

(22 September 2000)

GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the ...

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

Amendment of section 1 of Act 45 of 1955

. (1) Section 1 of the Estate Duty Act, 1955, is hereby amended by the insertion after the definition of "South African Revenue Service" of the following definition:

"spouse" in relation to any deceased person, means a person who—

- (a) was at the date of death of such person the partner in a marriage recognised in terms of the laws of the Republic;
- (b) who was at the date of death of such person married to such deceased person in accordance with any religious system which is recognised in the Republic; or
- (c) who the Commissioner is satisfied is or was at the time of death of such deceased person the partner of such person in a permanent same-sex life partnership."

(2) Subsection (1) shall be deemed to have come into operation on 27 April 1994.

Amendment of section 1 of Act 58 of 1962

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

- (a) by the deletion of the definition of "domestic company";
- (b) by the deletion of the definition of "external company";
- (c) by the substitution for the words preceding paragraph (a) of the definition of "gross income" of the following words:

“gross income’, in relation to any year or period of assessment, means—

- (i) in the case of any [person] resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such [person] resident; or
- (ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within or deemed to be within the Republic,

during such year or period of assessment **[from a source within or deemed to be within the Republic]**, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely—”;

- (d) by the substitution for paragraph (gA) of the definition of “gross income” of the following paragraph:

“(gA) any amount received or accrued from another person as consideration (or payment of like nature) for the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information **[for use in the Republic]**, or for the rendering of or the undertaking to render any assistance or service in connection with the application or utilization of such knowledge or information;”;

- (e) by the substitution for item (ee) of subparagraph (ii) of paragraph (c) of the definition of “pension fund” of the following item:

“(ee) for the administration of the fund in such a manner as to preclude the employer from controlling the management or assets of the fund and from deriving any monetary advantage from moneys paid into or out of the fund (other than any monetary advantage approved by the Registrar of Pension Funds), except that where the employer is a partnership, a member of the partnership may be permitted to derive such monetary advantage if he was previously an employee and, on becoming a partner, was permitted to retain his membership of the fund as though he had not ceased to be an employee, his contributions being based upon his pensionable emoluments during the 12 months which ended on the day on which he ceased to be an employee and his benefits from the fund being calculated accordingly;”;

- (f) by the insertion after the definition of “Republic” of the following definition:

“resident’ means any—

- (a) natural person who is—

- (i) ordinarily resident in the Republic; or
- (ii) not at any stage during the year of assessment ordinarily resident in the Republic, if such person is physically present in the Republic for a period or periods exceeding 91 days in aggregate during the relevant year of assessment and was—

(aa) on average physically present in the Republic for a period exceeding 183 days per year during the preceding three years of assessment; and

(bb) physically present in the Republic for a period or periods exceeding 91 days in aggregate during each of such three preceding years of assessment:

Provided that where such person, who becomes a resident in terms of this paragraph, is outside the Republic for a continuous period of at least 330 days after the day such person ceases to be physically present in the Republic, such person shall be deemed not to have been a resident from the day that such person so ceased to be physically present in the Republic; or

(b) any person other than a natural person which is incorporated, established, formed or which has its place of effective management in the Republic;”;

(g) by the deletion of the definition of “South African company”;

(h) by the deletion of the definition of “territory”.

Amendment of section 3 of Act 58 of 1962

. 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' and 'retirement annuity fund' in section 1, section 6, section 8(4)(b), (c), (d) and (e), **[section 9C]**, section 9D, section 9E, section 10(1)~~[(cB)]~~ (cH), ~~[(d), (cJ)]~~, (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, 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 27, section 31, section 35(2), section 38(4), section 57, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph (b) of the definition of 'formula A' in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 22, 24 and 27 of the Fourth Schedule and paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule, shall be subject to objection and appeal.”.

Substitution of section 6quat of Act 58 of 1962

. The following section is hereby substituted for section 6quat of the Income Tax Act, 1962:

“(1) Subject to the provisions of subsection (2), **[there] a rebate determined in accordance with this section shall be deducted from the normal tax payable by any resident [of the Republic or any person contemplated in section 9C(2)(b) or any shareholder who is a 'resident' as defined in section 9E],** in whose taxable income there is included—

- (a) any income received by or accrued to such resident **[or person]** from any **[country other than]** source outside the Republic (other than any foreign dividend contemplated in paragraph (d)), which is—
- (i) not deemed to be from a source within the Republic; or
- (ii) deemed to be from a source within the Republic in terms of section 9(1)(cA), (e) or (fA); or
- (b) any proportional amount of **[investment]** income contemplated in section 9D; or
- [(c) any income payable to such resident from the Republic, where such income is deemed to be from a source within the Republic in terms of the provisions of paragraphs (d), (d)bis and (f) of section 9(1); or]**
- (d) any foreign dividend contemplated in section 9E
- [a rebate determined in accordance with this section].**

(1A) For the purposes of subsection (1), the rebate shall be an amount equal to the sum of any taxes on income proved to be payable, without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment), by—

- (a) **[(i)]** such resident **[of the Republic]** in respect of—
- (i) any income contemplated in subsection (1)(a); or
- (ii) any dividend contemplated in subsection (1)(d); and
- [(b)]** **[(ii)]** any controlled foreign entity, as contemplated in section 9D, in respect of such proportional amount contemplated in subsection (1)(b); or
- [(b) such person contemplated in section 9C(2)(b); or**
- (c)(i) such shareholder in respect of any dividend contemplated in subsection (1)(d); and]**
- [(c)]** **[(ii)]** any company in respect of any profits from which **[such]** any dividend contemplated in subsection (1)(d) is declared or deemed to have been declared; or
- (d) any company in respect of the proportional amount of any profits from which any dividend is declared or deemed to have been declared to a controlled foreign entity and which dividend relates to any proportional amount of **[investment]** income included in the income of such **[shareholder]** resident as contemplated in subsection (1)(b),

to the government of any country other than the Republic in respect of the amount of income **[derived from such country]** which is so included in that resident's **[or person's or shareholder's]** taxable income: Provided that where such resident is a member of any partnership or a beneficiary of any trust and such partnership or trust is liable for tax as a separate entity in such other country, a proportional amount of any tax payable by such entity, which is attributable to the interest of such resident in such partnership or participation right of such resident in such trust, shall be deemed to have been payable by such resident.

(1B) Notwithstanding the provisions of subsection (1A)—

- (a) the rebate or rebates of any tax proved to be payable to the government of any other country or countries shall not in aggregate exceed an amount which bears to the total normal tax payable the same ratio as the total taxable income attributable to the income derived from such country or countries, which is so included as contemplated in subsection (1), bears to the total taxable income;
[and
- (b) where such sum of any taxes payable to the government of any such other country exceeds the rebate as determined in paragraph (a) (hereinafter referred to as the excess amount), such excess amount may—
- (i) in the case of any excess amount which relates to any amount included in the income of any company as contemplated in paragraph (a), (c) or (d) of subsection (1), be deducted from any Secondary Tax on Companies which becomes payable by such company after the determination of such excess amount, limited to an amount determined by applying the rate of the Secondary Tax on Companies to the profits attributable to the inclusion of the income contemplated in such paragraphs; or
- (ii) in the case of any excess amount relating to any amount included in the income of any company as contemplated in paragraph (b) of subsection (1), be deducted from any Secondary Tax on Companies which becomes payable by such company on the distribution of any profits derived by way of dividends declared to such company by such controlled foreign entity from profits that relate to any amount of investment income so included in terms of paragraph (b), limited to an amount determined by applying the rate of the Secondary Tax on Companies to the amount of the taxable income attributable to the inclusion of the income contemplated in such paragraph, after the deduction of—
- (aa) any normal tax paid or payable; or
- (bb) such sum of taxes payable to the government of any such other country,
whichever amount is the greater:]

Provided that—

- (A) the amount of any such excess amount [as exceeds the amount of any Secondary Tax on Companies as contemplated in subparagraph (i) or (ii)] may—
- [(AA)](a) be carried forward to the immediately succeeding year of assessment and shall be deemed to be a tax on income paid to the government of [such] any other country in such year; and
- [(BB)](b) be set off against the amount of any normal tax payable by such [company] resident during such year of assessment in respect of any

amount derived from **[such]** any other country which is included in the taxable income of such **[shareholder]** resident during such year, as contemplated in paragraph (a), (b) **[(c)]** or (d) of subsection (1), after any tax payable by such **[company]** resident to the government of **[such]** any other country in respect of **[the]** any amount so included during such year of assessment has been set off against the amount of—

[(AAA)] such normal tax payable in respect of such amount of income; and

[(BBB)] **any Secondary Tax on Companies (if any) as contemplated in subparagraph (i) or (ii) which becomes payable during such year; and]**

(B) the excess amount contemplated in this paragraph shall not be allowed to be carried forward for more than **[three]** seven years reckoned from the year of assessment when such excess amount was for the first time carried forward; and

(c) the amount of any tax which—

(i) becomes payable to the government of any other country in respect of any amount which—

[(aa)] is declared to any **[company which is a]** resident as a foreign dividend which is exempt from tax in terms of section 9E(7)(e); or

(bb) would, but for the provisions of section 9D(9)(f), have been included in any income of such company which is a resident;] and

(ii) has not been taken into account as a rebate against any normal tax payable by such company in respect of such amount previously included in his taxable income in terms of section 9D,

may be deducted from any **[Secondary Tax on Companies]** normal tax which becomes payable by such **[company on the distribution of any profits]** resident during any year of assessment that any income is derived by way of dividends declared to such [company] resident by any controlled foreign entity from profits relating to any investment income so previously included;

(d) no rebate shall be allowed as a deduction from the tax payable by any **[shareholder]** resident, in respect of any tax contemplated in subsection (1A)(c)**[(ii)]** or (d), which is payable by—

(i) any company distributing any dividend to such **[shareholder]** resident, if such **[shareholder]** resident (in the case of a company, together with any other company in a group of companies of which such company forms part)

- holds for his or its own benefit less than 10 per cent of the equity share capital in such company; or
- (ii) any company in respect of any profits from which the dividend is declared or deemed to have been declared, if such **[shareholder] resident** does not hold a qualifying interest in such company;
- (e) no rebate shall be allowed in respect of any tax payable on any amount contemplated in subsection (1)(d), if the **[shareholder] resident** has made an election as contemplated in section 9E(6).

(2) The rebate under subsection (1) shall not be granted in addition to any relief to which the resident **[of the Republic]** is entitled under any agreement between the government of the Republic and the said other country for the prevention of or relief from double taxation, but may be granted in substitution for the relief to which the resident **[of the Republic]** would be so entitled.

(3) For the purposes of this section—

'controlled company' means a controlled company as defined in section 9E;

'controlling company' means a controlling company as defined in section 9E;

'group of companies' means a group of companies as defined in section 9E;

'qualifying interest' means any qualifying interest as defined in section 9E;

['resident of the Republic' means—

(a) any natural person who is ordinarily resident in the Republic; and

(b) any person, other than a natural person, which is incorporated or has its place of effective management in the Republic.]”

