

**PLEASE NOTE**

This Bill is released in draft form for public comment. The Parliamentary briefing on the draft Bill is currently scheduled for 23 October 2002.

Comments may be directed before that date to:

[cbrodrick@sars.gov.za](mailto:cbrodrick@sars.gov.za) (SARS) or

[RevLawAmend2002@treasury.gov.za](mailto:RevLawAmend2002@treasury.gov.za) (National Treasury).

Due to time constraints, it will not be possible to respond individually to all comments received. Receipt of your comments will be acknowledged. All comments will, however, be considered by the National Treasury and SARS, who will respond per topic during the hearings of the Parliamentary Committees on Finance.

REPUBLIC OF SOUTH AFRICA

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**REVENUE LAWS AMENDMENT  
BILL**

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

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(MINISTER OF FINANCE)

[B - 2002]

## GENERAL EXPLANATORY NOTE:

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

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# BILL

## Amendment of section 3 of Act 32 of 1948

1. (1) Section 3 of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution for paragraph (f) of the following paragraph:

“(f)     in respect of the purchase of marketable securities by a **[company]** person that are acquired—

- (i)     in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);
- (ii)    in terms of a share-for-share transaction contemplated in section 43 of that Act;
- (iii)   in terms of an amalgamation transaction contemplated in section 44 of that Act;
- (iii)   in terms of an intra-group transaction contemplated in section **[44]** 45 of that Act;
- (iv)    in pursuance of a distribution in specie in the course of an unbundling transaction contemplated in section **[45]** 46 of that Act; or
- (v)    in terms of any liquidation distribution contemplated in section **[46]** 47 of that Act,

where the public officer of—

(aa) [that] the relevant company which acquired those marketable securities otherwise than in terms of an unbundling transaction; or

(bb) in the case where the shares were acquired in terms of an unbundling transaction, the unbundling company contemplated in section 46 of that Act,

has made a sworn affidavit or solemn declaration that such company formation transaction, share-for-share transaction, amalgamation, intra-group transaction, unbundling transaction or liquidation distribution complies with the provisions contained in section 42, 43, 44, 45, **[or]** 46 or 47, as the case may be, of that Act;”.

(2) Subsection (1) shall—

- (a) to the extent that it substitutes the word “company” with the word “person” be deemed to have come into operation on 1 October 2001, and applies in respect of any purchase of a marketable security in terms of any transaction entered into on or after that date; and
- (b) to the extent that it amends the rest of section 3, come into operation on ... and shall apply in respect of any purchase of marketable securities in terms of a transaction entered into or after that date.

#### **Amendment of section 1 of Act 40 of 1949**

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

- (a) by the insertion before the definition of “Commissioner” of the following definition:  
“acquired’ in relation to any property held by a discretionary trust (other than a special trust as defined in section 1 of the Income Tax Act, 1964), includes the acquisition by a person of a contingent right to any such property, which constitutes property contemplated in paragraph (a) of the definition of ‘residential property company’ or paragraph (d) or (e) of the definition property.”

(b) by the substitution for the definition of “fair value” of the following definition:

“‘fair value’—

(a) in relation to property as defined in paragraphs (a), (b) and (c) of the definition property, means the fair market value of that property as at the date of acquisition thereof;

(b) in relation to a share or member’s interest in a company as contemplated in paragraph (d) or (e) of the definition ‘property’, means so much of the fair market value on the date of acquisition of that share or member’s interest, of any property held by that company, which constitutes—

(i) property contemplated in paragraph (a) of the definition of ‘residential property company’; or

(ii) a share in any other company as contemplated in paragraph (d) or (e) of the definition of ‘property’,

as is attributable to that share or member’s interest, without taking into account any liability in relation to that property so held by that company; or

(c) in relation to any contingent right to any property contemplated in paragraph (a)(i) of the definition of ‘residential property company’ or paragraph (d) or (e) of the definition of ‘property’ held by a trust, means the fair market value of that property as at the date of acquisition of that contingent right:

Provided that where property, has been acquired by the exercise of an option to purchase or a right of pre-emption, the fair value in relation to that property shall be the fair market value thereof as at the date upon which the option or right of pre-emption was acquired by the person who exercised the option or right of pre-emption;”;

(c) by the addition to the definition of “property” of the following paragraphs:

“(d) a share or member’s interest in a residential property company; or

(e) a share or member’s interest in a company which is a holding company (as defined in the Companies Act, 1973 (Act No. 61 of 1973), if that company and all of its subsidiary companies (as

defined in the Companies Act, 1973), would be a residential property company if all such companies were regarded as a single entity.”;

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

“residential property company’ means any company—

(a) that holds any dwelling-house, holiday home, apartment or similar abode, improved or unimproved land zoned for residential use (including any real right thereto), other than—

(i) an apartment complex, hotel, motel or similar structure consisting of five or more units used or to be used for regular or systematic renting to five or more persons, who are not connected persons, as defined in the Income Tax Act, 1962 (Act No. 58 of 1962), in relation to that company; or

(ii) any ‘fixed property’ of a ‘vendor’ forming part of an ‘enterprise’ all as defined in section 1 of the Value Added Tax Act, 1991 (Act No. 89 of 1991); and

(b) where the fair value of the property contemplated in paragraph (a) comprises more than 50 per cent of the aggregate fair value of all the assets, as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, (other than financial instruments as defined in section 1 of that Act), held by that company on the date of acquisition of an interest in that company;

(e) by the substitution in subsection (1) for the definition of “transaction” of the following definition:

“transaction” means—

(a) in relation to paragraphs (a), (b) and (c) of the definition of ‘property’, an agreement whereby one party thereto agrees to sell, grant, waive, donate, cede, exchange, lease or otherwise dispose of property to another person or any act whereby any person renounces any right [interest] in or restriction in his or her favour upon the use or disposal of property; or

(b) in relation to any shares or member’s interest contemplated in paragraph (d) or (e) of the definition of ‘property’, an agreement

whereby one party thereto agrees to sell, grant, waive, donate, cede, exchange, issue, buy-back, convert, vary, cancel or otherwise dispose of any such shares or member's interest to another person or any act whereby any person renounces any right in or restriction in his or her favour upon the use or disposal of any such shares or member's interest; or

(c) in relation to a discretionary trust, the substitution or addition of one or more beneficiaries with a contingent right to any property held by that trust, which constitutes property contemplated in paragraph (a) of the definition 'residential property company' or paragraph (d) or (e) of the definition of 'property', unless the naming of such beneficiary is not—

(i) a consequence of or attendant upon the conclusion of any agreement for consideration with regard to property held by that trust;

(ii) accompanied by the substitution or variation of that trust's loan creditors, or by the substitution or addition of any mortgage bond or mortgage bond creditor; and

(iii) accompanied with the change of any trustee of that trust".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of the acquisition of any shares or member's interest in a company or contingent right in a trust on or after that date.

### **Amendment of section 3 of Act 40 of 1949**

3. (1) Section 3 of the Transfer Duty Act, 1949, is hereby amended—

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

“(1) The duty shall within six months of the date of acquisition be payable by the person who has acquired the property by way of a transaction or any other manner or in whose favour or for whose benefit any interest in or restriction upon the use or disposal of property has been renounced.”;

(b) by the addition of the following subsections:

“(1A) Where a person who acquires shares or a member’s interest in a residential property company, fails to pay the duty within the period contemplated in subsection (1), the public officer as defined in section 101 of the Income Tax 1962 (Act No. 58 of 1962), of that company and the person from whom the shares or member’s interest is acquired shall be jointly and severally liable for such duty.

“(1B) Where a person who acquires a contingent right in a trust as contemplated in paragraph (c) of the definition of ‘transaction’, fails to pay the duty within the period contemplated in subsection (1), the trust and the trustees of that trust shall be jointly and severally liable for such duty.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any duty which becomes payable in respect of the acquisition of any shares or member’s interest in a company or contingent right in a trust on or after that date.

#### **Amendment of section 9 of Act 40 of 1949**

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

“(l) any company in terms of any **[intra-group]** amalgamation transaction contemplated in section 44 of the Income Tax Act, 1962 (Act No. 58 of 1962), or any intra-group transaction contemplated in section 45 or liquidation distribution contemplated in section **[46]** 47 of that Act, where the public officer of that company has made a sworn affidavit or solemn declaration that such intra-group transaction or liquidation distribution complies with the relevant provisions contained in section 44, 45 or **[46]** 47, as the case may be, of that Act.”.

#### **Amendment of section 4 of Act 45 of 1955**



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

“the value of any property included in the estate which has not been allowed as a deduction under any other provision of this section which accrues or accrued **[by way of bequest]** to—”.

(2) Subsection (1) shall be deemed to have come into operation on 5 August 2002.

#### **Amendment of section 1 of Act 58 of 1962**

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

(a) by the insertion after the definition of “assessment” of the following definition:

“average exchange rate’ in relation to a year of assessment means—

(a) the average rate based on the spot rate for each day of the year of assessment; or

(b) the weighted average of the spot rate for each day on which income is received or accrued or expenditure is incurred, which average must be based on the net amount of receipts, accruals and expenditure on each such day, excluding those of a capital nature, and the capital gain or capital loss determined in respect of any disposal of an asset on the relevant day;”;

(b) by the substitution in the definition of “company” for paragraph (e) of the following paragraph:

“(e) any—

(i) **[unit]** portfolio comprised in any **[unit trust]** collective investment scheme in securities **[other than property shares]** contemplated in Part IV of the Collective Investment Schemes Control Act, 2002 (Act No. ?? of 2002), managed or carried on by any company registered as a **[management company]** manager under **[section 4 of the Unit Trusts**

**Control Act, 1981 (Act No. 54 of 1981)] section 42 of that Act for purposes of that Part [, if—**

**(aa) such portfolio was created on or after the date of commencement of the Unit Trusts Control Amendment Act, 1962 (Act No. 11 of 1962);**

**(bb) such portfolio was created before that date and the relevant trust deed has after that date been amended in order to create further units in that portfolio]; or**

(ii) arrangement or scheme carried on outside the Republic in pursuance of which members of the public are **[or will be]** invited or permitted to invest in a portfolio of a collective investment scheme, where two or more investors contribute to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; or”;

(c) by the insertion after the definition of “connected person” of the following definitions:

“‘controlled group company’ means a controlled group company contemplated in the definition of ‘group of companies’;

‘controlling group company’ means a controlling group company contemplated in the definition of ‘group of companies’;

‘controlled foreign company’ means a controlled foreign company as defined in section 9D, and includes any reference in this Act prior to the amendment thereof on ... to a controlled foreign entity;”;

(d) by the insertion after the definition of “date of assessment” of the following definition:

“‘designated country’ means a designated country contemplated in section 9E(8);”;

(e) by the substitution in the definition of “dividend” for the words preceding paragraph (a) of the following words:

“dividend’ means any amount distributed by a company (not being an institution to which section 10(1)(d) applies) to its shareholders or any

amount distributed out of the assets pertaining to any **[unit]** portfolio referred to in paragraph (e) of the definition of “company” in this section to shareholders in relation to such **[unit]** portfolio (including, in the case of any co-operative society or company referred to in section 27, any amount distributed on or after 1 April 1977 to its members, whether divided among the members in accordance with their rights as shareholders or according to the value of business transactions between individual members and such society or company or on some other basis), and in this definition the expression “amount distributed” includes—”;

(f) by the substitution for paragraph (a) of the definition of “dividend” of the following paragraph:

“(a) in relation to a company that is being wound up or liquidated, any profits distributed, whether in cash or otherwise, other than those of a capital nature **[earned before or during the winding-up or liquidation]** derived from the disposal of any asset which are attributable to any capital gains which accrued before 1 October 2001, (any such profits distributed by the liquidator of the company being deemed for the purposes of this definition to have been distributed by the company);”;

(g) by the insertion after the definition of “executor” of the following definition:

“financial instrument” includes—

(a) a loan, advance, debt, stock, bond, debenture, bill, share, promissory note, banker's acceptance, negotiable certificate of deposit, deposit with a financial institution, a participatory interest in a portfolio of a collective investment scheme, or a similar instrument;

(b) any repurchase or resale agreement, forward purchase arrangement, forward sale arrangement, futures contract, option contract or swap contract;

(c) any other contractual right or obligation which derives its value from the value of a debt security, equity, commodity, rate index or a specified index;

(d) any interest-bearing arrangement; and

- (e) any financial arrangement based on or determined with reference to the time value of money or cash flow or the exchange or transfer of an asset;”;
- (h) by the substitution for paragraphs (a) and (b) of the definition of “foreign equity instrument” of the following paragraph:
- “(a) a share listed on any [recognised] foreign stock exchange [outside the Republic] contemplated in paragraph (b) of the definition of ‘listed company’, and includes—
- (i) any comparable national, regional or local exchange; and
- (ii) any interdealer quotation system that regularly publishes or releases firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise;”;
- (b) a **[unit]** participatory interest in an arrangement or scheme contemplated in paragraph (e)(ii) of the definition of “company” in section 1;”;
- (i) by the substitution in the definition of “foreign equity instrument” for the words following paragraph (d) of the following words:
- “and any option, future or contract relating to such share, **[unit]** participatory interest, investment or contractual right or obligation or coin;”;
- (j) by the insertion after the definition of “gross income” of the following definition:
- “group of companies’ means two or more companies in which one company (hereinafter referred to as the ‘controlling group company’) directly or indirectly holds shares in at least one other company (hereinafter referred to as the ‘controlled group company’), to the extent that—
- (a) the controlling group company directly holds 75 per cent or more of the equity shares in at least one controlled group company; and
- (b) at least 75 per cent of the equity shares of each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof;”;

(k) by the insertion after the definition of “international headquarter company” of the following definition:

“listed company” means a company the shares of which are listed on—

(a) a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or

(b) a stock exchange in a country other than the Republic which has been recognised by the Minister as contemplated in paragraph (c) of the definition of ‘recognised exchange’ in paragraph 1 of the Eighth Schedule;

(l) by the substitution for subparagraph (iii) of paragraph (a) of the definition of “pension fund” of the following subparagraph:

“(iii) any fund contemplated in subparagraph (ii) **[established on or before 14 November 2000]**, which includes as members employees of any municipal entity created in accordance with the provisions of the Municipal Systems Act, 2000 (Act No. 32 of 2000), over which one or more local authorities exercise ownership control as contemplated by that Act, **[if]** where such fund was established—

(aa) on or before 14 November 2000, and such employees were employees of a local authority immediately prior to becoming employees of such municipal entity; or

(bb) after 14 November 2000, and such fund has been approved by the Commissioner on such limitations, conditions and requirements as contemplated in paragraph (c);”;

(m) by the substitution for the definition of “prescribed rate” of the following definition:

“prescribed rate’ in relation to any interest payable in terms of this Act, means **[such rate as the Minister may from time to time fix by notice in the Gazette]** for the purposes of—

(a) interest payable to any taxpayer under the provisions of section 89quat(4), a rate determined at four percentage points below the rate contemplated in paragraph (b); or

- (b) any other provision of this Act, such rate as the Minister may from time to time fix by notice in the Gazette in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999)”;
- (n) by the substitution in the definition of “resident” for item (A) of the proviso to subparagraph (ii) of paragraph (a) of the following paragraph:
- “(A) **[for the purposes of items (aa) and (bb)]** a day shall include a part of a day, but shall not include any day—
- (AA) that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a port of entry as defined in the Immigration Act, 2002 (Act No. 13 of 2002); or
- (BB) on which a person commutes to and from a place in the Republic, where that person has his or her main dwelling outside the Republic and is not employed and does not carry on any business in the Republic, but regularly commutes to and from the Republic; and”;
- (o) by the substitution in the definition of “retirement-funding employment” for subparagraph (i) of paragraph (a) of the following subparagraph:
- “(i) in the case of such employee, derives in respect of his employment any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule (but leaving out of account the provisions of paragraph (c) **[and paragraph (vii)]** of that definition and including the amount of any allowance or advance in respect of transport expenses contemplated in section 8(1)(b), but not an allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under the said section 8(1)(b)(iii)) and is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived; or”;
- (p) by the substitution for paragraph (b) of the definition of “shareholder” of the following paragraph:

- “(b) in relation to any company referred to in paragraph (e) of the said definition, the registered holder of any **[unit certificate issued in respect of a unit]** participatory interest included in the relevant **[unit]** portfolio, except that where some person other than the **[registered]** holder of any **[unit]** participatory interest is entitled, whether by virtue of any provision in the **[trust]** deed entered into for the purposes of the relevant **[unit trust]** collective investment scheme or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profits or income attaching to the **[unit certificate]** participatory interest, such other person shall, to the extent that he is entitled to such benefit, also be deemed to be a shareholder; or”;
- (q) by the substitution for the definition of “taxpayer” of the following definition:  
“‘taxpayer’ means any person chargeable with any tax leviable under this Act and**[, for the purposes of any provision relating to any return,]** includes every person required by this Act to furnish **[such]** any return; **[and for the purposes of Part IV of Chapter III includes any person chargeable with any tax leviable under any previous Income Tax Act;]**”;
- (r) by the substitution in the definition of “trading stock” for subparagraph (ii) of paragraph (a) of the following subparagraph:  
“(ii) the proceeds from the disposal of which forms or will form part of his gross income, otherwise than in terms of paragraph (j) or (m) of the definition of ‘gross income’, or as a recovery or recoupment contemplated in section 8(4) which is included in gross income in terms of paragraph (n) of that definition; or”.
- (2)(a) Subsection (1)(a), (c), (j) and (n) shall come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment ending on or after that date.
- (b) Subsection (1)(b), (e), (i) and (p) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.
- (c) Subsection (1)(h) shall be deemed to have come into operation on 1 October 2001.

(d) Subsection (1)(m) shall come into operation on the date of promulgation of this Act.

(e) Subsection (1)(r) shall be deemed to have come into operation on...

#### **Amendment of section 3 of Act 58 of 1962**

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

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

#### **Amendment of section 4 of Act 58 of 1962**

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

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

“(1E) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection



(1B) to any other person or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his **[of]** or her duties—

(a) for purposes of any investigation of, or prosecution for, an offence contemplated in subsection (1B); or

(b) to combat any public safety or environmental risk contemplated in subsection (1B).”;

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

“(3) Any person who contravenes the provisions of subsection (1), (1A), (1D), (1E) or (2A), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”.

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

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

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

(b) by the substitution in subsection (1) for paragraphs (e) and (f) of the following paragraphs:

“(e) any taxable capital gain contemplated in section 26A, **[to the extent that it is attributable to any capital gain in respect of an asset situated]** which is derived from a source outside the Republic which is not deemed to be from a source in the Republic;  
or

(f) any amount—

(i) contemplated in paragraphs (a), (b), (c) or (d) which is received by or accrued to any other person and which is deemed to have been received by or accrued to such resident in terms of section 7;

(ii) of capital gain of any other person from a source outside the Republic which is not deemed to be from a source in the Republic and which is attributed to that resident in terms of paragraph 68, 69, 70, 71, 72 or 80 of the Eighth Schedule; or

- (iii) contemplated in paragraphs (a), (b), (c), (d) or (e) which represents capital of a trust, [as contemplated in] and which is included in the income of that resident in terms of section 25B(2A) or taken into account in determining the aggregate capital gain or aggregate capital loss of that resident in terms of paragraph 80(3) of the Eighth Schedule, [in respect of which that resident acquires a vested right].”;
- (c) by the substitution in subsection (1A) for the words preceding paragraph (a) of the following words:  
“(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 to **[the]** any sphere of government of any country other than the Republic, 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—“;
- (d) by the substitution in subsection (1A) for paragraph (b) of the following paragraph:  
“(b) any controlled foreign **[entity, as contemplated in section 9D]** company, in respect of such proportional amount contemplated in subsection (1)(b); or”;
- (e) by the substitution in subsection (1A) for paragraph (d) of the following paragraph:  
“(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 as defined in section 9D]** company, and which dividend relates to any proportional amount included in the income of **[such]** that resident as contemplated in subsection (1)(b); or”;
- (f) by the substitution in subsection (1B) for the words preceding the proviso paragraph (a) of the following words:

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

(g) by the substitution in subsection (1B) for subparagraph (bb) of paragraph (i) of the proviso paragraph (a) of the following subparagraph:

“(bb) be set off against the amount of any normal tax payable by such resident during **[such]** that year of assessment in respect of any amount derived from any other country which is included in the taxable income of **[such]** that resident during **[such]** that year, as contemplated in **[paragraph (a), (b), (d), or (e) of]** subsection (1), after any tax payable to the government of any other country in respect of any amount so included during such year of assessment which may be deducted in terms of subsection (1) and (1A), has been deducted from the amount of such normal tax payable in respect of such amount so included; and

(h) by the substitution in subsection (1B) for the words in paragraph (c) following subparagraph (ii) of the following words:

“may be deducted from any normal tax which becomes payable by **[such]** that resident during any year of assessment that any income is derived by way of dividends declared to **[such]** that resident by any controlled foreign **[entity]** company from profits relating to any amount so previously included;”;

(i) by the substitution in subsection (1B) of subparagraph (i) of paragraph (d) of the following subparagraph:

“(i) any company distributing any dividend to such resident, if such resident (**[in the case of a company,]** together with any **[other company in a group of companies of which such company forms part]** connected person in relation to that resident) holds for

**[his or its] their** own benefit less than 10 per cent of the equity share capital in such company; or”;

(j) by the deletion in subsection (3) of the definitions of “controlled company”, “controlling company” and “group of companies”;

(k) by the addition in subsection (3) after the definition of “qualifying interest” of the following definition:

“taxes on income’ does not include any compulsory payment to the government of any other country which is intended by that government to be a consideration for the right to extract any mineral or natural oil;”;

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

“(4) For the purposes 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 on the last day of that year of assessment by applying<sup>3/4</sup>

**(a) the ruling exchange rate on the day on which such foreign tax is actually paid; or**

**(b) 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:**

**Provided that where such foreign tax is payable in respect of the amount of any foreign dividend which is included in the taxable income of such resident as contemplated in subsection (1)(d), such foreign tax shall be converted to the currency of the Republic by applying the exchange rate at which the amount of such foreign dividend is converted as contemplated in section 9E] the average exchange rate for that year of assessment.”;**

(m) by the substitution in subsection (5) for the words preceding the proviso of the following words:

“(5) Where any amount of tax, which was proved to be payable to the government of any other country, was allowed as a rebate in terms of this section against the normal tax payable by any resident in any previous year of assessment, and—

- (a) it is proved by such resident that the amount of such tax actually payable to such government in any currency other than currency of the Republic, exceeds the amount which was so allowed as a rebate determined in that other currency; or
- (b) the Commissioner is satisfied that the amount of such tax actually payable to such government in that other currency, is less than the amount which was so allowed as a rebate determined in that other currency,

the Commissioner may, notwithstanding the provisions of section 79 or section 81(5), issue a reduced or additional assessment, as the case may be, reflecting the amount of the rebate as determined in that other currency, converted to the currency of the Republic at the average exchange rate applicable for that previous year of assessment, which shall be allowed against normal tax.”.

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

#### **Amendment of section 7 of Act 58 of 1962**

**10.** (1) Section 7 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (8) of the following subsection:

“(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] company**, 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] company** in relation to such resident), there shall be included in the income of **[such] that** resident so much of the amount of any income as is attributable to **[such] that** donation, settlement or other disposition: Provided that any amount of income received by or accrued to **[such] that** 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] that person had been a shareholder who is a resident.”.

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

### **Amendment of section 8 of Act 58 of 1962**

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

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

“(iv) The provisions of this paragraph shall not apply in respect of any allowance or advance received by or accrued to a person contemplated in section 9(1)(e) stationed outside the Republic which is attributable to that person’s services rendered outside the Republic.”;

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

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

Provided that this subparagraph does not apply to the extent that—

(aa) the employer has borne the expenses (otherwise than by way of granting the allowance or advance) in respect of which the allowance was paid or granted for that day or part of that day; or

(bb) the recipient has proved to the Commissioner any amount of actual expenditure in respect of meals or incidental costs for

that day or part of that day, as contemplated in subparagraph (i).”;

(c) by the substitution for subparagraph (ii) of paragraph (k) of subsection (4) of the following subparagraph:

“(ii) **[distributed any asset by way of a dividend]** transferred in whatever manner or form any asset to any shareholder of that company; or”;

(d) by the substitution in subsection (4) for the words following subparagraph (iii) of paragraph (k) of the following words:

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

(2)(a) Subsection (1)(a) shall be deemed to have come into operation on 1 March 2001.

(b) Subsection (1)(b) shall be deemed to have come into operation on 1 March 2002.

(c) Subsection (1)(c) and (d) shall be deemed to have come into operation on 12 December 2001, and shall apply in respect of any asset disposed of on or after that date.

#### **Amendment of section 9 of Act 58 of 1962**

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

(a) by the deletion in subsection (1) of the proviso; and

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

“(2) The capital gain or capital loss from the disposal of an asset of a person shall be deemed to be from a source in the Republic, where—

(a) in the case of immovable property held by that person or any interest or right of whatever nature of that person to or in immovable property, that property is situated in the Republic; or

- (b) in the case of any other asset—
- (i) that person is a resident and that asset is not attributable to a permanent establishment of that person which is situated outside the Republic; or
  - (ii) that person is not a resident, but that asset is attributable to a permanent establishment of that person which is situated in the Republic.”.

### **Insertion of section 9A of Act 58 of 1962**

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

#### **“Blocked foreign funds**

**9A.** Where any amount, or any portion of any amount—

- (a) received by or accrued to any person which is required to be included in the gross income of that person; or
- (b) of the net income of a controlled foreign company which is taken into account in determining an amount which is required to be 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 that 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 arose, that amount or any portion thereof shall be deemed not to have been received or accrued to that person, or shall not be included in the income of that resident, as the case may be, during that year and that amount or portion thereof shall be included in the gross income of that person or the income of that resident during the year of assessment during which that amount or portion thereof may be so remitted to the Republic.”.



