";

(c) by the substitution in subsection (1) for the definitions of "container depot", "container operator" and "container terminal" of the following definitions:

""**container depot**" means any container depot contemplated in section 6(1)(*h*B) and licensed in terms of this Act;

"**container operator**" means any person providing international transportation of containerized goods, **[and]** licensed **[by the Commissioner, under section 96A,]** in terms of this Act for operating containers in the Republic;

"**container terminal**" means any container terminal contemplated in section 6(1)(*h*A) and licensed in terms of this Act;";

(d) by the insertion in subsection (1) after the definition of "container terminal" of the following definition:

""**container terminal operator**" means the licensee of a container terminal;";

(e) by the substitution in subsection (1) for the definitions of "depot operator", "master" and "pilot" of the following definitions:

""**container depot operator**" means the **[person having charge]** licensee of any container depot;

"**master**", in relation to any ship, means any person (other than a pilot) having charge of such ship and includes any agent appointed by such master as contemplated in section 97;

"**pilot**", in relation to any aircraft, means any person having charge of such aircraft and includes any agent appointed by such pilot as contemplated in section 97;";

(f) by the insertion in subsection (1) after the definition of "Road Accident Fund levy goods" of the following definitions:

""**road vehicle terminal**" means any terminal contemplated in section 6(1)(*h*F) and licensed in terms of this Act;

"**road vehicle terminal operator**" means a licensee of a road vehicle terminal;";

(g) by the insertion in subsection (1) after the definition of "this Act" of the following definitions:

""**transit shed**" means any transit shed contemplated in section 6(1)*(g)* and licensed in terms of this Act;

"**transit shed operator**" means the licensee of a transit shed;";

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

"(2) In this section, except in the definition of "package", and in sections 4, 6, 7, 18, 38, 44, 64A **[and]**, 87(2) and 107, "container" means transport equipment of tariff heading 86.09 -

(a) having an internal volume of not less than one cubic metre; and

(b) designed for the transport of goods by any means of carriage, without intermediate reloading,

and in this Act "containerized" has a corresponding meaning.";

(ij) by the insertion after subsection (4)*(c)* of the following subsection:

"(5) The expression "goods under customs control", "goods subject to customs control" or "goods under control of the Commissioner" and any cognate expression shall, unless the context otherwise indicates, be deemed to include, but is not limited to, any goods to which this Act relates or any ship, vehicle or container contemplated in section 1(2) that -

(a) enter or leave the Republic;

(b) are in, or at any premises licensed, registered or approved for any purpose in terms of this Act;

(c) are in, on or at any premises or at any place appointed or prescribed in terms of section 6;

(d) are in transit within or through the Republic or conveyed for transhipment to any place outside the Republic as may be specified by rule;

(e) are deemed in terms of any provision of this Act to be under customs control, and

"customs controlled area" means any place where goods under customs control are at any time, or are at any time landed, loaded, manufactured, stored, removed, packed or otherwise dealt with."; and

(2) *(a)* Subsection (1)*(a)* shall be deemed to have come into operation on 1 October 2006;

(b) Subsection (1)*(b)*, *(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)* and *(ij)* shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Insertion of section 3B of Act 91 of 1964

67. Section 3B of the Customs and Excise Act, 1964, is hereby inserted after section 3A as follows:

"**3B. Duties and powers of Director-General: Agriculture. –** (1) Any duty imposed or power conferred by this Act on the Director-General: Agriculture, may be performed or exercised by him personally or by an officer under delegation from or under the control or direction of the said Director-General.

(2) Any decision made under subsection (1) by any such officer may be withdrawn or amended by the said Director-General or by the officer (with effect from the date of making such a decision or the date of withdrawal or amendment thereof) and shall, until it has

been so withdrawn, be deemed, except for the purposes of this subsection, to have been made by that Director-General."

Amendment of section 4 of Act 91 of 1964

68. (1) Section 4 of the Customs and Excise Act, 1964, is hereby amended -

(a) by the substitution in subsection (3) for the words preceding subparagraph (i) of the following words:

"The Commissioner or any officer shall not disclose any information relating to any person, firm or business acquired in the performance of his duties, except **[-** ***(a)*** **for the purposes of this Act] [;or** ***(b)*** **when required to do so as a witness in a court of law]** in the performance of his duties under this Act or by order of a competent court:

Provided that the provisions of this subsection shall not be construed as preventing the Commissioner (in such form and under such procedural arrangements as the Commissioner may prescribe) from, on good cause shown –";

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

"*(a)* An officer may stop and detain and examine any goods in order to determine whether the provisions of this Act or any other law have been complied with in respect of such goods as contemplated in section 107(2)*(a)*.";

(c) by the substitution in subsection (8A)*(b)* for subparagraph (ii) of the following subparagraph:

"(ii) *(aa)* For the purposes of this subsection, unless the context otherwise indicates, "examine" includes using an X-ray scanner or any other non-intrusive inspection methods.

(bb) The Commissioner may by rule prescribe -

(A) any requirement any person must comply with in connection with such non-intrusive inspection;

(B) notwithstanding the provisions of section 8, any additional advance information required in respect of any goods that will be imported or exported in such form and at such time as may be specified in such rule.

(C) Any other matter which the Commissioner considers necessary and useful for the purpose of the effective and efficient use of such equipment and the results obtained from its operation.

(cc) Notwithstanding anything to the contrary in this Act, any non-intrusive or other examination may take place in the absence of any importer, exporter, port or airport authority, container operator, agent or any licensee or any other person having control of the goods concerned.

(dd) Any person who –

(A) without lawful excuse (the proof of which shall be upon him) enters any restricted area where non-intrusive equipment is operating;

(B) with the intent to deceive, does anything to prevent equipment from producing a true image of the contents of any container or package,

shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or treble the value of the goods in respect of which the offence is committed, whichever is the greater, or imprisonment for a period not exceeding five years or both such fine and imprisonment and the goods concerned shall be liable to forfeiture in accordance with the provisions of this Act.";

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

"(13) No person shall be entitled to any compensation for any loss or damage arising out of –

(a) any *bona fide* action of an officer under this section; or

(b) any examination of goods by means of the non-intrusive inspection methods contemplated in subsection (8A)."; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 6 of Act 91 of 1964

69. (1) Section 6 of the Customs and Excise Act, 1964, is hereby amended -

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

"*(g)* places where secure premises to be known as transit sheds may be established -

(i) into or to which imported break bulk goods may be removed from a ship or vehicle; or

(ii) from which break bulk goods for export may be packed into or loaded on to any ship or vehicle;";

(b) by the deletion in subsection (1) for paragraph *(gA)*;

(c) by the insertion in subsection (1) after paragraph (*h*C) of the following paragraphs:

(*h*D) "combination terminals" where -

(i) containerised and break bulk imported goods may be landed—

(*aa*) for transit, coastwise carriage; or

(*bb*) for delivery of the containerised goods to a container depot; or

(*cc*) after their contents have been duly entered, delivery to importer's or the importer's agent; or

(ii) from where containerised or break bulk goods may be shipped for export;

(*h*E) "bulk goods terminals" -

(i) wherein bulk imported goods may be discharged from a ship or vehicle; or

(ii) wherefrom bulk goods may be loaded into or on to any ship or vehicle;

(*h*F) "road vehicle terminals", where -

(i) imported vehicles on wheels may be landed; or

(ii) vehicles on wheels for export may be loaded on to a ship or vehicle;";

(d) by the insertion after subsection (5) of the following subsection:

"(6) Except where the Commissioner determines otherwise by rule, no person may –

(a) be in control of, or receive, deliver, remove, store or otherwise deal with any imported goods landed from any ship or vehicle; or

(b) load any goods for export or cause goods to be loaded into or on to any ship or vehicle

unless such person is a licensed container operator or a licensee of premises licensed in terms of this Act."; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 7 of Act 91 of 1964

70. (1) Section 7 of the Customs and Excise Act, 1964, is hereby amended –

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

"(1) An arrival report and a schedule report or departure report relating to any foreign-going ship or aircraft calling at any place in the Republic shall be submitted electronically by such persons at such times as may be prescribed by rule.

(1A) The master of any ship arriving at any place of entry appointed in terms of section 6, whether laden or in ballast, shall within 24 hours after the ship's arrival, unless the Controller has given permission to the contrary, and the pilot of any aircraft arriving in the Republic, whether with or without goods or passengers, shall within three hours after landing at any place appointed as a customs and excise airport in terms of the said section 6 or within such further time as the Controller may allow -

(a) make due report in writing as may be prescribed by rule of the arrival, with as many duplicates or extracts as the Controller may require;

(b) make and subscribe to a declaration as to the truth of the report before the Controller and answer all such questions concerning the ship or aircraft, the cargo and stores, and the crew, passengers and voyage or flight as may be put to him by the Controller; and

(c) produce, if required, the official log books for the voyage or flight, the stowage plans and any other documents in his possession relating to the cargo, stores, crew, passengers and voyage or flight."

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

"(1B) *(a)* The master of a foreign-going ship shall not all at any place in the Republic other than a place of entry appointed in terms of section 6 and the pilot of an aircraft arriving in the Republic shall, unless the Commissioner has granted him

special permission to land elsewhere, make his first landing at a place appointed as a customs and excise airport in terms of section 6: Provided that the provisions of this subsection shall not apply if the master or pilot, as the case may be, is forced by circumstances beyond his control to call or land at a place not so appointed and he reports to the Controller nearest to the place where he was so forced to call or land or to the Controller at the first place of entry or customs and excise airport appointed in terms of section 6 at which he next arrives.