(4) For the purpose of this section, the amount of any foreign tax proved to be payable as contemplated in subsection (1A) in respect of any amount which is included in the taxable income of any resident during any year of assessment, shall be converted to the currency of the Republic by applying the ruling exchange rate on the day that such foreign tax is actually paid: Provided that if such foreign tax has not been paid by the last day of such year of assessment the ruling exchange rate on the last day of such year of assessment shall be applied.”

Amendment of section 7 of Act 58 of 1962

. Section 7 of the Income Tax Act, 1962, is hereby amended by the addition of the following subsections:

“(8) Where by reason of or in consequence of any donation, settlement or other disposition (other than a donation, settlement or other disposition to a foreign entity, as defined in section 9D, of a public character) made by any resident, income is received by or accrued to any person who is not a resident (other than a controlled foreign entity as defined in section 9D in relation to such resident), there shall be included in the income of such resident so much of the amount of any income as is attributable to such donation, settlement or other disposition: Provided that any amount of income received by or accrued to such person by way of foreign dividends, shall for the purposes of this

section be determined in accordance with the provisions of section 9E, as if such person had been a shareholder who is a resident.

(9) Where any asset has been disposed of for a consideration which is less than the market value of such asset, the amount by which such market value exceeds such consideration shall for the purposes of this section be deemed to be a donation.

(10) Any resident who, at any time during any year of assessment makes any donation, settlement or other disposition as contemplated in this section, shall disclose such fact to the Commissioner in writing when submitting his return of income for such year and at the same time furnish such information as may be required by the Commissioner for the purposes of this section."

Amendment of section 8 of Act 58 of 1962

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

- (a) by the substitution for the words preceding subparagraph (i) of paragraph (b) of subsection (4) of the following words:
 “(b) If any amount referred to in paragraph (a) of this subsection is an amount which has been recovered or recouped during any year of assessment by a **[person referred to in section 9(1)(c)]** resident who carries on any business as owner or charterer of any ship as a result of the loss, sale or disposal in any other manner by that person of a ship, and if that person satisfies the Commissioner that—”;
- (b) by the insertion after subsection (4) of the following subsection:
 “(4A) The provisions of subsection (4)(a), (e), (f) or (k) shall not apply in respect of any amount which is deemed to have been allowed as a deduction in terms of subparagraph (ix) of the proviso to section 11(e), section 11(a)(bb), section 12B(4B), section 12C(4B), section 12D(3A), section 13(1A), section 13bis(3A) or section 13ter(6A).”.

Amendment of section 9 of Act 58 of 1962

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

- (a) by the deletion of paragraphs (a), (b), (bA), (c), (cB), (d), (d)bis and (f) of subsection (1);
- (b) by the substitution for subparagraph (i) of paragraph (e) of subsection (1) of the following subparagraph:
 “(i) any services rendered by such person to or work or labour done by such person for or on behalf of **[the] any employer in the national or provincial spheres of Government [including any provincial administration]**, or any local authority in the Republic, or **[the South African Tourist Corporation or the Council for Scientific and Industrial Research]** any national or provincial public entity if 80 per cent or more 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 such administration]** or local authority or **[that Corporation or that Council]** national or provincial public entity; or”;

- (c) by the substitution for subsection (1A) of the following subsection:
“(1A) For the purposes of paragraph (g)(ii) the services referred to in **[paragraphs (d), (d)bis, (f) and]** paragraph (fA) shall be deemed to have been performed within the Republic.”; and
- (d) by the deletion of subsection (5).

Repeal of section 9A of Act 58 of 1962

- . Section 9A of the Income Tax Act, 1962, is hereby repealed.

Repeal of section 9C of Act 58 of 1962

- . Section 9C of the Income Tax Act, 1962, is hereby repealed.

Amendment of section 9D of Act 58 of 1962

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

- (a) by the insertion in subsection (1) before the definition of “controlled foreign entity” of the following definition:
“business establishment’ of a controlled foreign entity means a place of business with—
- (a) an office, shop, factory, warehouse, farm or other structure which is owned by the controlled foreign entity or held by such entity under a lease for a period of not less than one year;
- (b) a mine, oil or gas well, a quarry or any other place of extraction of natural resources, which is owned by such controlled foreign entity or held by such entity under a lease for a period of not less than one year; or
- (c) a site for the construction or installation of buildings, bridges, roads, pipelines, heavy machinery or other projects of comparable magnitude which lasts for at least six months,
through which the business of such entity is carried on, and where—
- (i) such place of business is suitably equipped with on-site employees, equipment and other facilities for purposes of conducting such business;
- (ii) such establishment has its place of effective management within the country where such establishment is located; and
- (iii) the place of business is maintained in such country outside the Republic, 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 law administered by the Commissioner);”;

- (b) by the insertion in subsection (1) after the definition of “controlled foreign entity” of the following definition:
“designated country” means any designated country as defined in section 9E;”;
- (c) by the substitution for the definition of “foreign entity” in subsection (1) of the following definition:
“foreign entity” means any person (other than a natural person) which **[has its place of effective management in a country other than the Republic]** is not a resident or which is a resident but where such entity is as a result of the application of the provisions of any agreement entered into by the Republic for the avoidance of double taxation, is treated as not being a resident of the Republic;”;
- (d) by the deletion of the definition of “investment income” in subsection (1);
- (e) by the deletion of the definition of “resident” in subsection (1);
- (f) by the substitution for subsection (2) of the following subsection:
“(2) There shall be included in the income for the year of assessment of any resident contemplated in the definition of “controlled foreign entity” in subsection (1), **[a]** an amount equal to the proportional amount of **[any investment]** the net income **[received by or accrued to]** of such entity for any financial year of such entity which ends during such year of assessment of such resident, which bears to the total **[investment] net income [received by or accrued to]** of such entity during such financial year, the same ratio as the percentage of the participation rights of such resident in relation to such entity bears to the total participation rights in relation to such entity: Provided that—
- (a) the provisions of this subsection shall not apply **[to any amount of investment income to which the provisions of subsection (4) are applicable]** where such resident (together with any connected person in relation to such resident) holds less than 10 per cent of the participation rights in such controlled foreign entity; and
- (b) the amount of any **[investment]** income received by or accrued to such entity by way of foreign dividends, shall for the purposes of this section be determined in accordance with the provisions of section 9E, as if such entity had been a resident.”;
- (g) by the insertion after subsection (2) of the following subsection:
“(2A) For the purposes of subsection (2), the “net income” of a controlled foreign entity shall be an amount equivalent to the taxable income of such entity determined in accordance with this Act as if such controlled foreign entity had been a resident: Provided that—
- (a) any deductions or allowances which may be allowed, or any amounts which may be set off against, the income of such entity in terms of this Act shall be limited to the amount of such income;
- (b) any amount whereby such deductions or allowances or amounts exceed the amount of such income, shall be carried forward to the immediately succeeding year of assessment and be deemed to be a balance of assessed loss which may be set off against

the income of such entity in the such succeeding year for the purposes of section 20; and

- (c) no deduction shall be allowed in respect of any interest paid by such entity to any other controlled foreign entity in relation to the resident, as contemplated in subsection (9)(fA).";
- (h) by the substitution for subsection (3) of the following subsection:
 "(3) Where any resident acquires during any year of assessment any vested right to participate in any amount representing capital of any controlled foreign entity (other than a company) and—
 (a) such capital arose from **[investment]** income received by or accrued to such controlled foreign entity in any previous year of assessment during which such resident had a contingent right to participate in such **[investment]** income; and
 (b) such **[investment]** income has not been subject to tax in terms of the provisions of this Act,
 such amount shall be included in the income of such resident in such year of assessment.";
- (i) by the deletion of subsections (4), (4A) and (5);
- (j) by the substitution for subsections (6) and (7) of the following subsections:
 "(6) The amount apportioned to any resident under the provisions of this section, shall be converted **[at a date not later than the end of the financial year of the resident]** to the currency of the Republic on the last day of the financial year of the controlled foreign entity and the ruling exchange rate at that date, or an average exchange rate determined for such year in such manner as the Commissioner may approve, shall be applied to determine the value of the amount to be included in the income of such resident.
 (7) Any resident who, at any time during any year of assessment, has a **[participating]** participation right contemplated in subsection (2) or a vested right contemplated in subsection (3) **[or makes any donation, settlement or other disposition as contemplated in subsection (4)]**, shall disclose such fact to the Commissioner in writing when submitting his return of income for such year and at the same time furnish such information as may be required by the Commissioner for the purposes of this section.";
- (k) by the deletion of subsection (8);
- (l) by the substitution for subsection (9) of the following subsection:
 "(9) The provisions of this section shall not apply—
 (a) in respect of **[investment income]** receipts and accruals, other than **[income]** receipts and accruals from foreign dividends contemplated in section 9E, of any controlled foreign entity which is a company, where the [foreign tax actually paid or payable without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment) in any country other than the Republic, relating to the proportional amount contemplated in subsection (2) or (4)] receipts and accruals, after taking into consideration any

deductions or allowances under the taxation provisions of such other country **[determined at the ratio as contemplated in subsection (2) or (4) as the case may be, is more than 85 per cent of the normal tax payable in the Republic]** have been or will be subject to tax on income in a designated country at a statutory rate of at least 27 per cent without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment): **[Provided that for the purposes of the determination of the tax payable in the Republic on such proportional amount, such tax shall be an amount which bears to the total normal tax payable the same ratio as the taxable income attributable to the inclusion of such proportional amount bears to the total taxable income in relation to such resident];**

(b) where the **[investment income arises from and is effectively connected to the business activities of a substantive business enterprise]** net income of any controlled foreign entity which is a company is attributable to any business establishment of [any] such controlled foreign entity [conducted through a permanent establishment as defined in section 9C(1) of such controlled foreign entity] in any country other than the Republic [where such permanent establishment is suitably equipped for conducting the principal business of such substantive business enterprise]: Provided that the provisions of this paragraph shall not apply to any receipts and accruals—

(i) derived from any sale or service transaction by such controlled foreign entity with any connected person who is a resident, unless the consideration in respect of such transaction reflects an arm's length price that is consistent with the provisions of section 31; or

(ii) derived from—

(aa) any sale of goods by such controlled foreign entity to any connected person who is a resident, unless—

(A) such controlled foreign entity purchased such goods from an unconnected person within the country of residence of such controlled foreign entity;

(B) the labour, overhead, leasing, machinery repair, depreciation, and similar production costs incurred by such controlled foreign entity to extract, produce, or assemble such goods amount to 20 per cent or more of the total costs; or

(C) such controlled foreign entity sells goods of the same or a similar nature to unconnected persons at comparable prices (after

accounting for transportation and other bona fide costs of delivery) and such sales to unconnected persons constitute more than 50 percent of the total sales of such goods by such entity; or

(bb) any sale of goods by such controlled foreign entity to a person (other than a connected person who is a resident), where such controlled foreign entity initially purchased such goods or any materials, parts or ingredients thereof from one or more connected persons who are residents, unless—

(A) such goods, materials, parts or ingredients thereof purchased from connected persons who are residents amount to 20 percent or less of the total cost of such goods;

