

REPUBLIC OF SOUTH AFRICA

TAXATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 77))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 10—2009]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To—

- amend the Transfer Duty Act, 1949, so as to amend a definition; to make a new provision; to provide for an exemption; to effect consequential amendments;
 - amend the Estate Duty Act, 1955, so as to make further provision for a deduction;
 - amend the Income Tax Act, 1962, so as to fix the rates of normal tax and amend monetary amounts; to amend and insert certain definitions; to effect technical corrections; to repeal certain provisions; to amend certain provisions; to make a new provision; to effect textual and consequential amendments;
 - amend the Customs and Excise Act, 1964, so as to amend the air passenger tax; to amend rates of duty in Schedule No. 1; to provide for the continuation of certain amendments to the Schedule;
 - amend the Banks Act, 1990, so as to effect a consequential amendment;
 - amend the Value-Added Tax Act, 1991, so as to amend monetary amounts; to insert a new provision; to effect consequential amendments;
 - amend the Taxation Laws Amendment Act, 2004, so as to change an effective date;
 - amend the Revenue Laws Amendment Act, 2006, so as to change effective dates;
 - amend the Diamond Export Levy Act, 2007, so as to insert a definition; to clarify a provision;
 - amend the Securities Transfer Tax Act, 2007, so as to make a textual amendment;
 - amend the Mineral and Petroleum Resources Royalty Act, 2008, so as to amend effective dates; to amend provisions; to update a Schedule;
 - amend the Revenue Laws Amendment Act, 2008, so as to amend commencement provisions;
 - introduce measures relating to sharing of general fuel levy revenue;
 - provide for special measures relating to zero-rating of certain goods and services;
- and to provide for matters connected therewith.

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

Amendment of section 1 of Act 40 of 1949, as amended by section 11 of Act 80 of 1959, section 1 of Act 77 of 1964, section 5 of Act 103 of 1969, section 4 of Act 106 of 1980, section 1 of Act 86 of 1987, section 2 of Act 87 of 1988, Proclamation R.11 of 1994, section 8 of Act 37 of 1996, section 34 of Act 34 of 1997, section 1 of Act 5 of 2001, section 2 of Act 74 of 2002 and section 1 of Act 45 of 2003 5

1. (1) Section 1 of the Transfer Duty Act, 1949, is hereby amended—
- (a) by the deletion in the definition of “fair value” of the word “or” at the end of paragraph (b); 10
 - (b) by the addition in the definition of “fair value” of the word “or” at the end of paragraph (c);
 - (c) by the insertion in the definition of “fair value” of the following paragraph preceding the proviso: 15
 - “(d) in relation to a share in a company as contemplated in paragraph (g) of the definition of ‘property’, means so much of the fair market value, as at the date of acquisition of that share, of any property held by that company which constitutes property as contemplated in paragraphs (a), (b) and (c) of that definition (without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property) as is attributable to that share”; 20
 - (d) by the substitution in the definition of “property” for paragraphs (d) and (e) of the following paragraphs: 25
 - “(d) a share (other than a share contemplated in paragraph (g)) or member’s interest in a residential property company; [or] 25
 - (e) a share (other than a share contemplated in paragraph (g)) or member’s interest in a company which is a holding company (as defined in the Companies Act, 1973 (Act No. 61 of 1973), or as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be), if that company and all of its subsidiary companies (as defined in the Companies Act, 1973, or Close Corporations Act, 1984), would be a residential property company if all such companies were regarded as a single entity;”; 30
 - (e) by the addition to the definition of “property” of the following paragraph: 35
 - “(g) a share in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);”.
- (2) Subsection (1) is deemed to have come into operation on 1 September 2009 and applies in respect of the acquisition of any share in a share block company on or after that date. 40

Amendment of section 3 of Act 40 of 1949, as amended by section 4 of Act 88 of 1974, section 1 of Act 99 of 1981, section 4 of Act 97 of 1993, section 10 of Act 37 of 1996, section 6 of Act 60 of 2001, section 3 of Act 74 of 2002 and section 1 of Act 35 of 2007

2. (1) Section 3 of the Transfer Duty Act, 1949, is hereby amended by the substitution 45 in subsection (1A) for the words preceding the proviso of the following words:
- “Where a person who acquires any property contemplated in paragraph (d) [or], (e) or (g) of the definition of ‘property’ fails to pay the duty within the period contemplated in subsection (1), the public officer as defined in section 101 of the Income Tax Act, 1962 (Act No. 58 of 1962), of that company and the person from 50 whom the shares or member’s interest are acquired shall be jointly and severally liable for such duty”.
- (2) Subsection (1) is deemed to have come into operation on 1 September 2009 and applies in respect of the acquisition of any share in a share block company on or after that date. 55

Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 4 of Act 126 of 1998, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000, section 2 of Act 5 of 2001, section 8 of Act 60 of 2001, section 3 of Act 30 of 2002, section 4 of Act 74 of 2002, section 3 of Act 45 of 2003, section 2 of Act 16 of 2004, section 2 of Act 32 of 2004, section 2 of Act 31 of 2005, section 16 of Act 9 of 2006, section 1 of Act 20 of 2006, section 2 of Act 35 of 2007 and section 1 of Act 60 of 2008

3. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended— 15

(a) by the substitution in subsection (1)(l)(iv) for item (aa) of the following item:

“(aa) whether or not any election has been made [~~that the provisions~~] in terms of the relevant section [apply]; or”;

(b) by the addition of the following subsection:

“(20) No duty shall be payable in respect of any acquisition of any interest in a residence as contemplated in paragraph 51 of the Eighth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), where that acquisition takes place as a result of a transfer contemplated in that paragraph.”

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of a transaction entered into on or after that date. 25

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 11 February 2009 and applies in respect of distributions made on or after that date and before 1 January 2012.

Repeal of section 9A of Act 40 of 1949 30

4. The Transfer Duty Act, 1949, is hereby amended by the repeal of section 9A.

Substitution of section 4A of Act 45 of 1955

5. (1) The Estate Duty Act, 1955, is hereby amended by the substitution for section 4A of the following section:

“Dutiable amount of an estate 35

4A. (1) Subject to subsections (2) and (3), the dutiable amount of the estate of any person shall be determined by deducting from the net value of that estate, as determined in accordance with section 4, an amount of R3,5 million.

(2) Where a person was the spouse at the time of death of one or more previously deceased persons, the dutiable amount of the estate of that person shall be determined by deducting from the net value of that estate, as determined in accordance with section 4, an amount equal to the amount specified in subsection (1)—

(a) multiplied by two; and 45

(b) reduced by the amount deducted from the net value of the estate of any one of the previously deceased persons in accordance with this section.

(3) Where a person was one of the spouses at the time of death of a previously deceased person, the dutiable amount of the estate of that person shall be determined by deducting from the net value of that estate, as determined in accordance with section 4, an amount equal to the sum of—

(a) the amount specified in subsection (1); and

(b) the amount specified in subsection (1) divided by the number of spouses, reduced by an amount which is determined by dividing the amount deducted, in accordance with subsection (1), from the net 55

value of the estate of the previously deceased person by the number of spouses of that previously deceased person.

(4) The amount contemplated in subsection (2)(b) or (3)(b) shall not exceed the amount specified in subsection (1).

(5) Subsections (2) and (3) shall not apply unless the executor of the estate of that person submits, at the time and in the manner and form prescribed by the Commissioner, to the Commissioner a copy of a return submitted to the Commissioner in terms of section 7 in respect of the estate of the previously deceased person.”

(2) Subsection (1) comes into operation on 1 January 2010 and applies in respect of the estate of a person who dies on or after that date.

Fixing of rates of normal tax and amendment of certain amounts for purposes of Act 58 of 1962

6. (1) The rates of tax fixed by Parliament in terms of section 5(2) of the Income Tax Act, 1962, are set out in paragraphs 1, 3, 4, 5, 6, 7, 8 and 10 of Appendix I to this Act.

(2) The rate of tax fixed by Parliament in terms of section 48B(1) of the Income Tax Act, 1962, is set out in paragraph 9 of Appendix I to this Act.

(3) The Income Tax Act, 1962, is hereby amended by the substitution for the amounts in section 6(2)(a) and (b) respectively of the amounts in the third column opposite the relevant section in the table in paragraph 2 of Appendix I to this Act.

(4) For the purposes of Appendix I to this Act any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning so assigned unless the context otherwise indicates.

(5) Subject to subsection (6), the rates of tax referred to in subsection (1) and the amounts referred to in subsection (3) apply in respect of—

- (a) any person (other than a company or a trust other than a special trust) for the year of assessment commencing on or after 1 March 2009;
- (b) any company (other than an employment company as defined in section 12E of the Income Tax Act, 1962, or a personal service provider as defined in paragraph 1 of the Fourth Schedule to that Act) for any year of assessment ending during the period of 12 months ending on 31 March 2010;
- (c) any trust (other than a special trust or a personal service provider as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, that constitutes a trust) for any year of assessment ending on 28 February 2010;
- (d) any employment company as defined in section 12E of the Income Tax Act, 1962, for any year of assessment commencing before 1 March 2009 and ending during the period of 12 months ending on 31 March 2010; and
- (e) any personal service provider as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, for any year of assessment commencing on or after 1 March 2009.

(6) The rate of tax referred to in subsection (2) applies in respect of the taxable turnover of a person that was a registered micro business as defined in paragraph 1 of the Sixth Schedule to the Income Tax Act, 1962, in respect of any year of assessment commencing on or after 1 March 2009.