(b) Such master or pilot who is forced by circumstances beyond his control to call or land at a place in the Republic not appointed as a place of entry in terms of section 6 shall take all precautions necessary to prevent any contravention of this Act in respect of any goods on or in such ship or aircraft."; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 8 of Act 91 of 1964

71. (1) Section 8 of the Customs and Excise Act, 1964, is hereby amended –

(a) by the substitution for section 8 of the following section:

"**8. Cargo reports**

(1) Notwithstanding the provisions of sections 7 and 12, the Commissioner may by rule prescribe requirements in respect of the report of cargo and that -

(a) any report including any manifest or other report listing and describing cargo carried by or loaded or to be loaded on to any ship or vehicle arriving at or

departing from any place in the Republic, as the case may be; or

(b) any outturn report or other report concerning goods landed from or unpacked from or packed into or loaded on or to be packed into or to be loaded on to any such ship or vehicle, as the case may be; or

(c) any outturn report or other report in respect of any imported goods received or unpacked while under the control of any person after landing thereof at any place licensed in terms of this Act,

shall be in such form containing such particulars and shall be submitted to the Controller by such person in such circumstances and at such times as may be specified in such rule.";

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

"(2) Where the Commissioner prescribes that any report must be submitted prior to cargo for export being packed into or loaded on to a ship or vehicle, no cargo shall be so packed or loaded before -

(*a*) such report is received by the Controller; and

(*b*) release of the cargo has been granted as prescribed in the rules.

(3) *(a)* Any such outturn report or other report shall reflect full particulars concerning any excess or deficiency in respect of any goods landed, received, unpacked, packed or loaded, as the case may be, according to any manifest or other report contemplated in subsection (1)*(a)*.

(b) Where any imported goods reported in any manifest or other report are not landed or -

(i) any such goods not reported are landed; or

(ii) any container or package is landed with visible evidence of tampering or any deficiency is suspected,

any person completing any outturn report on landing of the goods shall examine and report on such goods in the presence of the carrier or the agent of the carrier, as may be prescribed by rule."

(4) *(a)* (i) Any exporter who –

(aa) packs or loads cargo or causes cargo to be packed or loaded in contravention of subsection (2); or

(bb) fails to report cargo or makes any false or misleading statement in connection with any report to which this section relates,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

(ii) Such cargo shall be liable to forfeiture in accordance with the provisions of this Act."; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 11 of Act 91 of 1964

72. (1) Section 11 of the Customs and Excise Act, 1964, is hereby amended –

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

"**Landing of [unentered] imported goods and loading of goods for export**";

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

"(1) All goods -

(a) imported into the Republic, shall, except if the Commissioner determines otherwise by rule, when landed be -

(i) placed into or delivered to a -

(aa) container terminal;

(bb) combination terminal;

(cc) transit shed;

(dd) bulk goods terminal;

(ee) road vehicle terminal;

(ff) container depot;

(gg) degrouping depot; or

(ii) delivered to -

(aa) the State warehouse; or

(bb) any other place, with the permission of the Commissioner;

(b) exported, shall –

(i) except if the Commissioner determines otherwise by rule, be delivered to the licensee of any of the premises contemplated in paragraph *(a)*(i) and loaded therefrom on to the ship or vehicle by means of which the goods are exported;

(ii) be delivered to such premises at such time prior to export as the Commissioner may determine by rule.

(2) The master, pilot or other carrier shall, where goods have not been duly entered and released before landing, be liable for the duty on all goods that have been landed and not placed into or delivered as contemplated in subsection (1)*(a)*."; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette.*

Insertion of section 11A of Act 91 of 1964

73. (1) Section 11A of the Customs and Excise Act, 1964, is hereby inserted after section 11(2) as follows:

"**11A. Seals and sealing of containers and sealing of packages and vehicles.** – (1) *(a)* For the purposes of security of goods under customs control -

(i) any container contemplated in section 1(2);

(ii) any vehicle with built up closed body;

(iii) any road tanker;

(iv) any other vehicle or part of a vehicle; or

(v) any package as may be determined by rule,

must have such security seals affixed thereto or the goods must be otherwise secured by such fastenings in such a manner and in compliance with such standards or other specifications as may be prescribed by rule.

(b) The Commissioner may fix a date by rule whereafter all goods under customs control must be so secured before being entered or declared, removed or otherwise dealt with in terms of any procedure to which this Act relates.

(c) (i) Such seals or fastenings must be supplied and affixed at the risk and expense of any person contemplated in section 107(1)*(a)*.

(ii) If any person fails to affix any such seal or fastening, an officer may at the risk and expense of the person concerned affix the seal or fastening on payment of the costs prescribed by rule.

(d) Nothwithstanding anything in paragraph *(c)*, the Commissioner may at any time affix a seal or fastening or any additional seal or fastening or replace any seal or fastening on any container.

(2) Any person who tampers with or except on good cause shown, removes, breaks or damages any seal or fastening contemplated in this section while the goods are under customs control, shall be guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) The Commissioner may make rules -

(a) regarding the keeping and affixing of seals and recording of seal numbers;

(b) specifying records to be kept of the inspection of seals or fastenings while goods are under customs control and the circumstances in which, and the requirements that must be met when seals or fastenings are replaced;

(c) as to all matters which in this section are required or permitted to be prescribed by rule;

(d) in respect of any other matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of the provisions of this section;"; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 18 of Act 91 of 1964

74. (1) Section 18 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for paragraphs *(d)* and *(e)* of the following paragraphs:

"*(d)* a container operator may, subject to section 44, remove any container in bond to the container depot or container terminal to which it was consigned, **[without furnishing the security provided for in subsection (6) of this section,]** and the

manifest of the goods packed in such container shall be deemed to be due entry for removal in bond of that container;"

(e) the pilot of any aircraft or airline may remove in bond any goods landed from any aircraft at a place in the Republic and for which an air cargo transfer manifest has been completed to **[their place of entry for the Republic]** a licensed transit shed in the common customs area, **[without furnishing the security provided for in subsection (6)]** and such air cargo transfer manifest shall be deemed to be due entry for removal in bond of such goods."; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 21 of Act 91 of 1964

75. Section 21 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (3)*(d)* for subparagraph (iii)*(bb)* of the following subparagraph:

"*(bb)* enter all goods of such class or kind for **[home consumption and payment of duty or for]** such **[other]** purposes as may be authorised under the rules for this section or any other provision of this Act, unless those goods are restricted or prohibited under any law.".

Amendment of section 21A of Act 91 of 1964

76. Section 21A of the Customs and Excise Act, 1964, is hereby amended -

(a) by the substitution in subsection (1) for the definition of "Industrial Development Zone" or "IDZ" of the following definition:

""**Industrial Development Zone**" or "**IDZ**" means an area designated by the Minister of Trade and Industry in terms of **[any regulation**

made in terms of] the Manufacturing Development Act, 1993 (Act No. 187 of 1993);";

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

"(2) Any reference in this section, any Schedule or any rule to "regulations" or "regulation" shall, unless otherwise specified, be a reference to **[the regulations made in terms of the Manufacturing Development Act, 1993]** the Industrial Development Zone Programme published by Government Notice No. R.1224 of 1 December 2000 and any amendment thereto."; and

(c) by the substitution in subsection (9)*(a)* for subparagraph (ii) of the following subparagraph:

"(ii) the goods have been duly consumed or otherwise used in the manufacture or production of any goods by the CCA enterprise in accordance with **[any CCA enterprise permit and]** any relevant provision of this Act;".

Repeal of section 31 of Act 91 of 1964

77. Section 31 of the Customs and Excise Act, 1964, is hereby deleted.

Amendment of section 37B of Act 91 of 1964

78. (1) Section 37B of the Customs and Excise Act, 1964, is hereby amended -

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

"*(b)* The **[Minister]** Commissioner may, **[in prescribing any licence for the manufacture of biofuel in any item of Schedule No. 8 under the provisions of section 60,]** by rule exempt any person or class of persons from licensing in respect of any

manufacturing process in the production of biofuel or any goods used in the production of biofuel.";

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

"*(c)* The Commissioner may, except if any provision of this Act otherwise provides, in respect of biofuel manufactured in the Republic by any person **[for his or her own use and not for sale or other disposal]** registered for such a purpose under section 59A -

(i) *(aa)* exempt for any period any such manufacturer of biofuel from payment of duty in respect of such a quantity of biofuel manufactured by him or her as specified by rule;

(bb) cancel any such exemption under circumstances prescribed by rule;

(ii) prescribe, subject to paragraph *(b)*, conditions and other requirements in respect of such exemption;

(iii) prescribe procedures relating to the manufacture and removal of biofuel for home consumption.";

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

"*(a)* require any manufacturer or seller of biofuel to register in terms of section 59A;"; and

(2) Subsection (1) shall be deemed to have come into operation on 29 March 2006.

Amendment of section 38 of Act 91 of 1964

79. (1) Section 38 of the Customs and Excise Act, 1964, is hereby amended -

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

"*(a)* Every exporter of goods shall, unless exempted by rule, before such goods are exported from the Republic enter the goods at the office of the Controller at the times prescribed by rule.";

(b) by the insertion in subsection (3) after subparagraph *(b)*(iv) of the following paragraph:

"*(c)* Where goods removed in terms of any procedure regulated by this Act will be transferred from one mode of transport to another or from such mode to a similar mode, the Controller where such procedure was authorised, must be informed before such transfer as may be prescribed by rule."; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 41 of Act 91 of 1964

80. Section 41 of the Customs and Excise Act, 1964, is hereby amended by the deletion in subsection (4) of paragraph *(d)*.