(B) the labour, overhead, leasing, machinery repair, depreciation and similar production costs incurred by such controlled foreign entity to extract, produce, or assemble the goods amount to 20 per cent or more of the total costs; or

(C) the products are sold by such controlled foreign entity to unconnected persons for delivery within the country of residence of such controlled foreign entity; or

(cc) any service performed by such controlled foreign entity to a connected person who is a resident, unless such service is performed outside the Republic and—

(A) in the case of any service other than commission sales or other selling services, such service relates to the creation, extraction, production, assembly, repair or improvement of goods utilised within one or more countries outside the Republic; or

(B) in the case of any commission sales and other selling services, such services relate to goods of a connected person who is a resident and such goods are sold to unconnected persons for delivery within the country of residence of such controlled foreign entity:

Provided that—

(a) the Minister may by way of general notice published in the Gazette—

(i) treat one or more foreign countries as one to the extent such foreign countries reflect a single economic market and such treatment will not lead to an unacceptable erosion of the tax base; or

- (ii) waive the application of this paragraph to the extent the application of this paragraph will unreasonably prejudice national economic policies or South African international trade and such waiver will not lead to an unacceptable erosion of the tax base; and
- (b) the Commissioner may by way of general notice published in the *Gazette* waive application of this paragraph for any form of transaction which is not exempt under this paragraph, to the extent that the Commissioner is satisfied that the form of the transaction will in all probability not involve pricing that will be inconsistent with the provisions of section 31;
- (iii) in the form of dividends, interest, royalties, rental income, annuities, insurance or income of a similar nature (as well as receipts and accruals from dealing in shares, securities and other properties giving rise to such receipts and accruals, to the extent that such controlled foreign entity does not deal in such properties as its principal business, other than receipts and accruals—
- (aa) which do not exceed 5 per cent of the total receipts and accruals of such controlled foreign entity; or
- (bb) which arise from any active banking, insurance or rental business as defined in subsection (11), excluding any such receipts and accruals from any—
- (A) connected person who is a resident; or
- (B) person who is a resident to the extent that such receipts and accruals are effected as part of a scheme for the purposes of avoiding the liability for any tax, duty or levy imposed in terms of this Act or any other Act administered by the Commissioner;
- [(c) in relation to the proportional amount of any investment income attributable to any natural person, arising from any asset acquired by a controlled foreign entity in relation to such natural person, before such natural person became ordinarily resident in the Republic for the first time, in respect of the first three consecutive years of assessment ending on or after 28 February 1998;**
- [(d) to any particular class of investment income which is taxable in a country which the Minister has identified by notice in the *Gazette* as a country whose tax on income is determined on a basis which is substantially the same as that of the Republic;]**
- (e) to **[investment income]** the net income of any controlled foreign entity **[which is—**

- (i) **deemed to have accrued to the entity from a source in the Republic in terms of section 9(1)(b) or (bA); or**
 - (ii) to the extent that such income is included in the taxable income of the entity;
- (f) in relation to the proportional amount of **[investment income relating]** the net income attributable to any resident, to the extent that it relates to any foreign dividend contemplated in section 9E declared to or deemed to have been declared to a controlled foreign entity [which is attributable to any resident to the extent that the profits from which the dividend is declared or deemed to have been declared relate to any proportional amount of investment income which has been included in the income of such resident in terms of the provisions of this section] which is a company by any other company which is a controlled foreign entity in relation to such resident; or
- ~~(fA) in relation to the proportional amount of the net income of a controlled foreign entity which is attributable to any resident, to the extent that it relates to any interest, which is paid to such entity by any other controlled foreign entity in relation to such resident;~~
- [(g) to the proportional amount of [any investment income] the net income of any company listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or any subsidiary of such company, which is attributable to any resident by virtue of the shareholding of such resident in such company which resident, together with any connected person in relation to such resident, directly or indirectly holds less than 10 per cent of the equity share capital in such company or subsidiary.]**”;
- (m) by the addition of the following subsections:
 - “(10) The provisions of subsection (9)(b), (f) and (fA) shall not apply in respect of any resident, where such resident fails to fully comply with the provisions of section 72A(2).
 - (11) For the purposes of subsection (9)(b)—
 - (a) ‘active banking, insurance or rental business’ means an active business which—
 - (i) is licensed or registered to perform as such within the country of residence of any controlled foreign entity carrying on such business;
 - (ii) generates more than 50 per cent of its total receipts and accruals from persons who are not connected persons in relation to the controlled foreign entity carrying on such business; and
 - (iii) in the case of insurance business, would have been taxed in terms of the provisions of section 28 or 29A, if such business had been performed in the Republic;
 - (b) ‘interest’ means—
 - (i) interest as contemplated in section 24J;

- (ii) an amount as contemplated in section 24K; or
- (iii) any other income which, by the laws of the Republic administered by the Commissioner, is subjected to the same treatment as income from money lent;
- (c) 'rental income' means any amount received by or accrued to any person as consideration for the use of, or the right to use, any movable or immovable property;
- (d) 'royalty' means any amount received by or accrued to any person as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or any other property or right of a similar nature, or for information concerning industrial, commercial or scientific experience.'

Amendment of section 9E of Act 58 of 1962

- . (1) Section 9E of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the words preceding paragraph (a) of the definition of "foreign dividend" in subsection (1) of the following words:
 "foreign dividend" means any dividend received by or which accrued to any person from any company **[to the extent that the dividend is declared from profits derived by such company from a source outside the Republic which are not deemed to be from a source within the Republic, or from profits which are deemed to be from a source within the Republic which have not been subject to tax in the Republic]** which is—
 - (i) a foreign entity as defined in section 9D; or
 - (ii) a resident to the extent that the dividend is declared from profits derived by such company before such company became a resident,
 and includes the following amounts which shall be deemed to be a dividend declared by such company to such person—";
 - (b) by the substitution for paragraph (a) of the definition of "foreign dividend" of the following paragraph:
 "(a) any amount deemed to have been distributed as contemplated in section 64C(3)(a), (b), (c) or (d) by any company which is a controlled foreign entity [as contemplated in section 64C(3)(a), (b), (c) or (d)] to such person or any resident who is a connected person in relation to such person to the extent that such company could have distributed a dividend to such person from profits **[derived from a source outside the Republic which are not deemed to be from a source within the Republic, or from profits which are deemed to be from a source within the Republic]** which have not been subject to tax in the Republic, and none of the provisions contained in section

64C(4) apply: Provided that the provisions of this paragraph shall not apply in respect of any amount distributed by any company which is being wound up or liquidated or whose corporate existence is finally terminated, out of profits of a capital nature (other than profits of a capital nature derived from the disposal by such company, on or after the effective date, of any interest in any other company with retained profits which were available for distribution by such other company to such company which would not have been excluded from the provisions of paragraph (b) had that paragraph applied); or

- (c) by the substitution for the words preceding the proviso to paragraph (b) of the definition of "foreign dividend" of the following words:
 "(b) any amount derived by any person from the disposal by such person of any share or interest in the fixed capital in a company which is a controlled foreign entity as defined in section 9D, to the extent that such company or any subsidiary of such company has any undistributed profits **[which were derived from a source outside the Republic which are not deemed to be from a source within the Republic, or from profits deemed to be from a source within the Republic]** which have not been subject to tax in the Republic, which were directly or indirectly available for distribution to such person:";
- (d) by the deletion of the definition of "resident" in subsection (1);
- (e) by the deletion of subsection (2);
- (f) by the insertion after subsection (5) of the following subsection:
"(5A) Notwithstanding the provisions of sections 11(a) and 23(g)—
 (a) there shall be allowed to be deducted from any income of a resident which is derived during any year of assessment from taxable foreign dividends, an amount of any interest actually incurred by such resident in the production of income in the form of foreign dividends: Provided that such deduction shall be limited to the amount of foreign dividends included in the gross income of such resident during such year; and
 (b) any amount whereby such interest contemplated in paragraph (a) exceeds the amount of any such foreign dividends shall be reduced by the amount of any foreign dividends received by or accrued to such resident during such year of assessment which are not included in the taxable income of such resident, and the balance shall—
 (i) be carried forward to the immediately succeeding year of assessment; and
 (ii) be deemed to be an amount of interest actually incurred by such resident during such succeeding year of assessment in the production of income in the form of foreign dividends.";
- (g) by the deletion of paragraphs (a) and (b) of subsection (7);

- (h) by the substitution for subparagraph (ii) of paragraph (d) of subsection (7) of the following subparagraph:
 “(ii) are or will be subject to tax at a statutory rate of at least 27 per cent without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment); or”;
- (i) by the deletion of the word “or” at the end of paragraph (d) of subsection (7);
- (j) by the substitution for subparagraph (i) of paragraph (e) of the following subparagraph:
 “(i) relate to any amount of **[investment]** income which has or will be included in the income of the shareholder of such company in terms of section 9D; or”
- (k) by the addition of the word “or” at the end of paragraph (e) of subsection (7); and
- (l) by the addition to subsection (7) of the following paragraph:
 “(f) any company out of profits derived by such company by way of any foreign dividend which is exempt from tax in terms of the provisions of this subsection.”
- (m) by the deletion of paragraph (a) of subsection (8).
 (2)(a) Subsection (1)(a), (b), (d), (e), (g), (j) and (m) shall come into operation on 1 January 2001 and shall apply in respect of any year of assessment commencing on or after that date.
 (b) Subsection (1)(c), (f), (h), (i), (k) and (l) shall be deemed to have come into operation on 23 February 2000.

Insertion of section 9F in Act 58 of 1962

. The following section is hereby inserted after section 9E of the Income Tax Act, 1962:

“Income from foreign sources.^{3/4}

9F. (1) For the purposes of this section ‘designated country’ means a designated country as defined in section 9E.

(2) The amount of any income which shall be exempt from tax in terms of the provisions of section 10(1)(kA), shall be so much of any amount received by or accrued during the relevant year of assessment to any company which is a resident from a source outside the Republic, which is not deemed to be from a source in the Republic, which has been or will be subject to tax in any designated country at a statutory rate of at least 27 per cent without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment).

(3) Where it is established to the satisfaction of the Commissioner that any amount, or any portion of such amount—

- (a) received by or accrued to any person which is required to be included in the gross income of such person; or

(b) which is required to included in the income of any resident in terms of the provisions of section 9D,
during any year of assessment, may not be remitted to the Republic during such year of assessment as a result of currency or other restrictions or limitations imposed in terms of the laws of the country where the amount was received or accrued, such amount or any portion thereof shall be deemed not to have been received or accrued to such person or such resident during such year and such amount or portion thereof shall be included in the gross income of such person or such resident during the year of assessment during which such amount or portion thereof may be so remitted to the Republic.”.