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice No. 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice No. 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008 and section 4 of Act 60 of 2008

7. (1) Section 1 of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in the definition of “company” of paragraph (e)(i);
 - (b) by the substitution in the definition of “connected person” for subparagraph (ii) of paragraph (a) of the following subparagraph:
 - “(ii) any trust (other than a portfolio of a collective investment scheme in securities) of which such natural person or such relative is a beneficiary;”;
 - (c) by the substitution in the definition of “connected person” for the words preceding subparagraph (i) of paragraph (b) of the following words:
 - “in relation to a trust (other than a portfolio of a collective investment scheme in securities)—”;
 - (d) by the substitution in the definition of “connected person” for paragraph (bA) of the following paragraph:
 - “(bA) in relation to a connected person in relation to a trust (other than a collective investment scheme in property shares managed or carried on by any company registered as a manager under section 42 of the Collective Investment Schemes Control Act, 2002, for purposes of Part V of that Act and other than a portfolio of a collective investment scheme in securities), includes any other person who is a connected person in relation to such trust;”;
 - (e) by the substitution in the definition of “connected person” for item (bb) of paragraph (d)(vi) of the following item:
 - “(bb) any relative of such member or any trust (other than a portfolio of a collective investment scheme in securities) which is a connected person in relation to such member; and”;
 - (f) by the addition to the definition of “connected person” of the following proviso:
 - “: Provided that for the purposes of this definition, a company includes a portfolio of a collective investment scheme in securities”;
 - (g) by the substitution in the definition of “contributed tax capital” for the words following paragraph (b) of the following words:
 - “reduced by so much of that amount as the company has transferred on or after that date to shareholders in relation to those shares, and has by the date of the transfer been determined [in writing] by the directors of the company or by some other person or body of persons with comparable authority conferred under the memorandum or articles of association of the company to be an amount so transferred: Provided that the amount so transferred to a shareholder of any class of shares is deemed to be an amount that bears to the total of the [amounts so transferred to all shareholders of that class] amount of contributed tax capital attribut-

- able to that class of shares immediately before the distribution the same ratio as the number of shares of that class held by that shareholder bears to the total number of shares of that class;”;
- (h) by the substitution for the definition of “dividend” of the following definition: 5
 “**‘dividend’** means any amount transferred or applied by a company for the benefit of any shareholder in relation to that company by virtue of any share held by that shareholder in that company, whether—
 (a) by way of a distribution; or
 (b) as consideration for the acquisition of any share in that company, but does not include any amount so transferred or applied by the company to the extent that the amount so transferred or applied—
 (i) results in a reduction of contributed tax capital;
 (ii) constitutes shares in that company;
 (iii) constitutes an acquisition by a company of its own securities as contemplated in paragraph 5.67 of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with the requirements prescribed by paragraphs 5.67 to 5.84 of section 5 of the JSE Limited Listings Requirements; or
 (iv) constitutes a redemption of a participatory interest in an arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’;”;
- (i) by the deletion in the definition of “gross income” of paragraph (eB);
 (j) by the deletion in the definition of “gross income” of paragraph (eC);
 (k) by the deletion in the definition of “gross income” of the proviso to paragraph (k); 25
 (l) by the insertion before the definition of “listed company” of the following definition:
 “**‘JSE Limited Listings Requirements’** means the JSE Limited Listings Requirements, 2003, made by the JSE Limited in terms of section 12 of the Securities Services Act, 2004 (Act No. 36 of 2004);”;
- (m) by the insertion after the definition of “listed company” of the following definition:
 “**‘listed share’** means a share that is listed on an exchange as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), and licensed under section 10 of that Act;”;
- (n) by the insertion after the definition of “low-cost residential unit” of the following definition:
 “**‘lump sum benefit’** means a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit;”;
- (o) by the substitution in the definition of “pension fund” for subparagraphs (i) and (ii) of paragraph (a) of the following subparagraphs: 40
 “(i) any **[superannuation,]** pension, provident or dependants’ fund or pension scheme established by law; **[or]**
 (ii) any **[superannuation,]** pension, provident or dependants’ fund or pension scheme established for the benefit of the employees of any municipality or of any local authority (as defined in the definition of ‘local authority’ in this section **[1]** prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006 (Act No. 20 of 2006), that was established prior to the date that section so came into operation); or”;
- (p) by the substitution in the definition of “pension preservation fund” for item (bb) of paragraph (a)(ii) of the proviso of the following item: 50
 “(bb) if the member elected to have any lump sum benefit contemplated in paragraph **[2(b)(ii)] 2(1)(b)(ii)** of the Second Schedule transferred to this pension preservation fund and who made this election while they were members of that other fund;”;
- (q) by the substitution in the definition of “pension preservation fund” for subparagraph (iv) of paragraph (a) of the proviso of the following subparagraph: 55
 “(iv) **[a person]** persons who **[has]** have elected to transfer **[an amount]** to that fund amounts awarded to **[that person]** those persons in terms of **[a]** any court order contemplated in section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), from **[a]** any 60