Amendment of section 44 of Act 91 of 1964

81. (1) Section 44 of the Customs and Excise Act, 1964, is hereby amended -

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

"(4) *(a)* The master, pilot or carrier concerned shall be liable for the duty on all goods deemed in terms of section 10 to have been imported, except goods in respect of which a bill of lading, air consignment note or other document was issued on loading of such goods onto the ship, aircraft or vehicle

by means of which they were imported stating that the said goods were accepted for conveyance at the risk of the owner thereof in all respects and not only as regards risk in respect of damage to such goods, provided such goods have not been landed **[and placed in a transit shed appointed or prescribed under section 6(1)]**.

(b) Any person who receives any goods contemplated in paragraph *(a)* shall be liable for the duty on those goods and such liability shall cease as provided in this section.

(c) The Commissioner may make rules in respect of any matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of the provisions of this section.";

(b) by the insertion after subsection (4)*(b)* of the following subsection:

"(4A) The liability for duty on goods in terms of subsection (4) shall cease, in the case of -

(a) the master -

(i) upon receipt of the goods by a -

(aa) container terminal operator;

(bb) combination terminal operator;

(cc) transit shed operator;

(dd) bulk goods terminal operator;

(ee) road vehicle terminal operator;

(ff) container depot operator;

(gg) degrouping depot operator;

(ii) where, if authorised by rule as contemplated in section 11 after due entry and release thereof -

(aa) if entered for home consumption, upon receipt of the goods by the importer or the importer's agent;

(bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee; or

(cc) upon receipt by the agent who has entered the goods for removal in bond in terms of section 18 or for export; or

(dd) upon receipt by any other person in circumstances and in accordance with procedures as may be prescribed by rule;

(iii) where any goods have not been dealt with as contemplated in subparagraphs (i) and (ii), on delivery thereof to the State warehouse or any other place with the permission of the Commissioner as contemplated in section 11;

(b) the pilot -

(i) upon receipt of the goods by –

(aa) a transit shed operator; or

(bb) a degrouping operator;

(ii) where authorised by rule as contemplated in section 11, after due entry and release thereof;

(aa) if entered for home consumption, upon receipt of the goods by the importer or the importer's agent; or;

(bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee;

(iii) where any goods have not been dealt with as contemplated in subparagraphs (i) and (ii), on delivery thereof to the State warehouse or with the permission of the Commissioner any other place contemplated;

(c) any other carrier -

(i) upon receipt of the goods by any person contemplated in section 11; or

(ii) where authorised by rule as contemplated in section 11 after due entry and release thereof -

(aa) if entered for home consumption, upon receipt of the goods by the importer or the importer's agent;

(bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee; or

(cc) *upon* receipt by the agent who has entered the goods for removal in bond in terms of section 18.

(iii) where any goods have not been dealt with as contemplated in subparagraphs (i) and (ii), on delivery thereof to the State warehouse or any other place with the permission of the Commissioner as contemplated in section 11;";

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

"(5) The liability for duty on goods received from the master, pilot or other carrier as contemplated in subsection (4A) shall cease in the case of -

(a) the terminal operator, combination terminal operator, bulk goods terminal operator or road vehicle terminal operator;

(i) after due entry and release thereof -

(aa) if entered for home consumption, upon receipt of the goods by the importer or the importer's agent;

(bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee;

(cc) upon receipt by the agent who has entered the goods for removal in bond in terms of section 18 or for export; or

(dd) upon receipt by any other person in circumstances and in accordance with procedures as may be prescribed by rule;

(ii) if containerised, upon receipt by the container operator or depot operator;

(iii) upon receipt by any other terminal operator or combination terminal operator, bulk goods terminal operator or road vehicle terminal operator on removal of the goods in accordance with the procedures prescribed by rule;

(iv) where any goods have not been dealt with as contemplated in subparagraphs (i) to (iii), on delivery thereof to the State warehouse or any other place with the permission of the Commissioner as contemplated in section 11;

(b) the transit shed operator -

(i) after due entry and release thereof -

(aa) if entered for home consumption, upon receipt of the goods by the importer or the importer's agent;

(bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee;

(cc) upon receipt by the agent who has entered the goods for removal in bond in terms of section 18 or for export; or

(dd) upon receipt by any other person in circumstances and in accordance with procedures as may be prescribed by rule;

(ii) in the case of air cargo, upon receipt thereof by a degrouping operator;

(iii) upon receipt by any other transit shed operator on removal of the goods in accordance with the procedures prescribed by rule;

(iv) when any goods have not been dealt with as contemplated in subparagraphs (i) to (iii) upon delivery thereof to the State warehouse, or any other place with the permission of the Commissioner as contemplated in section 11.";

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

"(5A) *(a)* The container operator shall be liable for the duty on all containerised goods received as contemplated in subsection (5)*(a)*(ii).

(b) The liability of the container operator for duty on such goods shall cease -

(i) after due entry and release thereof -

(aa) if entered for home consumption, upon receipt of the goods by the importer or the importer's agent;

(bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee;

(cc) upon receipt by the agent who has entered the goods for removal in bond in terms of section 18 or for export; or

(dd) upon receipt by any other person in circumstances and in accordance with procedures as may be prescribed by rule; or

(ii) upon receipt by a terminal operator or a depot operator or any other person, or at any other place specified by rule, where the container operator

removes any container in bond as contemplated in section 18(1)*(d)*;

(iii) in respect of goods containerized in -

(aa) L.C.L. containers; and

(bb) any other containers,

delivered to a container operator as contemplated in subsection (5)*(a)*(ii) and specified in a list to be compiled by the container operator concerned,

upon delivery thereof to a depot operator; or

(iv) where any goods have not been dealt with as contemplated in such paragraphs (i) to (iii), upon delivery thereof to the State warehouse or any other place with the permission of the Commissioner as contemplated in section 11.";

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

"(5B) *(a)* The container depot operator shall be liable for the duty on all containerised goods received as contemplated in this section.

(b) The liability for duty of the container depot operator shall cease -

(i) in respect of goods contained in L.C.L. containers and the other containers referred to in subsection (5A)*(b)*(iii)*(bb)* after due entry and release thereof -

(aa) if entered for home consumption, upon receipt of the goods by the importer or the importer's agent;

(bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee;

(cc) upon receipt by the agent who has entered the goods for removal in bond in terms of section 18 or for export; or

(dd) upon receipt by any other person in circumstances and in accordance with procedures as may be prescribed by rule; or

(ii) upon receipt by any other container depot operator on removal of the goods in accordance with the procedures prescribed by rule;

(iii) where any goods have not been dealt with as contemplated in subparagraphs (i) to (ii) upon delivery to the State warehouse or any other place with the permission of the Commissioner as contemplated in section 11."

(f) by the substitution in subsection (5C) for subparagraph *(a)*(ii) of the following subparagraph:

"(ii) degrouping operator from the transit shed operator **[(as defined by rule)]** where the degrouping operator takes delivery from the transit shed operator at the transit shed;";

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

"(5D) *(a)* Any person receiving any goods as contemplated in this section, shall issue a receipt to the person delivering the goods in respect of any goods received.

(b) Any outturn report or any discrepant report duly completed in accordance with section 8 and its rules shall, in respect of the goods concerned, be regarded to be a correct report of goods landed or received, as the case may be, in bulk, in a container, consolidated package or other package.

(c) Subject to compliance with any procedure prescribed by rule in respect of any goods or means of transport, the liability for duty of the master, pilot or other carrier, container operator, transit shed operator and any other person contemplated in section (1) on any imported goods not consigned to a place in the Republic which are landed

in the Republic, shall cease when it is proved that the goods have been duly taken out of the common customs area.";

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

"(6) In all cases where the master, pilot or other carrier is not liable for the duty on any imported goods or where the liability of the said master, pilot or other carrier has ceased in respect of such goods in terms of this section, liability for duty thereon shall, subject to the provisions of Chapter VII, rest -

(a) on the persons specified in subsections (4A), (5), (5A), (5B) or (5C); and

(b) in any other case, on the importer or the owner of such goods or any person who assumes such liability for any purpose under the provisions of this Act, subject to the approval of the Commissioner and such conditions as he may determine."; and

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

Amendment of section 55 of Act 91 of 1964

82. Section 55 of the Customs and Excise Act, 1964, is hereby amended –

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

"ANTI-DUMPING, COUNTERVAILING AND SAFEGUARD DUTIES AND MEASURES";

(b) by the substitution for the heading of section 55 of the following heading:

"**General provisions regarding anti-dumping, [and] countervailing and safeguard duties and measures**";

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

"*(a)* The imposition of any anti-dumping duty in the case of dumping as defined in the International Trade Administration Act, 2002 (Act No. 71 of 2002), a countervailing duty in the case of subsidized export as so defined or a safeguard duty or quota in the case of disruptive competition as so defined and the rate at which or the circumstances in which such duty or quota is imposed in respect of any imported goods shall be in accordance with any request by the Minister of Trade and Industry under the provisions of the International Trade Administration Act, 2002."; and

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

"(4) An anti-dumping, countervailing or safeguard duty or quota imposed under the provisions of this Chapter shall not apply to any goods entered under the provisions of any item specified in Schedule No. 3 or 4 unless such item is specified in Schedule No. 2 in respect of such goods.".

Amendment of section 56 of Act 91 of 1964

83. Section 56 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The Minister may, in accordance with any request by the Minister of Trade and Industry from time to time by notice in the *Gazette* -

(a) withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice; or

(b) otherwise amend, from the date of such amendment or any later date to such extent as may be specified in the notice,

any anti-dumping duty imposed under subsection (1).".

Amendment of section 56A of Act 91 of 1964

84. Section 56A of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The Minister may, in accordance with any request by the Minister of Trade and Industry from time to time by notice in the *Gazette* -

(a) withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice; or

(b) otherwise amend, from the date of such amendment or any later date to such extent as may be specified in the notice,

any countervailing duty imposed under subsection (1).".