Amendment of section 10 of Act 58 of 1962

- . Section 10 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for subparagraphs (iii) and (iv) of paragraph (c) of the following subparagraphs:
- “(iii) the salary and emoluments payable to any person who holds office in the Republic as an official of any government, other than the Government of the Republic, provided such person is stationed in the Republic for that purpose and is not **[ordinarily]** a resident **[in]** of the Republic;
- (iv) any salary and emoluments payable to any domestic or private servant of any person referred to in subparagraph (iii) in respect of domestic or private services rendered or to be rendered by such servant to such person if such servant is not a South African citizen and is not **[ordinarily]** a resident **[in]** of the Republic.”;
- (b) by the substitution for subparagraph (ii) of paragraph (cA) of subsection (1) of the following subparagraph:
- “(ii) any **[South African company]** association, corporation or company contemplated in paragraph (a) of the definition of “company” in section 1, all the shares of which are held by any such institution, board or body, if the operations of such association, corporation or company are ancillary or complementary to the object of such institution, board or body.”;
- (c) by the substitution for paragraph (cG) of subsection (1) of the following paragraph:
- “(cG) the receipts and accruals of any **[persons (other than a company) who is ordinarily resident in any country other than the Republic or of an external company which is managed and controlled in any such country]** person who is not a resident, which are derived by such person **[or company]** from carrying on business as the owner or charterer of any ship or aircraft, if a similar exemption or equivalent relief is granted by the **[said]** country where such person has his or her or its place of residence, to any **[person (other than a company) ordinarily resident in the Republic or to any domestic company]** resident in respect of any tax imposed in that country

- on income which may be derived by such person **[or company]** from carrying on in such country any business as owner or charterer of any ship or aircraft;”;
- (d) by the deletion of paragraph (dA) of subsection (1);
- (e) by the insertion of the following paragraph after paragraph (gB) of subsection (1):
“(gC) any—
 (i) amount received by or accrued to any resident under the social security system of any other country; or
 (ii) pension received by or accrued to any resident from a source outside the Republic, which is not deemed to be from a source in the Republic, in consideration of past employment outside the Republic;”;
- (f) by the substitution for subparagraphs (i) and (ii) of paragraph (h) of subsection (1) of the following subparagraphs:
 “(i) any person (other than a company) **[not ordinarily resident nor carrying]** who is not a resident and who does not carry on business in the Republic; or
 (ii) **[an external]** a company which is not a resident and which does not [carrying] carry on business in the Republic;”;
- (g) by the substitution for the first proviso to paragraph (h) of subsection (1) of the following proviso:
 “Provided that, if in the case of any such stock or securities issued in respect of a loan raised in a country outside the Republic, the Treasury has, with the approval of the Minister of Finance, given an undertaking that the interest derived therefrom by any person **[not ordinarily]** who is not a resident [in the Republic or by any external company] shall be exempt from taxes in the Republic, the interest received by or accrued to such a person **[or company]** from such of the said stock or securities as were acquired by such person **[or company]** outside the Republic and paid for by such person **[or company]** in the currency of any country other than the Republic shall be exempt from normal tax even if that person **[or company]** carries on business in the Republic.”;
- (h) by the substitution for the words preceding the proviso to paragraph (hA) of subsection (1) of the following words:
 “interest received by or accrued to a person **[(other than a company) who is ordinarily resident outside the Republic or a company which is managed and controlled outside the Republic]** who is not a resident;”;
- (i) by the substitution for subparagraphs (i) and (ii) of the proviso to paragraph (hA) of subsection (1) of the following subparagraphs:
 “(i) the exemption under this section shall not apply to any natural person who was at any time **[ordinarily]** a resident [in] of the Republic if such person has during the year of assessment carried on business in the Republic;
 (ii) for the purposes of this paragraph **[the expression “Republic” shall include]** any person who has his or her place of residence in any country which has for the purposes of applying any regulation made under section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), been included in the common

monetary area, shall be deemed to be a resident of the Republic;“;

- (j) by the substitution for subparagraph (v) of the proviso to paragraph (hA) of subsection (1) of the following subparagraph:
 “(v) the exemption under this paragraph shall not apply to any interest received by or accrued to a company which is **[managed and controlled outside]** not a resident of the Republic, if such interest is effectively connected with the business carried on by that company in the Republic;”;
- (k) by the substitution for paragraph (iA) of subsection (1) of the following paragraph:
 “(iA) in the case of any unit portfolio referred to in paragraph (e)(i) of the definition of 'company' in section 1, so much of the **[interest] income [or foreign dividends contemplated in section 9E]** received by or accrued to such unit portfolio as has been distributed, or as the Commissioner is satisfied will be distributed, by way of a dividend or a portion of a dividend, to persons who have become entitled to such dividend by virtue of their being registered as holders of units in such unit portfolio on a date falling on or after the first day of April, 1971;”;
- (l) by the substitution for item (A) of subparagraph (bb) of the proviso to paragraph (k) of subsection (1) of the following item:
 “(A) out of **[interest] income** derived by such unit portfolio which is exempt from tax in the hands of such unit portfolio under the provision of paragraph (iA); and”;
- (m) by the substitution for item (aa) of the proviso to subparagraph (i) of paragraph (k) of subsection (1) of the following item:
 “(aa) to dividends (other than those distributed out of profits of a capital nature and those received by or accrued to or in favour of any person who is not **[ordinarily]** a resident of, nor carrying on business in, the Republic) distributed by a fixed property company as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), on shares included in a unit portfolio comprised in any unit trust scheme in property shares authorized under the said Act; or”;
- (n) by the addition of the word “or” at the end of item (cc) of the proviso to subparagraph (i) of paragraph (k) of subsection (1);
- (o) by the substitution for item (dd) of the proviso to subparagraph (i) of paragraph (k) of subsection (1) of the following item:
 “(dd) to the amount of any foreign dividend contemplated in section 9E received by or accrued to any resident **[as defined in section 9C]**;”;
- (p) by the insertion after paragraph (k) of subsection (1) of the following paragraphs:
“(kA) so much of any amount received by or accrued to any company which is a resident from a source outside the Republic as determined in accordance with the provisions of section 9F(2);
(l) any amount received by or accrued to any person which has been subject to withholding tax in terms of the provisions of section 35;”;

(q) by the substitution for paragraph (o) of subsection (1) of the following paragraph:

“(o) any remuneration derived by—

(i) any person as an officer or crew member of a ship engaged—

~~[(i)](aa)~~ in the international transportation for reward of passengers or goods; or

~~[(ii)](bb)~~ in the prospecting (including surveys and other exploratory work) for, or the mining of, any minerals (including natural oils) from the seabed outside the 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 the purposes of the ‘passage’ of such ship, as defined in the Marine Traffic Act, 1981 (Act No. 2 of 1981),

if such person was outside the Republic for a period or periods exceeding 183 days in aggregate during the year of assessment; or

~~(ii) any person in respect of services rendered outside the Republic by such person for or on behalf of any employer if such person was outside the Republic for a continuous period of 183 days or longer during the relevant year of assessment and such services were rendered during such period: Provided that the provisions of this paragraph shall not apply in respect of any remuneration derived from services rendered for or on behalf of any employer, or holding of any office, as contemplated in section 9(1)(e);”;~~

(r) by the substitution for paragraph (p) of subsection (1) of the following paragraph:

“(p) any amount received by or accrued to any person who is not **[ordinarily]** a resident **[in]** of the Republic, 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 spheres of Government, [including the Railway Administration and any provincial administration], or any local authority in the Republic or **[the South African Tourist Corporation or the Council for Scientific and Industrial Research]** any national or provincial public entity if 80 per cent or more 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 provincial administration or]** local authority concerned **[or the said Corporation or the said Council]** or such public entity.”.

Amendment of section 10A of Act 58 of 1962

. Section 10A of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso to subsection (4) of the following words:

“(4) The valuator of an insurer who is a party to an annuity contract shall, before payment of the first annuity amount is made under such contract or **[where such payment was made before the date on which this section or section 9C comes into operation, within one month after the date, or in either case]** within such period as the Commissioner may allow, make a calculation (with due regard to the provisions of subsection (5)) in the manner prescribed in paragraph (a) of subsection (3) or, if the provisions of paragraph (b) of that subsection are applicable, in accordance with that paragraph, of the capital element of all the annuity amounts to be paid under the said contract.”.

Amendment of section 11 of Act 58 of 1962

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

(a) by the substitution for the words preceding paragraph (a) and paragraph (a) of the following words and paragraph:

“For the purpose of determining the taxable income derived by any person from carrying on any trade **[within the Republic]**, there shall be allowed as deductions from the income of such person so derived—

(a) expenditure and losses actually incurred **[in the Republic]** in the production of the income, provided such expenditure and losses are not of a capital nature;”;

(b) by the deletion of paragraph (b);

(c) by the addition of the following subparagraph to the proviso to paragraph (e):

“(ix) where any such machinery, plant, implement, utensil or article was used by the taxpayer during any previous financial year or years for the purposes of any trade carried on by such taxpayer, the receipts and accruals from which were not included in the income of such taxpayer during such year or years, the Commissioner shall take into account the period of use of such asset during such previous year or years in determining the amount by which the value of such machinery, plant, implement, utensil or article has been diminished;”;

(d) by the substitution for subparagraph (ii) of paragraph (gA) of the following subparagraphs:

“(ii) in obtaining any patent or the restoration of any patent under the Patents Act, 1978, or the registration of any design under the Designs Act, 1993, or the registration of any trade mark under the Trade Marks Act, 1993, or under similar laws of any other country; or”;

(e) by the substitution for the words preceding subparagraph (A) of paragraph (cc) of the proviso to paragraph (gA) of the following words:

- “(cc) no allowance shall be made in respect of any such invention, patent, design, trade mark, copyright or other property or knowledge so acquired or obtained by the taxpayer on or after 24 June 1988, but prior to 1 July 1993 from any other person who is a resident of the Republic or who is ordinarily resident in a neighbouring country (or, in the case of a company, **[a domestic company or a company]** is incorporated [managed or controlled] or has its place of effective management in a neighbouring country), if—
- (f) by the substitution for paragraph (dd) of the proviso to paragraph (gA) of the following paragraph:
 “(dd) where any such invention, patent, design, trade mark, copyright or other property or knowledge was so acquired or obtained by the taxpayer on or after 1 July 1993 from any other person who is a resident of the Republic or **[a]** who is ordinarily resident in a neighbouring country (or, in the case of a company, **[a domestic company or a company]** is incorporated [managed or controlled] or has its place of effective management in a neighbouring country), and who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the cost of such invention, patent, design, trade mark, copyright or other property or knowledge to such connected person or the market value thereof as determined on the date upon which such invention, patent, design, trade mark, copyright or other property or knowledge was acquired or obtained by the taxpayer;”
- (g) by the substitution for paragraph (gB) of the following paragraph:
 “(gB) expenditure (other than expenditure which has qualified in whole or 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 extension of the term of any patent under the Patents Act, 1978 (Act No. 57 of 1978), 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, design or trade mark is used by the taxpayer in the production of his income or income is derived by him therefrom;”
- (h) by the deletion of paragraph (gC);
- (g) by the substitution for the words following subparagraph (vii) of paragraph (o) and preceding the proviso thereto of the following words:
 “which have been scrapped by such taxpayer during the year of assessment, such allowance to be the excess of the original cost to such taxpayer of such building (or portion thereof), improvements (or portion thereof) to such building, shipbuilding structure, improvements to such shipbuilding structure, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils,

articles, transmission line or cable or railway line over the total amount arrived at by adding—

(aa) all the allowances made in respect thereof under the provisions of paragraph (e) of this section, or section 12(1), or section 12(1) as applied by section 12(3), or section 12A(2), or section 12B, or section 12C, or section 12D, or section 13(1), or section 13(1) as applied by section 13(4) or (8), or section 13*bis*(1), (2) or (3), or section 13*ter*(2) or (3), or section 14(1)(a) or (b), or the corresponding provisions of any previous Income Tax Act, or section 14*bis*(1)(a), (b) or (c), or section 24F, or section 24G, or section 27(2)(b) or (d); or

(bb) in the case of any building (or portion thereof), improvements (or portion thereof) to such building, shipbuilding structure, improvements to such shipbuilding structure, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils, articles, transmission line or cable or railway line, which was during any previous financial year or years used by the taxpayer in the course of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, all the allowances which could have been made in terms of the provisions referred to in item (aa) as if such receipts and accruals been included in such taxpayer's income,

to any amount or the value of any advantage accruing to the taxpayer in respect of the sale or other disposal of such building, shipbuilding structure, improvements, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils, articles, transmission line or cable or railway line.”.