- pension fund or pension preservation fund for the benefit of **[that person]** those persons;”;
- (r) by the substitution in the definition of “pension preservation fund” for the words preceding paragraph (b)(i) of the proviso of the following words: 5
 “payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph **[2(b)] 2(1)(b)** of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that is paid or transferred to the fund by—”;
- (s) by the substitution in the definition of “pension preservation fund” for subparagraph (ii) of paragraph (b) of the proviso of the following subparagraph: 10
 “(ii) a pension fund[,] or pension preservation fund[, **provident preservation fund or retirement annuity fund**] of which such member’s former spouse is or was previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956);”;
- (t) by the substitution in the definition of “pension preservation fund” for paragraph (c) of the proviso of the following paragraph: 15
 “(c) with the exception of amounts transferred to any other pension fund or pension preservation fund, not more than one amount contemplated in paragraph **[2(b)] 2(1)(b)(ii)** of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other pension preservation fund: Provided that this paragraph applies separately to each payment or transfer to the fund contemplated in paragraph (b);”;
- (u) by the substitution for the definition of “person” of the following definition: 20
 “**person** includes an insolvent estate, the estate of a deceased person **[and]**, any trust and any portfolio of a collective investment scheme in securities;”;
- (v) by the insertion after the definition of “person” of the following definition: 25
 “**portfolio of a collective investment scheme in securities**’ means any portfolio comprised in any collective investment scheme in securities contemplated in Part IV of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), managed or carried on by any company registered as a manager under section 42 of that Act for the purposes of that Part;”;
- (w) by the substitution in the definition of “provident preservation fund” for item (bb) of paragraph (a)(ii) of the proviso of the following item: 30
 “(bb) if the member elected to have any lump sum benefit contemplated in paragraph **[2(b)(ii)] 2(1)(b)(ii)** of the Second Schedule transferred to that fund and who made this election while they were members of that other fund;”;
- (x) by the substitution in the definition of “provident preservation fund” for the words preceding paragraph (b)(i) of the proviso of the following words: 35
 “payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph **[2(b)] 2(1)(b)** of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that is paid or transferred to the fund by—”;
- (y) by the substitution in the definition of “provident preservation fund” for subparagraph (ii) of paragraph (b) of the proviso of the following subparagraph: 40
 “(ii) a **[pension fund, pension preservation fund,]** provident fund[,] or provident preservation fund **[or retirement annuity fund]** of which such member’s former spouse is or was previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956);”;
- (z) by the substitution in the definition of “provident preservation fund” for paragraph (c) of the proviso of the following paragraph: 45
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- “(c) with the exception of amounts transferred to any other provident fund or provident [,] preservation fund, not more than one amount contemplated in paragraph [2(b)] 2(1)(b)(ii) of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other provident preservation fund: 5
 Provided that this paragraph applies separately to each payment [,] or transfer to the fund contemplated in paragraph (b); and”;
- (zA) by the substitution in the definition of “retirement annuity fund” for subparagraph (v) of paragraph (b) of the proviso of the following subparagraph: 10
 “(v) that no member shall become entitled to the payment of any annuity or lump sum benefit contemplated in paragraph [2(a)] 2(1)(a) of the Second Schedule prior to reaching normal retirement age;”;
- (zB) by the substitution in the definition of “retirement annuity fund” for subparagraph (x) of paragraph (b) of the proviso of the following subparagraph: 15
 “(x) that a member who discontinues his or her contributions prior to his or her retirement date shall be entitled to—
 (aa) an annuity or a lump sum benefit contemplated in 20
 paragraph [2(a)] 2(1)(a) of the Second Schedule payable on that date;
 (bb) be reinstated as a full member under conditions prescribed in the rules of the fund;
 (cc) the payment of a lump sum benefit contemplated in 25
 paragraph [2(b)(ii)] 2(1)(b)(ii) of the Second Schedule where that member’s interest in the fund is less than an amount determined by the Minister by notice in the *Gazette*; or
 (dd) the payment of a lump sum benefit contemplated in 30
 paragraph [2(b)(ii)] 2(1)(b)(ii) of the Second Schedule where that member emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control;”;
- (zC) by the substitution in the definition of “retirement annuity fund” for item (ee) 35
 of paragraph (b)(xii) of the proviso of the following item:
 “(ee) for any deduction contemplated in paragraph [2(b)] 2(1)(b) of the Second Schedule.”;
- (zD) by the substitution for the definition of “retirement date” of the following 40
 definition:
 “**‘retirement date’** means the date on which—
 (a) a member of a pension fund, pension preservation fund, provident 45
 fund, provident preservation fund or retirement annuity fund, in terms of the rules of that fund, becomes entitled to an annuity or a lump sum benefit contemplated in paragraph [2(a)] 2(1)(a) of the Second Schedule on or subsequent to [death or] attaining normal retirement age; or
 (b) a nominee or dependant of a deceased member of a pension fund, 50
 pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, in terms of the rules of that fund, becomes entitled to an annuity or a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule on the death of the member;”;
- (zE) by the substitution for the definition of “retirement fund lump sum benefit” of 55
 the following definition:
 “**‘retirement fund lump sum benefit’** means an amount determined in terms of paragraph [(2)(a)] 2(1)(a) of the Second Schedule [in respect of a year of assessment];”;
- (zF) by the substitution for the definition of “retirement fund lump sum withdrawal 60
 benefit” of the following definition:
 “**‘retirement fund lump sum withdrawal benefit’** means an amount determined in terms of paragraph [2(b)] 2(1)(b) of the Second Schedule;” and