## Substitution of section 9D of Act 58 of 1962

14. (1) Section 9D of the Income Tax Act, 1962, is hereby substituted by the following section:

**“[Investment] Net income of controlled foreign [entities and investment income arising from donations, settlements or other dispositions] companies**

**9D.** (1) For the purposes of this section—

‘business establishment’, in relation to a controlled foreign **[entity] company**, means **[a place of business with]**—

- (a) a place of business with an office, shop, factory, warehouse [farm] or other structure which is used or will continue to be used by the controlled foreign [entity] company for a period of not less than one year, whereby the business of such company is carried on, and where—
  - (i) that place of business is suitably equipped with on-site operational management, employees, equipment and other facilities for the purposes of conducting the primary operations of that business; and
  - (ii) that place of business is utilised 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 Act administered by the Commissioner);
- (b) a mine, oil or gas well, a quarry or any other place of extraction of natural resources, where that controlled foreign company has a right to directly explore or extract those natural resources, or any area where that controlled foreign company has the right to carry on prospecting operations preliminary to the establishment of a mine, oil or gas well, quarry or other place of extraction, where that

controlled foreign company carries on those exploration, extraction or prospecting operations; [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 a period of not less than six months, where that controlled foreign company carries on those construction or installation activities;

(d) agricultural land used for bona fide farming activities carried on by that controlled foreign company; or

(e) a vessel or an aircraft solely engaged in transportation within a single country, or a fishing vessel or a vessel used for prospecting, exploration or extraction, where that vessels or aircraft is operated by of that controlled foreign company

**[whereby the business of such entity is carried on, and where<sup>3/4</sup>**

**(i) such place of business is suitably equipped with on-site operational management, employees, equipment and other facilities for the purposes of conducting the primary operations of such business; and**

**(ii) such place of business is utilised 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)];**

'controlled foreign company' means any foreign company where more than 50 per cent of the total participation rights in that foreign company are held by one or more residents whether directly or indirectly: Provided that a person who holds less than five per cent of the participation rights of a foreign company which is—

(a) a listed company; or

(b) a scheme or arrangement contemplated in paragraph (e)(ii) of the definition of 'company' in section 1.

shall be deemed not to be a resident in determining whether residents directly or indirectly hold more than 50 per cent of the participation rights

in that foreign company or any other foreign company which is a controlled group company in relation to that foreign company, unless more than 50 per cent of the participation rights of that foreign company or controlled group company are held by persons who are connected persons in relation to each other;

**['controlled foreign entity' means any foreign entity in which any resident or residents of the Republic, whether individually or jointly, and whether directly or indirectly, hold more than 50 per cent of the participation rights, or are entitled to exercise more than 50 per cent of the votes or control of such entity: Provided that in determining whether residents jointly hold more than 50 per cent of the participation rights of any foreign entity which is listed on a recognised exchange or which is a scheme or arrangement contemplated in paragraph (e)(ii) of the definition of 'company' in section 1, except where connected persons hold more than 50 per cent of the participation rights of that foreign entity, scheme or arrangement, any person who holds less than five per cent of the participation rights of that foreign entity shall be deemed not to be a resident;**

**'designated country' means any designated country as defined in section 9E;]**

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

**"foreign financial instrument holding company" means any foreign company where more than 50 per cent of the market value or actual cost of all the assets of that company, together with any controlled group**

company in relation to that foreign company, consists of financial instruments, other than—

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

(i) the amount of that debt is or was included in the income of that foreign company or controlled group company, as the case may be; and

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

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

(i) regularly accepts deposits, premiums or effects transactions for the account of clients from the general public; or

(ii) derives more than 50 per cent of its income or gains arising from principal trading activities with respect to persons who are not connected persons in relation to that foreign company;

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

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

(ii) any financial instrument which constitutes a loan, advance or debt if both the debtor and creditor companies form part of the same group of companies;

'foreign tax year' in relation to a controlled foreign company means the year or period of reporting for foreign income tax purposes or, if that company is not subject to foreign income tax, the annual period of financial reporting by that company;

'participation rights' in relation to a foreign company means the right to directly or indirectly participate [directly or indirectly] in the share capital [or profits of, dividends declared by, or any other distribution or allocation made by any entity], share premium, current or accumulated profits or reserves of that foreign company, whether or not of a capital nature.

(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)]** who holds any participation rights in a controlled foreign company—

(a) on the last day of the foreign tax year of that controlled foreign company which ends during that year of assessment, an amount equal to—

(i) where that foreign company was a controlled foreign company for the entire foreign tax year, the proportional amount of the net income of **[such entity]** that controlled foreign company determined for that foreign tax year **[of such entity which ends during such year of assessment of such resident]**, which bears to the total net income of **[such entity]** that company during **[such]** that foreign tax year, the same ratio as the percentage of the participation rights of **[such]** that resident in relation to **[such entity]** that company bears to the total participation rights in relation to **[such entity]** that company: or

(ii) where that foreign company became a controlled foreign company at any stage during that foreign tax year, an amount which shall be equal to, at the option of the resident, either—

- (aa) an amount which bears to the proportional amount determined in accordance with subparagraph (i), the same ratio as the number of days during that foreign tax year that the foreign company was a controlled foreign company bears to the total number of days in that foreign tax year; or
- (bb) the proportional amount determined in accordance with subparagraph (i), of the net income of that company for the period commencing on the day that the foreign company commenced to be a controlled foreign company and ending on the last day of that foreign tax year; or
- (b) immediately before that foreign company ceased to be a controlled foreign company at any stage during that year of assessment before the last day of the foreign tax year of that controlled foreign company, an amount which shall be equal to, at the option of the resident, either—
- (i) an amount determined in accordance with paragraph (a)(ii)(aa); or
- (ii) the proportional amount determined in accordance with paragraph (a)(i), of the net income of that company determined for the period commencing on the first day of that foreign tax year and ending on the date that the company so ceased to be a controlled foreign company;

Provided that **[the provisions of]** this subsection shall not apply—

- (a) where **[such]** that resident (together with any connected person in relation to **[such]** that resident) **[in aggregate at all times during the foreign tax year]**—
- (i) at the end of the last day of the foreign tax year of the controlled foreign company; or
- (ii) in the case where that foreign company ceased to be a controlled foreign company during the relevant foreign tax

year, immediately before that foreign company so ceased to be a controlled foreign company.

holds less than 10 per cent of the participation rights **[and is entitled to exercise less than 10 per cent of the voting rights]** in **[such]** that controlled foreign [entity] company; or

(b) to the extent that the participation rights are held by that resident indirectly through the intermediary of any company which is a resident.

(2A) For the purposes of this section, the 'net income' of a controlled foreign **[entity shall be]** company in respect of a foreign tax year is an amount equal to the taxable income of [such entity] that company determined in accordance with the provisions of this Act as if [such] that controlled foreign [entity] company had been a taxpayer, which company must, for purposes of the definition of "gross income", sections 7(8), 10(1)(h), 10(1)(hA), 25B and paragraphs 2(a), 12, 24, 70, 71, 72 and 80 of the Eighth Schedule, be deemed to be 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] that foreign company in terms of this Act shall be limited to the amount of [such] that 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 foreign tax year [of assessment] and be deemed to be a balance of assessed loss which may be set off against the income of such [entity] company in such succeeding year for the purposes of section 20;
- (c) no deduction shall be allowed in respect of any interest, royalties, [or] rental or income of a similar nature paid or payable by [such entity] that company to any other controlled foreign [entity] company in relation to the resident or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign company and other foreign company are parties, as contemplated in subsection (9)(fA);";

- [(d) any capital gain or capital loss of such entity shall, when applying paragraph 43(4) of the Eighth Schedule, be determined in the currency of the Republic and such capital gain or capital loss shall be translated on the last day of the foreign tax year of the controlled foreign entity to the local currency as defined in section 24I, of that controlled foreign entity; and]**
- (e) where a foreign **[entity] company** becomes a controlled foreign **[entity] company** after 1 October 2001, the valuation date for purposes of the determination of any taxable capital gain or assessed capital loss in terms of the Eighth Schedule, shall be the date that such **[entity] company** becomes a controlled foreign **[entity] company**;
- (f) where the resident contemplated in subsection (2) is a natural person, special trust or an insurer in respect of its individual policyholder fund, the taxable capital gain of the controlled foreign **[entity] company** shall, for the purposes of paragraph 10 of the Eighth Schedule, be 25 per cent of that **[entity's] company's** net capital gain for the relevant foreign tax year **[of assessment; and]**
- [(g) any amount to be taken into account in the determination of such net income of that entity in respect of the disposal of any foreign equity instrument, shall be determined in the currency of the Republic and such amount shall then be translated on the last day of the foreign tax year of the controlled foreign entity to the local currency, as defined in section 24I, of that controlled foreign entity;]**
- (h) for the purposes of section 24I, 'local currency' in relation to an exchange item of a controlled foreign company which is not attributable to a permanent establishment of that company, means any currency used by that company for purposes of financial reporting;
- (i) for the purposes of section 31—



- (aa) any transaction, operation or scheme between that controlled foreign company and any other person shall be deemed to be an international agreement as defined in that section; and
- (bb) that controlled foreign company must for purposes of section 31(3)(a)(i) and (ii) be deemed to be a resident:
- (i) for the purposes of determining any capital gain or capital loss of that controlled foreign company from the disposal of any interest in any other foreign company (which is a controlled foreign company in relation to that resident), the base cost of that interest shall be increased in terms of paragraph 20(1)(h)(iii) of the Eighth Schedule, by any amount derived by that other foreign company (or any other company in which that foreign company holds a direct or indirect interest which is also a controlled foreign company in relation to that resident), which was taken into account in determining the amount to be included in the income of that resident in terms of this section by virtue of that resident's shareholding in the controlled foreign company, reduced by the amount of any dividend distributed to that controlled foreign company by any such other foreign company from such income so taken into account; and
- (k) for the purposes of paragraph 43 of the Eighth Schedule, 'local currency' of a controlled foreign company otherwise than in relation to a permanent establishment of that controlled foreign company, means the currency used by that company for purposes of financial reporting.

(6) The net income of a controlled foreign company, shall be determined in the currency used by that controlled foreign company for purposes of financial reporting and shall, for purposes of determining the amount to be included in the income of any resident during any year of assessment under the provisions of this section, [shall] be [converted] translated to the currency of the Republic [on the last day of the foreign tax year of the controlled foreign entity and the ruling] by applying the average exchange rate [at that date or any other exchange rate or rates as the

Commissioner may approve, determined with reference to the ruling exchange rates during such year shall be applied to determine the value of the amount to be included in the income of such resident] for that year of assessment, as contemplated in section 25D: Provided that—

(a) any capital gain or capital loss of that controlled foreign company shall, when applying paragraph 43(4) of the Eighth Schedule, be determined in the currency of the Republic and that capital gain or capital loss shall be translated to the currency used by that controlled foreign company for purposes of financial reporting by applying that average exchange rate; and

(b) any amount to be taken into account determining the net income of that controlled foreign company in respect of the disposal of any foreign equity instrument shall, when applying section 9G, be determined in the currency of the Republic and that amount shall be translated to the currency so used by that controlled foreign company by applying that average exchange rate.”.

(9) The provisions of this section shall not apply to the extent that the net income of the controlled foreign company—

(a) [in respect of receipts and accruals] is attributable to amounts [(other than receipts and accruals of a capital nature) or capital gains of any controlled foreign entity which is a company, where—

(i) such receipts and accruals] that have been or will be subject to tax on income in a designated country at a qualifying statutory rate [of at least 27 per cent; or

(ii) those capital gains of that company, have been or will be subject to tax in a designated country at a statutory rate of at least 13,5 per cent,

(after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) 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), notwithstanding the fact that such entity may, as a result of any foreign assessed tax loss incurred by such entity during such year or any previous year of assessment, not be liable for the payment of any tax: Provided that where such designated country imposes tax on that company on a progressive scale of statutory rates of tax, the statutory rate shall for the purposes of this paragraph be deemed to be the highest rate on such scale] as defined in section 9E;

(b) [where the net income of any controlled foreign entity which is a company] is attributable to any business establishment of [such] that controlled foreign [entity] company in any country other than the Republic: Provided that the provisions of this paragraph shall not apply to any [receipts and accruals] net income that is attributable to any amounts—

(i) derived from any transaction relating to the supply of goods or services by or to [such] that controlled foreign [entity] company with any connected person (in relation to [such] that controlled foreign [entity] company), who is a resident, unless the consideration in respect of [such] that 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] that controlled foreign [entity] company to any connected person (in relation to [such] that controlled foreign [entity] company) who is a resident, unless—

(A) [such] that controlled foreign [entity] company purchased [such] those goods within the country of residence of [such] that controlled foreign [entity] company from any person who

- is not a connected person in relation to **[such]** that controlled foreign **[entity]** company;
- (B) the creation, extraction, production, assembly, repair or improvement of goods undertaken by **[such]** that controlled foreign **[entity]** company amount to more than minor assembly or adjustment, packaging, repackaging and labeling; or
- (C) **[such]** that controlled foreign **[entity]** company sells a significant quantity of goods of the same or a similar nature to persons who are not connected persons in relation to **[such]** that controlled foreign **[entity]** company, at comparable prices (after accounting for the level of the market, volume discounts and costs of delivery); or
- (bb) any sale of goods by **[such]** that controlled foreign **[entity]** company to a person, other than a connected person (in relation to **[such]** that controlled foreign **[entity]** company) who is a resident, where **[such]** that controlled foreign **[entity]** company initially purchased **[such]** those goods or any tangible intermediary inputs thereof from one or more connected persons (in relation to **[such]** that controlled foreign **[entity]** company) who are residents, unless—
- (A) **[such]** those goods or tangible intermediary inputs thereof purchased from connected persons (in relation to such controlled foreign **[entity]** company) who are residents amount to an insignificant portion of the total tangible intermediary inputs of **[such]** those goods;

- (B) the creation, extraction, production, assembly, repair or improvement of goods undertaken by **[such] that** controlled foreign **[entity] company** amount to more than minor assembly or adjustment, packaging, repackaging and labeling; or
- (C) the products are sold by **[such] that** controlled foreign **[entity] company** to persons who are not connected persons in relation to **[such] that** controlled foreign **[entity] company**, for delivery within the country of residence of **[such] that** controlled foreign **[entity] company**; or
- (cc) any service performed by **[such] that** controlled foreign **[entity] company** to a connected person (in relation to such controlled foreign **[entity] company**) who is a resident, unless **[such] the** service is performed outside the Republic and—
- (A) such service relates directly to the creation, extraction, production, assembly, repair or improvement of goods utilised within one or more countries outside the Republic; or
- (B) such services relate directly to the sale or marketing of goods of a connected person (in relation to **[such] that** controlled foreign **[entity] company**) who is a resident and **[such] those** goods are sold to persons who are not connected persons in relation to **[such] that** controlled foreign **[entity] company** for delivery within the country of residence of **[such] that** controlled foreign **[entity] company**;

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

(aa) do not in total exceed five per cent of the sum of the receipts and accruals (other than receipts and accruals of a capital nature) and the amount of all capital gains and foreign currency gains of **[such]** that controlled foreign [entity] company; or

(bb) arise from the principal trading activities of any banking or financial services, insurance or rental business, excluding any such receipts and accruals from any—

(A) foreign financial instrument holding company;

[(A)](B) connected person (in relation to **[such]** that controlled foreign [entity] company) who is a resident or any resident who holds at least five per cent of the participation rights in that controlled foreign **[entity]** company; or

[(B)](C) resident to the extent that **[such]** those receipts and accruals are produced as part of a scheme for the purpose of avoiding the liability for any tax, duty or levy imposed in terms of this Act or any other law administered by the Commissioner;

**[Provided that the receipts and accruals of such banking or financial services, insurance or rental**

business are derived mainly from persons who are not connected persons in relation to that controlled foreign entity;]

(c) ...

(d) ...

(e) **[to the net income of any controlled foreign entity to the extent that such net income]** is included in the taxable income of the **[entity] company** and has not been or will not be exempt or taxed at a reduced rate in the Republic, as a result of the application of any agreement for the avoidance of double taxation; or

**[(f) in relation to the proportional amount of an amount equal to 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 a company, by any other company which is a controlled foreign entity in relation to such resident; or]**

**(fA) [in relation to the net income of a controlled foreign entity, to the extent that it relates]** is attributable to any interest, royalties, rental or income of a similar nature, which is paid or payable to **[such entity] that company** by any other foreign **[entity] company**, or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign **[entity] company** and that other foreign **[entity] company** are parties, where that controlled foreign **[entity] company** and that other foreign **[entity] company** form part of the same group of companies[, as defined in section 41];

**(fB) [in relation to the net income of a controlled foreign entity to the extent that it relates]** is attributable to any capital gain of **[such entity] that company**, which is determined in respect of the disposal of any asset, as defined in the Eighth Schedule, **[(excluding) other than** any financial instrument or intangible asset as defined in paragraph 16 of the Eighth Schedule), where that

asset was attributable to any business establishment of that controlled foreign **[entity]** company or any other foreign **[entity]** company **[which forms]**, where that controlled foreign company and that other foreign company form part of the same group of companies [, **as defined in section 41, as that controlled foreign entity**];

(g)

...

(h)

**[in respect of]** is attributable to any amount received by or accrued to **[such]** that controlled foreign **[entity]** company—

- (i) from the disposal of any interest in the equity share capital of any other foreign **[entity which is a]** company; or
- (ii) by way of a dividend declared to that controlled foreign **[entity]** company by any other foreign **[entity which is a]** company,

if that controlled foreign **[entity on the date of]** company immediately before that disposal or at the time of the declaration of dividend—

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

(bb) in the case of any disposal contemplated in subparagraph (i), held such interest contemplated in item (aa) for a period of at least 18 months prior to that disposal, unless that interest was acquired by the controlled foreign **[entity]** company from any other foreign **[entity]** company, where that controlled foreign **[entity]** company and that other foreign **[entity]** company form part of the same group of companies[, **as defined in section 41**] and that controlled foreign **[entity]** company and that other foreign **[entity]** company in aggregate held that interest for more than 18 months:

Provided that the provisions of this paragraph shall not apply where **[more than 50 per cent of either the market value or the actual costs of all the assets of that other foreign entity and any**



foreign entity, which is a controlled company, as defined in section 41, in relation to that other foreign entity on the date of that disposal or distribution, consists of financial instruments, as defined in paragraph 1 of the Eighth Schedule, other than any shares held in any foreign entity which is a controlled company in relation to that other foreign entity] that other foreign company is a foreign financial instrument holding company.

(10) For the purposes of subsection (9)(b)(ii) the Minister may—

- (a) by notice in the *Gazette* determine that one or more foreign countries be treated as one if such foreign countries comprise a single economic market and such treatment will not lead to an unacceptable erosion of the tax base; or
- (b) in consultation with the Commissioner grant exemption to any person from the application of subsection (9)(b)(ii), to the extent that its application will unreasonably prejudice national economic policies or South African international trade and such exemption will not lead to an unacceptable erosion of the tax base.

(11) The provisions of subsection (9)(b) **[(f) and (fA)]** to (h), inclusive shall not apply in respect of any resident, where **[such]** that resident fails to comply with the provisions of section 72A.”.

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

### **Substitution of section 9E of Act 58 of 1962**

**15.** Section 9E of the Income Tax Act, 1962, is hereby substituted by the following section:

#### **“Taxation of foreign dividends**

**9E.(1)** For the purposes of this section—

**['controlled company' means a company in relation to which another company is the controlling company;**

**'controlling company', in relation to any other company, means a company which is a resident and which holds for its own benefit, whether directly or indirectly, through one or more companies in a group of companies of which all the companies in question form part, shares in such other company which constitute not less than 75 per cent of the equity share capital of the said other company;**

**'designated country' means a country designated by the Minister under subsection (8);]**

'effective date' means 23 February 2000;

**['fixed capital' includes share capital, share premium and accumulated profits, whether of a capital nature or not;]**

'foreign dividend' means—

**(a)** any dividend received by or which accrued to any person from any company which is either a foreign **[entity] company** as defined in section 9D, or 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<sup>3/4</sup>**

**[(a)](b)** any amount deemed to have been distributed to that person or any resident who is a connected person in relation to that person, by any foreign company which is a controlled foreign company in relation to that person, as contemplated in section 64C(3)(a), (b), (c) or (d) **[by any company which is a controlled foreign entity to such person or any resident who is a connected person in relation to such person],** and where the provisions contained in section 64C(4)(a), (b), (c), (d), (e), (f), (i) or (j) do not apply, to the extent that **[such] the foreign** company could have distributed a dividend to **[such] that** person from profits which have not been subject to tax in the Republic, **[and none of the provisions contained in section 64C(4) (other than section 64C(4)(g) and**

**(h) apply]** which amount must be deemed to be a dividend declared by that company to that person: Provided that the provisions of this paragraph shall not apply in respect of any amount distributed by any foreign 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]** of any asset to the extent that those profits are attributable to any capital gain which accrued on or after 1 October 2001); [or]

'foreign tax year' means a foreign tax year as defined in section 9D:

**['group of companies' means a controlling company and one or more other companies which are controlled companies in relation to the controlling company;]**

'proportionate amount of the profit', in relation to a shareholder, means an amount which bears to the total profit, the same ratio as such shareholder's shareholding bears to the total shareholding, and for that purpose, if there are different classes of shares—

- (a) the expression 'total shareholding' refers only to the total of the class of shares of which such shareholding is part; and
- (b) the expression 'total profits' means the total profits attributable to such class of shares;

'qualifying interest' of any person means—

- (a) any direct interest of at least 10 per cent held by such person in the equity share capital of any company; and
- (b) any direct interest of at least 10 per cent held by any company contemplated in paragraph (a) in the equity share capital of any other company, which other company shall for the purposes of this definition be deemed to be a company contemplated in paragraph

(a) in which such person holds a direct interest of at least 10 per cent;

'qualifying statutory rate' means a statutory rate of tax on companies in the relevant country of at least—

- (a) 27 per cent in the case of amounts other than capital gains; and
- (b) 13.5 per cent in the case of capital gains,

after taking into account the application of any agreement for the avoidance of double taxation, if applicable, and in respect of which there is no right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment):  
Provided that where that country imposes a tax on companies at a progressive scale of statutory rates, the statutory rate shall for the purposes of this definition be deemed to be the highest rate on that scale.

(3) Subject to subsection (7), where during any year of assessment any foreign dividend is received by or accrues to any resident, the amount to be included in the gross income of **[such] that** resident for **[such] that** year of assessment in terms of paragraph (k) of the definition of 'gross income' in section 1, shall—

- (a) **[if such] where that** resident (together with any connected person in relation to that resident) holds for its own benefit—
  - [(i) holds for his own benefit; or**
  - (ii) in the case of a company, together with any other company in a group of companies of which such company forms part, hold for their own benefit,]**

at least 10 per cent of the equity share capital in the company declaring the dividend, be the proportionate amount of the profit from which the dividend is distributed, before taking into account any foreign tax on income imposed in respect of **[such] that** profit and any withholding tax paid in respect of **[such] that** dividend:  
Provided that—

- [(aa)](i) [unless such resident proves otherwise in such manner and such form as the Commissioner may**

**prescribe]** the foreign dividend shall be deemed to have been distributed by the foreign company from the profits of that foreign company determined in respect of the most [recently derived and] recent foreign tax year and which are available for distribution, unless the directors or shareholders at the directors' or general meeting decided to distribute the dividend from profits derived in a different foreign tax year, and

**[(bb)](ii)**

where **[such]** that foreign company during the relevant foreign tax year contemplated in subparagraph (i), derived its profits [by way of dividends received or accrued and by way of other sources of profits] from different forms of income, the dividend shall be deemed to have been declared on a proportionate basis from **[such dividends and other sources of profits]** the profits derived from such different forms of income; or

- (b) in any other case [if such resident<sup>3/4</sup>
- (i) **does not hold for his own benefit; or**
  - (ii) **in the case of a company, together with any other company in a group of companies of which such company forms part, do not hold for their own benefit,**
- at least 10 per cent of the equity share capital in the company declaring the dividend],** be the amount of **[such]** that dividend declared before taking into account the amount of any withholding tax paid in respect of **[such]** that dividend.

(4) In determining the proportionate amount of the profit to be included in the gross income of any resident in terms of subsection (3)(a), there shall be taken into account any profits derived by any other company in which the company distributing the dividend has an interest and which have been distributed to **[such]** that company in the form of dividends, if the

resident has a qualifying interest in **[such]** that other company: Provided that—

(a) **[unless such resident proves otherwise in such manner and such form as the Commissioner may prescribe]** the dividend shall be deemed to have been distributed by **[such]** that other company to that company from the profits **[most recently derived and]** determined in respect of the most recent foreign tax year and which are available for distribution, unless the directors shareholders at the director's general meeting decided to distribute the dividend from profits derived in a different foreign tax year; and

(b) where **[such]** that other company during the relevant foreign tax year contemplated in paragraph (a) derived its profits **[by way of dividends received or accrued to such company and by way of other sources of profits,]** from different forms of income, the dividend shall be deemed to have been declared **[by such other company]** on a proportionate basis from **[such dividends and other sources of profits]** the profits derived from such different forms of income.

(5) For the purposes of subsection (3)(b), where—

(a) any dividend is declared by a company to any **[unit]** portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of “company” in section 1; and

(b) such dividend is distributed by such **[unit]** portfolio 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]** participatory interests in such **[unit]** portfolio,

such dividend contemplated in paragraph (a) shall, to the extent that such dividend is declared to such holders of **[units]** participatory interests as contemplated in paragraph (b), be deemed to have been declared by such company directly to such holders of **[units]** participatory interests.

(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 income of such resident during such year; and

(b) any amount whereby **[such]** that 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.

(6) Any resident who receives a foreign dividend or to whom a foreign dividend accrues may, notwithstanding the provisions of subsection (3), in respect of any year of assessment elect that the amount of **[such]** that foreign dividend to be included in the gross income of **[such]** that resident shall—

(a) in the case of a resident contemplated in subsection (3)(a), [if such resident<sup>3/4</sup>

(i) **holds for his own benefit; or**

(ii) **in the case of a company, together with any other company in a group of companies of which such company forms part, hold for their own benefit,**

**at least 10 per cent of the equity share capital in the company declaring such dividend,]** be the amount of the profits from which such dividend is declared after taking into account any foreign tax on income imposed in respect of **[such]** those profits and any withholding tax paid in respect of **[such]** that dividend; or

(b) in the case of a resident contemplated in subsection (3)(b), [if such resident<sup>3/4</sup>

(i) **does not hold for his own benefit; or**

(ii) **in the case of a company, together with any other company in a group of companies of which such company forms part, do not hold for their own benefit,**

**at least 10 per cent of the equity share capital in the company declaring such dividend]** be the amount of **[such] that** dividend after taking into account any withholding tax paid in respect of **[such] that** dividend,

and **[such] that** election shall apply in respect of all foreign dividends received by or accrued to **[such] that** resident during the year of assessment in respect of which the election was made.

(7) There shall be exempt from tax any foreign dividend declared or deemed to have been declared by—

(a)...

(b)...

(c) any listed company, **[listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985),]** contemplated in paragraph (a) of the definition of 'listed company' in section 1, to a resident who, together with any connected person in relation to **[such] that** resident, **[does not hold at least]** holds less than 10 per cent of the equity share capital of **[such] that** company, if more than 10 per cent of the equity share capital in **[such] that** company is at the time of the declaration of **[such] that** dividend held collectively by residents: Provided that where **[such] the shares of that** company **[was] were** not listed on such a stock exchange on the effective date, the exemption shall apply only upon approval by the Commissioner, which approval the Commissioner may grant on application by **[such] that** company, having regard to—

(i) the fact whether or not the profits of **[such] that** company were generated in a designated country; and



- (ii) the tax rate at which the profits from which the dividend was declared was or will be taxed;
- (d) any company, which is distributed directly or indirectly to a resident who holds a qualifying interest in **[such] that** company, to the extent that the profits from which the dividend is declared are or will be subject to tax in a designated country at **[a] a qualifying** statutory rate **[of at least 27 per cent or, in the case of any capital gains of that company, at a statutory rate of at least 13,5 per cent, (after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) 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 where such designated country imposes tax on that company at a progressive scale of statutory rates, the statutory rate shall for the purposes of this paragraph be deemed to be the highest rate on such scale];**
- (e) any company to the extent that the profits from which the dividend is distributed—
- (i) relate to any amount of income which has been or will be included in the income of the shareholder of such company in terms of section 9D; **[or]**
- (ii) have been or will be subject to tax in the Republic in terms of this Act, unless those profits have been or will be exempt or taxed at a reduced rate in the Republic, as a result of the application of any agreement for the avoidance of double taxation; **[or]**
- (iii) have otherwise been included in the taxable income of the shareholder in terms of **[paragraph (a) of]** the definition of 'foreign dividend'; or
- (iv) arose directly or indirectly from any dividends declared by any company which is a resident; or

- (f) any company out of profits derived by **[such]** that company by way of—
- (i) any foreign dividend which is exempt from tax in terms of the provisions of this subsection; or
  - (ii) any dividend which would have constituted a foreign dividend which is exempt from tax, had **[such]** dividend been declared on or after **[23 February 2000]** the effective date.