Amendment of section 11*bis* of Act 58 of 1962

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

(a) by the substitution for paragraph (ii) of the proviso to subsection (3) of the following paragraph:

“(ii) any amount by which the marketing expenditure is reduced under paragraph (i) shall be deemed for the purposes of this section to be an amount of marketing expenditure which was incurred in the succeeding year of assessment and which was allowed to be deducted from his income under section 11 **[or 17]** during such year.”;

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

“(4) For the purposes of subsection (3) the marketing expenditure on which the marketing allowance is to be calculated shall be so much of the expenditure incurred by the exporter during the year of assessment and allowed to be deducted from his income under **[sections] section 11 [and 17]** as is proved to the satisfaction of the Commissioner to have been incurred directly—“;

- (c) by the substitution for the words following paragraph (e) of subsection (4A) of the following words:

“so much of such expenditure as the Commissioner is satisfied was in effect borne by any producer of any pastoral, agricultural or other farming produce exported by the said Association or by any such committee, board, society or company or by some other person under marketing arrangements controlled by the said Association or by such committee, board, society or company, shall for the purposes of this section be deemed to be marketing expenditure incurred by such producer, provided such expenditure, had it been incurred directly by such producer, would have ranked for deduction from his income under section 11 [or 17], and, where such expenditure was incurred by any such co-operative agricultural society or company or farmers’ special co-operative company, the expenditure shall be excluded from any marketing expenditure taken into account for the purposes of any allowance to such society or company under this section.”.

Amendment of section 12B of Act 58 of 1962

. Section 12B of the Income Tax Act, 1962, is hereby amended by the insertion of the following subsection after subsection (4A):

“(4B) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals from which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year that such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”.

Amendment of section 12C of Act 58 of 1962

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

- (a) by the insertion of the following subsection after subsection (4):
“(4A) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals from which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year that such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”;
- (b) by the substitution for subsection (5) of the following subsection:

“(5) The deductions which may be allowed or deemed to have been allowed in terms of this section and section 11(o) in respect of any asset shall not in the aggregate exceed the cost to the taxpayer of such asset.”.

Amendment of section 12D of Act 58 of 1962

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

- (a) by the substitution for subsection (2) of the following subsection:
 “(2) In respect of any new and unused affected asset which —
- (a) is owned by the taxpayer and is brought into use for the first time by such taxpayer on or after the effective date; and
- (b) is used directly by such taxpayer—
- [(i) in the production of his income; and**
- [(ii)]** in the carrying on his sole business of—
- [(aa)](i)** the transportation of persons, goods, things or natural oil, or
- [(bb)](ii)** the transmission of electricity or any telecommunication signal,
- there shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of such asset to the extent that such affected asset is used in the production of his income.”;
- (b) by the insertion of the following subsection after subsection (3):
“(3A) Where any affected asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals from which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year in which such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”;
- (c) by the substitution for subsection (6) of the following subsection:
 “(6) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any affected asset shall not in the aggregate exceed the amount of such cost.”;

Amendment of section 13 of Act 58 of 1962

. Section 13 of the Income Tax Act, 1962, is hereby amended—

- (a) by the insertion of the following subsection after subsection (1):
“(1A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any

trade carried on by such taxpayer, the receipts and accruals from which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”;

- (b) by the substitution for subsection (2) of the following subsection:
 “(2) The aggregate of the allowances allowed under subsection (1) or the corresponding provisions of any previous Income Tax Act, or deemed to have been allowed as contemplated in subsection (1A), in respect of any building or improvements shall not exceed the cost (after the deduction of any amount referred to in subsection (3) or the corresponding provisions of any previous Income Tax Act) of such building or improvements, as the case may be, less the aggregate of any allowances made to the taxpayer in respect of such building or improvements, as the case may be, under subsection (7) or section 11(g) or the corresponding provisions of any previous Income Tax Act.”.

Amendment of section 13bis of Act 58 of 1962

. Section 13bis of the Income Tax Act, 1962, is hereby amended—

- (a) by the insertion of the following subsection after subsection (3):
 “(3A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals from which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”;
- (b) by the substitution for subsection (5) of the following subsection:
 “(5) The aggregate of the allowances under the preceding provisions of this section and subsection (1) of section thirteen, as applied by subsection (4) of that section, and the corresponding provisions of any previous Income Tax Act, or any amount deemed to have been allowed as contemplated in subsection (3A), in respect of the cost of any building or portion thereof or any improvements or portion thereof shall not exceed such cost or, if such allowances have been calculated on a portion of such cost, such portion.”.

Amendment of section 13ter of Act 58 of 1962

. Section 13ter of the Income Tax Act, 1962, is hereby amended—

- (a) by the insertion of the following subsection after subsection (6):

“(6A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year used by the taxpayer for the purposes of any trade carried on by him or her the receipts and accruals from which were not included in the income of such taxpayer during such year, any deduction which could have been allowed during such previous year in terms of this section shall for the purposes of this section (excluding the provisions of subsection (7)(a)) be deemed to have been allowed during such previous year as if the receipts and accruals of such trade had been included in the income of such taxpayer.”;

- (b) by the substitution for subsection (10) of the following subsection:
“(10) The aggregate of the allowances allowed or deemed to have been allowed under the preceding provisions of this section in respect of the cost of any residential unit shall not exceed such cost or, if such allowances have been calculated on a portion of such cost, such portion.”.

Amendment of section 14 of Act 58 of 1962

. Section 14 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:
“(1) There shall be allowed to be deducted from the income of any **[person referred to in section 9(1)(c)]** resident who carries on any business as owner or charterer of any ship”;
- (b) by the substitution for the words preceding paragraph (a) of subsection (1C) of the following words:
“(1C) Where on or after 1 January 1974 any **[South African company]** association, corporation or company contemplated in paragraph (a) of the definition of ‘company’ in section 1 (being a **[person referred to in section 9(1)(c)]** resident who carries on any business as owner or charterer of any ship) has concluded a contract for the acquisition by it of a ship and such company (hereinafter referred to as the taxpayer company) satisfies the Commissioner that—“;
- (c) by the substitution for the definition of “South African ship” in subsection (2) of the following definition:
 “‘South African ship’ means—
- (a) a ship which is owned by a **[person referred to in section 9(1)(c)]** resident who carries on any business as owner or charterer of any ship, if such ship is a South African ship as defined in section 2 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951); or
- (b) if the Minister of Finance, having regard to the circumstances of the case, so directs, a ship which is owned by a company (in this section referred to as a subsidiary company) which is managed and controlled in the Republic if the sole beneficial shareholder in that company is a **[South African company]** association, corporation or company contemplated in

paragraphs (a) of the definition of “company” in section 1 (in this section referred to as a parent company) which is managed and controlled in the Republic.”.

Amendment of section 14bis of Act 58 of 1962

. Section 14bis of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words preceding the proviso to paragraph (b) of subsection (1) of the following words:

“(b) if such person is a **[person referred to in paragraph (c) of subsection (1) of section nine]** resident who carries on any business as owner or charterer of any aircraft and such **[person]** resident on or after the first day of April, 1965, concludes a contract for the acquisition by him of a new aircraft (whether built or still to be built), or of an aircraft which is not new and is proved to the satisfaction of the Secretary for Transport at all times since its construction to have been maintained in the highest class applicable to an aircraft of its type, and such person satisfies the Commissioner that the aircraft in question is or will be registered by him in the Republic and is or will be used by him in his business of transporting by air and for reward persons, livestock, goods or mail, an allowance in respect of the year of assessment during which such contract is concluded equal to forty per cent. of the adjustable cost to such person of that aircraft, or, if at the time at which the allowance under this paragraph has to be made, the cost price of the aircraft has not yet been determined, of the adjustable estimated cost price of that aircraft, provided the said person satisfies the Commissioner that not less than forty per cent. of the cost price or of the estimated cost price, as the case may be, of the aircraft will be paid by him within a period of two years, or, if the Commissioner agrees, three years after the end of that year of assessment or, if the said person does not so satisfy the Commissioner, an allowance in respect of any year of assessment equal to forty per cent. of the portion, if any, of the adjustable cost price of the aircraft paid by him during that year of assessment: “;

(b) by the substitution for subparagraph (iii) of the proviso to paragraph (b) of subsection (1) of the following subparagraph:

“(iii) if in respect of any year of assessment the Commissioner is no longer satisfied that an aircraft in respect of which an allowance has been made under the preceding provisions of this paragraph (whether in the current or any previous year of assessment) will be registered in the Republic or will be used by the taxpayer as aforesaid, or if in any year of assessment any such aircraft which has been registered in the Republic or has been used by the taxpayer as aforesaid, ceases to be so registered or used, or if in any year of assessment the taxpayer ceases to be a **[person referred to in paragraph (c) of**

subsection (1) of section nine] resident, so much of the amount of the said allowance as is not in terms of subsection (4) of section eight required to be included in the taxpayer's income for the current or any other year of assessment and is not in terms of paragraph (a) of subsection (2) of this section required to be deducted from the cost or estimated cost price of a further aircraft acquired to replace such aircraft, less such amount as would, if this paragraph had not been enacted, have been allowed to the taxpayer by way of deductions (in addition to those actually allowed) under paragraph (a) of this section or paragraph (o) of section eleven, either in the current or any previous year of assessment, shall in terms of this proviso be included in the income of the taxpayer for the current year of assessment;";

- (c) by the substitution for subparagraph (i) of paragraph (c) of subsection (1) of the following subparagraph:
 "(i) the person is a **[person mentioned in section 9(1)(c)]** resident who carries on any business as owner or charterer of any aircraft, who has acquired a new or used aircraft under a contract concluded by him on or after 1 August 1992;";
- (d) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:
 "If during any year of assessment any aircraft in respect of which an allowance has been granted to the taxpayer under subsection (1)(c) (whether in the current or any previous year of assessment) ceases to be registered by him in the Republic or ceases to be used by him in his business of transporting by air and for reward persons, livestock, goods or mail, or if the taxpayer to whom such allowance was granted ceases to be a **[person mentioned in section 9(1)(c)]** resident, there shall be included in the taxpayer's income in such first-mentioned year of assessment the amount (if any) by which the said allowance exceeds the sum of—".