(zG) by the substitution for the definition of “year of assessment” of the following definition:

“**‘year of assessment’** means any year or other period in respect of which any tax or duty leviable under this Act is chargeable, and any reference in this Act to any year of assessment ending the last or the twenty-eighth or the twenty-ninth day of February shall, unless the context otherwise indicates, in the case of a company or a portfolio of a collective investment scheme in securities be construed as a reference to any financial year of that company or portfolio ending during the calendar year in question.”

(2) Paragraphs (a), (b), (c), (d), (e), (f), (k), (u), (v) and (zG) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

(3) Paragraphs (g), (h) and (l) of subsection (1) come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

(4) Paragraph (i) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009.

(5) Paragraph (j) of subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of amounts awarded on or after that date.

Amendment of section 5 of Act 58 of 1962, as substituted by section 2 of Act 6 of 1963 and amended by section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 3 of Act 3 of 2008 and section 6 of Act 60 of 2008

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

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

“(c) ‘B’ represents the taxpayer’s taxable income [(excluding any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit)] for the said year;”;

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

“(f) ‘L’ [represents an amount equal to the sum of—
(i), in relation to any amount which accrued to the taxpayer on or after 1 September 1995 to which the provisions of section 7A(4A) are applicable in respect of the said year, represents an amount equal to the lesser of—

[(aa) (i) that amount; or

[(bb) (ii) an amount equal to three times the annual average of the amounts derived by such taxpayer during the three years of assessment which immediately preceded the year of assessment under charge by way of remuneration as defined in paragraph 1 of the Fourth Schedule, including any amount referred to in paragraph (vii) of that definition but excluding so much of the sum of any other amounts contemplated in [the said] section 7A(4A) as were included in the amounts represented by the symbols ‘C’ and ‘L’ in respect of the said year and any previous year of assessment; and

[(ii) any amount contemplated in paragraph 2(b) of the Second Schedule which was included in the taxpayer’s income for the year; and]”.

Amendment of section 6quat of Act 58 of 1962, as inserted by section 9 of Act 89 of 1969 and amended by section 5 of Act 94 of 1983, section 5 of Act 85 of 1987, section 5 of Act 28 of 1997, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000, section 4 of Act 59 of 2000, section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002, section 16 of Act 45 of 2003, section 4 of Act 32 of 2004, section 8 of Act 31 of 2005 and section 7 of Act 35 of 2007 5

9. (1) Section 6quat of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1A) of paragraph (e).

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2010 and applies in respect of— 10

(a) amounts received by or accrued to a portfolio of a collective investment scheme; and

(b) amounts distributed by a portfolio of a collective investment scheme that are derived from amounts contemplated in paragraph (a),

on or after that date. 15

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 5 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991, section 5 of Act 141 of 1992, section 6 of Act 21 of 1995, section 23 of Act 30 of 1998, section 13 of Act 53 of 1999, section 5 of Act 59 of 2000, section 10 of Act 74 of 2002, section 17 of Act 45 of 2003, section 5 of Act 32 of 2004, section 9 of Act 31 of 2005, section 8 of Act 35 of 2007, section 4 of Act 3 of 2008 and section 8 of Act 60 of 2008 20

10. Section 7 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (11) of the following subsection: 25

“(11) Any amount received by or accrued to any person by way of deduction from the minimum individual reserve of any other person in terms of—

(a) section 37D(1)(d)(iA) of the Pension Funds Act, 1956 (Act No. 24 of 1956); or

(b) section 37D(1)(d)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956), to the extent that the deduction is a result of a deduction contemplated in paragraph (a), 30

shall be deemed for the purposes of this Act to be income accrued to that other person on the date of the deduction.”.