Amendment of section 57 of Act 91 of 1964

85. Section 57 of the Customs and Excise Act, 1964, is hereby amended -

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

"**Imposition of safeguard [duties] measures**";

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

"(1) The Minister may from time to time by notice in the *Gazette* amend Schedule No. 2 to impose a safeguard duty or quota in accordance with the provisions of section 55(2)."; and

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

"(2) The Minister may, in accordance with any request by the Minister of Trade and Industry from time to time by notice in the *Gazette* -

(a) withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice; or

(b) otherwise amend, from the date of such amendment or any later date to such extent as may be specified in the notice, any safeguard duty or quota imposed under subsection (1).".

Insertion of section 64H of Act 91 of 1964

86. (1) Section 64H of the Customs and Excise Act, 1964, is hereby inserted after section 64G as follows:

"**64H. Licensing of container terminals.** – (1) *(a)* Every container terminal shall be licensed in accordance with the provisions of section 60, this section, any applicable note in Schedule No. 8 and any rule relating to such licence.

(b) Application for such a licence shall be made on the prescribed form which shall be supported by the documents and information specified in such form and as the Commissioner may require from each applicant.

(c) Before any licence is issued the applicant for a licence must furnish security as contemplated in section 60(1)*(c)*: Provided that the Commissioner may on good cause shown, to the extent considered reasonable in each case, reduce the amount of such security or exempt any person from furnishing security.

(d) Before commencing operations or from a date thereafter specified by the Commissioner by rule, every container terminal operator shall register for the purposes of electronic communication as a user and enter into a user agreement in terms of section 101A and its rules.

(2) *(a)* (i) The terminal operator shall -

(aa) be responsible for ensuring that goods for export are loaded on a ship for export; and

(bb) in addition to any liability for duty incurred by any person under any provision of this Act, be liable for the duty on any goods received for export and such liability shall cease when it is proved that the goods have been loaded on a ship as contemplated in subparagraph *(aa)*.

(ii) The terminal operator shall produce proof to the Controller as may be prescribed by rule that the goods have been loaded on a ship for export.

(iii) Goods received in a container terminal may not be opened or withdrawn therefrom without the permission of the Controller and in compliance with such procedures as may be prescribed by rule.

(b) The receipt, storage and handling of containers in a container terminal shall be in accordance with requirements the Commissioner may prescribe by rule.

(c) Except where goods have been entered for home consumption and released thereafter, or any other procedure is authorised by rule, the provisions of section 18 shall apply *mutatis mutandis* to any movement of any imported containers from a container terminal.

(3) The Controller may require any container to be detained in a container terminal for examination of the container or its contents, including by non-intrusive inspection methods contemplated in section 4(8A).

(4) *(a)* The Commissioner may refuse an application for a container terminal licence or cancel or suspend such a licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph *(a)*.

(5) The Commissioner may prescribe by rule -

(a) the security requirements regarding the premises, equipment of the container terminal and control measures to be observed in a container terminal;

(b) any procedure or obligation in connection with containers received which are -

(i) in excess of manifested quantities;

(ii) unmanifested excess containers; or

(iii) manifested but not received;

(c) reports and procedures relating to missing seals or seals and containers with signs of damage, tampering or other discrepancy;

(d) records to be kept in respect of the movement of containers and any other activity in the operation of the container terminal;

(e) all matters that are required or permitted in terms of this section to be prescribed by rule;

(f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of a container terminal.”; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Insertion of section 64IJ of Act 91 of 1964

87. (1) Section 64IJ of the Customs and Excise Act, 1964, is hereby inserted after section 64H as follows:

“**64IJ. Licensing of combination terminals.** – (1) *(a)* Every combination terminal shall be licensed in accordance with the provisions of section 60, this section, any applicable note in Schedule No. 8 and any rule relating to such licence.

(b) Application for such a licence shall be made on the prescribed form which shall be supported by the documents and information specified in such form and as the Commissioner may require from each applicant.

(c) Before any licence is issued the applicant for a licence must furnish security as contemplated in section 60(1)*(c)*: Provided that the Commissioner may on good cause shown, to the extent considered reasonable in each case, reduce the amount of such security or exempt any person from furnishing security.

(d) Before commencing operations or from a date thereafter specified by the Commissioner by rule, every combination terminal operator shall register for the purposes of electronic communication as a user and enter into a user agreement in terms of section 101A and its rules.

(2) *(a)* (i) The combination terminal operator shall -

(aa) be responsible for ensuring that goods for export are loaded on a ship for export; and

(bb) in addition to any liability for duty incurred by any person under any provision of this Act, be liable for the duty on any goods received for export and such liability shall cease when it is proved that the goods have been loaded on a ship as contemplated in subparagraph *(aa)*.

(ii) The combination terminal operator shall produce proof to the Controller as may be prescribed by rule that the goods have been loaded on a ship for export

(iii) Goods received in a combination terminal may not be opened or withdrawn therefrom without the permission of the Controller and in compliance with such procedures as may be prescribed by rule.

(b) The receipt, storage and handling of goods in a combination terminal shall be in accordance with the requirements that may be prescribed by rule.

(c) Except where goods have been entered for home consumption and released thereafter or any other procedure is authorised by rule, the provisions of section 18 shall apply *mutatis mutandis* to any movement of imported goods from a combination terminal.

(3) The Controller may require any container or package to be detained in a combination terminal for examination of the container or package or of its contents, including by non-intrusive inspection methods contemplated in section 4(8A).

(4) *(a)* The Commissioner may refuse an application for a combination terminal licence or cancel or suspend such a licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph *(a)*.

(5) The Commissioner may prescribe by rule -

(a) the security requirements regarding the premises, equipment of the combination terminal and control measures to be observed in a combination terminal;

(b) any procedure or obligation in connection with containers or packages received which are -

(i) in excess of manifested quantities;

(ii) unmanifested excess containers or packages;

(iii) manifested but not received;

(c) reports and procedures relating to missing seals and seals, containers or packages with signs of damage, tampering or other discrepancy;

(d) records to be kept in respect of the movement of goods and any other activity in the operation of a combination terminal;

(e) all matters that are required or permitted in terms of this section to be prescribed by rule;

(f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of a combination terminal.”; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Insertion of section 64K of Act 91 of 1964

88. (1) Section 64K of the Customs and Excise Act, 1964, is hereby inserted after section 64IJ as follows:

“**64K. Licensing of road vehicle terminals.** – (1) *(a)* Every road vehicle terminal shall be licensed in accordance with the provisions of section 60, this section, any applicable note in Schedule No. 8 and any rule relating to such licence.

(b) Application for such a licence shall be made on the prescribed form which shall be supported by the documents and information specified in such form and as the Commissioner may require from each applicant.

(c) Before any licence is issued the applicant for a licence must furnish security as contemplated in section 60(1)*(c)*: Provided that the Commissioner may on good cause shown, to the extent considered reasonable in each case, reduce the amount of such security or exempt any person from furnishing security.

(d) Before commencing operations or form a date thereafter specified by the Commissioner by rule, every road vehicle terminal operator shall register for the purposes of

electronic communication as a user and enter into a user agreement in terms of section 101A and its rules.

(2) *(a)* A road vehicle terminal operator shall -

(i) be responsible for ensuring that goods for export are loaded on a ship;

(ii) goods received in a road vehicle terminal may not be withdrawn therefrom without the permission of the Controller and in compliance with such procedures as may be prescribed by rule.

(b) The receipt, storage and handling of vehicles in a road vehicle terminal shall be in accordance with requirements the Commissioner may prescribe by rule.

(c) Except where vehicles have been entered for home consumption and released thereafter, or any other procedure is authorised by rule, the provisions of section 18 or 18A shall, subject to any adaptation or special requirement prescribed by rule, apply *mutatis mutandis* to any movement of imported vehicles from a road vehicle terminal.

(3) The Controller may require any vehicle to be detained in a road vehicle terminal for examination, including by non-intrusive inspection methods contemplated in section 4(8A).

(4) *(a)* The Commissioner may refuse an application for a road vehicle terminal license or cancel or suspend such a licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph *(a)*.

(5) The Commissioner may prescribe by rule -

(a) the security requirements regarding the premises, equipment of the road vehicle terminal and control measures to be observed in a road vehicle terminal;

(b) any procedure or obligation in connection with vehicles which are -

(i) in excess of manifested quantities;

(ii) unmanifested excess vehicles; or

(iii) manifested, but not received;

(c) reports and procedures relating to damaged vehicles;

(d) records to be kept in respect of the movement of vehicles and any other activity in the operation of a road vehicle terminal;

(e) all matters that are required or permitted in terms of this section to be prescribed by rule;

(f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of a road vehicle terminal."; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Insertion of section 64L of Act 91 of 1964

89. (1) Section 64L of the Customs and Excise Act, 1964, is hereby inserted after section 64K as follows:

"**64L. Licensing of bulk goods terminal.** – (1) *(a)* (i) This section applies to a terminal for imported bulk goods or bulk goods for export that is not licensed as a customs and excise warehouse.

(ii) Every bulk goods terminal shall be licensed in accordance with the provisions of section 60, this section, any applicable note in Schedule No. 8 and any rule relating to such licence.

(b) Application for such a licence shall be made on the prescribed form which shall be supported by the documents

and information specified in such form and as the Commissioner may require from each applicant.

(c) Before any licence is issued the applicant for a licence must furnish security as contemplated in section 60(1)*(c)*: Provided that the Commissioner may on good cause shown, to the extent considered reasonable in each case, reduce the amount of such security or exempt any person from furnishing security.

(d) Before commencing operations or from a date thereafter specified by the Commissioner by rule, every bulk goods terminal operator shall register for the purposes of electronic communication as a user and enter into a user agreement in terms of section 101A and its rules.