Repeal of section 17 of Act 58 of 1962

- . Section 17 of the Income Tax Act, 1962, is hereby repealed.

Amendment of section 18 of Act 58 of 1962

- . Section 18 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) any contributions made by him during the year of assessment to any medical scheme registered under the provisions of the Medical Schemes Act, 1998 (Act No. 131 of 1998), or any fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered,".

Amendment of section 20 of Act 58 of 1962

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

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

“For the purpose of determining the taxable income derived by any person from carrying on any trade **[within the Republic]**, there shall be set off against the income so derived by such person—”;

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

“(b) any assessed loss incurred by the taxpayer during the same year of assessment in carrying on **[in the Republic]** any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares.”;

- (c) by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that there shall not be set off against any amount—

(a) distributed to such person by any pension fund or provident fund which is included in the gross income of such person in terms of paragraph (eB) of the definition of ‘gross income’ in section 1, any—

~~[(a)](i) balance of assessed loss; or~~

~~[(b)](ii) ‘assessed loss’ as defined in subsection (2) incurred in such year before taking into account any amount of such distribution; or~~

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

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

~~or~~

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

~~in carrying on any trade outside the Republic.~~

Amendment of section 23F of Act 58 of 1962

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

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

“(c) it is shown by him that by reason of the loss or destruction of such trading stock or the termination of the agreement in terms of which such trading stock was acquired by him or for any other reason, such trading stock will neither be disposed of nor held by him, to the extent that such expenditure was actually paid.”;

- (b) by the deletion of the words following paragraph (c) of subsection (1).

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 23H of Act 58 of 1962

. (1) Section 23H of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) which is allowable as a deduction in terms of the provisions of section 11(a), ~~[(b)]~~ (c) or (d) or section 28(2)(c); and”.

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any expenditure incurred on or after that date.

Amendment of section 24F of Act 58 of 1962

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

(a) by the substitution for the words preceding paragraph (a) of subsection (7) of the following words:

“The amount of any print cost or any marketing expenditure contemplated in section 11*bis* which may be allowed under the provisions of ~~[sections]~~ section 11 ~~[and 17]~~ shall not in the aggregate exceed the total of—”;

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

“Provided further that any amount of print cost or marketing expenditure which has been disallowed in terms of this subsection shall be carried forward and be deemed for the purposes of ~~[sections]~~ section 11 ~~[and 17]~~ to be an amount of print cost or marketing expenditure, as the case may be, incurred in the succeeding year of assessment.”;

(c) by the substitution for paragraph (b) of the proviso to paragraph (b) of subsection (9) of the following paragraph:

“(b) any amount of such marketing expenditure which has been allowed as a deduction in terms of subsection (7) and which has not been taken into account in the calculation of the marketing allowance by reason of the provisions of paragraph (a) or (b) of this subsection shall be deemed for the purposes of section 11*bis* to be an amount of marketing expenditure incurred in the succeeding year of assessment and allowed as a deduction in that year under the provisions of section 11 ~~[or 17]~~.”.

Amendment of section 24I of Act 58 of 1962

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

(a) by the substitution for the definition of “foreign currency” in subsection (1) of the following definition:

“‘foreign currency’ means in respect of any trade carried on by any person—

(a) within the Republic, any currency which is not legal tender in the Republic, or

- (b) in any country outside the Republic, any currency which is not legal tender in such other country;”;
- (b) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:
 “(2) In determining the taxable income of any person derived from carrying on any trade by him **[within the Republic]** in respect of any year of assessment ending on or after 1 January 1994, there shall be included in or deducted from the income so derived, as the case may be, any transitional exchange difference (but subject to the provisions of subsection (3)) and any exchange difference—“;
- (c) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
 “(b) arising from a loan or advance owing by such person or a debt incurred by such person, where such loan or advance has been utilized or such debt has been incurred in order to finance expenditure incurred by a connected person in relation to such person in the course of the carrying on of any trade **[within the Republic]** by such connected person.”;
- (d) by the substitution for the words preceding paragraph (a) of subsection (4) of the following words:
 “In determining the taxable income of any person derived from carrying on any trade by him **[within the Republic]**, there shall in respect of any year of assessment ending on or after 1 January 1994 be included in or deducted from the income so derived, as the case may be—“.

Substitution for section 25B of Act 58 of 1962

. (1) Section 25B of the Income Tax Act, 1962, is hereby substituted by the following section:

“Income of trusts and beneficiaries of trusts.—

Any loss, assessed loss or balance of assessed loss as contemplated in section 20, incurred in the year of assessment or in any previous year of assessment, as the case may be, by any person in his capacity as trustee of a trust shall not be allowed to be deducted or set off against any amount in respect of which any beneficiary of such trust has a vested right in terms of the trust instrument, as defined in the Trust Property Control Act, 1988 (Act No. 57 of 1988), in terms of which such trust is created (whether or not such vested right is obtained by virtue of the exercise of any discretion by such trustee).”.

(2) Subsection (1) shall come into operation on 1 March 2001.

Insertion of section 25D in Act 58 of 1962

. The following section is hereby inserted after section 25C of the Income Tax Act, 1962:

“Determination of taxable income or losses in foreign currency.—

25D. The amount of any taxable income derived by any resident from a source outside the Republic (other than by way of any foreign dividend as contemplated in section 9E), shall be determined in the relevant currency of the country from where the income is derived and the amount of the taxable income so determined shall be converted on the last day of the relevant year of assessment to the currency of the Republic and the ruling exchange rate at that date, or any other exchange rate or rates determined with reference to the ruling exchange rates during such year as the Commissioner may approve, shall be applied to determine the value of the amount of the taxable income so derived.”.

Amendment of section 27 of Act 58 of 1962

. Section 27 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) the amounts of any profits distributed by it during the specified period in relation to the year of assessment by way of bonuses (other than bonuses distributed out of the stabilization fund referred to in paragraph (h) to persons entitled to participate in such distribution: Provided that the amounts allowed as deductions under this paragraph shall not in the aggregate exceed an amount which bears to the taxable income of such agricultural co-operative for the year of assessment (as calculated before allowing any deductions under this paragraph and sections 11bis ~~and 21ter~~) and before setting off any balance of assessed loss brought forward from a previous year of assessment) the same ratio as the aggregate value of the business conducted by such agricultural co-operative with its members during such year bears to the aggregate value of all business conducted by it during such year;”.

Amendment of section 28bis of Act 58 of 1962

. Section 28bis of the Income Tax Act, 1962, is hereby amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs:

“(a) that any company (hereinafter referred to as the subsidiary) which is **[incorporated, managed and controlled in the Republic]** a resident has under an arrangement with any other company (hereinafter referred to as the foreign company) which is **[incorporated, managed and controlled outside the Republic]** not a resident, acquired all the assets and assumed all the liabilities of the foreign company relating to any industrial, commercial or other business undertaking of the foreign company in the Republic which has been transferred by the foreign company to the subsidiary as a going concern; and

(b) that at the time the arrangement was implemented, all the issued shares of the subsidiary were held for its own benefit by the foreign company or a company which was **[incorporated, managed and**

controlled outside the Republic] not a resident and was controlled by or controlled the foreign company,”.

Amendment of section 29A of Act 58 of 1962

. Section 29A of the Income Tax Act, 1962, is hereby amended by the deletion of paragraph (c) of subsection (11).

Amendment of section 31 of Act 58 of 1962

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

(a) by the substitution for the definition of “international agreement’ in subsection (1) of the following definition:

“international agreement’ means a transaction, operation or scheme entered into between—

(a)(i) a **[person who, in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person, is managed or controlled in the Republic] resident**; and

(ii) any other person who **[in the case of a natural person, is ordinarily resident outside the Republic or in the case of a person other than a natural person, is managed or controlled outside the Republic] is not a resident**; or

(b)(i) a person who **[in the case of a natural person, is ordinarily resident outside the Republic or in the case of a person other than a natural person, is managed or controlled outside the Republic] is not a resident**; and

(ii) any other person who **[in the case of a natural person, is ordinarily resident outside the Republic or in the case of a person other than a natural person, is managed or controlled outside the Republic] is not a resident**,

for the supply of goods or services to or by a permanent establishment **[as contemplated in section 9C(1)]** of either of such persons in the Republic; or

(c) (i) a person who **[in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person is managed or controlled in the Republic] is a resident**; and

(ii) any other person who **[in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person is managed or controlled in the Republic] is a resident**,

for the supply of goods or services to or by a permanent establishment **[as contemplated in section 9C(1)]** of either of such persons outside the Republic; and”; or

(d) (i) a person who is a resident; and

(ii) any other person who is a resident,

where either of such persons is as a result of the application of the provisions of any agreement entered into by the Republic for the prevention of double taxation, not subject to tax in the Republic;”;

(b) by the insertion after the definition of “international agreement” in subsection (1) of the following definition:

“permanent establishment’ means a permanent establishment as defined from time to time in Article 5 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development;”;

(c) by the substitution for the words preceding subparagraph (i) of paragraph (a) of subsection (3) and subparagraphs (i) and (ii) of the following words and subparagraphs:

“Where any **[natural person ordinarily resident outside the Republic or any person other than a natural person who is managed or controlled outside the Republic]** person who is not a resident (hereinafter referred to as the investor) has granted financial assistance contemplated in paragraph (c) of the definition of “services” in subsection (1), whether directly or indirectly, to—

(i) any connected person (in relation to the investor) who **[in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person, is managed or controlled in the Republic]** is a resident; or

(ii) any other person (in whom he has a direct or indirect interest) other than a natural person, **[who is managed or controlled in the Republic]** which is a resident (hereinafter referred to as the recipient) and, by virtue of such interest, is entitled to participate in not less than 25 per cent of the dividends, profits or capital of the recipient, or is entitled, directly or indirectly, to exercise not less than 25 per cent of the votes of the recipient,”.

Amendment of section 33 of Act 58 of 1962

. Section 33 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person **[(not being a person ordinarily resident in the Republic or a domestic company)]** other than a resident who embarks passengers or loads livestock, mails or goods in the Republic, as an owner or charterer of any ship or aircraft, shall be deemed to have derived therefrom (apart from any taxable income derived by him from other sources) a taxable income of 10 per cent of the amount payable to him or to any agent on his behalf, whether the amount be payable in or outside the Republic, in respect of passengers, livestock, mails and goods so embarked or loaded, but the provisions of this section shall not apply to any such person who renders accounts which satisfactorily disclose the taxable income derived by him from the embarking of passengers or the loading of livestock, mails and goods as aforesaid.”.