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000, section 7 of Act 19 of 2001, section 21 of Act 60 of 2001, section 12 of Act 30 of 2002, section 11 of Act 74 of 2002, section 18 of Act 45 of 2003, section 6 of Act 32 of 2004, section 4 of Act 9 of 2005, section 21 of Act 9 of 2006, section 5 of Act 20 of 2006, section 6 of Act 8 of 2007, section 9 of Act 35 of 2007, section 5 of Act 3 of 2008 and section 9 of Act 60 of 2008 35

11. (1) Section 8 of the Income Tax Act, 1962, is hereby amended— 50

(a) by the deletion in subsection (1)(b)(ii) of the further proviso;

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

“Provided that the provisions of this paragraph shall not apply in respect of any such amount so recovered or recouped which has been included in the gross income of such taxpayer in terms of paragraph [(eB) or] (jA) of the definition of ‘gross income’”; and 55

(c) by the insertion in subsection (4) of the following paragraph:

“(b) For the purposes of paragraph (a), where during any year of assessment any actuarial surplus is paid to a taxpayer pursuant to the provisions of section 15E(1)(f) or (g) of the Pension Funds Act, 1956 (Act No. 24 of 1956), the taxpayer must be deemed to have recovered or recouped an amount equal to the amount of that actuarial surplus less any expenditure incurred by that taxpayer in respect of that actuarial surplus that was not allowed as a deduction during any year of assessment.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2010 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009.

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001, section 22 of Act 60 of 2001, section 14 of Act 74 of 2002, section 22 of Act 45 of 2003, section 13 of Act 32 of 2004, section 14 of Act 31 of 2005, section 9 of Act 20 of 2006, section 9 of Act 8 of 2007, section 15 of Act 35 of 2007, section 8 of Act 3 of 2008 and section 13 of Act 60 of 2008

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

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

“(a) a fixed place of business located in a country other than the Republic that is used or will continue to be used for the carrying on of the business of that controlled foreign company for a period of not less than one year, where—

- (i) that business is conducted through one or more offices, shops, factories, warehouses or other structures;
- (ii) that fixed place of business is suitably staffed with on-site managerial and operational employees of that controlled foreign company who conduct the primary operations of that business;
- (iii) that fixed place of business is suitably equipped for conducting the primary operations of that business;
- (iv) that fixed place of business has suitable facilities for conducting the primary operations of that business; and
- (v) that fixed place of business is located outside the Republic solely or mainly for a purpose other than the postponement or reduction of any tax imposed by any sphere of government in the Republic:

Provided that for the purposes of determining whether there is a fixed place of business as contemplated in this definition, a controlled foreign company may take into account the utilisation of structures as contemplated in subparagraph (i), employees as contemplated in subparagraph (ii), equipment as contemplated in subparagraph (iii), and facilities as contemplated in subparagraph (iv) of any other company—

- (aa) if that other company is subject to tax in the country in which the fixed place of business of the controlled foreign company is located by virtue of residence, place of effective management or other criteria of a similar nature;
- (bb) if that other company forms part of the same group of companies as the controlled foreign company; and
- (cc) to the extent that the structures, employees, equipment and facilities are located in the same country as the fixed place of business of the controlled foreign company.”;

- (b) by the substitution in subsection (2) for subparagraph (i) of paragraph (C) of the proviso of the following subparagraph:
- “(i) the participation rights are held by an insurer as defined in section 29A in any policyholder fund as defined in terms of that section [29A], and are directly attributable to—
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- (aa) a linked policy [**or a market-related policy**] as defined in section 1 of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998); or
- (bb) a policy as defined in section 29A, other than a policy contemplated in item (aa), of which the amount of the policy benefits as defined in the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), is not guaranteed by the insurer and is to be determined wholly by reference to the value of particular assets or categories of assets; and”;
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- (c) by the addition to subsection (2A) of the following further proviso: 15
- “: Provided further that—
- (i) the net income of a controlled foreign company in respect of a foreign tax year shall be deemed to be nil where the aggregate amount of tax payable to all spheres of government of any country other than the Republic by the controlled foreign company on the net income of that controlled foreign company in respect of the foreign tax year of that controlled foreign company is at least 75 per cent of the amount of normal tax that would have been payable in respect of any taxable income of the controlled foreign company had the controlled foreign company been a resident for that foreign tax year; and
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- (ii) the aggregate amount of tax payable contemplated in subparagraph (i) must be determined—
- (aa) after taking into account any applicable agreement for the prevention of double taxation and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic; and
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- (bb) after disregarding any loss in respect of a year other than a year contemplated in subparagraph (i) or from a company other than a company contemplated in subparagraph (i)”;
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- (d) by the deletion in subsection (10)(a) of subparagraphs (i), (iv) and (v); and
- (e) by the substitution for the proviso to subsection (10)(a) of the following proviso:
- “: Provided that the Commissioner—
- (i) must take into account the activities and transactions carried out or to be carried out by the persons involved; and
- (ii) must not issue any ruling in terms of this section if the application for the ruling relates to the determination of the net income of a controlled foreign company in respect of a foreign tax year and that application is submitted after the end of the year of assessment in which that foreign tax year ends”.
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- (2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 1 January 2008 and apply in respect of foreign tax years of controlled foreign companies ending during years of assessment ending on or after that date. 50
- (3) Paragraphs (d) and (e) of subsection (1) are deemed to have come into operation on 1 September 2009 and apply in respect of applications for rulings not accepted by the Commissioner for the South African Revenue Service by that date.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 1 of Act 49 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, section 8 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, section 10 of Act 20 of 2006, section 10 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, section 9 of Act 3 of 2008 and section 16 of Act 60 of 2008