(8) The Minister may, by notice in the *Gazette*—

- (a) designate countries which—
- [(b)](i)** have a tax on income that is determined on a basis which is substantially the same as that of the Republic;
  - [(c)](ii)** have **[a]** a qualifying statutory rate of tax on income of companies **[of at least 27 per cent without any right of recovery of such tax 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)]**; and
  - [(d)](iii)** comply with any other requirement which the Minister may prescribe by regulation:
- (b) exclude specific forms of income which are derived from those countries contemplated in paragraph (a).”

(8A) The Minister may, by notice in the *Gazette* to such extent as he may deem necessary in the national interest and subject to such conditions as he may prescribe, grant exemption from the application of this section in respect of any dividend received by or accrued to a resident, which is remitted to the Republic, to the extent that such dividend is declared from profits derived from any project approved by the Minister, having regard to—

- (a) the economic benefits of such project for the Republic;
- (b) the extent to which goods and services will be provided in respect of such project from the Republic;

- (c) the potential effect such project may have on the South African tax base;
- (d) other assistance granted by the State or organ of State in respect of such project; and
- (e) such other criteria which the Minister may prescribe by notice in the *Gazette*.

(8B) The Minister may withdraw any exemption granted in terms of subsection (8A), where he is satisfied that any condition imposed in terms of that subsection has not been complied with.

**[(9) The discretion exercised by the Commissioner in terms of this section shall be subject to objection and appeal.**

**(10) The amount of any foreign dividend to be included in the gross income of any resident in terms of subsection (3), shall be converted to the currency of the Republic at the ruling exchange rate applicable on the date on which such dividend accrued to such resident.]”.**

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

#### **Amendment of section 9F of Act 58 of 1962**

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

- (a) by the deletion of subsection (1); and
- (b) by the substitution for subsection (2) of the following subsection:

“(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 by or 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]** a qualifying statutory rate **[of at least 27 per cent (after taking into account the application of the relevant agreement for the avoidance of double**

taxation, if any, 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 where such designated country imposes tax on a company at a progressive scale of statutory rates, the statutory rate shall for the purposes of this subsection be deemed to be the highest rate on such scale] as defined in section 9E.”;

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

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

#### **Amendment of section 9G of Act 58 of 1962**

17. Section 9G of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

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

(3) Any—

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

(b) amount in any **[foreign]** currency other than currency of the Republic which is taken into account in the determination of the

taxable income of any person in respect of any foreign equity instrument,

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

- (i) in the case of a foreign equity instrument acquired before 1 October 2001, at the ruling exchange rate on that date; or
- (ii) in any other case, at the [ruling] average exchange rate [on the later of the date of incurral of that expenditure or 1 October 2001] for the year of assessment during which that expenditure was actually incurred by that person (or if the currency of expenditure no longer exists, the last available exchange rate for that currency of expenditure).”.

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

#### **Amendment of section 10 of Act 58 of 1962**

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

- (a) by the substitution in subsection (1) for subparagraph (iii) of paragraph (hA) of the following subparagraph:
  - “(iii) for the purposes of this paragraph, so much of any dividend as has been distributed by any **[unit]** portfolio of any collective investment scheme constituting a company in terms of paragraph (e)(i) of the definition of “company” in section 1 out of interest derived by such **[unit]** portfolio which is exempt from tax in the hands of such **[unit]** portfolio under the provisions of paragraph (iA), shall be deemed to be interest;”;
- (b) by the substitution in subsection (1) for paragraph (iA) of the following paragraph:

- “(iA) in the case of any [unit] portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of “company” in section 1, so much of the income 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]** participatory interest in such [unit] portfolio **[on a date falling on or after the first day of April, 1971];**”;
- (c) by the substitution in subsection (1) for items (aa) and (bb) of the proviso to subparagraph (i) of paragraph (k) of the following items:
- “(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 neither a resident, nor carrying on business in the Republic) distributed by a **[fixed property]** company the shares of which are “property shares” as defined in **[section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981)]** section 47 of the Collective Investment Schemes Control Act, 2002 (Act No. ?? of 2002), on shares included in a [unit] portfolio comprised in any **[unit trust]** collective investment scheme in property **[shares authorized under the said Act]** managed or carried on by any company registered as a manager under section 42 of that Act for purposes of Part V of that Act ; or
- (bb) to so much of any dividend as has been distributed by any [unit] portfolio of any collective investment scheme constituting a company in terms of paragraph (e)(i) of the definition of “company” in section 1—
- (A) out of 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
- (B) out of amounts received by or accrued to such [unit] portfolio by way of dividends referred to in section 11(s); or”;
- (d) by the deletion in subsection (1) of subparagraph (iA) of paragraph (k);

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

“any remuneration as defined in paragraph 1 of the Fourth Schedule [derived by any person]—”;

(f) by the substitution in subsection (1) for the words in subparagraph (i) of paragraph (o) preceding item (aa) of the following words:

“(i) derived by any person as an officer or crew member of a ship engaged—”;

(g) by the substitution in subsection (1) for the words in subparagraph (ii) of paragraph (o) preceding the proviso of the following words:

“(ii) received by or accrued to any person during any year of assessment in respect of services rendered outside the Republic by **[such] that** person for or on behalf of any employer, if **[such] that** person was outside the Republic—

(aa) for a period or periods exceeding 183 full days in aggregate during any 12 months period commencing or ending during **[a] that** year of assessment; and

(bb) for a continuous period exceeding 60 full days during **[such] that** period of 12 months,

and **[such] those** services were rendered during **[such] that** period or periods.”;

(h) by the deletion of subparagraph (xv) of paragraph (t) of subsection (1);

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

“(zA) any amount by way of rebate or other assistance received by or accrued to or in favour of any **[exporter (as defined in section 11bis(1))]** person under any scheme for the promotion or financing of exports which is for the purposes of this paragraph approved by the Minister of Trade and Industry with the concurrence of the Minister of Finance.”;

(j) by the deletion in subsection (1) of paragraph (zF).

(2)(a) Subsection (1)(a), (b) and (c) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

(b) Subsection(1)(d) shall come into operation on the date of promulgation of this Act and shall apply in respect of any dividend received or accrued on or after that date.

(c) Subsection (1)(e), (f) and (g) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending on or after that date

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

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

(a) by the substitution for paragraph (s) of the following paragraph:

“(s) in the case of a **[fixed property]** company the shares of which are “property shares as defined in section [1] 47 of the [Unit Trusts Control Act, 1981 (Act No. 54 of 1981)] Collective Investment Schemes Control Act, 2002 (Act No. ?? of 2002), the dividends (other than those distributed out of profits of a capital nature) distributed by such company during the year of assessment on shares included in a [unit] portfolio comprised in any [unit trust] collective investment scheme in property [shares authorized under the said Act] managed or carried on by any company registered as a manager under section 42 of that Act for the purposes of Part V of that Act;”.

(b) by the substitution for subparagraph (B) of paragraph (ee) of the proviso to paragraph (w) of the following subparagraph:

“(B) in the case of premiums paid under one or more policies referred to in subparagraph (C) of the said paragraph (dd) upon the life of a particular employee or director, to an amount equal to 10 per cent of the remuneration (as defined in the definition of “remuneration” in paragraph 1 of the Fourth Schedule **[but including any amount referred to in paragraph (iv) or (vii) of that definition]**) derived by such employee or director from the taxpayer during the said year of assessment;”.



(2) Subsection (1)(a) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

#### **Repeal of section 11bis of Act 58 of 1962**

20. Section 11bis of the Income Tax Act, 1962, is hereby repealed.

#### **Amendment of section 12E of Act 58 of 1962**

21. Section 12E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) none of the shareholders or members at any time during the year of assessment of the company or close corporation holds any shares or has any interest in the equity of any other company as defined in section 1 (other than a company **[listed on a stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)]** contemplated in paragraph (a) of the definition of ‘listed company’), or any **[unit]** portfolio in a collective investment scheme contemplated in paragraph (e) of the definition of ‘company’ **[in section 1]**”.

#### **Amendment of section 12G of Act 58 of 1962**

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

(a) by the substitution in subsection (1) for the words in paragraph (a) of the definition of “industrial asset” preceding subparagraph (i) of the following words:

“any plant or machinery acquired, **[or]** contracted for or brought into the Republic by a company after the date of approval in terms of subsection (5), which—”;

- (b) by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the definition of “industrial asset” of the following subparagraph:  
“(ii) will be brought into use for the first time by that company within **[three]** four years from the date of approval in terms of subsection (5).”;
- (c) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the definition of “industrial asset” of the following subparagraph:  
“(ii) will be brought into use by that company within **[three]** four years from the date of approval in terms of subsection (5).”;
- (d) by the substitution in subsection (1) for paragraph (a) of the definition of “industrial project” of the following paragraph:  
“(a) any manufacturing of products, goods, articles or other things (excluding any tobacco and tobacco related products) within the Republic that—  
(i) is classified under ‘Major Division 3: Manufacturing’ in the most recent Standard industrial Classification issued by Statistics South Africa; or  
(ii) in the case of products, goods, articles or things which are not yet classified, the adjudication committee is of the view will be classified as contemplated in subparagraph (i).”
- (e) by the substitution in subsection (2) for the word “and” at the end of paragraph (a) of the word “or”;
- (f) by the substitution in subsection (4) for paragraph (a) of the following paragraph:  
“(a) the cost of all industrial assets to be acquired by the company, which will be brought into use for that industrial project within **[three]** four years after the date of approval in terms of subsection (5), will exceed R50 million.”;
- (g) by the substitution in subsection (16) for paragraph (a) of the following paragraph:  
“(a) may, after taking into account the recommendations of the adjudication committee, extend the **[three]** four year period contemplated in the definition of ‘industrial asset’ in subsection (1)

by a period not exceeding one year, where an industrial project consists of industrial assets exceeding R1 billion;”;

(2) Subsection (1) shall be deemed to have come into operation on 27 July 2001.

#### **Amendment of section 20 of Act 58 of 1962**

**23.** Section 20 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of this section “assessed loss” means any amount by which the deductions admissible under sections 11 to 19, inclusive, exceeded the income in respect of which they are so admissible **[or, if the context so requires, means an assessed loss as determined under the provisions of section 30]**.”.

#### **Amendment of section 22 of Act 58 of 1962**

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

- (a) by the deletion in subsection (8) for the word “or” at the end of paragraph (b) to the proviso;
- (b) by the addition in subsection (8) of the word “or” at the end of paragraph (c) of the proviso;
- (c) by the addition to the proviso to subsection (8) of the following paragraph:

“(d) such trading stock consists of assets in respect of which any amount received or accrued from the disposal thereof is or will be included in the gross income of the taxpayer in terms of paragraph (jA) of the definition of ‘gross income’, the provisions of paragraph (b)iv shall not apply.”.

(2) Subsection (1) shall be deemed to have come into operation on 12 December 2001.

## **Amendment of section 24F of Act 58 of 1962**

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

(a) by the insertion in subsection (1) after the definition of “completion date” of the following definition:

“export’ in relation to a film, means sell and consign or sell and deliver to any purchaser at any address in any export country, or the exploitation of the film by the film owner in an export country and any derivative of ‘export’ shall be construed accordingly.”;

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

“export country’ means any country other than the Republic or a neighbouring country.”;

(c) by the insertion in subsection (1) after the definition of “production cost” of the following definition:

“marketing expenditure’ means so much of the expenditure incurred by the film owner during the year of assessment to market a South African export film and allowed to be deducted from his income under section 11 as is proved to the satisfaction of the Commissioner to have been incurred directly—

(a) in research into or obtaining information (including the remuneration of consultants, agents or representatives) in regard to the marketing of that film in any export country;

(b) in advertising or otherwise securing publicity for that film in an export country (excluding expenditure incurred in sponsoring or promoting any sporting or any other event in a country other than an export country) or in soliciting orders for that film in, or participating in trade fairs in, export countries;

(c) in providing without charge samples or technical information in respect of that film to prospective customers in any export country;

(d) in bringing prospective customers from any export country to the Republic;

- (e) in connection with the preparation or submission of tenders or quotations in respect of that film to be exported to any export country;
- (f) in respect of commission or other remuneration for orders for that film exported to any export country or the clearing or forwarding of that film in that country;
- (g) by way of certification fees charged by the South African Certification Authority in respect of that film which has been exported;
- (h) by way of expenditure (including search and application fees) incurred in obtaining in any export country the registration of any patent or the restoration of any patent or the registration of any design or trade mark or the extension of the term or registration period of, or the renewal of the registration of, any patent, design or trade mark;
- (i) in connection with the design of any special label or packaging used for that film, if the Commissioner is satisfied that the requirements as to the labeling or packaging of that film differ materially from, or are additional to, the requirements of the South African market; and
- (j) by way of membership fees of any institution or body which—
- (i) is actively engaged in export promotion of films;
- (ii) does not receive financial support from the State; and
- (iii) is approved by the Director-General of Trade and Industry.”;
- (d) by the substitution for the words preceding paragraph (a) of subsection (7) of the following subsection:
- “(7) The amount of any print cost or any marketing expenditure **[contemplated in section 11bis]** which may be allowed under the provisions of section 11 shall not in the aggregate exceed the total of—“;
- (e) by the substitution for subsection (8) of the following subsection:
- “(8) For the purposes of subsections (4) and (7), a film owner shall be deemed to be at risk to the extent that the payment of the production cost, post-production cost, print cost or marketing expenditure **[(as contemplated in section 11bis)]** incurred by him, or the repayment of any loan or credit used by him for the payment or financing of any such production cost, post-production cost, print cost or marketing expenditure, would (having regard to any transaction, agreement, arrangement, understanding or scheme entered

into before or after such production cost, post-production cost, print cost or marketing expenditure is incurred) result in an economic loss to him were no income to be received by or accrue to him in future years from the exploitation by him of the film.”; and

(f) by the deletion of subsections (9), (10) and (11).

#### **Amendment of section 24H of Act 58 of 1962**

26. Section 24H of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(3) Notwithstanding anything to the contrary in this Act contained, the amount of any allowance or deduction which may be granted to any taxpayer under any provision of this Act **[other than section 11bis]** in respect of or in connection with any trade or business carried on by him in a partnership in relation to which he is a limited partner shall not in the aggregate exceed the sum of—”.

#### **Amendment of section 24I of Act 58 of 1962**

***(Alternative option: Comments required whether “spot rate” should be replaced by “average exchange rate”)***

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

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

“‘foreign currency’ in relation to any exchange item of a person, means any currency which is not local currency **[in relation to<sup>3/4</sup>**

**(a) a any permanent establishment of a person, any currency which is not legal tender in the country in which that permanent establishment is situated;**

- (b) any resident in respect of any exchange item which is not attributable to a permanent establishment outside the Republic, any currency which is not legal tender in the Republic;
- (c) any company or trust which is not a resident in respect of any exchange item which is not attributable to a permanent establishment of that company or trust, any currency which is not legal tender in the country in which that company is incorporated or trust is formed;]”;
- (b) by the substitution in subsection (1) for the definition of “local currency” of the following definition:
- “local currency’ means in relation to—
- (a) any exchange item which is attributable to any permanent establishment of a person, [any] the currency [which is legal tender in the country in which that permanent establishment is situated] used by that permanent establishment for purposes of financial reporting; or
- (b) any resident in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, any currency which is legal tender in the Republic;
- [(c) any company or trust which is not a resident in respect of any exchange item which is not attributable to a permanent establishment, any currency which is legal tender in the country in which that company is incorporated or trust is formed;]”;**
- (c) by the deletion in subsection (1) of the word “or” at the end of paragraph (b) of the definition of “realised” and the addition of the word “or” at the end of paragraph (c) of that definition;
- (d) by the addition in subsection (1) to the definition of “realised” of the following paragraph:
- “(d) an amount which constitutes a unit of currency, when that amount is disposed of.”;

- (e) by the substitution in subsection (1) for item (bb) of subparagraph (ii) of paragraph (c) of the definition of “ruling exchange rate” of the following item:
- “(bb) in relation to a foreign currency option contract which is an affected contract, the rate obtained by dividing any amount included or deducted, as the case may be, in terms of subsection ~~[(4)(a)] (3)(b)~~ by the foreign currency amount, as specified in such affected contract;”;
- (f) by the insertion in subsection (1) before the proviso to the definition of “ruling exchange rate” of the following paragraph:
- “(d) ~~an amount which constitutes a unit of currency, on—~~
- (i) ~~transaction date, the spot rate on that date;~~
- (ii) ~~the date it is translated, the spot rate on that date; or~~
- (iii) ~~the date it is realised, the spot rate on that date.”;~~
- (g) by the deletion in subsection (1) of the word “and” at the end of paragraph (e) of the definition of “transaction date” and by the addition of the word “and” at the end of paragraph (f) of that definition;
- (h) by the addition in subsection (1) to the definition of “transaction date” of the following paragraph:
- “(g) ~~an amount which constitutes a unit of currency, the date on which~~  
~~that amount was acquired.”;~~
- (i) by the deletion in subsection (2) of the word “and” at the end of paragraph (b);
- (j) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
- “(c) natural person who holds any amount contemplated in paragraph (a) or (b) of the definition of “exchange item” **[for purposes of trade]** as trading stock; and”;
- (k) by the addition to subsection (2) of the following paragraph:
- “(d) natural person or trust in respect of any amount contemplated in paragraph (c) or (d) of the definition of “exchange item.””;
- (l) by the deletion of subsection (4);



(m) by the substitution for subsections (10), (11) and (12) of the following subsections:

“(10) No **[deduction shall be allowed]** amount shall be included in or deducted from the income of any person in terms of this section in respect of any exchange difference determined on the translation of an exchange item arising from a transaction entered into by **[such]** that person—

(a) with any controlled foreign **[entity]** company in relation to that person **[or any connected person in relation to that controlled foreign entity, to the extent that the income attributable to that transaction is not included in the net income of that controlled foreign entity for purposes of section 9D];** or

(b) where that person is a company, with any other company which is a controlled group company in relation to the controlling group company of that person:

Provided that where that exchange item is realised during any year of assessment, the exchange difference in respect of that exchange item shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the date on which that exchange item is realised and the ruling exchange rate on transaction date, after taking into account any exchange difference included in or deducted from the income of that person in terms of this section.”.

(11) No amount shall be included in or deducted from the income of a person in terms of this section in respect of any exchange difference arising from—

(a) any amount owing by a person in respect of a loan, advance or debt incurred by that person in foreign currency to acquire any asset, other than an asset—

(i) which constitutes an exchange item; or

(ii) **[to]** in respect of which the provisions of section 9G or paragraph [43(1) or (2)] 43(2)(a) or 43(4) of the Eighth Schedule applies; and

(b) any forward exchange contract or foreign currency option contract entered into to hedge such loan, advance or debt.

(12) Where a person holds any **[amount contemplated in paragraph (a), (b), (c) or (d) of the definition of ‘exchange item’ otherwise than as trading stock]** exchange item and the provisions of this section at any time during a year of assessment—

(a) become applicable to that person, that **[amount]** exchange item shall be deemed to **[be an exchange item which has]** have been acquired at that time for the purposes of this section; or

(b) cease to apply to that person, that **[amount]** exchange item shall be deemed to **[be an exchange item which has]** have been realised at that time for the purposes of this section.”.

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

#### **Substitution of section 25D of Act 58 of 1962**

28. Section 25D of the Income Tax Act, 1962, is hereby substituted as follows:

##### **“Determination of taxable income 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]** a person during any year of assessment from amounts received by or accrued to, or expenditure incurred by, that person which are denominated in any currency other than currency of the Republic. shall be determined—

(a) \_\_\_\_\_ in that currency; or

**[(a)](b)** where **[such]** that income is attributable to a permanent establishment of that **[resident]** person outside the Republic, be determined in the **[relevant]** currency **[of the country in which that permanent establishment is situated, if the financial records of that permanent establishment are kept in that currency, 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 as the Commissioner may approve taking into account the ruling exchange rates during such year of assessment, shall be applied to determine the value of the amount of the taxable income so derived] used by that permanent establishment for purposes of financial reporting,

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

**[(b) in any other case, be determined in the currency of the Republic].”.**

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

#### **Amendment of section 27 of Act 58 of 1962**

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

“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 section 11bis]** 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 29A of Act 58 of 1962**

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

#### **Amendment of section 30 of Act 58 of 1962**

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

(a) by the substitution for subparagraph (f) of paragraph (5) of the following subparagraph:

“(f) the Commissioner is satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph [(b)]10(iii) of [the definition of “public benefit activity] Part 1 of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which it has been provided; and”;

(b) by the deletion of subsections (10) and (11).

(2) Subsection (1) shall be deemed to have come into operation on 5 August 2002.

#### **Amendment of section 35 of Act 58 of 1962**

32. Section 35 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) Any person (other than a resident or a controlled foreign company) by whom any amount is received or to whom any amount accrues by virtue of—”.

#### **Amendment of section 38 of Act 58 of 1962**

33. Section 38 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (i) of the following paragraph:

- “(i) any [unit] portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of “company” in section one.”.

### **Substitution of Part III of Chapter II of Act 58 of 1962**

34. Part III of Chapter II of the Income Tax Act, 1962, is hereby substituted as follows:

#### **“PART III**

*Special rules relating to company formations, share-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions and liquidation distributions.*

#### **General**

41. (1) For the purposes of this Part, unless the context otherwise indicates, any word or expression that has been defined in section 1, shall bear the same meaning so defined, and—

‘allowance asset’ means a capital asset qualifying for a deduction or allowance under the provisions of the Act;

‘asset’ means an asset as defined in paragraph 1 of the Eighth Schedule;

‘base cost’ means the base cost as defined in paragraph 1 of the Eighth Schedule;

‘capital asset’ means an asset as defined in paragraph 1 of the Eighth Schedule, which does not constitute trading stock;

‘domestic financial instrument holding company’ means any company which is a resident, where more than 50 per cent of the market value or actual cost of all the assets of that company together with any controlled group company in relation to that company is attributable to financial instruments, other than—

- (a) a financial instrument that constitutes a debt due to that company (or to any controlled group company in relation to that company) in respect of goods

sold or services rendered by that company where the amount of that debt is or was included in the income of that company (or of any controlled group company in relation to that company) and that debt is an integral part of a business conducted by that company as a going concern; or

(b) a financial instrument of any company regulated in terms of—

- (i) the Banks Act, 1990 (Act No.94 of 1990);
- (ii) the Financial Markets Control Act, 1989 (Act No.55 of 1989);
- (iii) the Long Term Insurance Act, 1998 (Act No.52 of 1998);
- (iv) the Short Term Insurance Act, 1998 (Act No.53 of 1998);
- (v) the Stock Exchanges Control Act, 1985 (Act No.1 of 1985);or
- (vi) the Unit Trusts Control Act, 1981 (Act No.54 of 1981), or its successor the Collective Investment Schemes Act, 2002 (Act No. ?? of 2002).

Provided that in determining the 50 per cent ratio, the following will be wholly disregarded—

- (i) any share of a controlled group company in relation to that company; and
- (ii) any financial instrument which constitutes a loan, advance or debt if both the debtor and creditor companies are members within the same group of companies;

‘disposal’ means a disposal as defined in paragraph 1 of the Eighth Schedule;

‘equity share’ in relation to a company, means a share in the equity share capital of that company or a member’s interest in a company which is a close corporation;

‘hold’ in relation to an equity share means the holding, by a person, of an equity share in such manner that that person qualifies as a ‘shareholder’ as defined in this subsection;

‘listed company’ means a company as contemplated in paragraph (a) of the definition of ‘listed company’ in section 1;

‘market value’ in relation to an asset means the price which could be obtained upon a sale of that asset between a willing buyer and a willing seller dealing at arm’s length in an open market; and

'qualifying interest' of any person means equity shares held by that person in a company, which—

(a) is a listed company or will become a listed company within twelve months after that transaction ; or

(b) in any other case, constitute more than 25 per cent of the equity shares of that company ;

'shareholder' in relation to an equity share, means the registered shareholder of that equity share, unless a person other than that registered shareholder is entitled to all or part of the benefit of the rights of participation in the profits or income attaching to that equity share, in which case that person must, to the extent of that entitlement to that benefit, be deemed to be the shareholder;

'unlisted company' means any company which is not a listed company as defined in this subsection.

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

(3) Any person who acquires or disposes of any asset in terms of any transaction in respect of which the provisions of this Part apply, must provide full particulars relating to that transaction to the Commissioner, in such form as the Commissioner may prescribe, in the return furnished by that person for the year of assessment in which that transaction takes effect.

(4) A company must for the purposes of this Part, be deemed to have taken steps to liquidate, wind up or deregister a company, where—

(a) in the case of a liquidation or winding-up—

(i) that company has lodged a resolution authorising the voluntary liquidation or winding-up of that company, for registration in terms of—

(aa) section 200 of the Companies Act, 1973 (Act No. 61 of 1973), in the case of a company registered in terms of that Act;





the end of the period contemplated in regulation 3, have been submitted or furnished or arrangements have been made with the Commissioner for the submission of any outstanding returns or furnishing of information.

(5) The Minister may prescribe by regulation the circumstances under which prior written approval of the Commissioner must be obtained or may be elected to be obtained in respect of any company formation transaction, share-for-share transaction, intra-group transaction, unbundling transaction or liquidation distribution before the provisions of this Part must apply in respect of that transaction, transfer or distribution.

(6) Particulars of any election exercised in terms of this Part must be submitted to the Commissioner in such form as the Commissioner may prescribe.

### **Company Formations**

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

‘company formation transaction’ means a transaction—

- (a) in terms of which a person (other than a trust which is not a special trust) transfers an asset, the market value of which exceeds
  - (i) in the case of an asset held as a capital asset, the base cost of that asset on the date of that disposal; or
  - (ii) in the case of an asset held as trading stock, the amount taken into account in respect of that asset in terms of sections 11(a) or 22(1) or (2),to a company which is a resident, in exchange for an equity share or shares of that company and that person, at the close of the day during which that transaction is effected, holds a qualifying interest in that company ;
- (b) as a result of which that company acquires that asset from that person—
  - (i) as a capital asset or as trading stock, where that person holds it as a capital asset ; or
  - (ii) as trading stock, where that person holds it as trading stock; and

(c) in respect of which that person and that company have jointly elected that this section applies.