(2) *(a)* (i) The bulk goods terminal operator shall -

(aa) be responsible for ensuring that goods for export are loaded on a ship or vehicle for export; and

(bb) in addition to any liability for duty incurred by any person under any provision of this Act, be liable for the duty on any goods received for export and such liability shall cease when it is proved that the goods have been loaded on a ship or vehicle as contemplated in subparagraph *(aa)*.

(ii) The bulk goods terminal operator shall produce proof to the Controller as may be prescribed by rule that the goods have been loaded on a ship or vehicle for export.

(iii) Goods received in a bulk goods terminal may not be opened or withdrawn therefrom without the permission of the Controller and in compliance with such procedures as may be prescribed by rule.

(b) The receipt, storage and handling of goods in a bulk goods terminal shall be in accordance with the requirements that may be prescribed by rule.

(c) Except where goods have been entered for home consumption and released thereafter or any other procedure is authorised by rule, the provisions of section 18 shall apply *mutatis mutandis* to any movement of imported goods from a bulk goods terminal.

(3) The Controller may require any bulk goods to be detained in a bulk goods terminal for examination of the bulk goods, including by non-intrusive inspection methods contemplated in section 4(8A).

(4) *(a)* The Commissioner may refuse an application for a bulk goods terminal licence or cancel or suspend such a licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph *(a)*.

(5) The Commissioner may prescribe by rule -

(a) the security and control measures to be observed in a bulk goods terminal;

(b) any procedure or obligation in connection with bulk goods which are –

(i) in excess of manifested quantities;

(ii) unmanifested excess bulk goods; or

(iii) manifested, but not received;

(c) reports and procedures relating to damaged bulk goods;

(d) records to be kept in respect of the storage or movement of goods and any other activity in the operation of a bulk goods terminal;

(e) all matters that are required or permitted in terms of this section to be prescribed by rule;

(f) any other matter which is necessary to prescribe and useful to achieve the efficient and administration of a bulk goods terminal.”; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Insertion of section 64M of Act 91 of 1964

90. (1) Section 64M of the Customs and Excise Act, 1964, is hereby inserted after section 64L as follows:

“**64M. Licensing of container operators.** – (1) *(a)* Every container operator shall be licensed in accordance with the provisions of section 60, this section, any applicable note in Schedule No. 8 and any rule relating to such licence.

(b) Application for such a licence shall be made on the prescribed form which shall be supported by the documents and information specified in such form and as the Commissioner may require from each applicant.

(c) Before any licence is issued the applicant for a licence must furnish security as contemplated in section 60(1)*(c)*: Provided that the Commissioner may on good cause shown, to the extent considered reasonable in each case, reduce the amount of such security or exempt any person from furnishing security.

(d) Before commencing operations or from a date thereafter specified by the Commissioner by rule, every container operator shall register for the purposes of electronic communication as a user and enter into a user agreement in terms of section 101A and its rules.

(2) *(a)* Except if determined otherwise by rule, containerised goods for export must be delivered to and exported from a container terminal or a combination terminal.

(b) The receipt and handling of containers by the container operator shall be in accordance with requirements the Commissioner may prescribe by rule.

(c) Except where goods have been entered for home consumption and released thereafter or any other procedure is authorised by rule, the provisions of section 18 shall apply *mutatis mutandis* to any movement of any containerised imported goods by the container operator.

(3) The Controller may require any container received by the container operator to be detained for examination of the container or its contents, including by non-intrusive inspection methods contemplated in section 4(8A) and, if the Controller so determines, the container operator must remove the container to a container depot for examination of its contents.

(4) *(a)* The Commissioner may refuse an application for a container operator licence or cancel or suspend such a licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph *(a)*.

(5) The Commissioner may prescribe by rule -

(a) the security and control measures to be observed by the container operator;

(b) any procedure or obligation in connection with containers received and the movement of such containers;

(c) reports and procedures relating to missing seals or seals and containers with signs of damage, tampering or other discrepancy;

(d) records to be kept in respect of the movement of containers and any other activity in the operation of containers;

(e) all matters that are required or permitted in terms of this section to be prescribed by rule; and

(f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of the activities of a container operator."; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Insertion of section 64N of Act 91 of 1964

91. (1) Section 64N of the Customs and Excise Act, 1964, is hereby inserted after section 64M as follows:

"**64N. Licensing of transit shed operators.** – (1) *(a)* Every transit shed operator shall be licensed in accordance with the provisions of section 60, this section, any applicable note in Schedule No. 8 and any rule relating to such licence.

(b) Application for such a licence shall be made on the prescribed form which shall be supported by the documents and information specified in such form and as the Commissioner may require from each applicant.

(c) Before any licence is issued the applicant for a licence must furnish security as contemplated in section 60(1)*(c)*: Provided that the Commissioner may on good cause shown, to the extent considered reasonable in each case, reduce the amount of such security or exempt any person from furnishing security.

(d) Before commencing operations or from a date thereafter specified by the Commissioner by rule, every transit shed operator shall register for the purposes of electronic communication as a user and enter into a user agreement in terms of section 101A and its rules.

(2) *(a)* Except if determined otherwise by rule, break bulk goods for export must be delivered to and exported from a transit shed.

(b) Except where goods have been entered for home consumption and released thereafter or any other procedure is authorised by rule, the provisions of section 18 shall apply *mutatis mutandis* to any movement of any containerised imported goods by the transit shed operator.

(3) The Controller may require any break bulk goods to be detained in a transit shed for examination of the cargo or package or its contents, including by non-intrusive inspection methods contemplated in section 4(8A).

(4) *(a)* The Commissioner may refuse an application for a transit shed licence or cancel or suspend such a licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph *(a)*.

(5) The Commissioner may prescribe by rule -

(a) the security requirements regarding the premises, equipment of the transit shed and control measures to be observed in a transit shed;

(b) any procedure or obligation in connection with packages received which are -

(i) in excess of manifested quantitites;

(ii) unmanifested excess consolidated packings or packages;

(iii) manifested but not received;

(c) reports and procedures relating to packages received with signs of damage, tampering or other discrepancy;

(d) records to be kept in respect of the storage and movement of goods and any other activity in the operation of the transit shed;

(e) all matters that are required or permitted in terms of this section to be prescribed by rule; and

(f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of the activities of a transit shed.”; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 75 of Act 91 of 1964

92. Section 75 of the Customs and Excise Act, 1964, is hereby amended –

(a) by the substitution in subsection (1A) for the wording following subparagraph (iii) for the following wording:

“shall be granted in accordance with the provisions of this section and of item **[540.02 of Schedule No. 5 or item 640.03]** 670.04 of Schedule No. 6 to the extent stated in those items;”;

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

“*(c)* Any seller of such fuel shall furnish such user with an original invoice reflecting the particulars, and shall keep a copy of such invoice for such time, as may be prescribed in the notes to **[the]** item **[640.03]** 670.04.”;

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

“*(d)* Any user shall complete and keep such books, accounts and documents and furnish to the Commissioner at such times such

particulars of the purchase, use or storage of such fuel or any other particulars as may be prescribed in the notes to item **[640.03]** 670.04.";

(d) by the substitution in subsection (4A)*(f)*(ii) for subparagraph *(bb)* of the following subparagraph:

"*(bb)* fails to complete, keep or furnish such accounts, books or documents or keep such invoice, as may be prescribed in the notes to item **[640.03]** 670.04.";

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

"*(g)* For the purposes of the administration of the refunds of levies on distillate fuel as provided in this section and **[item 540.02 of Schedule No. 5 or]** item **[640.03]** 670.04 of Schedule No. 6 the Commissioner may, subject tot the provisions of section 3(2), delegate by rule any of the Commissioner's powers, duties or functions under this Act to any officer, including any officer employed in administering the provisions of the Value-Added Tax Act, 1991 (Act 89 of 1991).";

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

"(i) Any person to whom a refund of levies has been granted in accordance with the provisions of this section and of **[item 540.02 of Schedule No. 5 or]** item **[640.03]** 670.04 of Schedule No. 6 who falsely applied for such refund or who uses or disposes of such fuel contrary to such provisions, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or double the amount of any levies refunded, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment and the fuel in respect of which the offence has been committed shall be liable to forfeiture under this Act.";

(g) by the substitution for subsection (7A) of the following subsection:

"(7A) Any person to whom a refund of levies has been granted on any distillate fuel in terms of the provisions of **[item 540.02 of Schedule No. 5 or]** item **[640.03]** 670.04 of Schedule No. 6, as the case may be, and who has disposed of such fuel or has applied such fuel or any portion thereof for any purpose or use otherwise than in accordance with the provisions of such items and the use declared in the relevant application for registration shall pay on demand to the Commissioner the full amount of any refund granted to him in respect of such fuel or such portion thereof, failing which such amount or such portion shall be recoverable as if it were a duty payable under this Act.";

(h) by the substitution in subsection (15) for paragraph *(b)* of the following paragraph:

"*(b)* An amendment made under paragraph *(a)* which repeals any existing provision in Schedule No. 5 or which excludes any goods from any existing provision of that Schedule, shall not apply in respect of goods **[, excluding distillate fuels referred to in item 540.02 of Schedule No. 5,]** which were imported prior to the date of the relevant notice in the *Gazette*, and an amendment made under the said paragraph which embodies any additional provision in that Schedule or applies any existing provision of that Schedule in respect of additional goods, shall not, except in so far as the Commissioner so directs and subject to such conditions as he may determine, apply in respect of goods which were imported prior to the ate of the relevant notice in the *Gazette*.";

(i) by the deletion in subsection (18) for paragraph *(c)*; and

(j) by the substitution in subsection (18) for subparagraph *(e)*(ii) of the following subparagraph:

"(ii) in the case of distillate fuel, unmarked illuminating kerosene or unmarked specified aliphatic hydrocarbon solvents manufactured in the Republic, 0,15 per cent of any quantity entered for removal and removed from a customs and excise manufacturing warehouse.".