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

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

“(e) (i) any levy [**and any income derived from any other sources, to the extent that the income derived from those other sources does not in total exceed R50 000,**] received by or accrued to—

[(i)](aa) any body corporate established in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986), from its members;

[(ii)](bb) a share block company established in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), from its shareholders; or

[(iii)](cc) any other association of persons (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), any co-operative, close corporation and trust, but including a company [**incorporated under**] contemplated in section 21 of the Companies Act, 1973), from its members, where the Commissioner is satisfied that, subject to such conditions as he or she may deem necessary, such association of persons—

[(aa)](A) has been formed solely for purposes of managing the collective interests common to all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable; and

[(bb)](B) is not permitted to distribute any of its funds to any person other than a similar association of persons:

Provided that such body, company or association is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would

- become payable by any person under this Act or any other law administered by the Commissioner; and
- (ii) any receipts and accruals other than levies derived by a body corporate, share block company or association contemplated in subparagraph (i), to the extent that the aggregate of those receipts and accruals does not exceed R50 000;”;
- (b) by the insertion in subsection (1) of the following paragraph:
 “(gE) any amount awarded to a person by a beneficiary fund as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956);”;
- (c) by the substitution in subsection (1) for paragraph (h) of the following paragraph:
 “(h) interest as defined in section 24J(1) or deemed interest as contemplated in section 8E(2), which is received or accrued during any year of assessment by or to any person who is not a resident, unless that person—
 (i) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during that year; or
 (ii) at any time during that year carried on business through a permanent establishment in the Republic[,
and for purposes of this paragraph, so much of any dividend distributed to that person by a portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of ‘company’ in section 1 out of income derived by that portfolio which is exempt from tax in the hands of that portfolio under paragraph (iA), is deemed to be interest;”;
- (d) by the substitution in subsection (1)(i) for subparagraph (xv) of the following subparagraph:
 “(xv) in the case of any taxpayer who is a natural person—
 (aa) so much of the aggregate of any foreign dividends and interest received by or accrued to him or her from a source outside the Republic, which are not otherwise exempt from tax, as does not during the year of assessment exceed **[R3 200] R3 500**: Provided that the amount of the exemption in terms of this paragraph shall—
 (A) first apply in respect of any such foreign dividends; and
 (B) in so far as such amount exceeds the amount of such foreign dividends, apply in respect of any such interest; and
 (bb) so much of the aggregate of any interest received by or accrued to him or her from a source in the Republic **[and any dividends (other than foreign dividends), which are not otherwise exempt from tax,]** as does not during the year of assessment exceed—
 (A) in the case of any person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of **[R27 500] R30 000**; or
 (B) in any other case, the amount of **[R19 000] R21 000**, reduced by the amount of any exemption allowable in terms of paragraph (aa);”;
- (e) by the deletion in subsection (1) of paragraph (iA);
- (f) by the insertion in subsection (1) of the following paragraph:
 “(iB) any amount received by or accrued to a holder of a participatory interest in a portfolio of a collective investment scheme in securities by way of a distribution from that portfolio if that amount is deemed to have accrued to that portfolio in terms of section 25BA(b);”;