(2) Subject to subsections (4) and (8), where a person disposes of an asset to a company in terms of a company formation transaction,

(a) that person must be deemed to have—

(i) disposed of that asset for an amount equal to the amount contemplated in subparagraphs (i) or (ii) of paragraph (a) of the definition of “company formation transaction”, as the case may be; and

(ii) acquired the equity shares in that company on the date that such person acquired that asset and for a cost equal to the amount referred to in subparagraph (i), which amount must, where those equity shares are acquired as—

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

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

(b) that person and that company must, for purposes of determining—

(i) any taxable income derived by that company from a trade carried on by it; or

(iii) any capital gain or capital loss in respect of a disposal of that asset by that company,

be deemed to be one and the same person with respect to—

(aa) where that asset is acquired by that company as a capital asset from that person who disposes of it as a capital asset—

(A) the date of acquisition of that asset by that person and the amount and date of incurral by that person of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and

- (B) any valuation of that asset effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule;
  - (bb) where that asset is acquired by that company as trading stock from that person who disposes of it as trading stock, the date of acquisition of that asset by that person and the amount and date of incurral by that person of any cost or expenditure incurred in respect of that asset as contemplated in sections 11(a) or 22(1) or (2); or
  - (cc) where that asset is acquired by that company as trading stock from that person who disposes of it as a capital asset—
    - (A) the date of acquisition of that asset by that person and the amount and date of incurral by that person of any expenditure allowable in terms of paragraph 20 of the Eighth Schedule; or
    - (B) where that person has valued that asset as contemplated in paragraph 29(4) of the Eighth Schedule, the amount of the market value so determined ,  
which amount must, notwithstanding paragraph 25 of the Eighth Schedule, be treated as the amount to be taken into account by that company in respect of that asset for purposes of sections 11(a) or 22(1) or (2).
- (3) Subject to subsection (4), where a person disposes of—
- (a) an asset that constitutes an allowance asset in that person's hands to a company as part of a company formation transaction and that company acquires that asset as an allowance asset—
    - (i) no allowance allowed to that person in respect of that asset must be recovered or recouped by that person or included in that person's income for the year of that transfer; and
    - (ii) that person and that company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
      - (aa) to which that company may be entitled in respect of that asset; or



purposes of this section, and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b), be deemed to be a disposal of part of that asset other than in terms of a company formation transaction, in which case the amount to be determined in respect of—

- (i) in the case of a disposal of a capital asset, the base cost of that asset at the time of that disposal; or
- (ii) in the case of a disposal of an allowance asset, the amount of the allowances allowed to that person in respect of that asset; or
- (iii) in the case of the disposal of an asset that constitutes trading stock, the amount taken into account in respect of that asset in terms of sections 11(a) or 22(1) or (2),

that must be attributed to the part of the asset deemed to have been disposed of other than in terms of a company formation transaction, must bear the same ratio to the total amount referred to in subparagraphs (i) to (iii) as the amount of the consideration not consisting of equity shares issued by that company bears to the amount of the full consideration in respect of that asset.

(5) Where a person—

- (a) acquired any equity share in a company in terms of a company formation transaction; and
- (b) disposes of any such equity share (other than by way of involuntary disposal, as contemplated in paragraph 65 of the Eighth Schedule, an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47 or the death of that person) within a period of 18 months after the date of acquisition contemplated in paragraph (a) and at the time of that disposal more than 50 per cent of the market value of all the assets disposed of by that person to that company in terms of any transaction in respect of which the provisions of this Part apply, is attributable to allowance assets or trading stock or both,

that person must be deemed to have disposed of that share as trading stock.

(6) Where a person disposed of any asset in terms of a company formation transaction and that person ceases to hold a qualifying interest in that company, as contemplated in paragraph (b) of the definition of 'qualifying interest' in

subsection (1), within a period of 18 months after the date of the disposal of that asset (whether or not by way of the disposal of any shares in that company), that person must for purposes of subsection (5), section 22 or the Eighth Schedule be deemed to have—

- (a) disposed of all the equity shares acquired in terms of that company formation transaction which were not disposed of immediately before that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares on the date that those equity shares were acquired in terms of the company formation transaction; and
- (b) immediately reacquired all the equity shares not disposed of immediately after that person ceased to hold a qualifying interest at a cost equal to the amount contemplated in paragraph (a):

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in that company in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or as the result of the death of that person.

(7) Where a company disposes of an asset (other than by way of an involuntary disposal, as contemplated in paragraph 65 of the Eighth Schedule, an intra-group transaction as contemplated in section 45 or a liquidation distribution as contemplated in section 47) within a period of 18 months after acquiring that asset in terms of a company formation transaction, and—

- (a) that asset constitutes a capital asset, a capital gain determined in respect of the disposal of that asset may not be taken into account in determining any net capital gain or assessed capital loss of that company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that company; or
- (b) that asset constitutes—
  - (i) trading stock in the hands of that company, the amount received or accrued in respect of the disposal of that trading stock and the

amount taken into account in respect of that trading stock in terms of sections 11(a) or 22(1) or (2); or

- (ii) an allowance asset in the hands of that company, any allowance in respect of that asset that is recovered or recouped by or included in the income of that company as a result of that disposal, must be deemed to be attributable to a separate trade carried on by that company, the taxable income from which trade may not be set off against any assessed loss or balance of assessed loss of that company.

(8) Where a person disposes of—

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

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

- (ii) within a period of 18 months before that disposal—

- (aa) and that debt was incurred at the same time as that asset was acquired by that person; or

- (bb) to the extent that debt constitutes the refinancing of any debt in respect of that asset incurred as contemplated in subparagraph (i) or item (aa) of subparagraph(ii),

and that company assumes that debt or an equivalent amount of debt that is secured by that asset; or

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

that person must, notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraphs (a) or (b), add the face value of that debt to the proceeds or the amount to be included in that person's income when that person disposes of that equity share.

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

- (a) that financial instrument constitutes a debt due to that person in respect of goods sold or services rendered by that person in the course of carrying on any business where the amount of that debt is or was included in the income of that person and that debt is transferred as an integral part of a going concern; or
- (b) the total market value of all financial instruments so transferred (other than financial instruments contemplated in paragraph (a)), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern; or
- (c) that financial instrument is being transferred to any company regulated in terms of—
  - (i) the Banks Act, 1990 (Act No.94 of 1990);
  - (ii) the Financial Markets Control Act, 1989 (Act No.55 of 1989);
  - (iii) the Long Term Insurance Act, 1998 (Act No.52 of 1998);
  - (iv) the Short Term Insurance Act, 1998 (Act No.53 of 1998);
  - (v) the Stock Exchanges Control Act, 1985 (Act No.1 of 1985); or
  - (vi) the Unit Trusts Control Act, 1981 (Act No.54 of 1981), or its successor the Collective Investment Schemes Act, 2002 (Act No. ?? of 2002).

(10) No election may be made in terms of paragraph (c) of the definition of 'company formation transaction' in subsection (1) in respect of the disposal of any asset by a company where that asset was acquired by that company in terms of any company formation transaction, unless that asset was held by that company for a period of more than 18 months.



## Share-for-share transactions

43. (1) For the purposes of this section, a 'share-for-share transaction' means any transaction—

(a) in terms of which any person (other than a trust which is not a special trust) disposes of an equity share, the market value of which exceeds—

- (i) in the case of a share held as a capital asset, the base cost of that share on the date of that disposal; or
- (ii) in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of sections 11(a) or 22(1) or (2),

(hereinafter referred to as the 'target share') in a company (hereinafter referred to as the 'target company') to any other company (hereinafter referred to as the 'acquiring company'), which is a resident, in exchange for any equity share or shares issued by that acquiring company to that person; and

(b) that person acquires that share or those shares in the acquiring company—

- (i) where that target share is disposed of as a capital asset, as a capital asset or as trading stock; or
- (ii) where that target share is disposed of as trading stock, as trading stock; and

(c) the acquiring company—

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

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



transaction', which cost must be treated as the amount to be taken into account by that person in respect of those equity shares for purposes of section 11(a) or 22(1) or (2); and

(b) the acquiring company must, where the target company is a listed company and the listed equity shares in that company were acquired by the acquiring company from any shareholder who does not hold more than 25 per cent of the equity share capital of the acquiring company after any transaction referred to in paragraph (b)(i) of the definition of 'share-for-share transaction', be deemed to have acquired those equity shares at a cost equal to the market value of those equity shares; or

(c) that person and the acquiring company must, in any other case, for purposes of determining—

(i) any taxable income derived by the acquiring company from a trade carried on by it; or

(ii) any capital gain or capital loss in respect of a disposal of that equity share by the acquiring company,

be deemed to be one and the same person with respect to—

(aa) where that share is acquired by the acquiring company as a capital asset from that person who disposes of it as a capital asset—

(A) the date of acquisition of that share by that person and the amount and date of incurrence by that person of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and

(B) any valuation of that share effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule;

(bb) where that share is acquired by the acquiring company as trading stock from that person who disposes of it as trading stock, the date of acquisition of that share by that person and the amount and date of incurrence by that person of any cost or expenditure incurred in respect of that asset as contemplated in sections 11(a) or 22(1) or (2);

(cc) where that share is acquired by the acquiring company as trading stock from that person who disposes of it as a capital asset—

(A) the date of acquisition of that share by that person and the amount and date of incurral by that person of any expenditure allowable in terms of paragraph 20 of the Eighth Schedule; or

(B) where that person has valued that share as contemplated in paragraph 29(4) of the Eighth Schedule, the amount of the market value so determined,

which amount must, notwithstanding paragraph 25 of the Eighth Schedule, be treated as the amount to be taken into account by the acquiring company in respect of that share for purposes of sections 11(a) or 22(1) or (2); or

(dd) where that share is acquired by the acquiring company as a capital asset from that person who disposes of it as trading stock, the date of acquisition of that share by that person and the amount of any cost or expenditure incurred by that person in respect of that share as contemplated in sections 11(a) or 22(1) or (2), which amount must, notwithstanding paragraph 25 of the Eighth Schedule, be treated as expenditure actually incurred and paid by the acquiring company in respect of that share for purposes of paragraph 20 of the Eighth Schedule.

(3) Where—

(a) a person disposes of an equity share to a company in terms of a share-for-share transaction; and

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

the disposal of that share to the acquiring company contemplated in paragraph (a) must, to the extent that any equity shares are issued by the acquiring company to that person, be deemed to be a disposal in terms of a share-for-share transaction for purposes of this section, and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b),

be deemed to be a disposal of part of that share other than in terms of a share-for-share transaction, in which case the amount to be determined in respect of—

- (i) in the case of a disposal of a share as a capital asset, the base cost of that share at the time of that disposal; or
- (ii) in the case of the disposal of a share as trading stock, the amount taken into account in respect of that share in terms of sections 11(a) or 22(1) or (2),

that must be attributed to the part of the share deemed to have been disposed of other than in terms of a share-for-share transaction, must bear the same ratio to the total amount contemplated in subparagraphs (i) or (ii) as the amount of the consideration not consisting of equity shares issued by the acquiring company bears to the amount of the full consideration in respect of that share.

(4) Where a person disposed of any equity share in terms of a share-for-share transaction and that person ceases to hold an interest in the acquiring company, as contemplated in paragraph (b)(ii) of the definition of 'share-for-share transaction' in subsection (1), within a period of 18 months after the date of the disposal of that share (whether or not by way of the disposal of any shares in the acquiring company), that person must for purposes of section 22 or the Eighth Schedule be deemed to have—

- (a) disposed of all the equity shares acquired in terms of that share-for-share transaction which were not disposed of immediately before that person ceased to hold such an interest, for an amount equal to the market value of those equity shares on the date that those equity shares were acquired in terms of the share-for-share transaction; and
- (b) immediately reacquired all the equity shares not disposed of immediately after that person ceased to hold such an interest at a cost equal to the amount contemplated in paragraph (a):

Provided that the provisions of this subsection do not apply where that person ceases to hold an interest in the acquiring company, as contemplated in paragraph (b)(ii) of the definition of 'share-for-share transaction' in subsection 1, in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated

in section 47, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or as the result of the death of that person.

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

- (a) disposed of all the equity shares in the target company acquired in terms of that share-for-share transaction which were not disposed of immediately before that acquiring company ceased to hold such an interest, for an amount equal to the market value of those equity shares on the date that those equity shares were acquired in terms of the share-for-share transaction; and
- (b) immediately reacquired all the equity shares not disposed of immediately after that acquiring company ceased to hold such an interest at a cost equal to the amount contemplated in paragraph (a).

Provided that the provisions of this subsection do not apply where that acquiring company ceases to hold an interest in the target company, as contemplated in paragraph (b) of the definition of 'share-for-share transaction', in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, a liquidation distribution contemplated in section 47 or an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule.

(6) Where an acquiring company disposes of an equity share (other than by way of an involuntary disposal, as contemplated in paragraph 65 of the Eighth Schedule, an intra-group transaction as contemplated in section 45 or a liquidation distribution as contemplated in section 47) within a period of 18 months after acquiring that share in terms of a share-for-share transaction and—

- (a) that share constitutes a capital asset, a capital gain determined in respect of the disposal of that share may not be taken into account in determining

any net capital gain or assessed capital loss of that company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that company; or

(b) that share constitutes trading stock in the hands of that company, the amount received or accrued in respect of the disposal of that trading stock and the amount taken into account in respect of that trading stock under sections 11(a) or 22(1) or (2) must be deemed to be attributable to a separate trade carried on by that company, the taxable income from which trade may not be set off against any assessed loss or balance of assessed loss of that company.

(7) The provisions of this section do not apply in respect of the disposal by a person of any equity share in a target company where that target company constitutes a domestic financial instrument holding as defined in section 41 or a foreign financial instrument company as defined in section 9D.

(8) The provisions of this section do not apply in respect of the disposal of any equity share by a company where that equity share was acquired by that company in terms of a share-for-share transaction within a period of 18 months before that disposal.

### **Amalgamation transactions**

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

‘amalgamation transaction’ means any transaction—

- (a) in terms of which any company (hereinafter referred to as the ‘amalgamated company’) which is a resident, disposes of all of its assets and transfers all of its obligations to another company (hereinafter referred to as the ‘resultant company’) which is a resident, by means of an amalgamation, conversion, merger or similar scheme;
- (b) as a result of which that amalgamated company’s existence will be terminated; and

(c) in respect of which that amalgamated company and that resultant company have jointly elected that this section applies;

'equity share' includes a participatory interest in a portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of 'company' in section 1;

'qualifying interest' of any person means—

(a) a qualifying interest as defined in section 41; or

(b) any equity shares held by that person in a resultant company which is a collective investment scheme referred to in paragraph (e)(i) of the definition of 'company' in section 1.

(2) Subject to subsection (9), where an amalgamated company disposes of—

(a) a capital asset in terms of an amalgamation transaction to a resultant company which acquires it as a capital asset—

(i) the amalgamated company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal; and

(ii) that resultant company and that amalgamated company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that resultant company, be deemed to be one and the same person with respect to—

(aa) the date of acquisition of that asset by that amalgamated company and the amount and date of incurral by that amalgamated company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and

(bb) any valuation of that asset effected by that amalgamated company as contemplated in paragraph 29(4) of the Eighth Schedule;

(b) an asset held by it as trading stock in terms of an amalgamation transaction to a resultant company which acquires it as trading stock—

(i) that amalgamated company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by



that amalgamated company in respect of that asset in terms of sections 11(a) or 22(1) or (2); and

- (ii) that amalgamated company and that resultant company must, for purposes of determining any taxable income derived by that resultant company from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that amalgamated company and the amount and date of incurral by that amalgamated company of any cost or expenditure incurred in respect of that asset as contemplated in sections 11(a) or 22(1) or (2).
- (3) Subject to subsection (9), where an amalgamated company transfers—
- (a) an asset that constitutes an allowance asset in that amalgamated company's hands to a resultant company as part of an amalgamation transaction and that resultant company acquires that asset as an allowance asset—
    - (i) no allowance allowed to that amalgamated company in respect of that asset must be recovered or recouped by that amalgamated company or included in that amalgamated company's income for the year of that transfer; and
    - (ii) that amalgamated company and that resultant company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
      - (aa) to which that resultant company may be entitled in respect of that asset; or
      - (bb) that is to be recovered or recouped by or included in the income of that resultant company in respect of that asset;
  - (b) a contract to a resultant company as part of a disposal of a business as a going concern in terms of an amalgamation transaction and that contract imposes an obligation on that amalgamated company in respect of which an allowance in terms of section 24C was allowable to that amalgamated company for the year preceding that in which that contract is transferred or would have been allowable to that amalgamated company for the year of that transfer had that contract not been so transferred—

- (i) no allowance allowed to that amalgamated company in respect of that obligation must be included in that amalgamated company's income for the year of that transfer; and
- (ii) that amalgamated company and that resultant company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
  - (aa) to which that resultant company may be entitled in respect of that obligation; or
  - (bb) that is to be included in the income of that resultant company in respect of that obligation.

(4) Where the resultant company acquires any asset from the amalgamated company in terms of an amalgamation distribution and that resultant company disposes of that asset within a period of 18 months after so acquiring that asset and—

- (a) that asset constitutes a capital asset in the hands of that resultant company—
  - (i) a capital gain determined in respect of the disposal of that asset may not be taken into account in determining any net capital gain or assessed capital loss of that resultant company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that resultant company; or
  - (ii) a capital loss determined in respect of the disposal of that asset must be disregarded in determining the aggregate capital gain or aggregate capital loss of that resultant company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that resultant company from that amalgamated company in terms of that amalgamation distribution; or
- (b) that asset constitutes—

- (i) trading stock in the hands of that resultant company, the amount received or accrued in respect of the disposal of that trading stock and the amount taken into account in respect of that trading stock in terms of sections 11(a) or 22(1) or (2); or
- (ii) an allowance asset in the hands of that resultant company, any allowance in respect of that asset that is recovered or recouped by or included in the income of that resultant company as a result of that disposal,

must be deemed to be attributable to a separate trade carried on by that resultant company, the taxable income or assessed loss from which trade may not be set off against or added to any assessed loss or balance of assessed loss of that resultant company.

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

- (a) in the case of a share held as a capital asset, the base cost of that share on the date of that disposal; or
- (b) in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of sections 11(a) or 22(1) or (2),

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

- (i) acquires that share or those shares in the resultant company—
  - (aa) where that share in the amalgamated company is disposed of as a capital asset, as a capital asset or as trading stock; or
  - (bb) where that share in the amalgamated company is disposed of as trading stock, as trading stock; and
- (ii) at the close of the day during which that disposal is effected, holds a qualifying interest in that resultant company, that person must be deemed to have—
  - (aa) disposed of the equity share in that amalgamated company for an amount equal to the amount contemplated in subparagraphs (a) or (b), as the case may be; and

(bb) acquired the equity share or shares in that resultant company on the date that such person acquired that equity share in the amalgamated company and for a cost equal to the amount referred to in subparagraph (i), which cost must, where those equity shares are acquired as—

- (A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and
- (B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of sections 11(a) or 22(1) or (2).

(6) Where—

- (a) a person disposes of an equity share in an amalgamated company; and
- (b) that person becomes entitled, in exchange for that share, to any consideration in addition to any equity shares in the resultant company,

the disposal of that share in the amalgamated company contemplated in paragraph (a) must, to the extent that that person becomes entitled to any equity shares in that resultant company, be deemed to be a disposal in respect of which subsection (5) applies (hereinafter referred to as the qualifying transaction), and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b), be deemed to be a disposal of part of that share in respect of which subsection (5) does not apply (hereinafter referred to as the non-qualifying transaction), in which case the amount to be determined in respect of—

- (i) in the case of a disposal of a share as a capital asset, the base cost of that share at the time of that disposal; or
- (ii) in the case of the disposal of a share as trading stock, the amount taken into account in respect of that share in terms of sections 11(a) or 22(1) or (2),

that must be attributed to the part of the share deemed to have been disposed of in terms of the non-qualifying transaction, must bear the same ratio to the total amount contemplated in subparagraphs (i) or (ii) as the amount of the

consideration not consisting of equity shares in that resultant company bears to the amount of the full consideration in respect of that share.

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

- (a) disposed of all the equity shares in the resultant company acquired in terms of that qualifying transaction which were not disposed of immediately before that person ceased to hold such an interest, for an amount equal to the market value of those equity shares on the date that those equity shares were acquired in terms of that qualifying transaction; and
- (b) immediately reacquired all the equity shares not disposed of immediately after that person ceased to hold such an interest at a cost equal to the amount contemplated in paragraph (a):

Provided that the provisions of this subsection do not apply where that person ceases to hold an interest in that resultant company, as contemplated in the definition of 'qualifying interest' in subsection (1), in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or as the result of the death of that person.

(8) No election may be made in terms of paragraph (c) of the definition of 'amalgamation transaction' in subsection (1) in respect of the disposal of any asset where—

- (a) that asset constitutes a financial instrument as defined in paragraph 1 of the Eighth Schedule, unless—
  - (i) that financial instrument constitutes a debt due to that amalgamated company in respect of goods sold or services rendered by that amalgamated company in the course of carrying

on any business where the amount of that debt is or was included in the income of that amalgamated company and that debt is transferred as an integral part of a going concern;

(ii) the total market value of all financial instruments so transferred (other than financial instruments contemplated in paragraph (i)), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern; or

(iii) that financial instrument is being transferred to any resultant company regulated in terms of—

(aa) the Banks Act, 1990 (Act No.94 of 1990);

(bb) the Financial Markets Control Act, 1989 (Act No.55 of 1989);

(cc) the Long Term Insurance Act, 1998 (Act No.52 of 1998);

(dd) the Short Term Insurance Act, 1998 (Act No.53 of 1998);

(ee) the Stock Exchanges Control Act, 1985 (Act No.1 of 1985); or

(ff) the Unit Trusts Control Act, 1981 (Act No.54 of 1981), or its successor the Collective Investment Schemes Act, 2002 (Act No. xx of 2002); or

(b) all the receipts and accruals of the resultant company are exempt from tax in terms of section 10.

(9) The provisions of subsections (3) and (4) do not apply where the amalgamated company has not, within a period of six months after the date of the amalgamation transaction, taken the steps contemplated in section 41(4) to liquidate, wind up or deregister.

### **Intra-group transactions**

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

‘intra-group transaction’ means a transaction—

(a) in terms of which any asset is disposed of by one company (hereinafter referred to as the ‘transferor company’) to another company which is a resident (hereinafter referred to as the ‘transferee company’) and both

- companies form part of the same group of companies on the date of that transaction;
- (b) as a result of which that transferee company acquires that asset from that transferor company—
    - (i) as a capital asset, where that transferor company holds it as a capital asset ; or
    - (ii) as trading stock, where that transferor company holds it as trading stock; and
  - (c) in respect of which that transferor company and that transferee company have jointly elected that this section applies.
- (2) Where a transferor company disposes of—
- (a) a capital asset in terms of an intra-group transaction to a transferee company which acquires it as a capital asset—
    - (i) the transferor company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal; and
    - (ii) that transferor company and that transferee company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that transferee company, be deemed to be one and the same person with respect to—
      - (aa) the date of acquisition of that asset by that transferor company and the amount and date of incurral by that transferor company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and
      - (bb) any valuation of that asset effected by that transferor company as contemplated in paragraph 29(4) of the Eighth Schedule;
  - (b) an asset held by it as trading stock in terms of an intra-group transaction to a transferee company which acquires it as trading stock—
    - (i) that transferor company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that

transferor company in respect of that asset in terms of sections 11(a) or 22(1) or (2); and

- (ii) that transferor company and that transferee company must, for purposes of determining any taxable income derived by that transferee company from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that transferor company and the amount and date of incurral by that transferor company of any cost or expenditure incurred in respect of that asset as contemplated in sections 11(a) or 22(1) or (2).
- (3) Where a transferor company transfers—
- (a) an asset that constitutes an allowance asset in that transferor company's hands to a transferee company as part of an intra-group transaction and that transferee company acquires that asset as an allowance asset—
    - (i) no allowance allowed to that transferor company in respect of that asset must be recovered or recouped by that transferor company or included in that transferor company's income for the year of that transfer; and
    - (ii) that transferor company and that transferee company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
      - (aa) to which that transferee company may be entitled in respect of that asset; or
      - (bb) that is to be recovered or recouped by or included in the income of that transferee company in respect of that asset;
  - (b) a contract to a transferee company as part of a disposal of a business as a going concern in terms of an intra-group transaction and that contract imposes an obligation on that transferor company in respect of which an allowance in terms of section 24C was allowable to that transferor company for the year preceding that in which that contract is transferred or would have been allowable to that transferor company for the year of that transfer had that contract not been so transferred—



- (i) no allowance allowed to that transferor company in respect of that obligation must be included in that transferor company's income for the year of that transfer; and
- (ii) that transferor company and that transferee company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
  - (aa) to which that transferee company may be entitled in respect of that obligation; or
  - (bb) that is to be included in the income of that transferee company in respect of that obligation.

(4) Where an asset is disposed of by a transferor company to a transferee company in terms of an intra-group transaction and the transferor company and the transferee company at any time thereafter, before the disposal by the transferee company of that asset, are no longer part of any group of companies in relation to each other, that transferee company must be deemed to have disposed of that asset for an amount equal to the market value of that asset on the date on which that asset was acquired in terms of that intra-group transaction and as having immediately reacquired that asset for a cost equal to that market value: Provided that where the transferor company or transferee company is liquidated or deregistered as contemplated in section 47, the holding company and the liquidating company, as contemplated in that section, must be deemed to be one and the same company for purposes of this subsection.

(5) Where a transferee company disposes of an asset (other than by way of an involuntary disposal, as contemplated in paragraph 65 of the Eighth Schedule, an amalgamation transaction contemplated in section 44, an intra-group transaction as contemplated in this section or a liquidation distribution as contemplated in section 47) within a period of 18 months after acquiring that asset in terms of an intra-group transaction and—

- (a) that asset constitutes a capital asset in the hands of that transferee company—
  - (i) a capital gain determined in respect of the disposal of that asset may not be taken into account in determining any net capital gain or assessed capital loss of that transferee company but is subject to

paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that transferee company; or

- (ii) a capital loss determined in respect of the disposal of that asset must be disregarded in determining the aggregate capital gain or aggregate capital loss of that transferee company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that transferee company from the transferor company in terms of an intra-group transaction; or

(b) that asset constitutes—

- (i) trading stock in the hands of that transferee company, the amount received or accrued in respect of the disposal of that trading stock and the amount taken into account in respect of that trading stock in terms of sections 11(a) or 22(1) or (2); or
- (ii) an allowance asset in the hands of that transferee company, any allowance in respect of that asset that is recovered or recouped by or included in the income of that transferee company as a result of that disposal,

must be deemed to be attributable to a separate trade carried on by that transferee company, the taxable income or assessed loss from which trade may not be set off against any assessed loss or balance of assessed loss of that transferee company.