Amendment of section 35 of Act 58 of 1962

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

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

“(1) Any person **[(not being a person who is ordinarily resident in the Republic or a domestic company) to]** (other than a resident) by whom any amount [referred to in paragraph (b) or (bA) of subsection (1) of section 9 is deemed to accrue from a source within the Republic] is received or to whom any amount accrues by virtue of^{3/4}

(a) the use or right of use in the Republic of, or the grant of permission to use in the Republic—

(i) any patent as defined in the Patents Act, 1978 (Act No. 57 of 1978), or any design as defined in the Designs Act, 1993 (Act No. 195 of 1993), or any trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act no. 98 of 1978), or any model, pattern, plan, formula or process or any other property or right of a similar nature;

or
(ii) any motion picture film, or any film or video tape or disc for use in connection with television, or any sound recording or advertising matter used or intended to be used in connection with such motion picture film, film or video tape or disc,

wheresoever such patent, design, trade mark, copyright, model, pattern, plan, formula, process, property, right, motion picture film, film, video tape or disc, sound recording or advertising matter has been produced or made or such right of use or permission has been granted or payment for such use, right of use or grant of permission has been made or is to be made, and whether such payment has been made or is to be made by a person resident in or outside the Republic; or

(b) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in the Republic, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information, wheresoever such knowledge or information has been obtained or such knowledge or information has been imparted or is to be imparted or such assistance or service has been rendered or is to be rendered or any such undertaking has been given, and whether payment for such knowledge, information, assistance, service or undertaking has been made or is to be made by a person resident in or out of the Republic,

shall **[(apart from taxable income derived by him from other sources) be deemed to have derived from that amount a taxable income equal to thirty per cent of that amount]** be liable for tax, to

be known as the withholding tax on royalties, which shall be paid for the benefit of the National Revenue Fund at a rate of 12 per cent of such amount: Provided that the provisions of this subsection shall not apply in respect of any amount which is received by or accrues to any person (other than a person who has his or her or its place of residence in a neighbouring country) in respect of the use (otherwise than for advertising purposes in connection with any motion picture film or otherwise than in connection with television) in any printed publication of any copyright as aforesaid.”;

- (b) by the substitution for the words preceding the proviso to paragraph (a) of subsection (2) of the following words:

“Any person who incurs a liability to pay to any other person **[(not being a person] who is [ordinarily] not a resident [in the Republic or a company which has its place of effective management inside the Republic]** any amount referred to in **[section 9(1)(b) or (bA)] subsection (1)**, or who receives payment of any such amount on behalf of such other person, shall within 14 days after the end of the month during which the said liability is incurred or the said payment is received, as the case may be, or within such further period as the Commissioner may approve, make a payment (which shall be **[deemed to be an advance]** a final payment made on behalf of such other person) to the Commissioner in respect of such other person’s **[obligation to pay normal] liability for tax [for the year of assessment during which the said amount accrues to or is received by such other person, calculated at the rate of 12 per cent of the said amount] in terms of subsection (1)**, and shall submit to the Commissioner at the time of such tax payment a declaration in such form as the Commissioner may prescribe.”;

- (c) by the substitution for paragraph (ii) of the proviso to paragraph (a) of subsection (2) of the following paragraph:

“(ii) for the purposes of this subsection a person having an address outside the Republic shall until the contrary is proved be deemed not to be **[not ordinarily resident in the Republic or, in the case of a company, to be a company which is not a domestic company] a resident;**”;

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

“(c) The general provisions contained in Parts I to VI of [subsection (2) of section five] this Act shall *mutatis mutandis* apply in respect of payments made to the Commissioner in terms of paragraph (a).”;

Substitution of section 54 of Act 58 of 1962

. The following section is hereby substituted for section 54 of the Income Tax Act, 1962:

“Levy of donations tax^{3/4}

54. Subject to the provisions of section 56, there shall be paid for the benefit of the National Revenue Fund a tax (in this Act referred to as donations tax) on the value of any property disposed of (whether directly or indirectly and whether in trust or not) under any donation **[which took or takes effect on or after 16 March 1988]** by any **[person]** resident (in this Part referred to as the donor) **[who in the case of a person other than a company, is ordinarily resident in the Republic, or, in the case of a company, is a domestic company].**”.

Amendment of section 56 of Act 58 of 1962

. Section 56 of the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (i) of paragraph (g) of subsection (1) of the following subparagraph:

“(i) before the donor **[being a person other than a company]** became **[ordinarily]** a resident **[in]** of the Republic for the first time **[or, in the case of a company, became for the first time, a domestic company];** or”.

Amendment of section 64B of Act 58 of 1962

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

- (a) by the substitution for subsection (2) of the following subsection:
 “(2) There shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the secondary tax on companies, which is calculated at the rate of 12,5 per cent of the net amount, as determined in terms of subsection (3), of any dividend declared on or after 14 March 1996 by any company **[on or after 14 March 1996]** which is a resident.”;
- (b) by the substitution for the words preceding the proviso to subsection (3) of the following words:
 “The net amount of any dividend referred to in subsection (2) shall be the amount by which such dividend declared by a company exceeds the sum of any dividends (other than any dividends contemplated in subsection (5)(b), (c), (d) and (f) or any foreign dividends as defined in section 9E, but including foreign dividends which are exempt in terms of section 9E(7)**[(a), (b)]** (c), (d) or (e)(ii) or (iii) or (f), which have during the dividend cycle in relation to such firstmentioned dividend accrued to the company.”;
- (c) by the deletion of paragraph (h) of subsection (5);
- (d) by the substitution for paragraph (a) of subsection (6) of the following paragraph:
 “(a) If any dividend subject to the payment of secondary tax on companies has been declared by a company which derives profits from sources within and outside the Republic, the secondary tax on companies in respect of that dividend shall be calculated on an amount which bears to the net amount of that dividend the same ratio as the sum of the net annual profits of the company derived from—

- (i) sources within or deemed to be within the Republic in terms of section 9 **[9C or 9E]**; and
- (ii) sources outside the Republic which are not deemed to be from a source in the Republic and which are not exempt from tax in terms of the provisions of section 10(1)(kA),

bears to the total sum of its net annual profits derived from all sources.”.

(2) Subsection (1)(b) shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any foreign dividend—

- (a) received by or accrued to any company on or after that date; or
- (b) which accrued to the company before 23 February 2000, but which is received on or after that date: Provided that the provisions of this paragraph shall not apply in respect of any foreign dividend which was declared by a company before 23 February 2000, where—
 - (i) the company declaring the dividend is listed on a recognised stock exchange; or
 - (ii) in any other case, the chief executive officer and—
 - (aa) an external auditor of the company declaring the dividend; or
 - (bb) where the company declaring the dividend is situated in a country which does not require compulsory appointment of an external auditor, a registered public accountant of the same standing as a qualified chartered accountant, have declared under oath or affirmation that such dividend was actually declared by the company before 23 February 2000.

Amendment of section 64C of Act 58 of 1962

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

- (a) by the deletion of the word “and” at the end of paragraph (h) of subsection (4);
- (b) by the addition of the word “and” at the end of paragraph (i) of subsection (4); and
- (c) by the addition to subsection (4) of the following paragraph:

“(j) to any loan granted to any recipient which is a company by any other company which holds for its own benefit, whether directly or indirectly, any of the equity share capital of such recipient company: Provided that the provisions of this paragraph shall not apply where such recipient holds any of the equity share capital in such other company.”.

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 72 of Act 58 of 1962

. Section 72 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) where such dividend represents an amount of any taxable foreign dividend as determined in accordance with the provisions of section 9E and such company is a resident **[as defined in section 9C]**, notify each shareholder who is a resident of the amount of such taxable foreign dividend.”.

Insertion of section 72A in Act 58 of 1962

. The following section is hereby inserted after section 72 of the Income Tax Act, 1962:

“Return as to participation right in controlled foreign entity—

(1) Every resident who—

- (a) directly or indirectly holds 10 per cent or more of the participation rights in any controlled foreign entity as contemplated in section 9D; and
- (b) together with any connected person in relation to such resident, holds more than 50 per cent of the total participation rights in such controlled foreign entity,

shall submit to the Commissioner a return reflecting such information as contemplated in subsection (2) relating to such controlled foreign entity, in such form and within such time as may be prescribed by the Commissioner: Provided that the provisions of this subsection shall not apply to any resident where any person who is a resident and who is a connected person in relation to such resident, holds a greater percentage of the participation rights than such resident.

(2) The return of information contemplated in subsection (1) relating to any controlled foreign entity shall show fully—

- (a) the name, address and country of residence of such controlled foreign entity;
- (b) a description of the various classes of the participation rights in such controlled foreign entity;
- (c) the percentage and class of participation rights held by such resident whether directly, indirectly or together with connected persons;
- (d) the percentage and class of participation rights held by any other resident (who is a connected person in relation to such resident) who directly or indirectly holds 10 per cent or more of the participation rights in such controlled foreign entity;
- (e) an income statement and balance sheet of such controlled foreign entity prepared in pursuance of the laws of the country of which such controlled foreign entity is a resident;
- (f) a description of the receipts and accruals of such controlled foreign entity which are—
 - (i) included in the income of such resident in terms of the provisions of section 9D;
 - (ii) not included in the income of such residents in terms of the provisions of section 9D(9);
- (g) a description of any amount of tax proved to be payable by such controlled foreign entity to the government of any other country in

respect of any income contemplated in paragraph (f)(i), including particulars relating to the country in which such tax was payable and the underlying profits to which such foreign tax relates.

(3) Every resident who is required to submit a return as contemplated in subsection (1), shall submit the relevant information referred to in subsection (2)(a), (b), (d), (e) and (g) relating to any other resident contemplated in subsection (2)(d) to such other resident.

(4) Every resident who receives any information as contemplated in subsection (3), shall submit such information to the Commissioner in such form and in such manner as the Commissioner may prescribe.”.

Amendment of section 89bis of Act 58 of 1962

. Section 89bis of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:
 “(3) For the purposes of this section “taxes” means the taxes comprehended in the definition of “tax” in section 1, excluding^[3/4] donations tax.”;
- (b) by the deletion of paragraphs (a) and (b) of subsection (3).

Amendment of section 89ter of Act 58 of 1962

. Section 89ter of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:
 “(3) For the purposes of subsections (1) and (2) ‘taxes’ means the taxes comprehended in the definition of ‘tax’ in section 1, excluding^[3/4] donations tax and secondary tax on companies.”;
- (b) by the deletion of paragraphs (a), (c) and (d) of subsection (3).

Amendment of section 89quat of Act 58 of 1962

. Section 89quat of the Income Tax Act, 1962, is hereby amended—

- (a) by the addition of the word “and” at the end of paragraph (c) of the definition of “credit amount” in subsection (1);
- (b) by the addition of the following paragraph to the definition of “credit amount” in subsection (1):
“(d) any amount of foreign taxes which may be deducted from the tax payable by such taxpayer in respect of the relevant year of assessment in terms of the provisions of section 6quat.”.

Amendment of section 90 of Act 58 of 1962

. Section 90 of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Subject to the provisions of this Act, any tax (other than **[non-resident shareholder’s tax, undistributed profits tax, excess profits duty]** donations tax **[and non-residents tax on interest]**) and any interest payable in terms of section 89(2) or 89*quat*, shall be payable—”.