Amendment of section 76A of Act 91 of 1964

93. Section 76A of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The provisions of subsection (1) shall apply *mutatis mutandis* to any amount set off in terms of section 77**[(1)]** *(a)*.".

Amendment of section 80 of Act 91 of 1964

94. (1) Section 80 of the Customs and Excise Act, 1964, is hereby amended by the insertion in subsection (1) after paragraph *(r)* of the following paragraph:

"*(s)* fails to deal with goods as contemplated in section 11(1),"; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 96 of Act 91 of 1964

95. Section 96 of the Customs and Excise Act, 1964, is hereby amended by the insertion after subsection (2) of the following subsection:

"(3) Notwithstanding anything in the Admiralty Jurisdiction Regulations Act, Act 105 of 1983, when any person applies to the High Court for an order for the sale of any arrested property, such person shall deliver a notice of such an application at the place prescribed in the rules.".

Repeal of section 96A of Act 91 of 1964

96. Section 96A of the Customs and Excise Act, 1964, is hereby deleted.

Amendment of section 97 of Act 91 of 1964

97. (1) Section 97 of the Customs and Excise Act, 1964, is hereby amended by the substitution of the heading and the section as follows:

"**97. Appointment of an agent by a master, pilot or other carrier.**

(1) Notwithstanding anything to the contrary contained in this Act -

(a) any master, pilot or other carrier to which this Act relates, may, and shall, except if the Commissioner otherwise determines by rule, in the circumstances specified in paragraph *(b)*, instead of himself or herself performing any act, including the answering of questions required by or under any provision of this Act, appoint an agent to perform any such act;

(b) where the means of transport concerned is not owned or chartered by a legal person registered in the Republic in accordance with the laws of the Republic and which has its place of effective management in the Republic, or by a natural person who is ordinarily resident in the Republic, such master, pilot or other carrier shall appoint an agent as required in terms of paragraph *(a)*.

(2) *(a)* Any such agent shall be a legal person registered in the Republic in accordance with the laws of the Republic or a natural person ordinarily resident in the Republic with a permanent business establishment in the Republic.

(b) Any act performed by such agent on behalf of such master, pilot or other carrier shall in all respects for the purposes of

this Act in be deemed to be the act of such master, pilot or other carrier.

(3) For the purposes of this section -

(a) "agent" includes, subject to subsection (2)*(a)*, a person carrying on a business as an airline or a shipping line; and

(b) (i) "airline" means any transport enterprise offering or operating an international air service;

(ii) "shipping line" means any transport enterprise offering or operating an international shipping service.

(4) Any such agent must be licensed in terms of section 60 from a date determined by the Commissioner by rule.

(5) The Commissioner may make rules regarding -

(a) any matter required or permitted to be prescribed by rule;

(b) any other matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of this section."; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 101A of Act 91 of 1964

98. (1) Section 101A of the Customs and Excise Act, 1964, is hereby amended by the insertion in subsection (2) after paragraph *(c)* of the following paragraph:

"*(d)* The Commissioner may require by rule any person or class of persons, participating in any activity regulated by this Act, unless exempted in such rule, to communicate electronically and register as a user in accordance with the provisions of this section."; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 105 of Act 91 of 1964

99. 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,]** interest, forfeiture, duty and expenses incurred by or charges due to the Commissioner, in that order;".

Amendment of section 107 of Act 91 of 1964

100. (1) Section 107 of the Customs and Excise Act, 1964, is hereby amended -

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

"*(a)* All handling of and dealing with goods for the purposes of this Act shall be performed by or at the expense and risk of -

(i) the importer, exporter, manufacturer, owner or other person, whoever is in control of the goods, except in the case of goods examined at a customs and excise warehouse, where such handling of and dealing with goods shall be performed at the expense and risk of the owner thereof or the licensee of such warehouse;

(ii) in the case of goods in transit through the Republic the agent who enters the goods for such transit;

(iii) in the case of goods for transhipment at any place in the Republic, the person who declares the goods on any cargo report for such transhipment."

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

"*(a)* (i) Subject to the provisions of this Act, the Commissioner shall not, except on such conditions, including conditions relating to security, as may be determined by him or her, allow goods to pass from his or her control until the provisions of this Act or any law relating to the importation, exportation, transhipment or transit carriage through the Republic of goods, have been complied with in respect of such goods.

(ii) The State or the Commissioner or any officer shall in no case be liable in respect of any claim arising out of the detention or examination of goods or for the costs of such detention or examination.

(iii) Such examination shall include any examination contemplated in section 4(8A)."; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 114 of Act 91 of 1964

101. Section 114 of the Customs and Excise Act, 1964, is hereby amended –

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

"(i) Any amount of any duty, interest, **[fine,]** penalty or forfeiture incurred under this Act and which is payable in terms of this Act, shall, when it becomes due or is payable, be a debt due to the State by the person concerned and shall be recoverable by the Commissioner in the manner hereinafter provided.";

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

"*(aa)* The Commissioner may by notice in writing addressed to the clerk or registrar, withdraw the statement referred to in subparagraph (ii), and such statement shall thereupon cease to have any effect: Provided that the Commissioner may institute proceedings afresh under the subsection in respect of any duty, interest, **[fine,]** penalty or forfeiture referred to in the withdrawn statement."; and

(c) by the substitution in subsection (1)*(b)*(iv) for subparagraph *(aa)* of the following subparagraph:

"*(aa)* any duty, interest, **[fine,]** penalty, forfeiture, expenses incurred by or charges due to the Commissioner; and".

Amendment of section 120 of Act 91 of 1964

102. (1) Section 120 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for paragraph *(c)* of the following paragraph:

"*(c)* as to the reporting inwards and outwards of ships and aircraft (including such reporting of ships or aircraft calling or landing at places not appointed as places of entry or customs and excise airports under this Act), the entry or departure of vehicles overland, the landing, loading, removal, detention, release, examination, conveyance and handling of cargo (including transit and coastwise <u>and transhipment</u> cargo), <u>goods under customs control, customs controlled area,</u> the control of persons (including their baggage and goods) entering or leaving the Republic, the placing into or removal from any State warehouse of goods and the removal in bond of goods;"; and

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 4 of Act 77 of 1968

103. Section 4 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for paragraph (*h*) of the following paragraph:

"(*h*) any instrument transferred by any public benefit organisation contemplated in paragraph (*a*) of the definition of "public benefit organisation" in section 30(1) that has been approved by the Commissioner in terms of section 30(3)**[, which is exempt from tax in terms of section 10(1)(*c*N)]** of the Income Tax Act, 1962 (Act No. 58 of 1962), to any other entity which is controlled by such public benefit organisation **[in order to comply with the provisions of the proviso to section 30 (3) of that Act]**.".

Repeal of section 9 of Act 11 of 1977

104. Section 9 of the Finance and Financial Adjustments Act Consolidation Act, 1977 (Act No. 11 of 1977), is hereby repealed.

Amendment of section 1 of Act 89 of 1991

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

(a) by the substitution for the definition of "**foreign donor funded project**" of the following definition:

"**'foreign donor funded project'** means a project established as a result of an international donor funding agreement, which is binding in terms of section 231 of the Constitution of the Republic of South Africa, 1996, to which the Government of the Republic is a party, to supply goods or services to beneficiaries;"; and

(b) by the substitution for the definition of **"municipality"** of the following definition:

"**'municipality'** means a municipality which**[—]** is listed within a category in section 155(1) of the Constitution of the Republic of South Africa Act, 1996, and which

[(*a*)] is an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998)**[; and**

(*b*) which has the power in terms of section 22 of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004), to levy municipal rates,

but does not include any institution or entity listed in the Schedules to the Public Finance Management Act, 1999 (Act No. 1 of 1999)];".

Amendment of section 2 of Act 89 of 1991

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

"(vi) **'participatory security'** means a participatory interest as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), but does not include an equity security, a debt security, money or a cheque;".

Amendment to section 6 of Act 89 of 1991

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

"(*c*) disclosing to the Chief of the Central Statistical Services such information in relation to any person as may be required by such Chief in connection with the collection of statistics in carrying out the provisions of the Statistics Act, **[1976 (Act No. 66 of 1976)]** 1999 (Act No. 6 of 1999), or any regulation thereunder;".

Amendment of section 8 of Act 89 of 1991

108. Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(*a*) by the substitution for subsection (24) of the following subsection:

"(24) For the purposes of this Act, a vendor, being a customs controlled area enterprise or an IDZ operator, 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 approved in writing by the Controller.";

(b) the addition of the following subsection after subsection (26):

"(27) For the purposes of this Act, where any payment received in respect of a taxable supply of goods or services exceeds the consideration charged for that supply, and such excess amount has not been refunded within 3 months of receipt thereof, that excess amount shall be deemed to be consideration for a supply of services performed by the vendor in the course or furtherance of his or her enterprise on the last day of the tax period during which that 3 month period ends.".

Amendment of section 10 of Act 89 of 1991

109. Section 10 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsection after subsection (25):

"(26) Where a service is under section 8(27) deemed to be supplied, the consideration in money for the supply shall be deemed to be the excess amount contemplated in that section.".