(6) No election may be made in terms of paragraph (c) of the definition of 'intra-group transaction' in subsection (1) in respect of the disposal of any asset where—

- (a) that asset constitutes a financial instrument as defined in paragraph 1 of the Eighth Schedule, unless—
  - (i) that financial instrument constitutes a debt due to that transferor company in respect of goods sold or services rendered by that

transferor company in the course of carrying on any business where the amount of that debt is or was included in the income of that transferor company and that debt is transferred as an integral part of a going concern;

- (ii) the total market value of all financial instruments so transferred (other than financial instruments contemplated in paragraph (i)), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern; or
  - (iii) that financial instrument is being transferred to any transferee company regulated in terms of—
    - (aa) the Banks Act, 1990 (Act No.94 of 1990);
    - (bb) the Financial Markets Control Act, 1989 (Act No.55 of 1989);
    - (cc) the Long Term Insurance Act, 1998 (Act No.52 of 1998);
    - (dd) the Short Term Insurance Act, 1998 (Act No.53 of 1998);
    - (ee) the Stock Exchanges Control Act, 1985 (Act No.1 of 1985); or
    - (ff) the Unit Trusts Control Act, 1981 (Act No.54 of 1981), or its successor the Collective Investment Schemes Act, 2002 (Act No. xx of 2002); or
  - (iv) that financial instrument constitutes an equity share in a controlled group company in relation to that transferor company and that controlled group company is not a domestic or foreign financial instrument holding company; or
- (b) all the receipts and accruals of the transferee company are exempt from tax in terms of section 10.

### **Unbundling transactions**

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

‘unbundling transaction’ means any disposal in terms of which—

- (a) all the equity shares (hereinafter referred to as the ‘distributable shares’) in a company (hereinafter referred to as the ‘unbundled company’) which is a resident, that—

- (i) are held by a company (hereinafter referred to as the 'unbundling company') which is a resident; and
  - (ii) were acquired by that unbundling company—
    - (aa) at least 18 months before the time of that disposal; or
    - (bb) in terms of a substitution, as contemplated in paragraph 78(2) of the Eighth Schedule, of any equity shares contemplated in item (aa); or
    - (cc) in terms of any transaction contemplated in this Part or an unbundling transaction contemplated in section 60 of the Income Tax Act, 1993 (Act No. 113 of 1993), or a rationalisation scheme contemplated in section 39 of the Taxation Laws Amendment Act, 1994 (Act No. 20 of 1994); and
  - (iii) constitute, immediately prior to that disposal—
    - (aa) where that unbundled company is a listed company—
      - (A) more than 25 per cent of the equity shares of that unbundled company, in the case where no other shareholder holds an equal or greater amount of equity shares in that unbundled company; or
      - (B) in any other case, at least 35 per cent of the equity shares of that unbundled company; or
    - (bb) where that unbundled company is an unlisted company, more than 50 per cent of the equity shares of that unlisted unbundled company; and
  - (iv) where that unbundled company is an unlisted company and that unbundling company is a listed company, those distributable shares are, in pursuance of that transaction, to be listed within twelve months after that disposal;
- (b) are disposed of—
- (i) where that unbundling company is a listed company, to the shareholders of that unbundling company; or
  - (ii) where that unbundling company is an unlisted company, to any shareholder of that unbundling company that is company and that

forms part of the same controlled group of companies as that unbundling company,

in accordance with the effective interest of those shareholders or that shareholder, as the case may be, in those distributable shares.

(2) Where an unbundling company disposes of any distributable shares to a shareholder in terms of an unbundling transaction that unbundling company must be deemed to have disposed of those shares for proceeds equal to—

- (a) in the case of shares held as capital assets, the base cost of those shares on the date of that disposal; or
- (b) in the case of shares held as trading stock, the amount taken into account in respect of those shares in terms of sections 11(a) or 22(1) or (2).

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

- (a) that shareholder must be deemed to have acquired the equity shares held in the unbundling company (hereinafter referred to as the 'previously held shares') and those distributable shares at a cost equal to—
  - (i) where the previously held shares were held by that shareholder as trading stock, the amount taken into account by that person in respect of the previously held shares as contemplated in sections 11(a) or 22(1) or (2); or
  - (ii) where the previously held shares were held by that shareholder as capital assets, the expenditure in respect of those shares allowable in terms of paragraph 20 of the Eighth Schedule, or the amount of the market value of those shares determined by that shareholder as contemplated in paragraph 29(4) of the Eighth Schedule; and
- (b) that shareholder must determine the portion of the cost contemplated in paragraph (a) that must be attributed to those distributable shares, by determining an amount which bears to that cost the same ratio that the market value of those distributable shares, as at the close of the day after the date of that disposal, bears to the sum of the market values, as at the close of that day, of the previously held shares and of those distributable shares, which amount must, where the shareholder held the previously held shares as—

- (i) capital assets and acquired those distributable shares as capital assets, be treated as an expenditure actually incurred and paid by that shareholder in respect of those distributable shares for the purposes of paragraph 20 of the Eighth Schedule; or
  - (ii) trading stock and acquired those distributable shares as trading stock, be treated as the amount to be taken into account by that shareholder in respect of those distributable shares for the purposes of sections 11(a) or 22(1) or (2); and
- (c) that shareholder must determine the portion of the cost contemplated in paragraph (a) that must be attributed, after that unbundling transaction, to the previously held shares, by reducing that cost by the amount determined in terms of paragraph (b);
- (d) that shareholder's previously held shares and those distributable shares must be deemed to be the same shares in respect of the date of acquisition of those shares and the date of incurral of any expenditure in respect of those shares.

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

- (a) in the year of assessment during which that shareholder becomes entitled to dispose of those distributable shares, which portion shall be an amount which bears to such gain the same ratio as that contemplated in paragraph (3)(b); and
- (b) in the year of assessment during which that person becomes entitled to dispose of the previously held shares, which portion shall be calculated by reducing such gain by the amount which has been determined or is to be determined in terms of paragraph (a).

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

- (a) the disposal by that unbundling company of the distributable shares must be deemed not to be a dividend with respect to that unbundling company for the purposes of section 64B(3); and
  - (b) any distributable shares acquired by a company in terms of that disposal must be deemed—
    - (i) not to be a dividend which accrued to that company for the purposes of section 64B(3); and
    - (ii) to be profits which are not of a capital nature for the purposes of section 64B(5)(c).
- (6) Any distributable shares disposed of by an unbundling company in terms of an unbundling transaction, must be deemed to have been disposed of first from the share premium account of that unbundling company.
- (7) The provisions of this section do not apply—
- (a) where the unbundled company is a domestic financial instrument holding; or
  - (b) in respect of any disposal of distributable shares in terms of an unbundling transaction to a shareholder who is not a resident, where that shareholder acquires more than five per cent of those distributable shares.

### **Transactions relating to liquidation, winding-up and deregistration**

- 47.** (1) For the purposes of this section—
- ‘liquidation distribution’ means a disposal
- (a) by a company (hereinafter referred to as the ‘liquidating company’) that is effected in anticipation of or in the course of the liquidation, winding up or deregistration of that company;
  - (b) to a company (hereinafter referred to as the ‘holding company’) which is a resident and which holds, on the date of that disposal, at least 75 per cent of the equity shares of that liquidating company; and
  - (c) in respect of which that liquidating company and that holding company have jointly elected that this section applies in respect of all the assets so disposed of by that liquidating company to that holding company.

- (2) Where a liquidating company disposes of—
- (a) a capital asset in terms of a liquidation distribution to its holding company which acquires it as a capital asset—
    - (i) that liquidating company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of the disposal thereof; and
    - (ii) that liquidating company and that holding company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that holding company, be deemed to be one and the same person with respect to—
      - (aa) the date of acquisition of that asset by that liquidating company and the amount and date of incurrence by that liquidating company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and
      - (bb) any valuation of that asset effected by that liquidating company as contemplated in paragraph 29(4) of the Eighth Schedule; or
  - (b) an asset held by it as trading stock in terms of a liquidation distribution to its holding company which acquires it as trading stock—
    - (i) that liquidating company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that liquidating company in respect of that asset in terms of sections 11(a) or 22(1) or (2), and
    - (ii) that liquidating company and that holding company must, for purposes of determining any taxable income derived by that holding company from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that liquidating company and the amount and date of incurrence by that liquidating company of any cost or expenditure incurred in respect of that asset as contemplated in sections 11(a) or 22(1) or (2).
- (3) Where a liquidating company transfers—



- (a) an asset that constitutes an allowance asset in that liquidating company's hands to its holding company in terms of a liquidation distribution and that holding company acquires that asset as an allowance asset—
- (i) no allowance allowed to that liquidating company in respect of that asset must be recovered or recouped by that liquidating company or included in that liquidating company's income for the year of that transfer; and
  - (ii) that liquidating company and that holding company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
    - (aa) to which that holding company may be entitled in respect of that asset; or
    - (bb) that is to be recovered or recouped by or included in the income of that holding company in respect of that asset; or
- (b) a contract to its holding company as part of a disposal of a business as a going concern in terms of a liquidation distribution and that contract imposes an obligation on that liquidating company in respect of which an allowance in terms of section 24C was allowable to that liquidating company for the year preceding that in which that contract is transferred or would have been allowable to that liquidating company for the year of that transfer had that contract not been so transferred—
- (i) no allowance allowed to that liquidating company in respect of that obligation must be included in that liquidating company's income for the year of that transfer; and
  - (ii) that liquidating company and that holding company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
    - (aa) to which that holding company may be entitled in respect of that obligation; or
    - (bb) that is to be included in the income of that holding company in respect of that obligation.

(4) Where the holding company acquires any asset from the liquidating company in terms of a liquidation distribution and that holding company disposes of that asset within a period of 18 months after so acquiring that asset and—

(a) that asset constitutes a capital asset in the hands of that holding company—

(i) a capital gain determined in respect of the disposal of that asset may not be taken into account in determining any net capital gain or assessed capital loss of that holding company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that holding company; or

(ii) a capital loss determined in respect of the disposal of that asset must be disregarded in determining the aggregate capital gain or aggregate capital loss of that holding company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that holding company from the liquidating company in terms of that liquidation distribution; or

(b) that asset constitutes—

(i) trading stock in the hands of that holding company, the amount received or accrued in respect of the disposal of that trading stock and the amount taken into account in respect of that trading stock in terms of sections 11(a) or 22(1) or (2); or

(ii) an allowance asset in the hands of that holding company, any allowance in respect of that asset that is recovered or recouped by or included in the income of that holding company as a result of that disposal,

must be deemed to be attributable to a separate trade carried on by that holding company, the taxable income or assessed loss from which trade may not be set

off against or added to any assessed loss or balance of assessed loss of that holding company:

(5) Where a holding company disposes of any asset to a liquidating company as a result of the liquidation of that liquidating company, that holding company must be treated to have disposed of that asset for an amount equal to—

- (a) in the case of an asset held as a capital asset, the base cost of that asset on the date of that disposal; or
- (b) in the case of an asset held as trading stock, the amount taken into account in respect of that asset in terms of sections 11(a) or 22(1) or (2).

(6) The provisions of this section do not apply where—

- (a) all the receipts and accruals of the holding company are exempt from tax in terms of section 10;
- (b) the liquidating company constitutes a domestic financial instrument holding as defined in section 41;
- (c) the liquidating company has not, within a period of six months after the date of the liquidation distribution, taken such steps contemplated in section 41(4) to liquidate, wind up or deregister that company: Provided that any tax which becomes payable as a result of the application of this paragraph shall be recoverable from the holding company.”.

(2) Subsection (1) shall come into operation on ... and shall apply in respect of any transaction entered into on or after that date.

#### **Amendment of section 56 of Act 58 of 1962**

**35.** Section 56 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of paragraph (q).

#### **Amendment of section 64B of Act 58 of 1962**

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

(a) by the deletion in subsection (1) of the definitions of “affected company” and “holding company”;

(b) by the substitution in subsection (1) for the definition of “intermediate company” of the following definition:

“‘intermediate company’ means any company at least 75 percent of whose equity share capital is held by—

(a) the first-mentioned company in the definition of **['holding company']** ‘controlling group company’; or

(b)(i) one or more companies which are intermediate companies in terms of paragraph (a); or

(ii) a **['holding company']** controlling group company and one or more companies referred to in subparagraph (i);”;

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

“(c) so much of any dividend distributed in the course or in anticipation of the liquidation or winding up or deregistration of a company, as is shown by the company to be a—

(i) distribution of profits derived during any year of assessment which ended not later than 31 March 1993, (other than any such profits derived by way of the revaluation of trading stock held by such company); or

(ii) distribution of profits of a capital nature, other than profits derived from the disposal of an asset which are attributable to any capital gain which accrued on or after 1 October 2001:

Provided that where such dividend is distributed in anticipation of the liquidation or winding-up or deregistration of a company and such company—

(i) has not within six months taken such steps as **[may be prescribed by the Minister by regulation in the Gazette]** contemplated in section 41(4) to liquidate, wind up or deregister that company **[within such period specified by the Minister in those regulations]**; or

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

the provisions of this paragraph and of subsection (3)(b) shall be deemed not to have applied to such dividend and any secondary tax on companies which becomes payable as a result thereof shall be recoverable from the shareholders to whom such dividend was distributed in the same proportion as such dividend was so distributed.”;

- (d) by the substitution in subsection (5) for paragraph (d) of the following paragraph:

“(d) so much of any dividend declared by a **[unit]** portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of “company” in section 1 as represents a distribution **[of interest or]** of dividends referred to in section 11(s) received by or accrued to such **[unit]** portfolio.”;

- (e) by the substitution in subsection (5) for paragraph (f) of the following paragraph:

“(f) any dividend declared by any **[affected]** controlled group company to a **[holding]** controlling group company or intermediate company (other than a **[holding]** controlling group company or an intermediate company which is a company referred to in paragraph (a)), if—

- (ii) such **[holding]** controlling group company or intermediate company, as the case may be, has its place of effective management in the Republic and at least 90 per cent of its profits (excluding profits derived by way of dividends) during the three years of assessment immediately preceding the date of such declaration, were derived from a source within the Republic;

- (iiA) such dividend was declared solely out of profits earned by such **[affected]** controlled group company during any period in which **[it was an affected company in relation to such holding] that**

controlling group company or intermediate company, as the case may be, held at least 75 per cent of the equity share capital, as contemplated in the definition of 'controlling group company', of that controlled group company; and

(iii) such **[affected]** controlled group company has by notice in writing furnished to the Commissioner by not later than the last day on which secondary tax on companies would, but for this exemption, have been payable in respect of the declaration of such dividend or such later date as the Commissioner may approve, elected that such dividend be exempt from the payment of secondary tax on companies in terms of this paragraph;”;

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

“(a) in the case of a company **[which is listed on a recognized stock exchange]** contemplated in paragraph (a) or (b) of the definition of 'listed company' or a subsidiary (as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973)), of any such company, it had not prior to that date paid the dividend to the shareholders concerned or publicly announced the declaration thereof; or”.

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

### **Amendment of section 64C of Act 58 of 1962**

**37.** Section 64C of the Income Tax Act, 1962, is hereby amended—

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

“share incentive scheme’ means a scheme in terms of which not more than 10 per cent of the equity share capital of a company is—

(a) held by the directors and full-time employees of—

(i) such company; or

(ii) an associated institution, as defined in paragraph 1 of the Seventh Schedule, in relation to such company.

in terms of a share incentive scheme carried on for their own benefit;

(b) held by a trustee for the benefit of such directors and employees under a scheme referred to in section 38(2)(b) of the Companies Act, 1973 (Act 61 of 1973); or

(c) collectively held by such directors and full-time employees, and such a trustee.”;

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

“(2) For the purposes of section 64B any amount which is in terms of subsection (3) deemed to have been distributed by a company **[to a recipient, ]** shall, subject to the provisions of subsection (4), be deemed to be a dividend declared by such company to a shareholder where that shareholder—

(a) receives a deemed distribution as contemplated in subsection (3); or

(b) is a connected person in relation to any person who receives a deemed distribution as contemplated in subsection (3),

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

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

“(3) For the purposes of subsection (2) an amount shall be deemed to have been distributed by a company **[to a recipient]** if—”;

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

“(h) to a loan made by any **[affected]** controlled group company to—

(i) a **[holding]** controlling group company, in relation to such **[affected]** controlled group company; or

(ii) any other **[affected]** controlled group company, where both such **[affected]** controlled group companies are directly or indirectly held by the same **[holding]** controlling group company,

if such loan is utilised by such **[holding]** controlling group company or other **[affected]** controlled group company, as the case may be, in the Republic;”.

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

### **Amendment of section 66 of Act 58 of 1962**

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

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

“(a) The Commissioner shall annually give public notice that all persons who are personally or in a representative capacity liable to taxation under the provisions of this Act **[and]** or are required to furnish returns for the assessment of tax, shall within sixty days after the date of such notice, or within such further time as the Commissioner may for good cause allow, furnish returns for the purposes of assessments in respect of the years of assessment specified in such notice.”;

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

“(vi) any resident who holds any funds in foreign currency as defined in section 78(3) or owns any assets outside the Republic, or to whom any income or gain from any funds in foreign currency or assets outside the Republic would be attributable during the relevant year of assessment in terms of section 7 or Part X of the Eighth Schedule.”;

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

“(13) The return of income to be made by any person **[in respect of the year of assessment ended the thirtieth day of June, 1962, or by any person (other than a company)]** in respect of any year of assessment **[referred to in subparagraph (i) of paragraph (b) of subsection (1) of section five]** shall be a full and true return—



- (a) in the case of a person (other than a company), for the whole period of twelve months ending upon the last day of the year of assessment under charge; or
- (b) in the case of a company, for the whole period of the relevant financial year of that company comprising the year of assessment: [Provided that where it is established to the satisfaction of the Commissioner that the income of a person cannot be conveniently returned for that period, the Commissioner may accept returns made up to a date agreed to by him which returns shall be deemed for all purposes of this Act to be returns for the periods covered by the years of assessment under charge, and the taxpayer shall not without the consent of the Commissioner be entitled to make a return in respect of any subsequent year of assessment to a date other than the date so agreed to].”;

(d) by the deletion of subsections (13)*bis*, (13)*ter*, (13)*quat* and (13)*quin*;

(e) by the insertion after subsection (13) of the following subsections:

“(13A) Where—

- (a) it is established to the satisfaction of the Commissioner that the whole or any portion of the income of any person to whom the provisions of subsection (13)(a) apply cannot be conveniently returned for any year of assessment, the Commissioner may, subject to such conditions as he or she may impose, accept accounts in respect of the whole or a portion of the taxpayer's income drawn to a date agreed to by the Commissioner, whether for a longer or shorter period than the year of assessment under charge, and the income disclosed in any such accounts must be deemed to be income of that person in respect of that year under charge;
- (b) any such accounts are drawn to a date later than the last day of the year of assessment, no further regard shall be had to the income disclosed by those accounts for purposes of any subsequent year of assessment;

(c) any such accounts are drawn to a date falling within the year of assessment and the person concerned dies or his or her estate is sequestrated during the interim period between that date and the last day of the year of assessment, any income received by or accrued to that person during that interim period must be deemed to be part of that person's income for the year of assessment.

(13B) For the purposes of subsections (13), (13A) and (14), the word 'income' must be construed as including any aggregate capital gain or aggregate capital loss."

(2) Subsection (1) shall be deemed to have come into operation on 1 July 2002 in respect of years of assessment commencing on or after that date.

#### **Amendment of section 69 of Act 58 of 1962**

39. Section 69 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) In addition to the returns specified in subsection (1), every person[, **whether a taxpayer or not,**] shall, if required by the Commissioner—”.

#### **Substitution of section 70A of Act 58 of 1962**

40. Section 70A of the Income Tax Act, 1962, is hereby substituted by the following section:

##### **“Return of information by Unit Portfolio**

Any **[unit]** portfolio of a collective investment scheme contemplated in paragraph (e)(i) of the definition of 'company' in section 1, and any **[unit]** portfolio comprised in any **[unit trust]** collective investment scheme in property **[shares authorised under the Unit Trust Control Act, 1981**

**(Act 54 of 1981)** contemplated in Part V of the Collective Investment Schemes Control Act, 2002 (Act No. ?? of 2002) managed or carried on by a company registered under section 42 of that Act for the purposes of Part V of that Act, shall furnish to the Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe.”.

(2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

#### **Substitution of section 71 of Act 58 of 1962**

41. The following section hereby substitutes section 71 of the Income Tax Act, 1962:

##### **“Return of payments in respect of bearer warrants**

Every bank carrying on business in the Republic or company dealing in or negotiating bearer warrants shall keep a record in such form, including any electronic form, as the Commissioner may prescribe of all payments in respect of interest or dividends made to any person by means of bearer warrants, and shall in such manner and form and at such times as may be prescribed or as the Commissioner may require, furnish particulars of such payments.”.

#### **Amendment of section 72A of Act 58 of 1962**

42. Section 72A of the Income Tax Act, 1962, is hereby amended—

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

**“Return as to participation right in controlled foreign [entity] company”;**

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

“(a) directly or indirectly holds not less than 10 per cent of the participation **[or voting] rights [or control]** in any controlled foreign **[entity as contemplated in section 9D] company**; and

(b) together with any connected person in relation to such resident, in aggregate holds more than 50 per cent of the total participation **[or voting rights or control]** in such controlled foreign **[entity] company**.”;

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

“shall submit to the Commissioner a return containing the information contemplated in subsection (2) relating to such controlled foreign **[entity] company**, in such form and within such time as may be prescribed by the Commissioner.”;

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

“(a) the name, address and country of residence of such controlled foreign **[entity] company**;

(b) a description of the various classes of participation rights in such controlled foreign **[entity] company**;

(c) the percentage and class of participation **[or voting 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 not less than 10 per cent of the participation **[or voting rights]** in such controlled foreign **[entity] company**.”;

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

“a description of the receipts and accruals of such controlled foreign **[entity] company** which are—”;

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

“(f) a description of any amount of tax proved to be payable by such controlled foreign **[entity]** company to the government of any other country in respect of any income contemplated in paragraph (e)(i), including particulars relating to the country in which such tax was payable and the underlying profits to which such foreign tax relates.”;

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

“(b) have available for submission to the Commissioner when so requested, an income statement and balance sheet of such controlled foreign **[entity]** company prepared in accordance with the laws of the country of which such controlled foreign **[entity]** company is a resident, or internationally accepted accounting practice.”.

(2) Subsection (1) shall come into operation on the date of promulgation.

### **Amendment of section 73A of Act 58 of 1962**

**43.** Section 73A of the Income Tax Act, 1962, is hereby amended—

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

“(1) A person **[whose gross income consists of amounts other than those derived solely by way of salary, wages or similar compensation for personal service]** who is required to render a return or who is not so required but has rendered a return shall retain all records relevant to that return for a period of **[four]** five years from the date upon which the return relevant to the last entry in those records was received by the Commissioner.”; and

(b) by the addition of the following subsection:

“(3) The records contemplated in subsection (1) must be retained in such form, including any electronic form, as may be prescribed by the Commissioner.”.

#### **Amendment of section 73B of Act 58 of 1962**

**44.** Section 73B of the Income Tax Act, 1962, is hereby amended—

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

“(1) A person shall retain all records required to determine the taxable capital gain or assessed capital loss of that person for a period of **[four]** five years from the date on which the return for that year of assessment was received by the Commissioner.”; and

(b) by the addition of the following subsection:

“(4) The records contemplated in subsections (1) and (2) must be retained in such form, including any electronic form, as may be prescribed by the Commissioner.”.

#### **Amendment of section 75 of Act 58 of 1962**

**45.** Section 75 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words following paragraph (f) of the following words:

“shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[12]** 60 months.”.

#### **Amendment of section 77 of Act 58 of 1962**

**46.** (1) Section 77 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2) for the expression “Controller and Auditor-General” of the expression “Auditor-General”; and

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

“(5) The Commissioner shall, in the notice of assessment, give notice to the taxpayer that any objection to the assessment made must be sent to him or her within **[30 days after the date of the assessment]** the period contemplated in section 81.”.

(2) Subsection (1)(b) shall come into operation on the date that section 53(1) of the Second Revenue Laws amendment Act, 2001 (Act No. 60 of 2001), comes into operation.

#### **Amendment of section 78 of Act 58 of 1962**

**47.** Section 78 of the Income Tax Act, 1962, is hereby amended—

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

“(1B) The Commissioner shall estimate an amount of taxable income derived from any funds or assets contemplated in subsection (1A), which estimated amount shall be calculated by applying a percentage, determined at the rate contemplated in paragraph (a) of the definition of ‘official rate of interest’ contemplated in paragraph 1 of the Seventh Schedule during the year of assessment to the estimated amount of those funds or value of those assets or such higher amount as may be estimated in terms of subsection (1).”; and

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

“(b) taken into account by the Commissioner during any succeeding year of assessment in estimating the amount of any funds in foreign

currency or value of any assets owned by that resident outside the Republic, as contemplated in subsection (1A).”;

(c) by the addition of the following subsection:

“(3) For the purposes of this section, ‘foreign currency’ means currency other than the currency of the Republic.”

(2) Subsection (1) shall come into operation on 1 January 2003.

#### **Insertion of section 79B of Act 58 of 1962**

**48.** The following section is hereby inserted after section 79A of the Income Tax Act, 1962:

##### **“Withdrawal of assessments**

**79B.** The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal noted in terms of Part III of Chapter III of this Act, withdraw an assessment, which—

- (a) was incorrectly issued in respect of a taxpayer, based on the return of income of any other taxpayer; or
- (b) was issued in respect of a year of assessment other than the year of assessment in respect of which the taxable income or a portion of the taxable income relates.”

#### **Amendment of section 89quat of Act 58 of 1962**

**49.** Section 89quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the definition of “effective date” of the following paragraphs:

- “(a) where the provisional taxpayer is a company which has a year of assessment which ends on the last day of February or is a person (other than a company) who has not been granted permission by



the Commissioner under the provisions of section ~~[66(13)ter]~~ 66(13A) to render accounts for a period ending on a date other than the last day of February, the date falling ~~[7] seven~~ months after the last day of such year; or

- (b) in any other case, the date falling ~~[6] six~~ months after the last day of such year as applicable for the purposes of the provisions of paragraph 21 ~~[22]~~ or 23 of the Fourth Schedule;”.

#### **Amendment of section 101 of Act 58 of 1962**

**50.** Section 101 of the Income Tax Act, 1962, is hereby amended—

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

“(1) Every company carrying on business or having an office in the Republic and every **[unit]** portfolio of a collective investment scheme constituting a company in terms of paragraph (e)(i) of the definition of 'company' in section one, shall at all times be represented by an individual residing therein.”;

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

“Provided further that in the case of any **[unit]** portfolio referred to in subsection (1) the public officer of the relevant **[management company]** manager registered in terms of section 42 of the Collective Investment Schemes Control Act,2002 (Act No. ?? of2002) shall be the public officer except in the event of the winding-up of the **[management company]** portfolio , in which event the manager, trustee or custodian appointed by the Registrar as defined in section 1 of that Act or any competent division of the court, to wind-up the portfolio **[under the relevant unit trust scheme]** shall be the public officer.”;

- (c) by the substitution in subsection (5) for the first proviso of the following proviso:

“Provided that in the case of any **[unit]** portfolio referred to in subsection (1) the place at which any such notice or other document may be served

or delivered or to which any such notice or document may be sent shall be the place appointed by the relevant **[management company]** manager in regard to any notice or other document affecting itself, or, in the event of the manager, trustee or custodian under the relevant **[unit trust]** collective investment scheme becoming the public officer, the place within the Republic appointed by the manager, trustee or custodian and approved by the Commissioner.”.