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

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

- (a) by the substitution for paragraphs (b) and (bA) of the definition of “provisional taxpayer” of the following paragraphs:
- “(b) unless the Commissioner in the particular case otherwise directs, any director of a private company if such director **[is ordinarily resident in the Republic]** or such company is **[managed and controlled or has its registered office in the Republic]** a resident;
- (bA) unless the Commissioner in the particular case otherwise directs, any member of a close corporation if such member is **[ordinarily]** a resident [in the Republic]”;
- (b) by the substitution for words preceding subparagraph (aa) of paragraph (ii) of the exclusions to the definition of “remuneration” of the following words:
- “(ii) any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person who is not **[ordinarily]** a resident [in the Republic] or an employee contemplated in paragraph (b), (c), **[or]** (d), (e) or (f) of the definition of ‘employee’ in the course of any trade carried on by him independently of the person by whom such amount is paid or payable and of the person to whom such services have been or are to be rendered: Provided that for the purposes of this paragraph a person shall not be deemed to carry on a trade independently as aforesaid—”;
- (c) by the substitution for paragraph (d) of the definition of “representative employer” of the following paragraph:
- “(d) in the case of any employer who is not **[ordinarily]** a resident [in the Republic], any agent of such employer having authority to pay remuneration who is a resident.”.

- (2) Subsection (1)(b) shall—
- (a) in so far as it inserts the reference to paragraphs (e) and (f) be deemed to have come into operation on 1 August 2000; and
 - (b) in so far as it deletes the words “ordinarily” and “in the Republic” come into operation on 1 January 2001, and shall apply in respect of any year of assessment commencing on or after that date.

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

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

“(1) Every —

(a) employer who is a resident; or

(b) representative employer in the case of any employer who is not a resident.

(whether or not registered as an employer under paragraph 15), who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount by way of employees' tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee's spouse, in respect of such liability of that spouse, and shall pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which he ceased to be an employer, or in either case within such further period as the Commissioner may approve.”.

Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962

. Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister of Finance in his budget statement or as varied by the said Minister under section 5 (3) of this Act, to the rebates applicable in terms of section 6 and section 6quat of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe deduction tables applicable to such classes of employees as he may determine, and the manner in which such tables shall be applied, and the amount of employees' tax to be deducted from any amount of remuneration shall, subject to the provisions of subparagraph (3) of this paragraph and paragraphs 10, 11 and 12, be

determined in accordance with such tables or where subparagraph (3) is applicable, in accordance with that subparagraph.”.

Amendment of paragraph 17 of Fourth Schedule to Act 58 of 1962

. Paragraph 17 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (5) of the following subparagraph:

“(5) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister of Finance in his budget statement or as varied by the said Minister under section 5 (3) of this Act, to the rebates applicable in terms of section 6(2) and (3)(a) and section 6quat of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe tables for optional use by provisional taxpayers falling within any category specified by the Commissioner, or by provisional taxpayers generally, for the purpose of estimating the liability of such taxpayers for normal tax, and the Commissioner may prescribe the manner in which such tables shall be applied.”.

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

. Paragraph 2 of the Fifth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following paragraph:

“(3) Any person **[(other than a company)]** who is not **[ordinarily]** a resident and is not carrying on business in the Republic **[and any company which is not a South African company and is not carrying on business in the Republic]**, shall not be liable for the payment of any loan portion: Provided that any person (other than a company) who proves to the satisfaction of the Commissioner that his business operations in the Republic are of a temporary and non-recurrent nature shall for the purposes of this paragraph not be deemed to be carrying on business in the Republic.”.

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

. Paragraph 1 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “official rate of interest” of the following definition:

“‘official rate of interest’ means—

- (a) in the case of a loan which is denominated in the currency of the Republic, the rate of interest fixed by the Minister from time to time by notice in the Gazette; or
- (b) in the case of a loan which is denominated in a foreign currency, a market related rate of interest;”.

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

. (1) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution for subparagraph (i) of paragraph (hA) of the *Exemptions under paragraph (3)* of the following subparagraph:

“(i) any pension fund established by law to any other pension fund established by law or to any other pension fund which is registered under the Pension Funds Act, 1956; or”.

(2) Subsection (1) shall be deemed to have come into operation on 1 March 2000.

Amendment of section 1 of Act 89 of 1991

. Section 1 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the words preceding the proviso to the definition of “resident of the Republic” of the following words:

“resident of the Republic’ means a **[person (other than a company) who is ordinarily resident in the Republic or a company which is a domestic company]** resident as defined in section 1 of the Income Tax Act.”.

Amendment of section 1 of Act 38 of 1996

. Section 1 of the Tax on Retirement Funds Act, 1996, is hereby amended—

(a) by the substitution for the definition of “guaranteed annuity” in subsection (1) of the following definition:

“guaranteed annuity’ means an annuity contemplated in section **[29(4)(a)(iii)]** 29A(4)(a)(iii) of the Income Tax Act, where such annuity is contractually subject to a guaranteed increase at a fixed rate, which rate may be zero, over the full term of the annuity, excluding any annuity which may participate in any bonus distributions by the insurer;” and

(b) by the substitution for the definition of “untaxed policyholder fund” of the following definition:

“untaxed policyholder fund’ means a fund contemplated in section **[29(4)(a)]** 29A(4)(a) of the Income Tax Act.”.

Amendment of section 3 of Act 38 of 1996

. Section 3 of the Tax on Retirement Funds Act, 1996, is hereby amended by the substitution for paragraphs (b) and (c) of the following paragraphs:

“(b) “I” represents the gross amount of any interest received by or accrued to such fund during such tax period **[from a source within the Republic or deemed to be within the Republic as contemplated in sections 9 and 9C of the Income Tax Act]**;

- (c) “R” represents the gross amount of any rental income received by or accrued to such fund during such tax period **[from a source within the Republic or deemed to be within the Republic as contemplated in the last-mentioned sections 9 and 9C]**; and”.

Amendment of section 4 of Act 38 of 1996

- . Section 4 of the Tax on Retirement Funds Act, 1996, is hereby amended—
- (a) by the substitution for paragraph (c) of the following paragraph:
 “(c) “B” represents the portion of symbol “A” attributable to assets referred to in section **[29(4)(a)(i)]** 29A(4)(a)(i) of the Income Tax Act as allocated to retirement funds in terms of section 9 during such tax period;”;
- (b) by the substitution for subparagraphs (i) and (ii) of paragraph (d) of the following subparagraphs:
 “(i) representing business of such untaxed policyholder fund as contemplated in section **[29(4)(a)(iii)]** 29A(4)(a)(iii) of the Income Tax Act (excluding assets contemplated in paragraph (c));
 (ii) equal to the **[statutory]** actuarial value of liabilities under guaranteed annuities; and”;
- (c) by the substitution for subparagraph (i) of paragraph (f) of the following subparagraph:
 “(i) section **[29(4)(a)(ii)]** 29A(4)(a)(ii) of the Income Tax Act (excluding assets in respect of amounts allocated to retirement funds contemplated in paragraph (c) and assets representing guaranteed annuities contemplated in paragraph (d)); and”;
- (d) by the substitution for the words preceding item (aa) of subparagraph (ii) of paragraph (f) of the following words:
 “section **[29(4)(a)(iii)]** 29A(4)(a)(iii) of the Income Tax Act (excluding assets—”.

Amendment of section 16 of Act 38 of 1996

- . Section 16 of the Tax on Retirement Funds Act, 1996, is hereby amended—
- (a) by the substitution for paragraph (k) of the following paragraph:
 “(k) income of controlled foreign entities and **[investment]** income arising from any donation, settlement or other disposition;”;
- (b) by the substitution for subparagraph (viii) of the following subparagraph:
 “(viii) in respect of the inclusion of any **[investment income]** amount in the income of any fund.”.

Amendment of section 13 of Act 9 of 1999

. Section 13 of the Skills Development Levies Act, 1999, is hereby amended—

- (a) by the deletion of the word “and” at the end of paragraph (h);
- (b) by the addition of the word “and” at the end of paragraph (i);
- (c) by the addition of the following paragraph:
 “(j) jurisdiction of courts as contained in section 105,”;
- (d) by the addition of the word “and” at the end of subparagraph (vi); and
- (e) by the addition of the following subparagraph:
 “(vii) jurisdiction of courts.”.

Amendment of section 12 of Act 30 of 2000

. Section 12 of the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution for paragraph (c) of the following paragraph:

- “(c) the taxable income of any company contemplated in paragraph 2(b) or (c) of Schedule 1 to this Act, for the year of assessment commencing on or after 1 April 2000 and ending during the period of twelve months ending on 31 March ~~2000~~ 2001.”.

Amendment of section 24 of Act 30 of 2000

. Section 24 of the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution for subparagraph (ii) of paragraph (b) of subsection (1) of section 18A of the Income Tax Act, 1962, of the following subparagraph:

- “(ii) during the year of assessment preceding the year of assessment of such public benefit organisation during which the donation is received, distributed or incurred the obligation to so distribute at least 75 per cent of the funds received by **[or accrued to]** such organisation by way of donations which qualified for a deduction in terms of this section.”.

Amendment of section 35 of Act 30 of 2000

. Section 35 of the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution for paragraph (a) of subsection (2) of section 30 of the Income Tax Act, 1962, of the following paragraph:

- “(a) The Minister shall, by notice in the *Gazette*, determine any activity which is of a philanthropic **[and] or** benevolent nature, having regard to the needs, interests and well-being of the general public for the purposes of this section.”.

Amendment of section 59 of Act 30 of 2000

. (1) Section 59 of the Taxation Laws Amendment Act, 2000, is hereby amended by the addition to subsection (2) of the following proviso:

“Provided that the provisions of subsection (1) shall not apply in respect of the carriage of any chargeable passenger, where the ticket in respect of such flight was purchased and issued before 1 August 2000.”.

(2) Subsection (1) shall be deemed to have come into operation on 19 July 2000.

Amendment of paragraph 4 of Schedule 1 to Act 30 of 2000

. Paragraph 4 of Schedule 1 to the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution for item (iii) of subparagraph (b) of the following item:

“(iii) ‘investment income’ means any **[investment income as defined in section 9C of the Income Tax Act, 1962, and includes]**—

- (aa) dividends; **[and]**
- (bb) **[any]** proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property;
- (cc) ~~annuity, other than—~~
 - (A) ~~pensions in consideration of past employment; or~~
 - (B) ~~payments made under the social security system of any other country;~~
- (dd) ~~interest, including—~~
 - (A) ~~interest as contemplated in section 24J;~~
 - (B) ~~any amount as contemplated in section 24K; or~~
 - (C) ~~any other income which, by the laws of the Republic administered by the commissioner, is subjected to the same treatment as income from money lent;~~
- (ee) ~~rental income received by or accrued to any person as consideration for the use of, or the right to use, any movable or immovable property; and~~
- (ff) ~~amount received by or accrued as consideration for the use of, or the right to use, any copyright or literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or any other property or right of a similar nature, or for information concerning industrial, commercial or scientific experience;”.~~

Short title and commencement

. (1) This Act shall be called the Revenue Laws Amendment Act, 2000.

(2) Save in so far as is otherwise provided in the Act or the context otherwise indicates, will come into operation on 1 January 2001, and shall apply in respect of years of assessment commencing on or after that date.