Amendment to section 11 of Act 89 of 1991

110. Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

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

"(*c*) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if the goods are used exclusively in an export country or by a customs controlled area enterprise or an IDZ operator in a customs controlled area: Provided that this subsection shall not apply where a 'motor car' as defined in section 1 is supplied to a person located in a customs controlled area; **[or]**";

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

"(*m*) a vendor supplies movable goods, (excluding any 'motor car' as defined in section 1), in terms of a sale or instalment credit agreement to a **[registered vendor]** customs controlled area enterprise or an IDZ operator **[in a customs controlled area]** and those goods are physically delivered to that customs controlled area enterprise or IDZ operator in a customs controlled area either—

(i) **[physically delivered]** by the supplier **[to the recipient]**; or

(ii) **[physically delivered]** by a VAT registered cartage contractor, **[engaged by the supplier,]** whose main activity is that of transporting goods and who is engaged by the supplier **[: Provided that this subsection shall not apply where the cartage contractor is not liable to the supplier for delivery of]** to deliver the goods and that supplier is **[not]** liable for the full cost relating to that delivery;";

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

"(*m*A) a vendor supplies fixed property situated in a customs controlled area to a customs controlled area enterprise or an IDZ operator under any agreement of sale or letting or any other agreement under which the use or permission to use such fixed property is granted;";

(*d*) by the addition in subsection (1) of the word "or" at the end of paragraph *(q)*; and

(e) by the addition in subsection (1) of the following paragraph after paragraph *(q)*:

"(*r*) compensation is paid by a public authority in terms of section 19 of the Animal Diseases Act, 1984 (Act No. 35 of 1984) for the supply of a 'controlled animal or thing' as defined in that Act to that public authority:";

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

"(*k)* the services are physically rendered elsewhere than in the Republic or to a **[registered vendor]** customs controlled area enterprise or an IDZ operator in a customs controlled area; or "; and

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

"(*q*) the services are deemed to be supplied in terms of section 8(5B) and to the extent that the zero-rating has been approved by the Minister after consultation with the Minister of Foreign Affairs;".

Amendment of section 12 of Act 89 of 1991

111. Section 12 of the Value-added Tax Act, 1991, is hereby amended—

(a) by the substitution in paragraph *(h)*(i) for item *(cc)* of the following item:

"(cc) any public benefit organisation as contemplated in paragraph *(a)* of the definition of **"public benefit organisation"** in section 30(1) of the Income Tax Act, 1962, that has been approved by the

Commissioner in terms of section 30(3) of that Act and which has been formed for **[the]**—";

(b) by the substitution in paragraph *(h)*(i)*(cc)* for subitems (A) and (B) of the following subitems:

"(A) **[promotion of]** adult basic education and training including literacy and numeracy education, registered under the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000), vocational training or technical education;

(B) **[promotion of the]** education and training of religious or social workers;";

(c) by the substitution in paragraph (h)(i)(cc) for subitem (E) of the following subitem:

"(E) provision of bridging courses to enable indigent persons to enter a higher education institution as envisaged in subparagraph (bb); **[or]**"; and

(d) by the addition in paragraph (*h*) of the word "or" at the end of subparagraph (ii).

Amendment to section 15 of Act 89 of 1991

112. (1) Section 15 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

"(a) the vendor is—

(i) a public authority;

(ii) any water board or regional water services corporation or any other institution which has powers similar to those of any such boards or corporations listed in Schedule 3B of the Public Finance Management Act, 1999 (Act No. 1 of 1999), which would have complied with the definition of 'local authority' in section 1 prior to the deletion of that definition on 1 July 2006;

(iii) a 'regional electricity distributor' as defined in section 1 of the Income Tax Act;

(iv) a 'municipal entity' as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), where that municipal entity supplies—

(aa) electricity, gas, water; or

(bb) drainage, removal or disposal of sewage or garbage;

(v) a municipality; or

(vi) an association not for gain; or".

(2) (*a*) Subsection (1)—

(i) to the extent it inserts subparagraph (iii) to section 15(2)(*a*) is deemed to have come into operation 1 August 2006; and

(ii) to the extent it amends the rest of section 15(2)(*a*) is deemed to have come into operation 1 July 2006.

Amendment of section 16 of Act 89 of 1991

113. (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—

(i) the tax invoice for that supply should have been issued as contemplated in section 20(1); or

(ii) in any other case, where a tax invoice is not required for the deduction, the vendor for the first time became entitled to such deduction.";

(b) by the substitution in subsection (3) for paragraph *(d)* 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 or winnings awarded constitutes either goods or services, **[input tax]** the deduction must be limited to the input tax **[incurred]** on the initial cost of acquiring those goods or services;";

(c) by the addition in subsection (3) of the following paragraph after paragraph *(l)*:

"*(m)* an amount equal to the tax fraction of any excess amounts contemplated in section 8(27) which is refunded by the vendor during the tax period."; and

(d) 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—

(i) the tax invoice for that supply should have been issued as contemplated in section 20(1); or

(ii) in any other case, where a tax invoice is not required for the deduction, the vendor for the first time became entitled to such deduction;

and to the extent that it has not previously been deducted by the vendor under this subsection:".

(2) Subsection (1)(*b*) shall be deemed to have come into operation on 1 February 2006.

Amendment of section 17 of Act 89 of 1991

114. Section 17 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the substitution in subsection (2) for the words in paragraph *(a)*(i)*(aa)* preceding subitem (A) of the following words:

"*(aa)* continuously or regularly supplies entertainment to clients or customers (other than in the circumstances contemplated in **[subparagraph]** item *(bb)*) for a consideration to the extent that such taxable supplies of entertainment are made for a charge which—"; and

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

"(ii) such goods or services are acquired by the vendor for the consumption or enjoyment by that vendor (including, where the vendor is a partnership, a member of such partnership), **[or]** an employee, **[or]** office holder of such vendor, or a self-employed natural person in respect of a meal, refreshment or accommodation, **[personal subsistence]** in respect of any night that such vendor or member is by reason of the vendor's enterprise or, in the case of such employee, **[or]** office holder or self-employed natural person, he or she is by reason of the duties of his or her employment, **[or]** office or contractual relationship, obliged to spend away from his usual place of residence and**[, in respect of an absence on or after 15 July 1992,]** from his or her usual working-place.

For the purposes of this section, the term 'self-employed natural person' shall mean a person to whom an amount is paid or is payable in the course of any trade carried on by him or her independently of the person by whom such amount is paid or payable and of the person to whom the services have been or are to be rendered, as contemplated in the proviso to paragraph (ii) of the exclusions to the definition of 'remuneration' in paragraph 1 of the Fourth Schedule to the Income Tax Act;".

(c) by the insertion in subsection (2) for the proviso after paragraph (d): "Provided that this subsection shall not apply to such goods or services that are applied in the course of furtherance of a foreign donor funded project to the extent that the Minister after consultation with the Minister of Foreign Affairs has approved that the international donor funding received from an international donor in respect of that project is zero-rated in terms of section 11(2)(q).".

Amendment of section 18 of Act 89 of 1991

115. Section 18 of the Value-Added Tax Act, 1991 is hereby amended—

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

"(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*), 11(1)(*m*A) or 11(2)(*k*) to a **[registered]** vendor, being **[who is]** a customs controlled area enterprise or an IDZ operator; or

(*b*) goods have been imported into the Republic by a **[registered]** vendor, being **[who is]** a customs

controlled area enterprise or an IDZ operator **[for use, consumption or supply in that area]** and those goods are exempt from tax in terms of section 13(3),

and where a deduction of input tax would have been denied in terms of section 17(2), and to the extent that such goods or services are not wholly for consumption, use or supply within a customs controlled area in the course of making taxable supplies by that vendor, being a customs controlled area enterprise or an IDZ operator, those goods or services shall be deemed to be supplied by the vendor concerned in the same tax period in which they were so acquired, in accordance with the formula:

A × B

in which formula—

'A' represents the rate of tax levied in terms of section 7(1); and

'B' represents—

[(*a*)](i) the cost to the vendor of the acquisition of those goods or services which were supplied to him in terms of sections 11(1)(*c*), 11(1)(*m*), 11(1)(*m*A) or 11(2)(*k*); or

[(*b*)](ii) the value to be placed on the importation of goods into the Republic as determined in terms of section 13(2).".

Amendment of section 20 of Act 89 of 1991

116. Section 20 of the Value-Added Tax Act, 1991 is hereby amended by the substitution in subsection (8) for the proviso of the following proviso:

"Provided that this subsection shall not require that recipient to keep such records where the total consideration for that supply is in money and does not exceed **[R20]** R50 or an amount determined by the Commissioner.".

Amendment of section 22 of Act 89 of 1991

117. Section 22 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the substitution in subsection (3) for the words following paragraph *(b)*, but preceding the proviso of the following words:

"an amount equal to the tax fraction, as applicable at the time of such deduction, of that portion of the consideration which has not been paid shall be deemed to be tax charged in respect of a taxable supply made in the **[next following]** tax period following **[after]** the expiry of the period of 12 months:"; and

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

"(ii) where—

(aa) the estate of a vendor is sequestrated, whether voluntarily or compulsorily;

(bb) the vendor is declared insolvent; **[or]**

(cc) the vendor 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, or

(dd) the vendor ceases to be a vendor as contemplated in section 8(2),

[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—

(AA) at the time of sequestration, declaration of insolvency or the date on which the compromise or the arrangement or similar arrangement was entered into; or

(BB) immediately before the vendor ceased to be a vendor as contemplated in section 8(2).".

Amendment of section 31 of Act 89 of 1991

118. Section 31 of the Value-Added Tax Act, 1991 is hereby amended—

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

"*(f)* any person who holds himself out as a person entitled to a refund or who produces, furnishes, authorises, or makes use of any tax invoice or document or debit note and has obtained any undue tax benefit or refund under the provisions of an export incentive scheme referred to in paragraph *(d)* of the definition of 'exported' in section 1, to which such person is not entitled**[,]**;"; and

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

"the Commissioner may, notwithstanding the provisions of section 32(5) of this Act and section 83(18) and 83A(12) of the Income Tax Act, make an assessment of the amount of tax payable by the person liable for the payment of such amount of tax, and the amount of tax so assessed shall be paid by the person concerned to the Commissioner.".