(2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

### **Substitution of section 105 of Act 58 of 1962**

**51.** Section 105 of the Income Tax Act, 1962, is hereby amended by the substitution thereof for the following:

#### **“Jurisdiction of courts**

**105.** Any person charged with an offence under this Act may[, **notwithstanding anything to the contrary contained in any law,**] be tried in respect of that offence by any court having jurisdiction within any area in which he resides or carries on business, in addition to any jurisdiction conferred upon any court by any law.”.

### **Amendment of section 106 of Act 58 of 1962**

**52.** Section 106 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for subparagraph (ii) of paragraph (d) of the following subparagraph:

“(ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company under subsection (5) of section 101 or, in the case of any **[unit]** portfolio of a

collective investment scheme referred to in paragraph (e)(i) of the definition of “company” in section 1, the public officer of which is the manager, trustee or custodian referred to in the said subsection (5), by such manager, trustee or custodian, or where no such place has been appointed by the company, **[or]** manager, trustee or custodian, as the case may be, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company, **[or]** manager, trustee or custodian, as the case may be, in the Republic; or”.

(2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

#### **Amendment of section 107 of Act 58 of 1962**

**53.** Section 107 of the Income Tax Act, 1962, is hereby amended by the deletion of paragraph (f) of subsection (1).

#### **Amendment of paragraph 5 of First Schedule to Act 58 of 1962**

**54.** Paragraph 5 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) The value to be placed upon livestock for the purposes of this Schedule shall, subject to the provisions of paragraph 4(1) **[and subparagraph (2) of this paragraph]** as respects livestock held and not disposed of at the end of the year of assessment, be the standard value applicable to the livestock.”.

#### **Amendment of paragraph 11B of the Fourth Schedule to Act 58 of 1962**

55. Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “net remuneration” in subparagraph (1) for item (h) of the following item:

“(h) the amount of any allowance or advance contemplated in paragraph [(bA) or] (c) of the definition of “remuneration” in paragraph (1);”.

(2) Subsection (1) shall be deemed to have come into operation on 1 August 2002.

#### **Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962**

56. Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

“(4) The records contemplated in subparagraph (1) must be maintained in such form, including any electronic form, as may be prescribed by the Commissioner.”.

#### **Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962**

57. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraphs (2), (3), (4) and (5).

#### **Amendment of paragraph 21 of Fourth Schedule to Act 58 of 1962**

58. Paragraph 21 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

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

**“Payment of provisional tax by provisional taxpayers (other than companies) [whose income is not normally derived wholly or mainly from farming, fishing or diamond digging]”;**

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

**“(2) If the Commissioner has in terms of [subsection (13)ter of section sixty-six] section 66(13A) of this Act agreed to accept accounts from any provisional taxpayer in respect of any year of assessment drawn to a date falling after the end of such year, the period referred to in item (a) of subparagraph (1) shall, notwithstanding the provisions of that subparagraph, be reckoned from such date as the Commissioner upon application of the taxpayer and having regard to the circumstances of the case may approve, and in such case the last day of such year of assessment shall for the purposes of item (b) of that subparagraph be deemed to be the day preceding the first anniversary of the said date.”;**  
and

(c) by the deletion of subparagraph (3).

#### **Repeal of paragraph 22 of Fourth Schedule to Act 58 of 1962**

**59.** (1) Paragraph 22 of the Fourth Schedule to the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 July 2002 in respect of years of assessment commencing on or after that date.

#### **Amendment of Paragraph 1 of Seventh Schedule to Act 58 of 1962**

**60.** Paragraph 1 of the Seventh Schedule is hereby amended—

(a) by the substitution for paragraph (b) of the definition of “official rate of interest” of the following paragraph:

**“(b) in the case of a loan which is denominated in [a foreign] any other currency, a market related rate of interest;”;**

(b) by the addition in the definition of “taxable benefit” of the following paragraph:

“(d) any benefit or privilege received by or accrued a person contemplated in section 9(1)(e) stationed outside the Republic which is attributable to that person’s services rendered outside the Republic.”.

#### **Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962**

**61.** (1) Paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion of the definition of “active business asset”;

(b) by the deletion of the definition of “financial instrument”;

(c) by the deletion of the definition of “foreign currency”;

(d) by the insertion after the definition of “ruling price” of the following definition:

“special trust’ means a trust contemplated in paragraph (a) of the definition of ‘special trust’ in section 1.”.

(2)(a) Subsection (1)(a) shall be deemed to have come into operation on 1 October 2001.

(b) Subsection (1)(d) shall be deemed to have come into operation from the commencement of years of assessment ending on or after 1 January 2003.

#### **Amendment of Paragraph 2 of Eighth Schedule to Act 58 of 1962**

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

“(b) the following assets **[situated in the Republic]** of a person who is not a resident, namely—

(i) immovable property situated in the Republic held by that person or any interest or right of whatever nature of that

- person to or in immovable property situated in the Republic;  
or
- (ii) any asset **[of a]** which is attributable to a permanent establishment of that person in the Republic [through which a trade is carried on in the Republic during the relevant year of assessment]”.

#### **Amendment of paragraph 4 of Eighth Schedule to Act 58 of 1962**

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

- “(a) during that year, is equal to the amount by which the base cost of that asset exceeds the proceeds received or accrued in **[consequence]** respect of that disposal; or”.

#### **Amendment of paragraph 10 of the Eighth Schedule to Act 58 of 1962**

**64.** Paragraph 10 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (a) of the following subparagraph:

- “(a) in the case of a natural person or a special trust as defined in section 1 of the Act, 25 per cent;”.

#### **Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962**

**65.** Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (2) for item (c) of the following item:

- “(c) by a **[unit]** portfolio of a collective investment scheme in respect of the issue of a **[unit]** participatory interest in that portfolio, or by a

[unit] portfolio in respect of the granting of an option to acquire a [unit] participatory interest in that [unit] portfolio;”.

(b) by the substitution in subparagraph (2) for item (e) of the following item:

“(e) by a trustee in respect of the distribution of an asset of the trust to a beneficiary **[who]** to the extent that that beneficiary has a vested right in that asset **[prior to distribution]**.”;

(c) by the deletion in subparagraph (2) at the end of item (g) of the word “or”; and

(d) by the addition in subparagraph (2) to the end of item (h) of the word “or”.

### **Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962**

**66.** (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (5) for the words preceding item (a) of the following words:

“(5) **[Where]** (a) Subject to paragraph 67, this subparagraph applies where a debt owed by a person to a creditor has been reduced or discharged by that creditor—

(i) **[without full]** for no consideration **[for that reduction or discharge]**

(ii) or for a consideration which is less than the amount by which the face value of the debt has been so reduced or discharged,

**[that person will, to the extent that]** but does not apply where the amount of that reduction or discharge **[did not constitute]** constituted a capital gain in terms of paragraph 3(b)(ii) or has **[not]** been taken into account in terms of section 20(1)(a)(ii) or paragraph 20(3). **[be treated as having—]**”.

(b) Where this subparagraph applies the person contemplated in item (a) shall be treated as having—

**[(a)](i)** acquired a claim to so much of that debt that was reduced or discharged for no consideration, or if a consideration was paid, to so much of the reduction or discharge of the debt as



exceeds the consideration, which claim shall have a base cost of nil; and  
[(b)](ii) disposed of that claim for proceeds equal to that reduction or discharge.”.

### **Amendment of paragraph 13 of Eighth Schedule to Act 58 of 1962**

67. (1) Paragraph 13 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) The time of disposal of an asset **[in consequence of]** by means of—”.

(b) by the substitution in subparagraph (1) for the words preceding sub-item (i) of item (a) of the following words:

“(a) a change of ownership effected or to be effected from one person to another because of an event, act, forbearance or by the operation of law is, in the case of—”; and

(c) by the substitution in subparagraph (1) for the words preceding sub-item (1) of item (g) of the following words

“the happening of an event contemplated in—”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

### **Amendment of paragraph 14 of Eighth Schedule to Act 58 of 1962**

68. Paragraph 14 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding subparagraph (a) of the following words:

“For the purposes of this Schedule, in the case of spouses married in community of property, where any **[property]** asset is disposed of by one of the spouses and that **[property]** asset—”.

### **Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962**

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

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

“(f) if that asset was acquired or disposed of by the exercise on or after valuation date of an option acquired prior to the valuation date, the valuation date value of that option, which value must be treated **[to be]** as expenditure actually incurred in respect of that asset on valuation date for the purposes of this Part;”;

(b) by the substitution in subparagraph (1) for the words in item (g) preceding subitem (i) of the following words:

“(g) the following amounts actually incurred as expenditure directly related to the cost of ownership of that asset, which is used wholly and exclusively for business purposes or which constitutes a share listed on a recognised stock exchange or [an] a participatory interest in a **[unit]** portfolio of a collective investment scheme **[(other than a unit portfolio comprised in any unit trust scheme in property shares)]**—”;

(c) by the substitution in subparagraph (1) for the proviso to item (g) of the following proviso:

“Provided that if that asset constitutes a share listed on a recognised **[stock]** exchange or **[an]** a participatory interest in a **[unit]** portfolio of

a collective investment scheme, the expenditure in respect of that asset must for the purposes of this subparagraph be reduced by two-thirds;”;

(d) by the substitution in subparagraph (1) for sub-items (ii) and (iii) of item (h) of the following sub-items:

“(ii) any other asset—

(aa) so much of an amount that has been included in that person’s income in terms of section 8(5), as having been applied towards the reduction of the purchase price of that asset; **[or]**

(bb) where an amount has been included in that person’s gross income in terms of paragraph (i) of the definition of ‘gross income’ in section 1, the value placed on the asset under the Seventh Schedule for purposes of determining the amount so included in that person’s gross income; or

(cc) where an amount has been included in that person’s gross income in terms of paragraph (h) of the definition of ‘gross income’ in section 1 in respect of that asset, so much of that amount so included as exceeds the amount of any allowance granted to that person in terms of section 11(h);

(iii) **[an interest]** a share in a controlled foreign **[entity as defined in section 9D]** company, the proportional amount **[of the net income]** of that **[entity]** company (or any other controlled foreign company in relation to that resident in which that controlled foreign company directly or indirectly has an interest) which was included in the income of that person in terms of section 9D during any year of assessment (other than such portion of that proportional amount which relates to the amount of any taxable capital gain included in that **[net income]** proportional amount) plus the proportional amount of the net capital gains of that controlled foreign **[entity]** company, less the amount of any foreign dividend distributed by that **[entity]** company to that person during any year of assessment which was exempt from tax in terms of section 9E(7)(e)(i); or”.

(2) Subsection (1)(a) and (d) shall be deemed to have come into operation on 1 October 2001.

### **Amendment of paragraph 24 of Eighth Schedule to Act 58 of 1962**

**70.** (1) Paragraph 24 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) The base cost of an asset, other than an asset situated in the Republic listed in paragraph 2(1)(b)(i) and (ii), acquired by a person before the date on which that person became a resident is the sum of the value of that asset determined in terms of subparagraphs (2) or (3) and the expenditure allowable in terms of paragraph 20 incurred on or after that date in respect of that asset.”;

(b) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

“(2) Where an asset of a person who becomes a resident as contemplated in paragraph 12(4), has been disposed of by a person on or after the date on which that person commenced to be a resident and the proceeds from that disposal and the expenditure allowable in terms of paragraph 20 incurred prior to that date in respect of that asset are each lower than the market value of that asset as at that date, that person must be treated as having acquired that asset at a cost equal to the higher of—”;

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

“(b) those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after that date in respect of that asset.”;

(d) by the substitution for the words preceding item (a) of subparagraph (3) of the following words:

“(3) Where an asset contemplated in paragraph 12(4) has been disposed of by a person on or after the date on which that person

commenced to be a resident and the proceeds from the disposal of that asset and the market value of that asset as at the date on which that person commenced to be a resident are each lower than the expenditure allowable in terms of paragraph 20 incurred prior to that date in respect of that asset, that person must be treated as having acquired that asset at a cost equal to the higher of—”; and

(e) by the substitution for item (b) of subparagraph (3) of the following item:

“(b) those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after that date in respect of that asset.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

#### **Substitution of paragraph 25 of Eighth Schedule to Act 58 of 1962**

71. (1) Paragraph 25 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

##### **"Determination of base cost of pre-valuation date assets**

25. The base cost of a pre-valuation date asset (other than an identical asset in respect of which paragraph 32(3A) has been applied), is the sum of the valuation date value of that asset, as determined in terms of paragraph 26, 27 or 28 and the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

#### **Amendment of paragraph 26 of Eighth Schedule to Act 58 of 1962**

**72.** (1) Paragraph 26 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“Where the proceeds from the disposal of a pre-valuation date asset (other than an asset contemplated in paragraph 28 or in respect of which paragraph 32(3A) has been applied) exceed the expenditure allowable in terms of paragraph 20 incurred **[both]** before, on and after the valuation date in respect of that asset, the person who disposed of that asset must, subject to subparagraph (3), adopt any of the following as the valuation date value of that asset—”;

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

“(b) 20 per cent of the proceeds from disposal of the asset, after deducting from those proceeds an amount equal to the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date; or”;

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

“(b) 20 per cent of the proceeds from disposal of the asset, after deducting from those proceeds an amount equal to the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date.”; and

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

“(3) Where a person has adopted the market value as the valuation date value of an asset, as contemplated in subparagraph (1)(a), and the proceeds from the disposal of that asset do not exceed that market value, that person must substitute as the valuation date value of that asset, those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

### **Amendment of paragraph 27 of Eighth Schedule to Act 58 of 1962**

**73.** (1) Paragraph 27 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) Subject to subparagraph (2), where the proceeds from the disposal of a pre-valuation date asset do not exceed the expenditure allowable in terms of paragraph 20 incurred **[both]** before, on and after the valuation date in respect of that asset, the valuation date value of that asset must be determined in terms of this paragraph."; and

(b) by the substitution in subparagraph (3) for paragraph (bb) of sub-item (ii) of item (a) of subparagraph (3) of the following paragraph:

"(bb) those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset; or".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

#### **Amendment of paragraph 29 of Eighth Schedule to Act 58 of 1962**

**74.** (1) Paragraph 29 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subparagraph (4) of the word "or" at the end of item (a);

(b) by the addition in subparagraph (4) of the word "or" to the end of item (b);

(c) by the addition to subparagraph (4) of the following item; and

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

(d) by the substitution in subparagraph (6) for the words following item (b) the following words:

“that person must submit proof of that valuation in a form prescribed by the Commissioner with the return for the year of assessment during which that asset was disposed of.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

### **Amendment of paragraph 30 of Eighth Schedule to Act 58 of 1962**

**75.** (1) Paragraph 30 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for the words proceeding the formula of the words:

“(1) Subject to subparagraph (3), the time apportionment base cost of a pre-valuation date asset is determined in accordance with the formula—“;

(b) by the substitution in subparagraph (1) for item (c) of the following item:

“(c) ‘P’ represents the proceeds as determined in terms of paragraph 35, in **[consequence]** respect of the disposal of that asset, or where subparagraph (2) applies, the amount of proceeds attributable to the expenditure in ‘B’ as determined in accordance with subparagraph (2);”;

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

“(2) Where **[the total amount]** a portion of the expenditure allowable in terms of paragraph 20 in respect of a pre-valuation date asset was incurred **[in more than one year of assessment]** on or after the valuation date, the proceeds to be used in the determination of the time apportionment base cost of the asset must be determined in accordance with the formula—

$$P = \frac{[T] R}{x} \times \frac{B}{(A + B)},$$

where—

(a) ‘P’ represents the **[amount to be determined]** proceeds attributable to B;



- (b) 'TR' represents the total amount of proceeds as determined in terms of paragraph 35 in consequence of the disposal of the pre-valuation date asset;
- (c) 'A' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date;
- (d) 'B' represents the amount of expenditure allowable in terms of paragraph 20 in respect of that asset that is incurred before valuation date.”;

(d) by the addition of the following subparagraphs:

“(3) Despite the provisions of paragraph 20(3)(a) and 35(3)(a), where in respect of a pre-valuation date asset—

(a) a person has incurred expenditure allowable in terms of paragraph 20 on or after the valuation date;

(b) any part of the expenditure allowable in terms of paragraph 20 is or was allowable as a deduction in determining the taxable income of that person before the inclusion of any taxable capital gain; and

(c) the proceeds in respect of the disposal of that asset exceed the expenditure allowable in terms of paragraph 20 incurred before, on and after the valuation date,

that person must determine the time-apportionment base cost of that asset in terms of subparagraph (4).

(4) The time-apportionment base cost of a pre-valuation date asset referred to in subparagraph (3) is determined in accordance with the formulae—

$$Y = B + \frac{[(P_1 - B_1) \times N]}{T + N},$$

and

$$P_1 = R_1 \times \frac{B_1}{(A_1 + B_1)}$$

where—

- (a) 'Y' represents the time apportionment base cost of the asset;
- (b) 'P<sub>1</sub>' represents the proceeds attributable to the expenditure in B<sub>1</sub>, disregarding the provisions of paragraph 35(3)(a);
- (c) 'A<sub>1</sub>' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date, disregarding the provisions of paragraph 20(3)(a);
- (d) 'B<sub>1</sub>' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred before valuation date, disregarding the provisions of paragraph 20(3)(a);
- (e) 'B', 'N' and 'T' bear the same meanings ascribed to those symbols in subparagraph (1); and
- (f) 'R<sub>1</sub>' represents the total amount of proceeds as determined in terms of paragraph 35 in respect of the disposal of the pre-valuation date asset, disregarding the provisions of paragraph 35(3)(a);".

(2) Subsection (1) shall be deemed to come into operation on 1 October 2001.

#### **Amendment of paragraph 31 of Eighth Schedule to Act 58 of 1962**

**76.** (1) Paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (c) of the following item:
  - “(c) an asset which is not listed on a recognised exchange which constitutes a right of a **[unit]** holder of a participatory interest in—
    - (i) any company contemplated in paragraph (e)(i) of the definition of “company” in section 1 of the Act, or any **[unit]** portfolio comprised in any **[unit trust]** collective investment scheme in property **[shares]** contemplated in Part V of the Collective Investment Schemes Control Act, 2002 (Act No. ?? of 2002) carried on in the Republic, the price at which a **[unit]** participatory interest can be sold to the management company of the scheme on the date of disposal; or

- (ii) any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of 'company', the price at which a **[unit] participatory interest** can be sold to the management company of the scheme on the date of disposal or where there is not a management company the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market;"
- (b) by the substitution in subparagraph (1) for items (d) and (e) of the following items:
- "(d) a fiduciary, usufructuary or other similar interest in any **[property] asset**, an amount determined by capitalising at 12 per cent the annual value of the right of enjoyment of the **[property] asset** subject to that fiduciary, usufructuary or other like interest, as determined in terms of subparagraph (2), over the expectation of life of the person to whom that interest was granted, or if that right of enjoyment is to be held for a lesser period than the life of that person, over that lesser period;
- (e) any **[property] asset** which is subject to a fiduciary, usufructuary or other similar interest in favour of any person, the amount by which the **[fair]** market value of the full ownership of that **[property] asset** exceeds the value of that fiduciary, usufructuary or other like interest determined in accordance with item (d)"; and
- (c) by the substitution for subparagraph (2) of the following subparagraph:
- "(2) For purposes of subparagraph (1)(d)—
- (a) the annual value of the right of enjoyment of any **[property] asset** which is subject to any fiduciary, usufructuary or other like interest, means an amount equal to 12 per cent of the **[fair]** market value of the full ownership of the **[property] asset**. Provided that where the Commissioner is satisfied that the **[property] asset** which is subject to that interest could not reasonably be expected to produce an annual yield equal to 12 per cent on that value of the **[property] asset**, the

Commissioner may fix such sum as representing the annual yield as may seem **[to him to be]** reasonable, and the sum so fixed must for the purposes of subparagraph (1)(d) be treated as being the annual value of the right of enjoyment of that **[property]** asset; and

(b) the expectation of life of a person to whom an interest was granted—

(i) in the case of a natural person, must be determined in accordance with the provisions applicable in determining the expectation of life of a person for estate duty purposes, as contemplated in the regulations issued in terms of section 29 of the Estate Duty Act, 1955, (Act No. 45 of 1955); and

(ii) in the case of a person other than a natural person, is a period of fifty years.”.

(2) Subsection (1)(b) and (c) shall be deemed to have come into operation on 1 October 2001.

### **Amendment of paragraph 32 of the Eighth Schedule to Act 58 of 1962**

**77.** Paragraph 32 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(a) from the date of acquisition to the date of disposal constituted assets contemplated in paragraph 31(1)(a), other than an instrument contemplated in item (d);”;

(b) by the substitution for item (b) of subparagraph (3A) of the following item:

“(b) constitute participatory interests **[rights of unit holders]**—

(i) contemplated in paragraph 31(1)(c), where the prices of these **[units, shares or]** participatory interests or shares are regularly published in a national or international newspaper;

- (ii) in any **[unit]** portfolio comprised in any **[unit trust]** collective investment scheme managed or carried on by a **[management]** company registered as a manager under section **[4 or 30 of the Unit Trust Control Act, 1981 (Act No. 54 of 1981)]** 42 of the Collective Investment Schemes Control Act, 2002 (Act No. ?? of 2002) for purposes of Parts IV an V of that Act; or
- (iii) in any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of 'company' in section 1 of the Act, which is approved in terms of section 65 of the Collective Investment Schemes Control Act, 2002 (Act No. ?? of 2002) by the Registrar **[of Unit Trust Companies in terms of section 37A of the Unit Trust Control Act, 1981 (Act No. 54 of 1981)]** defined in section 1 of the latter Act; [or];
- (c) by the addition in subparagraph (3A) of the word "or" to the end of item (c);
- (d) by the insertion after item (c) of the following item:
- "(d) from the date of acquisition to the date of disposal constituted an instrument as defined in section 24J that was listed on a recognised exchange and for which a price was quoted on that exchange."
- (2) Subsection (1)(a), (c) and (d) shall be deemed to have come into operation on 1 October 2001.

#### **Amendment of paragraph 33 of Eighth Schedule to Act 58 of 1962**

**78.** Paragraph 33 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

"(3) For the purposes of subparagraphs (1) and (2) there is no part-disposal of an asset by a person in respect of—

(a) the granting of an option by that person in respect of that asset; and

(b) the granting, variation or cession of a right of use or occupation of that asset by that person in respect of which no proceeds are received by or accrue to that person.

(4) Where proceeds are received by or accrue to a person in respect of the granting, variation or cession of a right of use or occupation of an asset by that person, the portion of the base cost attributable to the part of the asset in respect of which those proceeds were received or accrued is an amount which bears to the base cost of the entire asset the same proportion as those proceeds bear to the market value of the entire asset immediately prior to that disposal.”.

#### **Amendment of paragraph 38 of Eighth Schedule to Act 58 of 1962**

**79.** (1) Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

“(1) Subject to subparagraph 2 and **[paragraph]** paragraphs 12(5) and 67, where a person disposed of an asset by means of a donation or for a consideration not measurable in money or to a person who is a connected person in relation to that person for a consideration which does not reflect an arm's length price—”.

#### **Amendment of paragraph 40 of Eighth Schedule to Act 58 of 1962**

**80.** Paragraph 40 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (1) of the word “or” at the end of item (b);
- (b) by the addition in subparagraph (1) of the word “or” at the end of item (c);  
and
- (c) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

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

#### **Amendment of paragraph 41 of Eighth Schedule to Act 58 of 1962**

**81.** Paragraph 41 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution of item (a) of subparagraph (1) of the following item:

“(a) the tax determined in terms of this Act, which relates to the taxable capital gain of a deceased person, exceeds 50 per cent of the net value of the estate determined for purposes of the Estate Duty Act, 1955 (Act No. 45 of 1955), before taking into account the amount of that tax so determined; and”.

#### **Amendment of Paragraph 43 of Eighth Schedule to Act 58 of 1962**

**82.** Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

##### **“Assets disposed of or acquired in foreign currency**

43. (1) Subject to subparagraph (4), where a person during any year of assessment disposes of an asset[, **other than a foreign equity instrument,**] for proceeds denominated in a foreign currency after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal [**by translating both proceeds and the base cost**] in that foreign currency and that capital gain or capital loss must be translated into the local

currency **[of the Republic at the ruling exchange rate on the date of disposal]** in accordance with the provisions of section 25D.

(2) Despite section 25D, where a person disposes of an asset, (other than **[a foreign equity instrument]** an asset contemplated in subsection (4)), for proceeds denominated in any currency (hereinafter referred to as the 'currency of disposal') after having incurred expenditure in respect of that asset in another currency (hereinafter referred to as the 'currency of expenditure'), that person must **[determine]** for purposes of determining the capital gain or capital loss on the disposal **[by translating both]** of that asset—

(a) where the currency of expenditure is denominated in the local currency, translate the proceeds **[and the base cost]** into the local currency **[of expenditure]** at the **[ruling]** average exchange rate **[on the date of disposal]** for that year of assessment during which that asset was disposed of; **[and]**

(b) **[determine a capital gain or capital loss in terms of Part XIII as if that person disposed of the currency of expenditure for the currency of disposal]** where the currency of disposal is denominated in the local currency, translate the expenditure which is allowable in terms of paragraph 20, into the local currency at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the currency of expenditure no longer exists, the last available exchange rate for that currency of expenditure);

(c) where neither the currency of disposal nor the currency of expenditure constitutes local currency—

(i) translate the amount of the expenditure, which is allowable in terms of paragraph 20, to the currency of disposal at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the currency of expenditure no longer exists, the last available exchange rate for that currency of expenditure); and



(ii) translate the amount of the capital gain or capital loss determined in foreign currency to the local currency [of the Republic] at the average exchange rate for the year of assessment during which the asset was disposed of.

**[(3) For the purposes of this paragraph the term 'ruling exchange rate' will have the same meaning as defined in section 24I.]**

(4) Despite section 25D, where a person during any year of assessment disposes of any asset which was acquired or disposed of in any currency other than currency of the Republic—

(a) which constitutes a foreign equity instrument; or

(b) the capital gain or capital loss from the disposal of which is derived or deemed to have been derived from a source in the Republic, as contemplated in section 9(8),

that person must **[determine]** for purposes of determining the capital gain or capital loss on the disposal [by translating] of that asset, translate—

**[(a)](i)** the proceeds into the currency of the Republic at the [ruling] average exchange rate [on the date of disposal] for that year of assessment; and

**[(b)]** **the valuation date value of that foreign equity instrument which is a pre-valuation date asset into the currency of the Republic at the ruling exchange rate on valuation date; and]**

**[(c)](ii)** the expenditure incurred [after valuation date] in respect of that foreign equity instrument into the currency of the Republic at the [ruling] average exchange rate [on the date of incurral of that expenditure] for the year of assessment during which that expenditure was incurred:

Provided that the provisions of this subparagraph does not apply in respect of any exchange item in respect of which section 24I applies).

(5) Where a person is treated as having derived an amount of proceeds from the disposal of any asset and the base cost of that asset is determined in any foreign currency—

(a) the amount of those proceeds must be treated as being denominated in the currency of the base cost; and

(b) the base cost of the person acquiring that asset must for purposes of paragraphs 12, 38, 40, 42 and 67 be treated as being denominated in that currency.

(6) Where a person has adopted the market value as the valuation date value of any asset contemplated in this paragraph, that market value must be determined in the currency of expenditure of that asset and, in the case of an asset—

(a) contemplated in paragraph (2)(b) and (4), must be translated to the currency of the Republic at the ruling exchange rate on valuation date; or

(b) contemplated in paragraph (2)(c), must be translated to the currency of disposal at the ruling exchange rate on valuation date.

(7) For the purposes of this paragraph—

'foreign currency' means currency other than local currency; and

'local currency' means—

(a) in relation to a permanent establishment of a person, the currency used by that permanent establishment for purposes of financial reporting;

(b) in any other case, the currency of the Republic.”.

#### **Amendment of paragraph 51 of Eighth Schedule to Act 58 of 1962**

**83.** Paragraph 51 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution of item (a) of subparagraph (2) of the following item:

“(a) that natural person acquires that residence from the company or trust on or after the date of promulgation of the Taxation Laws Amendment Act, 2001 (Act No. 5 of 2001), but not later than 30 September 2002;”.

#### **Amendment of paragraph 53 of the Eighth Schedule to Act 58 of 1962**

84. Paragraph 53 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subparagraph (3) of the word “and” at the end of item (f);

(b) by the substitution of item (g) of subparagraph (3) of the following item:

“(g) any contract in terms of which a person, in return for payment of a premium, is entitled to policy benefits upon the happening of a certain event and includes a reinsurance policy in respect of such a contract, but excludes any short-term policy contemplated in the Short-Term Insurance Act, 1998 (Act No. 53 of 1998).”; and

(c) by the addition to subparagraph (3) of the following items:

“(h) any short-term policy contemplated in the Short-Term Insurance Act, 1998, to the extent that it relates to any asset which is not a personal-use asset; and

(i) a right or interest of whatever nature to or in an asset envisaged in items (a) to (h).”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

#### **Amendment to paragraph 55 of the Eighth Schedule to Act 58 of 1962**

85. Paragraph 55 of the Eighth Schedule to the Income tax Act, 1962, is hereby amended—

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

**“(b) in respect of any policy, [taken out on the life of an employee or director as contemplated in section 11(w)] where that person is an employee or director whose life was insured in terms of that policy and any premiums paid by that person’s employer were deducted in terms of section 11(w);**

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

**“(c) in respect of a policy that was [originally] taken out on the life of [any other] that person by any other person who was a partner of**

that person, or held any share or similar interest in a company in which that person held any share or similar interest, for the purpose of enabling that other person to acquire, upon the death of that **[other]** person, the whole or part of—

- (i) that **[other]** person's interest in the partnership concerned;  
or
- (ii) that **[other]** person's share or similar interest in that company and any claim by that **[other]** person against that company,

and no premium on the policy was paid or borne by that **[other]** person **[or any connected person in relation to that other person]** while that other person was the beneficial owner of the policy; or".

#### **Amendment of paragraph 56 of Eighth Schedule to Act 58 of 1962**

**86.** (1) Paragraph 56 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

"Despite paragraph 39, subparagraph (1) does not apply in respect of any capital loss determined in consequence of the disposal by a creditor of a claim **[owned]** owed by a debtor, to the extent that the amount of that claim so disposed of represents—

- (a) a capital gain which is included in the determination of the aggregate capital gain or aggregate capital loss of that debtor by virtue of paragraph 12(5);
- (b) an amount which the creditor proves must be or was included in the gross income of any acquirer of that claim; or
- (c) an amount that must be or was included in the gross income or income of the debtor or taken into account in the determination of the balance of assessed loss of the debtor in terms of section 20(1)(a)(ii)."

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

#### **Amendment of paragraph 57 of the Eighth Schedule to Act 58 of 1962**

**87.** (1) Paragraph 57 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion before the definition of “small business” in subparagraph (1) of the following definition:

“active business asset’ means—

(a) an asset which constitutes immovable property, to the extent that it is used for business purposes; or

(b) an asset (other than immovable property) used or held wholly and exclusively for business purposes,

but excludes—

(i) a financial instrument; and

(ii) an asset held in the course of carrying on a business mainly to derive any income in the form of an annuity, rental income, a foreign exchange gain or royalty or any income of a similar nature;”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

#### **Substitution of paragraph 61 of Eighth Schedule to Act 58 of 1962**

**88.** Paragraph 61 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

##### **“Unit Trust Funds**

**61.** A [unit] portfolio in a collective investment scheme contemplated in paragraph (e)(i) of the definition of 'company' in section 1, must disregard any capital gain or capital loss.”.

### **Substitution of paragraph 63 of Eighth Schedule to Act 58 of 1962**

89. Paragraph 63 of the Eighth Schedule is hereby substituted by the following paragraph:

#### **“Exempt persons**

**63.** A person must disregard any capital gain or capital loss in respect of the disposal of an asset where ~~[all the] section 10 would exempt any~~ receipts and accruals of that person **[are exempt]** from tax **[in terms of section 10]**.”.

### **Insertion of paragraph 64A of Eighth Schedule to Act 58 of 1962**

90. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 64:

#### **“Awards in terms of the Restitution of Land Rights Act**

**64A.** A person must disregard any capital gain or capital loss in respect of the disposal that resulted in that person receiving restitution of a right to land, an award or compensation in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994).”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

### **Substitution of paragraph 67A of the Eighth Schedule to Act 58 of 1962**

91. Paragraph 67A of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

#### **“Capital gains and capital losses in respect of interests in unit trust funds**

**67A.** (1) A holder of a **[unit]** participatory interest in a **[unit]** portfolio comprised in any **[unit trust]** collective investment scheme managed or carried on by any company registered as a **[management company]** under section **[30 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981)]**, 42 of the Collective Investment Schemes Control Act, 2002 (Act No. ?? of 2002) for the purposes of Part V of that Act must determine a capital gain or capital loss in respect of any participatory interest in that **[unit]** portfolio only upon the disposal of that **[unit]** interest.

(2) The capital gain or capital loss to be determined in terms of subparagraph (1) must be determined with reference to the proceeds from the disposal of that **[unit]** participatory interest and its base cost.”.

### **Amendment of Paragraph 72 of Eighth Schedule to Act 58 of 1962**

92. Paragraph 72 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (b) of the following item:

“(b) a capital gain attributable to that donation, settlement or other disposition has arisen during a year of assessment and has during that year vested in or is treated as having vested in any person who is not a resident (other than a controlled foreign **[entity, as defined in section 9D]** company, in relation to that resident),”.

### **Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962**

93. Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “company” of the following definition:

“company’ means any ‘company’ as defined in section 1[, **except for any unit portfolio contemplated in paragraph (e) of that definition**];”.

#### **Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962**

94. (1) Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1)(a) Subject to subparagraph (2), a capital distribution of cash or the market value of an asset *in specie* received by or accrued to a shareholder in respect of a share must be treated as proceeds on disposal of that share.

(b) For the purposes of item (a), the amount to be treated as proceeds in respect of a share acquired prior to the valuation date, is, in the case where the valuation date value has been determined on the basis of—

- (i) time apportionment base cost as contemplated in paragraph 30, the amount of the capital distributions received by or accrued to that shareholder on or after the date of acquisition of that share;
- (ii) market value as contemplated in paragraph 29, or 20 per cent of the proceeds as contemplated in paragraph 26(1)(b), the amount of the capital distributions received by or accrued to that shareholder on or after the valuation date.”;

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

“(2) A shareholder who has adopted the weighted average method under paragraph 32(3A) must reduce the base cost of identical assets by the amount of any capital distribution referred to in subparagraph (1) received by or accrued to that shareholder on or after the valuation date.

(c) by the deletion of subparagraph (4).



(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

#### **Amendment of paragraph 78 of Eighth Schedule to Act 58 of 1962**

**95.** (1) Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraphs (1) and (2) of the following subparagraphs:

“(1) Where a company issues capitalisation shares, **[such] those** capitalisation shares must be treated as having **[a base cost] been acquired for expenditure incurred and paid** of nil, except to the extent that the issue of those shares constitutes a dividend, in which case they must be treated as having been acquired for expenditure incurred and paid equal to the amount of that dividend.

(2) Subject to paragraphs 11(1)(g), 23 and 35(2), where a company issues shares in substitution of previously held shares in that company by reason of a subdivision, consolidation, or similar arrangement or a conversion contemplated in section 40A or 40B—

(a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution; and

(b) those newly issued shares must **[have] be treated as—**

(i) having an aggregate base cost equal to the aggregate base cost of the previously held shares with the aggregate base cost allocated among all those newly issued shares in proportion to their relative market values; and

(ii) having been acquired on the same date as those previously held shares.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

#### **Amendment of paragraph 79 of Eighth Schedule to Act 58 of 1962**

96. Paragraph 79 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

“Despite [section] paragraph 76, where a shareholder receives a capital distribution of cash or assets *in specie*, the amount of that capital distribution must be treated as a capital gain for the purposes of determining that shareholder’s aggregate capital gain or aggregate capital loss, where—”.

#### **Substitution of paragraph 81 of Eighth Schedule to Act 58 of 1962**

97. Paragraph 81 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

#### **“Base cost of interest in discretionary trust**

81. Despite paragraph 38(1)(b), a person’s interest in a discretionary trust must be treated as having a base cost of nil.”.

#### **Substitution of Part XIII of Eighth Schedule to Act 58 of 1962**

98. Part XIII of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following Part:

#### **“PART XIII FOREIGN CURRENCY**

#### **Definitions**

84. For purposes of this Part, unless the context otherwise indicates—

“foreign currency” means any currency which is not legal tender in the Republic;

“foreign currency asset” in relation to a person means any amount in foreign currency—

- (a) which constitutes a unit of foreign currency of that person; or
- (b) owing to that person in respect of any loan, advance or debt payable to that person;

“foreign currency base cost” means the base cost in respect of a foreign currency asset, as determined in accordance with paragraph 91;

“foreign currency liability” means an amount in foreign currency owing by that person in respect of any loan, advance or debt incurred by that person;

“foreign currency proceeds” means the proceeds from the disposal of a foreign currency asset, as determined in accordance with paragraph 92;

“personal expenses” of a person means any—

- (a) domestic or private expenses incurred outside the Republic in respect of foreign accommodation (excluding the acquisition of any immovable property) or foreign personal-use assets; or
- (b) traveling or maintenance expenses;

“personal foreign currency asset” means any foreign currency asset of a person which constitutes—

- (a) an amount which constitutes a unit of foreign currency in cash or cash equivalent, held primarily for the regular payment of personal expenses; or
- (b) any one account held in the relevant foreign currency with a banking institution from which funds can be immediately withdrawn, which account is used mainly for the regular payment of personal expenses;

“valuation date” means—

- (a) 1 January 2003; or
- (b) where a person becomes a resident of the Republic after 1 January 2003, the date that such person becomes a resident.

### **Application of this Part**

**85.** This Part applies in respect of—

- (a) the acquisition and disposal of any foreign currency asset; and
  - (b) the settlement or part settlement of any foreign currency liability,
- by any person who is a resident (other than a resident in respect of whom section 24I of the Act applies in respect of any foreign currency asset or foreign currency liability of that person in the relevant foreign currency).

### **Foreign currency capital gain and foreign currency capital loss**

**86.(1)** Despite anything to the contrary contained in the Act, a person's foreign currency capital gain for the year of assessment in respect of—

- (a) the disposal of a foreign currency asset (other than a personal foreign currency asset), is the amount by which the foreign currency proceeds exceed the foreign currency base cost; or
- (b) the settlement or part settlement of any foreign currency liability due by that person, is the amount determined in accordance with paragraph 93(1).

(2) Despite anything to the contrary contained in the Act, a person's foreign currency capital loss for the year of assessment in respect of—

- (a) the disposal of a foreign currency asset (other than a personal foreign currency asset) is the amount by which the foreign currency base cost in respect of that asset exceeds the foreign currency proceeds; or
- (b) any settlement or part settlement of any foreign currency liability due by that person, is the amount determined in accordance with paragraph 93(2).

(3) The amount of any foreign currency capital gain or foreign currency capital loss of a person during any year of assessment, as contemplated in subparagraphs (1) and (2), respectively, shall be treated as a capital gain or capital loss, as the case may be, for purposes of determining the aggregate capital gain or aggregate capital loss of that person for that year in terms of this Schedule.

### **Disposal of foreign currency asset**

**87.** A disposal of a foreign currency asset includes—

- (a) the conversion, sale, donation, expropriation, cession, exchange or any alienation or transfer of that foreign currency asset;
- (b) the forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry, abandonment or loss of that foreign currency asset; or
- (c) the vesting of any foreign currency asset of a trust in a beneficiary of that trust.

### **Events treated as acquisition or disposal of foreign currency asset**

**88.**(1) A person must be treated as having acquired on valuation date all foreign currency assets (other than personal foreign currency assets) of that person which have not been disposed of by that person before that date.

(2) Where a person—

- (a) ceases to be a resident; or
- (b) who is a resident, is as a result of the application of any agreement entered into by the Republic with any other country for the avoidance of double taxation, treated as not being a resident,

that person must be treated as having disposed of all foreign currency assets (other than personal foreign currency assets) acquired and not disposed of by that person before so ceasing to be or treated as not being a resident.

(3) Where the provisions of section 24I become applicable to a person in respect of any foreign currency asset of that person, that person must, for the purposes of this Part, be treated as having disposed of all foreign currency assets (other than personal foreign currency assets) of that person which were not disposed of immediately before section 24I became applicable.

(4) Where the provisions of this Part become applicable to a person, that person must, for the purposes of this Part, be treated as having acquired all foreign currency assets (other than personal foreign currency assets) of that person which were not disposed of immediately before this Part became applicable.

(5) Where a person commences to hold a foreign currency asset which is included in the foreign currency asset pool, as a personal foreign currency asset,

that person must be treated as having disposed of that foreign currency asset on the date that the person so commences to hold that foreign currency asset as a personal foreign currency asset.

(6) Where a person ceases to hold a foreign currency asset as personal foreign currency asset, that person must be treated as having acquired that foreign currency asset on the date that the person so ceases to hold that foreign currency asset as a personal foreign currency asset.

### **Exchange of foreign currency assets denominated in same foreign currency**

**89.**(1) Subject to subparagraph (2), where a person exchanges one foreign currency asset for another foreign currency asset which is denominated in the same currency, there shall, for the purposes of this Part—

- (a) be no disposal by that person of the foreign currency asset which is surrendered in exchange for that other foreign currency asset, to the extent that the value in foreign currency of that foreign currency asset so surrendered does not exceed the value in foreign currency of that other foreign currency asset; and
- (b) be no acquisition by that person of the foreign currency asset which is obtained in exchange for that other foreign currency asset, to the extent that the value in foreign currency of that foreign currency asset so obtained does not exceed the value in foreign currency of that other foreign currency asset.

(2) Subparagraph (1) does not apply to the extent that the foreign currency asset obtained or surrendered in exchange for the other foreign currency asset constitutes a personal foreign currency asset.

### **Foreign currency asset pool**

**90.**(1) A person must maintain a foreign currency asset pool for each foreign currency in which any foreign currency asset of that person is denominated, which must—

- (a) include the total amount in foreign currency of all foreign currency assets (other than personal foreign currency assets) acquired on or after valuation date, (including any amount of interest which is deemed to have accrued for purposes of the Act in respect of any foreign currency asset); and
- (b) be reduced by the amount in foreign currency of any foreign currency asset included therein, which has been disposed of by that person on or after valuation date.
- (2) The total asset pool base cost in respect of the foreign currency asset pool contemplated in subparagraph (1), is determined as the sum of the values in foreign currency of each foreign currency asset contemplated in subparagraph (1)(a), translated into the currency of the Republic at the average exchange rate for the year of assessment during which the relevant foreign currency asset was acquired, subject to paragraphs 95 and 96, reduced by the foreign currency base cost of any foreign currency assets disposed of as contemplated in subparagraph (1)(b).

#### **Foreign currency base cost of foreign currency asset**

**91.** The base cost of a foreign currency asset disposed of by a person is an amount which bears to the total asset pool base cost determined in terms of paragraph 90(2) prior to that disposal, the same ratio as the value in foreign currency of that foreign currency asset so disposed of bears to the total value in foreign currency of the relevant foreign currency asset pool determined in terms of paragraph 90(1) prior to that disposal.

#### **Foreign currency proceeds**

**92.** Subject to paragraphs 95 and 96, the proceeds from the disposal by a person of a foreign currency asset is an amount determined by translating the value in foreign currency of that asset into the currency of the Republic at the average exchange rate for the year of assessment during which that asset is disposed of and—

- (a) reducing that amount by—
- (i) any capital gain determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise that in terms of the application of this Part), which was included in that amount; or
  - (ii) any other amount included therein, which is or was during any year of assessment included in the taxable income of that person (or of that person's spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset; or
- (b) increasing that amount by any capital loss determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part).

#### **Settlement of foreign currency liability**

93.(1) A person must be treated as having a foreign currency capital gain from the settlement or part settlement by that person of any foreign currency liability, to the extent that the amount settled or part settled, translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was incurred, exceeds that amount translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was settled or part settled.

(2) A person must be treated as having a foreign currency capital loss from the settlement or part settlement by that person of any foreign currency liability, to the extent that the amount settled or part settled, translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was settled or part settled, exceeds that amount translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was incurred.

(3) A person must disregard any foreign currency capital gain or foreign currency capital loss determined during any year of assessment in respect of the



settlement of any foreign currency liability, to the extent that the amount of that foreign currency liability was utilised otherwise than to—

- (a) acquire any right in terms of a forward exchange contract or a foreign currency option contract;
- (b) acquire any foreign currency asset other than a personal foreign currency asset;
- (c) acquire any foreign equity instrument or any asset in local currency as contemplated in paragraph 43; or
- (d) refinance any foreign currency liability which was utilised to acquire any asset contemplated in item (a), (b) or (c),

which was not disposed of by that person during any previous year of assessment.

#### **Involuntary disposal of foreign currency asset**

**94.** A person must disregard any foreign currency gain or foreign currency loss determined in respect of an involuntary disposal of any foreign currency asset by way of expropriation, theft or physical loss.

#### **Transfer of foreign currency assets between spouses**

**95.** Where a person disposes of any foreign currency asset to his or her spouse—

- (a) that person must be treated as having disposed of that foreign currency asset for proceeds equal to the foreign currency base cost of that foreign currency asset; and
- (b) that spouse must, for purposes of paragraph 90(2), treat that foreign currency base cost as the value of that asset in the currency of the Republic on the date of acquisition.

### **Application of provisions of Eighth Schedule**

**96.**(1) The provisions of paragraphs 11(2)(a), (e) and (j), 12(1), 12(2)(a), 13, 14, 36, 38, 39, 40, 56, 62, 63, 68, 69, 70, 71, 72, 73, 80 and 82 and 83 of the Eighth Schedule to the Act, shall apply *mutatis mutandis* in respect of the determination of any foreign currency capital gain or foreign currency capital loss resulting from the disposal of any foreign currency asset.

(2) For purposes of paragraph 96(1), any reference in any provision referred to in that paragraph to—

- (a) the market value shall be treated as a reference to the relevant value in foreign currency translated to the currency of the Republic at the average exchange for the relevant year of assessment; and
- (b) the base cost shall be treated as a reference to the foreign currency base cost.”.

### **Renumbering of paragraph 86 of Eighth Schedule to Act 58 of 1962**

**99.** Paragraph 86 of the Eighth Schedule to the Income Tax Act, 1962, is hereby renumbered as paragraph 97.

### **Amendment of section 18 of Act 91 of 1964**

**100.** Section 18 of the Customs and Excise Act, 1964, is hereby amended—

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

- “(a) except as otherwise prescribed by rule, any—
  - (i) importer or owner of any imported goods landed in the Republic;
  - (ii) the licensee of any customs and excise manufacturing warehouse in which excisable or fuel levy goods are manufactured;

- (iii) the licensee of any storage warehouse in which excisable or fuel levy goods are stored;
- (iv) the licensee or owner of any imported goods stored in a customs and excise storage warehouse; or
- (v) any clearing agent licensed in terms of section 64B appointed by such importer, owner of licensee,

may enter such goods for removal in bond and may remove such goods or cause such goods to be removed—

(aa) in the case of goods contemplated in subparagraph (i), to any place in the Republic appointed as a place of entry or warehousing under this Act or to any place outside the Republic: Provided that any goods which are in transit through the Republic as contemplated in subsection (1A), may only be so entered and removed or caused to be so removed by such licensed clearing agent; or

(bb) in the case of goods contemplated in subparagraphs (ii), (iii) or (iv), to any warehousing place in the Republic or to any place in any other country in the common customs area appointed as a warehousing place for rewarehousing at that place in another such warehouse.”;

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

“(f) Any goods entered for removal in bond may, except if exempted by rule, when carried by road only be transported by a licensed remover of goods in bond contemplated in section 64D, whether or not the goods are wholly or partly transported by road.”;

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

“(2) In addition to any liability for duty incurred by any person under any provision of this Act, but subject to the provisions of section 99(2), the person who enters or is deemed to have entered any goods for removal in bond in terms of subsection (1), and removes or causes such goods to be removed shall subject to the provisions of subsection (3), be liable for the

duty on all goods which [he so removes] are so entered and removed in bond.”.

#### **Insertion of section 37B in the Customs and Excise Act, 1964**

**101.** (1) The following section is hereby inserted in the Customs and Excise Act, 1964 after section 37A:

#### **“Provisions relating to the manufacture, storage, distribution and use of biofuel, biodiesel or bio-ethanol**

**37B.** (1) For the purposes of this Act, unless the context otherwise indicates—

“biofuel” means any product manufactured from any vegetable or other material, not being any material from which mineral fuels, oils or other goods are obtained as provided in Chapter 27 of Part 1 of Schedule No. 1;

“biodiesel” means a biofuel capable of use as a substitute for or an additive to distillate fuel, as specified in and described in any note to any heading or subheading of Part 1 of Schedule No. 1, any item of Section B of Part 2 or Part 5 of the said Schedule No. 1 or any item of Schedule No. 3, 4, 5 or 6;

“bio-ethanol” means a biofuel capable of use as a substitute for or additive to petrol, as specified in and described in any heading or subheading of Part 1 of Schedule No. 1, any item of Section A of Part 2 or Part 5 of the said Schedule no. 1 or any item of Schedule No. 3, 4, 5 or 6;

“distillate fuel” or “diesel” means distillate fuel defined in the Notes to Chapter 27 of Part 1 of Schedule No 1 and liable to customs duty as specified in the said Part 1 and to excise duty and fuel levy as specified in Section A of Part 2 and Part 5, respectively, of Schedule No. 1;

“manufacture” in relation to biofuel includes mixing biofuel with distillate fuel;

“petrol” means petrol as defined in the Notes to Chapter 27 of Part 1 of Schedule No 1 and liable to customs duty as specified in the said Part 1 and to excise duty and fuel levy as specified in Section A of Part 2 and Part 5, respectively, of Schedule No. 1.

(2) Except where otherwise provided—

(i) in this section;

(ii) by the Minister in any amendment of any schedule in terms of any provision of this Act; or

(iii) by the Commissioner in any rule,

the provisions of this Act governing the administration of excisable and fuel levy goods in so far as such provisions relate to distillate fuel, including the levying of duty and granting of any rebate or refund of duty on such goods, shall apply *mutatis mutandis* to biofuel.

(3) Notwithstanding anything to the contrary contained in this Act, the Minister may in any amendment of any schedule under any provision of this Act, specify—

(a) in which proportion distillate fuel and biodiesel or petrol and bio-ethanol may be mixed to be classifiable under any tariff heading or item;

(b) a different rate of duty and extent of rebate or refund on the basis of the proportionate content of distillate fuel or biodiesel or petrol or bio-ethanol in any such mixture.

(4) The Commissioner may—

(a) require any seller of biofuel to register in terms of section 59A;

(b) make rules—

(i) to exempt any person who is required to license under any provision of this Act from licensing or furnishing of security;

(ii) concerning payment of duty, accounts to be kept and procedures regulating the manufacture or disposal of biofuel;

(iii) to delegate, subject to section 3(2), any power which may be exercised and assign any duty that shall be performed by the Commissioner in terms of this Act to any officer;

(iv) regarding all matters which are required or permitted in terms of this section to be prescribed by rule;

(v) in respect of any other matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of this section.”.

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

#### **Amendment of section 44 of Act 91 of 1964**

**102.** Section 44 of the Customs and Excise Act, 1964, is hereby amended by the insertion of the following subsection:

“(13)(a) Notwithstanding anything to the contrary contained in this Act, where any provision of this Act provides that liability shall cease after the lapse of a specified period, such liability shall not cease where any legal proceedings disputing such liability have been instituted.

(b) The period that such liability ceases shall in such circumstances commence to run from the final judgment in such legal proceedings.”.

#### **Amendment of section 47 of Act 91 of 1964**

**103.** Section 47 of the Customs and Excise Act, 1964 is hereby amended by the substitution for the words following paragraph (a)(iv) of subsection (8) of the following words:

“shall be subject to the International Convention on the Harmonized Commodity Description and Coding System done in Brussels on 14 June 1983 and to the Explanatory Notes to the Harmonised System issued by the Customs Co-operation Council, Brussels (now known as the World Customs Organisation) from time to time: Provided that where the application of any part of such Notes or nay addendum thereto or any

explanation thereof is optional the application of such part, addendum or explanation shall be in the discretion of the Commissioner.”.

(2) Subsection (1) shall be deemed to have come into operation on 12 December 2001.

#### **Amendment of section 50 of Act 91 of 1964**

**104.** Section 50 to the Customs and Excise Act, 1964, is hereby substituted by the following section:

**50.** Notwithstanding the provisions of section 4(3)—

- (a) the Commissioner may, in accordance with-
  - (i) any agreement or convention in respect of customs co-operation to which the Republic is a party; or
  - (ii) any other international agreement or convention to which the Republic is a party and in circumstances where the Commissioner is, on good cause shown, satisfied that the international, regional or national public interest in the disclosure of information outweighs any potential harm to the person, firm or business to whom or to which such information relate-
    - (aa) disclose, or, for the purpose of paragraph (a), in writing authorise any officer to disclose, any information relating to any person, firm or business acquired by an officer in carrying out any duty under this Act;
    - (bb) render mutual and technical assistance in accordance with any convention or agreements contemplated in paragraph (a); and
    - (cc) in writing authorise any officer to exercise any power under this Act which may be considered necessary for

the purposes of rendering such assistance or of disclosing such information;

(b) The Commissioner may, in the circumstances contemplated in paragraph (b)-

- (i) disclose, or as contemplated in paragraph (b)(i), authorise such disclosure, to a person authorised to act on behalf of any international agency, institution or organisation with which an agreement has been entered into with the Republic; and
- (ii) specify the purpose for which such disclosure is authorised and the manner in which or the conditions under which such disclosure is to be made.”.