Amendment of section 41 of Act 89 of 1991

119. (1) Section 41 of the Value-Added Tax Act, 1991 is hereby amended by the addition to paragraph *(c)* of the following provisos:

": Provided that this subsection shall not apply to a written decision issued by the Commissioner prior to 1 January 2007 in respect of supplies which are, or will be made on or after 1 January 2007, except to the extent to which, if any, the Commissioner prescribes, in writing that the written decision has binding effect: Provided further that this subsection shall not apply to a written decision issued by the Commissioner after 1 January 2007.".

(2) Subsection (1) shall be deemed to come into operation on 1 January 2007.

Insertion of section 41A of Act 89 of 1991

120. (1) Section 41A of the Value-Added Tax Act, 1991 is hereby inserted after section 41:

"41A. Advance Tax Rulings

(1) Subject to the provisions of section 41B—

(*a*) The provisions relating to advance tax rulings contained in Part IA of Chapter III of the Income Tax Act, 1962, apply *mutatis mutandis* for purposes of this Act.

(*b*) Any procedures and guidelines issued by the Commissioner in terms of section 76S of the Income Tax Act, 1962, for implementation and operation of the advance tax ruling system apply *mutatis mutandis* for purposes of this Act.".

(2) Subsection (1) shall come into operation on the date on which Part 1A of Chapter III of the Income Tax Act, 1962, comes into operation.

Amendment of section 41B of Act 89 of 1991

121. (1) Section 41B of the Value-Added Tax Act, 1991 is hereby inserted after section 41A:

(1) Section 41B of the Value-Added Tax Act, 1991 is hereby inserted after section 41A:

"41B. VAT Rulings and VAT class rulings

(1) The Commissioner may issue 'VAT rulings' or 'VAT class rulings' and in applying the provisions relating to Part IA of Chapter III of the Income Tax Act, 1962, 'VAT rulings' or 'VAT class rulings' must be dealt with as if it were 'binding private rulings' or 'binding class rulings' respectively: Provided that the provisions of section 76E and 76F of that Act shall not apply to any VAT rulings or VAT class rulings.

(2) For the purposes of this section—

'VAT rulings' means a written statement issued by the Commissioner to a person regarding the interpretation or application of the Act;

'VAT class rulings' means a written statement issued by the Commissioner to a class of vendors regarding the interpretation or application of the Act.

(3) Notwithstanding the provisions of Part IA of Chapter III of the Income Tax Act, 1962, the Commissioner will not publish 'VAT rulings' or 'VAT class rulings' that is the same or substantially similar to 'VAT rulings', 'VAT class rulings' or 'binding general rulings' already published.".

(2) Subsection (1) shall be deemed to come into operation on 1 January 2007.

Amendment of section 44 of Act 89 of 1991

122. Section 44 of the Value-Added Tax Act, 1991, is hereby amended—

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

"Provided that—

(a)**[(i)]** the Commissioner shall not make a refund under this subsection unless the claim for the refund is received by the Commissioner within five years after the end of the said tax period; **[or]**

(b)**[(ii)]** where the amount that would be so refunded to the vendor is determined to be **[R25 or]** less than R100, or less than such other amount as the Commissioner may determine by Notice in the *Gazette*, the amount so determined shall not be refunded in respect of the said tax period but shall be carried forward to the next succeeding tax period of the vendor and be accounted for as provided in section 16 (5);";

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

"*(b)* the amount to be refunded is **[R25 or]** more than R100 or more than such other amount as the Commissioner may determine by Notice in the *Gazette*; or"; and

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

"(4) Where the amount that would be refunded under subsection (2) is determined to be **[R25 or]** less than R100 or such other amount as the Commissioner may determine by Notice in the *Gazette*, the amount so determined shall not be refunded but shall be credited to the vendor's account and be accounted for as provided in section 16(5)."

Amendment of section 5A of Act 31 of 1998

123. Section 5A of the Uncertificated Securities Act, 1998, is hereby amended by the insertion of the following subsection after subsection (2):

"(3) Any tax payable in terms of subsection (2) must be paid through the participant or member holding the securities in custody, in respect of which a person has acquired the beneficial ownership or which have been cancelled or redeemed.".

Amendment of section 7 of Act 31 of 1998

124. Section 7 of the Uncertificated Securities Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following subsection:

"(c) referred to in section 5A is payable, **[by the person acquiring the beneficial ownership of the securities]** by the participant or member holding the securities in custody, in respect of which a person acquired the beneficial ownership or which has been redeemed or cancelled, 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.".

Substitution of section 12 of Act 31 of 1998

125. The following section hereby substitutes section 12 of the Uncertificated Securities Act, 1998:

"12. Tax recoverable from the person **[to]** who**[m]** acquires securities [were transferred] or any of the rights or entitlements in securities.—A member or participant as the case may be, may recover the amount of the tax payable by such member or participant in terms of this Act, from the person **[to whom the relevant securities were transferred]** who—

(a) acquires beneficial ownership in a security; or

(b) cancels or redeems a security.".

Repeal of section 42 of Act 19 of 2001

126. Section 42 of Revenue Laws Amendment Act, 2001, is hereby repealed.

Amendment of section 3 of Act 63 of 2001

127. Section 3 of the Unemployment Insurance Act, 2001 is hereby amended by the deletion of section 3(1)(e).

Amendment of section 14 of Act 63 of 2001

128. Section 14 of the Unemployment Insurance Act, 2001 is hereby amended by the deletion of section 14(a)(i).

Amendment of section 145 of Act 45 of 2003

129. Section 145 of the Revenue Laws Amendment Act, 2003, is hereby amended by the substitution for subsection (2)(a) of the following subsection:

"(2) (a) (i) Subsection (1)(a), (c), (d), (e) and (f) shall come into operation on the date of promulgation of this Act;

(ii) Subsection (1)(b) shall be deemed to have come into operation on 1 July 2001;".

Repeal of section 42 of Act 34 of 2004

130. Section 42 of the Second Revenue Laws Amendment Act, 2004, is hereby repealed.

Amendment of section 26 of Act 9 of 2005

131. Section 26 of the Taxation Laws Amendment Act, 2005, is hereby amended—

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

"(b) which was issued by 1 January **[2007]** 2008 by that company to that person in exchange for any right held by that person in that non-proprietary exchange prior to that conversion."; and

(b) by the insertion after section 26 of the following section:

"(26A).Section 26 is deemed to have come into operation on 1 July 2005.".

Repeal of section 12 of Act 10 of 2005

132. Section 12 of the Taxation Laws Second Amendment Act, 2005, is hereby repealed.

Amendment of section 22 of Act 32 of 2005

133. (1) Section 22 of the Revenue Laws Second Amendment Act, 2005, is hereby amended

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

"(b) [(1)] (a) Any person contemplated in section 77B may request reasons for a decision.

(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.";

(2) Subsection (1) shall come into operation on the date Part A of Chapter XA comes into operation.

Amendment to the index of Act 9 of 2006

134. The Index to the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended--

(a) by the substitution for item 11 of the Index of the following item: "Disallowance of losses and deductions"; and

(b) by the substitution for item 61 of the Index of the following item: "Transitional petroleum provisions".

Amendment of section 11 of Act 9 of 2006

135. Section 11 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution for the heading of the following heading:

"Disallowance of losses and deductions"

Amendment of section 23 of Act 9 of 2006

136. Section 23 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution in paragraph (e) of the expression (1)(zL) for the expression (1)(zI).

Amendment of section 30 of Act 9 of 2006

137. Section 30 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 is hereby amended by the substitution of subsection (b) with the following subsection:

"(ii) to any destination outside the Republic if such travel was undertaken on a flight or voyage made in the ordinary course of the employer's business and such employee, spouse or minor child was not permitted to make a firm advance reservation of the seat or berth occupied by him**[, or if the lowest fare in respect of such travel facility, as contemplated in subparagraph (1)(a), did not exceed R500]** or her;".

Amendment of section 54 of Act 9 of 2006

138. Section 30 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution for subsection (2) of the following section:

"(2) Subsection (1) is deemed to have come into operation on 1 March 2006 and applies in respect of any tax period **[commending]** commencing on or after that date."

Amendment of section 61 of Act 9 of 2006

139. The Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution for section 61 of the following section:

"**Transitional petroleum provisions**

61. The transitional **[mineral and]** petroleum provisions relating to the preservation of the tax terms contained in the OP26 right for converted pre-existing petroleum rights and new petroleum rights are set out in Schedule 3.".

Amendment of Schedule 1 to Act 9 of 2006

140. (1) Paragraph 1 of Schedule 1 to the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the insertion after subparagraph (*h*) of the following subparagraph:

"(i) on each rand of taxable income derived by a public benefit organisation or recreational club, 34 cents."

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

Amendment of section 1 of Act 10 of 2006

141. Section 1 of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"The purpose and objective of the tax amnesty provided for in this Chapter and Chapter I of the Tax Amnesty Act is to—".

Amendment of section 6 of Act 10 of 2006

142. Section 6 of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

"(2) Part III of Chapter III of the Income Tax Act, and the rules relating thereto, apply mutatis mutandis to any objection lodged and appeal noted against a decision of the Commissioner under **[this]** Chapter I of the Tax Amnesty Act.

(3) The tax court contemplated in section 83 of the Income Tax Act has jurisdiction to hear any appeal noted against any decision of the Commissioner under **[this Chapter and]** Chapter I of the Tax Amnesty Act".

Short title, commencement and savings

143. (1) This Act is called the Revenue Laws Amendment Act, 2006.

(2) Save in so far as is otherwise provided in this Act or the context indicates otherwise, the amendments effected to the Income Tax Act, 1962, by this Act for the 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 2007.