#### **Insertion of section 50A in Act 91 of 1964**

**105.** The following section is hereby inserted after section 50 of the Customs and Excise Act, 1964:

#### **“Joint, one-stop or juxtaposed international land border posts**

**50A.** (1) The Commissioner may in accordance with any international agreement concerning joint, one-stop or juxtaposed international land border posts and places of entry for the Republic and an adjoining state—

(a) in respect of such places situated in the territory of the Republic—

- (i) allow and appoint any such place as a place of entry for the adjoining state through which goods may be imported or exported and where goods may be entered for customs and excise purposes in accordance with the national legislation of the adjoining state; and
- (ii) allow officers of the competent customs authority of the adjoining state to perform such functions and exercise such powers as may be required and prescribed by the national legislation of the



adjoining state to effect entry and clearance of goods through such place and matters incidental thereto; and

(b) in respect of such places situated in the territory of the adjoining state—

(i) deem such a place to be a place of entry for the Republic through which goods may be imported and exported and where goods may be entered for customs and excise purposes; and

(ii) allow officers to perform their powers duties and functions under the Act in such places.

(2) Notwithstanding anything to the contrary in any other law contained for purposes of this Act—

(a) any such place situated in the territory of an adjoining state shall be deemed to be part of the Republic; and

(b) whenever, within such a place, situated within an adjoining state—

(i) any goods are detained for purposes of this Act, such goods shall as soon as practicably be removed to the State Warehouse, or other place indicated by the Controller, within the territory of the Republic; or

(ii) any person is detained for purposes of this Act, such person shall without delay be secured in an office of the South African Police Service closest to such place.

(3) Whenever such a place is situated within the territory of the Republic, and the national legislation of the adjoining state provides for the detention of goods or persons at such place the Commissioner shall allow for the removal of such detained goods or persons by the competent customs authorities of the adjoining state from such a place to the territory of the adjoining state.

(4) The Commissioner may in administering the provisions of this section, notwithstanding anything to the contrary in this Act or in any other law contained—

(a) decide or determine any matter or perform any duty or impose any condition in connection with the provisions so administered.

(b) make rules—

(i) where reference is made to customs or competent authorities, to domestic national or customs law or any other matter which

requires either expressly or by implication application of customs legislation:

- (ii) in connection with the entry of goods imported or exported and documents to be produced in support thereof;
- (iii) prescribing forms or procedures or specifying any condition to be complied with to give effect to any agreement contemplated in this section;
- (iv) to delegate subject to section 3(2) any power, duty or function to any officer or any other person; and
- (v) regarding any other matter which may be necessary or useful for purposes of administering such places.”.

#### **Amendment of section 61 of Act 91 of 1964**

**106.** Section 61 of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsection (4) of the following subsection:

“(4)(a) Not more than one licence shall be issued in respect of any customs and excise warehouse:

Provided that the Commissioner may, on such conditions as **[he]** the Commissioner may in each case impose, issue a licence—

- (i) to the owner or person in possession or control of any customs and excise storage or manufacturing warehouse in which fuel levy goods are stored or manufactured; and
  - (ii) to each person who obtains for distribution **[for] on [his]** own account these goods from **[that] any such** warehouse.
- (b) The owner or person in possession or control of such warehouse who is so licensed shall be liable for the fulfilment of all obligations under this Act in respect of such goods in such warehouse. Provided that each person to whom a licence is so issued shall be liable for any liability incurred under this Act in respect of goods so obtained **[taken]** from such warehouse.”.

**Insertion of Section 64F in the Customs and Excise Act, 1964.**

**107.** (1) The following section is hereby inserted in the Customs and Excise Act, 1964 after section 64E:

**“Licensing of distributors of mineral fuels obtained from the licensee of a customs and excise manufacturing warehouse.**

64F. (1) For the purposes of this section, the rules therefore and any relevant provisions in Schedule No. 6, unless the context otherwise indicates—

“licensed distributor” means any person who—

- (a) is licensed as contemplated in this section;
- (b) obtains for delivery to a purchaser in any other country of the common customs area for consumption in such country or for export (including supply as ships’ or aircraft stores) fuel, which have been or are deemed to have been entered for payment of excise duty and fuel levy, from a licensee of a customs and excise manufacturing warehouse; and
- (c) is entitled to a refund of duty in terms of any provision of Schedule No. 6 in respect of such fuel which have been duly delivered or exported as contemplated in paragraph (a);

“fuel” means any goods classifiable in any item of Section A of Part 2 of Schedule No.1 liable to excise duty and goods classifiable in any item of Part 5 of Schedule No. 1 liable to fuel levy, used as fuel.

(2)(a) No person, who removes to any other country in the common customs area or exports any fuel, shall be entitled to any refund of duty unless such person is licensed in terms of this section.

(b) Application for such a licence shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and with any additional requirement that may

be prescribed in any other rule and as may be determined by the Commissioner in each case.

(c) Before any licence is issued the applicant must furnish security as contemplated in section 60(1)(c): Provided that the Commissioner may, on good cause shown, to the extent considered reasonable in each case, exempt any person from furnishing such security or reduce the amount of such security.

(3)(a) Any refund of duty shall be subject to compliance with the requirements specified in the item of Schedule No. 6 providing for such refund and any rule prescribing any requirement in respect of the movement of such fuel to any such country or for export.

(b) Notwithstanding anything to the contrary contained in this Act, the Commissioner may pay any such refund at such intervals for such periods and on such conditions as may be prescribed by rule.

(4) The Commissioner may make rules—

(a) prescribing the forms to be completed and the procedures to be followed and other requirements to be observed for the purposes of administering the provisions of this section and the provisions for a refund of duty in Schedule No. 6;

(b) in respect of all matters which are required or permitted in terms of this section to be prescribed by rule:

(c) any other matter which the Commissioner may consider reasonably necessary and useful for the efficient and defective administration of this section.

(5)(a)(i) Any person who falsely applies for a refund of duty in terms of the provisions of Schedule No. 6 shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or double the amount of any duty refunded as a result of the false application for refund, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or both such fine and imprisonment and the fuel in respect of which the offence has been committed shall be liable to forfeiture under this Act.

(ii) For the purposes of paragraph (i), any forfeiture amount in respect of such fuel shall be calculated on the basis of the usual retail price thereof on

the date the false application was submitted or on the date of assessment of such amount, whichever is greater.”

(2) Subsection (1) shall come into operation on a date determined by the President by proclamation in the *Gazette*.

#### **Amendment of section 75 of Act 91 of 1964**

**108.** (1) Section 75 of the Customs and Excise Act, 1964, is hereby amended by the insertion of the following subsection:

“(11A)(a) Where any applicant for a refund of duty in terms of any item of Schedule No. 6, which relates to circumstances other than those referred to in subsection (11), if required to prove payment of duty on the goods in respect of which the refund is claimed in terms of any Note to such item, is unable to prove such payment by production of an entry or deemed entry for home consumption as provided in this Act, the Commissioner may, notwithstanding anything to the contrary contained in this Act, allow such refund—

- (i) on the basis of any evidence produced by such applicant; and
- (ii) by taking into account any other evidence contained in accounts or invoices or other documents relating to the removal of the goods concerned from any customs and excise manufacturing or storage warehouse, any other records required to be kept in terms of the Act or any other facts that may be available or requested by the Commissioner,

if, in the relevant circumstances of each case, the Commissioner considers that such evidence is reasonably sufficient to allow such refund: Provided that where it is so specified in the relevant item of Schedule No. 6, the duty refundable shall be calculated at the lowest rate operative during any period not exceeding 12 months prior to the date the goods were placed under the procedure specified in such item.

(b) Any such refund provision in Schedule No. 6 may include—

- (i) goods found to be off specification or which have become contaminated or have undergone post-manufacturing deterioration and are returned to a customs and excise manufacturing warehouse for reprocessing or destruction; and
- (ii) any fuel levy goods removed to another country in the common customs area or for export or to a customs and excise storage warehouse.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2002.

#### **Amendment of section 99 of Act 91 of 1964**

**109.** Section 99 of the Customs and Excise Act 1964, is hereby amended-

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

“(a)(i) An agent appointed by any importer, exporter, manufacturer, licensee, or any other principal, hereinafter referred to as the principal; and

(ii) any person who represents him- or herself as such an agent to any officer and is accepted as such by the officer concerned, shall in respect of the matter in question be liable for the fulfilment of all obligations imposed by this Act on such principal.

(b) In addition to the fulfilment of the obligations mentioned in paragraph (a) such agent or person shall be liable for-

- (i) the payment of all duties and charges;
- (ii) the payment of penalties; and
- (iii) the payment of amounts demanded under section 88(2)(a) which may be incurred in respect of the matter in question.

(c) Whenever an agent or any person contemplated in paragraph (a)(ii) delivers any document of whatever nature required to be completed and presented for any purpose under this Act wherein-

- (i) any principal contemplated in paragraph (a) has not been disclosed; or
  - (ii) the name of such agent or the name of another agent is stated as the principal as contemplated in section 64B(6); or
  - (iii) any principal is a person outside the Republic,  
such agent or person shall be liable for the fulfilment of all the obligations imposed on such a principal as if such agent is the principal concerned.
- (d)(i) The agent or person contemplated in this section shall cease to be so liable if such agent or person proves that-
- (aa) such agent or person exercised reasonable care to ensure that every document completed and presented and every act performed or procedure followed for purposes of this Act by such agent or person complied in all respects with the requirements of this Act, the rules, any prescribed procedures or requirements of the Commissioner and the terms and conditions of any agreement entered into with the Commissioner; and
  - (bb) all reasonable steps were taken by such agent or person, including those mentioned in any agreement contemplated in subparagraph (i), to prevent any non-fulfilment of the provisions of this Act by such principal of such agent.
- (ii) For purposes hereof reasonable care or steps shall not include reliance solely on information supplied by the principal.”;
- (b) by the deletion of subsection (5).

#### **Amendment of section 105 of the Customs and Excise Act, 1964**

**110.** Section 105 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (b) of the following paragraph:

- “(b) the interest so payable shall be paid at a rate **[which]** the Minister of Finance **[may from time to time fix by notice in the *Gazette*]** determines in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999).”.

## **Amendment of section 114 of the Customs and Excise Act, 1964**

**111.** Section 114 of the Customs and Excise Act, 1964 is hereby amended—

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

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

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

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

(bb) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a statement for any amount whatsoever may be filed in terms of subparagraph (ii) with the clerk of the magistrate's court having jurisdiction in respect of the person



by whom such amount is payable in accordance with the provisions of this Act.

(cc) It shall not be competent for any person in proceedings in connection with any statement filed in terms of subparagraph (ii) to question the correctness of any assessment or determination upon which such statement is based, notwithstanding that any internal review, internal appeal, appeal or other proceedings may have been lodged or instituted against such assessment or determination.

(iv) (aa) Any imported or excisable goods, vehicles, machinery, plant or equipment, any goods in any customs and excise warehouse, any goods in a rebate store room, any goods in the custody or under the control of the Commissioner and any goods in respect of which an excise duty or fuel levy is prescribed, and any materials for the manufacture of such goods, belonging to such person whether imported, exported or manufactured before or after the debt became so due, whether or not such goods are found in or on any premises in the possession or under the control of the person by whom the debt is due; and

(bb) any imported or excisable goods, vehicles, machinery, plant or equipment, in the possession or under the control of such person or in or on any premises in the possession or under the control of such person and in respect of which such person has entered into any credit agreement as defined in the Credit Agreements Act, (Act No. 75 of 1980) and of which the right, title or interest of such person may be readily established and excused,

may be detained in accordance with the provisions of subsection (2) and shall subject to subparagraph (vii)(cc) be subject to a lien until such debt is paid.

(vi) Whenever any of the goods mentioned in subparagraph (iv)(bb) are subject to a lien the person concerned shall without delay advise the Commissioner, or the officer detaining and subjecting such goods to a lien, of the existence of any such agreement setting forth at least the following—

- (aa) The name and address of the credit grantor as intended in the said Credit Agreement Act;
  - (bb) The amount of the principal debt as intended in the Usury Act 73 of 1968 in respect of the applicable credit agreement;
  - (cc) The duration of the agreement;
  - (dd) The outstanding balance due; and
  - (ee) A copy of such agreement.
- (vii) (aa) The Commissioner shall without delay advise the credit grantor concerned of such detention and lien and shall enquire as to the right, title or interest of such person in such goods.
- (bb) The credit grantor concerned shall, where such right, title or interest is determinable, without delay advise the Commissioner of such right, title or interest of the person concerned in the goods, expressed as a liquid amount, and the lien shall thereafter serve as security for such liquid amount and such amount may be recovered as provided for in paragraph (ii).
- (cc) In circumstances where such credit grantor advises the Commissioner that the right, title or interest of the person concerned is economically insignificant or does not exist, the Commissioner shall without delay remove such goods from the operation of the lien.
- (dd) Any person who, without reasonable cause fails to advise the Commissioner of the existence of any credit agreement contemplated in subparagraph (vi) shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000,00 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.
- (ee) In the absence of evidence to the contrary which raises a reasonable doubt, proof of the failure to advise the Commissioner of the existence of such credit agreement shall be sufficient evidence of the absence of reasonable cause.”; and
- (b) by the substitution for paragraph (b) of the following paragraph:
- “(b)(i) The claims of the State shall have priority over the claims of all persons upon anything subject a lien contemplated in paragraph (a), (aA), (aB) or (aC) and may be enforced in accordance with the

provisions of this section if the debt is not paid upon demand after the person by whom the debt is due is in writing advised of such debt and of the date on which such debt becomes due and is payable.

- (ii) The Commissioner and the credit grantor concerned may, notwithstanding anything to the contrary in this Act or any other law contained, and subject to such conditions as may be agreed upon, agree to dispose of any goods contemplated in paragraph (a)(iv)(bb) in order to preserve and secure the interests of all parties in such goods and in the proceeds of the disposal of such goods pending the resolution of any dispute in respect of which an interest in such goods is secured by such lien.
- (iii) In the event of any goods subjected to a lien being attached pursuant to a warrant of execution, such goods shall, notwithstanding anything to the contrary contained in the Magistrates' Court Act, 1944 (Act No.32 of 1944) or its rules, where such goods are not detained in the State Warehouse, be removed by an officer to the State Warehouse and such goods may thereupon be disposed of in accordance with the provisions of this section.
- (iv) Where, in addition to any amount of duty which is due or is payable by any person in terms of this Act, any fine, penalty, forfeiture or interest is incurred under this Act and are payable by such person, any payment made by that person or any amount recovered pursuant to any sale of such goods as contemplated in this section shall be utilised by the Commissioner to discharge such payment or amount in the order of-
  - (aa) any duty, interest, fine, penalty, forfeiture, expenses incurred by or charges due to the Commissioner; and
  - (bb) payment of the overplus, on application, to the person by whom the debt was due.”.

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

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

(a) by the substitution in *Exemptions from the duty under paragraph (1) or (2)* for paragraph (g) of the following paragraph:

“(g) The original issue of any share by a company to any other company in terms of an intra-group transaction contemplated in section ~~[44]~~ 45 of the Income Tax Act, 1962 (Act 58 of 1962), where the public officer of that company has made a sworn affidavit or solemn declaration that such intra-group transaction complies with the provisions contained in section ~~[44]~~ 45 of that Act;”;

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

“(x) Any registration of transfer of any marketable security acquired by a ~~[company]~~ person in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act 58 of 1962), a share-for-share transaction contemplated in section 43 of that Act, an amalgamation transaction contemplated in section 44, an intra-group transfer contemplated in section ~~[44]~~ 45 of that Act, in pursuance of a distribution in specie in the course of an unbundling transaction contemplated in section ~~[45]~~ 46 of that Act, or in terms of a liquidation distribution contemplated in section ~~[46]~~ 47 of that Act, where the public officer of ~~[that]~~ the relevant company has made a sworn affidavit or solemn declaration that such company formation transaction, share-for-share transaction, intra-group transfer, unbundling transaction or liquidation distribution complies with the provisions contained in section 42, 43, 44, 45, ~~[or]~~ 46 or 47, as the case may be, of that Act.”.

## Amendment of section 1 of Act 89 of 1991

113. (1) Section 1 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the substitution for paragraph (vii) of the proviso to the definition of "enterprise" of the following paragraph:

"(vii) the activities of the **[Multilateral Motor Vehicles Accidents Fund]** Road Accident Fund contemplated in the **[Multilateral Motor Vehicles Accidents Fund Act, 1989 (Act No. 93 of 1989)]** Road Accident Fund Act, 1996 (Act No. 56 of 1996), shall be deemed not to be the carrying on of an enterprise;" and

(b) by the substitution in the definition of "welfare organisation" for the words preceding paragraph (a) of the following words:

"'welfare organisation' means any association not for gain which is registered under the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997) and is exempt from income tax in terms of section **[30]** 10(1)(cN) of the Income Tax Act, if it carries on or intends to carry on any welfare activity determined by the Minister for purposes of this Act to be of a philanthropic or benevolent nature, having regard to the needs, interests and well-being of the general public, relating to those activities that fall under the headings—".

#### **Amendment section 2 of Act, 89 of 1991**

114. Section 2 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for item (vi) of the following item:

"(vi) 'participatory security' means a **[unit]** participatory interest as defined in section 1 of the **[Unit Trust Control Act, 1981 (Act No. 58 of 1981)]** Collective Investment Schemes Control Act, 2002 (Act No. ?? of 2002), but does not include an equity security, a debt security, money or a cheque;"

#### **Amendment of section 6 of Act 89 of 1991**

115. Section 6 of the Value-Added Tax Act, 1991 is hereby amended—

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

"Provided that **[(i) any information, document or thing obtained in terms of section 57C(17)(a) may not be disclosed in terms of this subsection; and (ii)]** any information, document or thing provided by a taxpayer in any return or document, or obtained from a taxpayer in terms of section 57A, **[or] 57B or 57C** which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such taxpayer, to the extent that such information, document or thing constitutes an admission by such taxpayer of the commission of an offence contemplated in paragraph (a)."; and

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

"(2C) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (2A) to any other person or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his [of] or her duties for purposes of—

(a) any investigation of, or prosecution for, an offence contemplated in subsection (2A); or

(b) dealing with any such public safety or environmental risk as contemplated in subsection (2A)."; and

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

"(2D) The Director-General or any person acting under the Direction and control of such Director-General **[as contemplated in subsection (2)(e)]** shall not disclose any information supplied under **[to subsection (2)(e)]** proviso (ii) to subsection (1) to any other person or permit any other person to have access thereto, except in the performance of any function contemplated in proviso (ii) to subsection (1)."

## Amendment of section 12 of Act 89 of 1991

116. (1) Section 12 of the Value-Added Tax Act, 1991, is hereby amended—

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

"(c) the supply of—

(i) a dwelling under an agreement for the letting and hiring thereof;

(ii) lodging or board and lodging—

(aa) by the employer of the recipient (including an employer as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act), where the recipient is entitled to occupy the accommodation as a benefit of his or her office or employment and his or her right thereto is limited to the period of his or her employment or the term of his or her office or a period agreed upon by the supplier and the recipient;

(bb) by the employer of the recipient, where the employer operates a hostel or boarding establishment mainly for the benefit of the employees otherwise than for the purpose of making profit; or

(cc) by a local authority which operates a hostel or boarding establishment otherwise than for the purpose of making profit.”; and

(b) by the substitution in subparagraph (ii) of paragraph (h) thereof for the words preceding the proviso thereto of the following words:

"(ii) the supply by a school, university, technikon or college solely or mainly for the benefit of its learners or students of goods or services (including domestic goods and services) necessary for and subordinate and incidental to the supply of services referred to in subparagraph (i) of this paragraph, if such goods or services are supplied for a consideration in the form of school fees, tuition fees or payment for board and lodging:"

## **Amendment of section 28 of Act 89 of 1991**

117. Section 28 of the Value-Added Tax Act, 1991 is hereby amended by the addition of the following subsections:

“(8) Where in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner is a party, the question arises whether an electronic or digital signature of a person affixed to any return as contemplated in subsection (6), was used with or without the consent and authority of that person, it shall, in the absence of proof to the contrary, for purposes of this Act be assumed that such signature was so used with the consent and authority of that person.

(9)(a) Notwithstanding anything contained to the contrary in this Act or in any other law, whenever in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner is a party, it is necessary to prove the authenticity, the veracity, the origin, the contents, an electronic signature or any other aspect of any electronic communication transmitted to and received by the Commissioner under this section, the provisions and conditions of any agreement (entered into in accordance with any regulations made by the Minister in terms of subsection (7)) establish the basis upon which any court of competent jurisdiction shall determine such issues.

(b) Notwithstanding anything to the contrary contained in any other law, nothing in the application of the rules of evidence shall be applied so as to deny the admissibility of any electronic communication under this section for purposes of this Act in evidence—

(i) on the sole grounds that it is an electronic data message; or

(ii) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in original form.

(c) (i) Information in the form of a data message shall be given due evidential weight.



(ii) In assessing the evidential weight of a data message a court shall have regard to—

(aa) the reliability of the manner in which the data message was generated, stored and communicated;

(bb) the reliability of the manner in which the integrity of the information was maintained;

(cc) the manner in which its originator was identified;

(dd) whether these functions were in compliance with the agreement and

(ee) the requirements of this section, and any other relevant factor.”

#### **Amendment of section 58 of Act 89 of 1991**

118. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following paragraph:

“(p) uses an electronic or digital signature of any other person in any electronic communication to the Commissioner for any purpose, without the consent and authority of such person.”

#### **Substitution of section 70 of Act 89 of 1991**

119. The following section substitutes section 70 of the Value-Added Tax Act, 1991:

**“Jurisdiction of courts.**

**70.** A person charged with an offence under this Act may[, notwithstanding anything to the contrary in any law,] be tried in respect of that offence by any court having jurisdiction within any area in

which that person resides or carries on business, in addition to any jurisdiction conferred upon any court by any law.".

**Amendment of Schedule 1 to Act 89 of 1991, as substituted by section 177 of Act 60 of 2001 and amended by section 56 of Act 30 of 2002**

**120.** Schedule 1 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition of the following to Item 407.02:

"00.00/02.00 Additional goods, new or used, of a total value not exceeding R10 000 per person (or such other amount as the Minister may fix by way of a notice in the *Gazette*), excluding goods of a class or kind specified in Item Nos. 407.02/22.00, 407.02/24.02 and 407.02/33.03."

(b) by the insertion of the following paragraphs after paragraph 4 of the Notes to Item 407.00:

"4A The exemption in item 407.02/00.00/02.00 is only applicable if the total value of the goods declared under item 407 (excluding goods provided for in item 407.01) does not exceed R10 000 (or such other amount as the Minister may fix by way of a notice in the *Gazette*).

4B If the person concerned so desires and indicates accordingly before the goods are cleared, the goods in respect of which the exemption in item 407.02/00.00/02.00 is applicable, may be cleared at the rates of duty specified in Schedule 1 to the Customs and Excise Act and with payment of VAT at the standard rate.

4C If a person contravenes any provision of this Act, the Customs and Excise Act or any other law relating to the importation of goods, the Commissioner may refuse to grant any exemption provided for in Item 407.02."

**Amendment of section 6 of Act 31 of 1998**

**121.** Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for subparagraph (ix) of paragraph (b) of the following subparagraph:

“(ix) if the beneficial ownership is acquired by a **[company]** person in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act 58 of 1962), a share-for-share transaction contemplated in section 43 of the Act, an amalgamation transaction contemplated in section 44, an intra-group transaction contemplated in section **[44]** 45, or in pursuance of a distribution in specie in the course of an unbundling transaction or in terms of a liquidation transaction contemplated in section **[46]** 47 of that Act, where the public officer of **[that]** the relevant company has made a sworn affidavit or solemn declaration that such company formation transaction, share-for-share transaction, unbundling transaction or liquidation transaction complies with the provisions contained in section 42, 43, 44, 45, **[or]** 46 or 47, as the case may be, of that Act.”.

#### **Substitution of section 11 of Act 9 of 1999**

**122.** The following section hereby substitutes section 11 of the Skills Development Levies Act, 1999:

### **“Interest on late payment**

If an employer fails to pay a levy or any portion thereof on the last day for payment thereof, as contemplated in section 6(2) or 7(4), interest is payable on the outstanding amount at the rate contemplated in paragraph (b) of the definition of ‘prescribed rate’ in section 1 of the Income Tax Act, calculated from the day following that last day for payment to the day that payment is received by the Commissioner, SETA or approved body, as the case may be.”.

### **Substitution of section 20A of Act 9 of 1999**

**123.** The following section substitutes section 20A of the Skills Development Levies Act, 1999:

#### **“Jurisdiction of courts.**

**20A.** A person charged with an offence under this Act may[, **notwithstanding anything to the contrary in any law,**] be tried in respect of that offence by any court having jurisdiction within any area in which that person resides or carries on business, in addition to any jurisdiction conferred upon any court by any law.”.

### **Amendment of section 4 of Act 59 of 2000**

**124.** (1) Section 4 of the Revenue Laws Amendment Act, 2000, is hereby amended by the addition of the following subsection:

“(2) Subsection (1) shall, in so far as it amends section 6quat of the Income Tax Act, 1962 (Act No. 58 of 1962), to withdraw subitem (BBB) of item (bb) of subparagraph (i) of the proviso to subsection (1B)(b), come into operation on the date of promulgation of this Act, and shall apply in

respect secondary tax on companies in respect of dividends declared on or after that date.”.

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

#### **Amendment of section 3 of Act 5 of 2001**

**125.** Section 3 of the Taxation Laws Amendment Act, 2001, is hereby amended by the addition of the following subsection:

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

#### **Amendment of section 51 of Act 19 of 2001**

**126.** (1) Section 51 of the Revenue Laws Amendment Act, 2001, is hereby amended by the addition to the Afrikaans text of the following subsection:

“(2) Subartikel (1) tree in werking op ‘n datum deur die President by proklamasie in die Staatskoerant bepaal.”.

(2) Subsection (1) shall be deemed to have come into operation on 27 July 2001.

#### **Amendment of section 118 of Act 60 of 2001**

**127.** (1) Section 118 of the Second Revenue Laws Amendment Act, 2001, is hereby amended by the substitution in subsection (1) in the proposed section 11(1) of the Customs and Excise Act, 1964, for the words preceding paragraph (a) of the following words:

“all goods imported into the Republic by ship, aircraft or other vehicle shall, ~~except where the Commissioner otherwise prescribe by rule. [if]~~ when landed [before due entry thereof] be—”.

(2) Subsection (1) shall be deemed to have come into operation on the date on which section 116(1) of the Second Revenue Laws Amendment Act, 2001, comes into operation.

#### **Amendment of section 134 of Act 60 of 2001**

**128.** (1) Section 134 of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The provisions contained in the regulations prescribing the circumstances under which the Commissioner may **[waive and claim for purposes of the settlement of]** settle any dispute and the reporting requirements, as contemplated in section 93A of the Customs and Excise Act, 1964 , must be **[incorporated into that Act]** tabled in Parliament within a period of 12 months from the date that the regulations come into operation for incorporation into the Customs and Excise Act, 1964”.

(2) Subsection (1) shall be deemed to have come into operation on 12 December 2001.

#### **Short title and commencement**

**129.** (1) This Act shall be called the Revenue Laws Amendment Act, 2002.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected by this Act to the Income Tax Act, 1962, shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2003.