- (g) by the deletion in subsection (1)(k)(i) of paragraph (bb) of the proviso;
- (h) by the deletion in subsection (1)(k)(ii) of item (aa);
- (i) by the substitution in subsection (1)(k)(ii) for item (bb) of the following item:
 “(bb) **[to the extent that]** if the share in respect of which the foreign dividend [relates to any amount which was declared by a listed company which complies with paragraphs (a) and (b) of the definition of ‘listed company’ in section 1] is paid is a listed share;”;
- (j) by the deletion in subsection (1)(u) of subparagraph (ii); and
- (k) by the substitution in subsection (1) for paragraph (zG) of the following paragraph:
 “(zG) any amount received by or accrued to a person by way of a subsidy payable by the State under any scheme designed to promote the production of films (as defined in section 24F); Provided that where that person has agreed to pay the whole or any portion of that amount to any film owner (as defined in section 24F) that is the owner of the film in respect of which the subsidy is payable, the exemption under this paragraph must also apply to the whole or that portion of the amount received by or accrued to that film owner;”.
- (2) Paragraph (a) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009.
- (3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of amounts awarded on or after that date.
- (4) Paragraphs (c), (e), (f) and (g) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 January 2010 and apply in respect of—
- (a) amounts received by or accrued to a portfolio of a collective investment scheme; and
- (b) amounts distributed by a portfolio of a collective investment scheme that are derived from amounts contemplated in paragraph (a),
- on or after that date.
- (5) Paragraph (d) of subsection (1), to the extent that it amends—
- (a) monetary amounts, is deemed to have come into operation on 1 March 2009 and applies in respect of years of assessment commencing on or after that date; and
- (b) the words preceding subitem (A) in section 10(1)(i)(xv)(bb) of the Income Tax Act, 1962, comes into operation as from the commencement of years of assessment commencing on or after 1 January 2010 and applies in respect of—
- (i) amounts received by or accrued to a portfolio of a collective investment scheme; and
- (ii) amounts distributed by a portfolio of a collective investment scheme that are derived from amounts contemplated in paragraph (a),
- on or after that date.
- (6) Paragraphs (h) and (i) of subsection (1) come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.
- (7) Paragraph (k) of subsection (1) is deemed to have come into operation on 1 September 2009 and applies in respect of any amounts received or accrued on or after that date.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1968, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, section 9 of Act 16 of 2004, section 16 of Act 32 of 2004, section 6 of Act 9 of 2005, section 18 of Act 31 of 2005, section 11 of Act 20 of 2006, section 11 of Act 8 of 2007, section 17 of Act 35 of 2007, section 10 of Act 3 of 2008 and section 18 of Act 60 of 2008

14. (1) Section 11 of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion of paragraph (bB);
 - (b) by the addition to paragraph (f) of a semicolon and the word “or” at the end of subparagraph (iv);
 - (c) by the addition to paragraph (f) of the following subparagraph preceding the proviso:
 - “(v) the right of use of any pipeline, transmission line or cable or railway line contemplated in the definition of ‘affected asset’ in section 12D”;
 - (d) by the substitution in paragraph (f) for paragraph (aa) of the proviso of the following paragraph:
 - “(aa) the allowance under sub-paragraph (i), (ii), (ii)*bis* [or], (iii) or (v) shall not exceed for any one year such portion of the amount of the premium or consideration so paid as is equal to the said amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said amount, whichever is the greater;”;
 - (e) by the substitution in paragraph (f) for paragraph (dd) of the proviso of the following paragraph:
 - “(dd) the provisions of this paragraph shall not apply in relation to any such premium or consideration paid by the taxpayer which does not for the purposes of this Act constitute income of the person to whom it is paid, unless such premium or consideration is paid **[under a written agreement formally and finally signed before 10 April 1984 by every party to the agreement]** in respect of a right of use of a line or cable—
 - (A) used for the transmission of electronic communications;
 - and
 - (B) substantially the whole of which is located outside the territorial waters of the Republic, where the term of the right of use is 20 years or more;”;
 - (f) by the substitution in paragraph (g) for paragraph (iv) of the proviso of the following paragraph:
 - “(iv) the aggregate of the allowances under this paragraph in respect of any building or improvements referred to in section 13(1) [or (4)] or 27(2)(b) shall not exceed the cost (after the deduction of any amount which has been set off against the cost of such building or improvements under section 13(3) or section 27(4)) to the taxpayer of such building or improvements less the aggregate of the allowances in respect of such building or improvements made to the taxpayer under the said section 13(1) [or (4)] or 27(2)(b) or the corresponding provisions of any previous Income Tax Act;”;

- (g) by the substitution in paragraph (g) for paragraph (vi) of the proviso of the following paragraph:
- “(vi) the provisions of this paragraph shall not apply in relation to any such expenditure incurred [**under an agreement concluded on or after 1 July 1983,**] if the value of such improvements or the amount to be expended on such improvements, as contemplated in paragraph (h) of the definition of ‘gross income’ in section 1, does not for the purposes of this Act constitute income of the person to whom the right to have such improvements effected has accrued, unless the expenditure was incurred pursuant to an obligation to effect improvements in terms of—
- (aa) a Public Private Partnership; or
- (bb) a right of use or occupation of land or a building owned by—
- (i) the Government, any provincial administration or any municipality; or
- (ii) any entity, the receipts and accruals of which are exempt in terms of section 10(1)(cA) or 10(1)(t), where the right of use or occupation has a duration of 20 years or more;”;
- (h) by the substitution in paragraph (k)(ii) for paragraph (dd) of the proviso of the following paragraph:
- “(dd) no deduction shall be made under this paragraph in respect of so much of any amount carried forward in terms of paragraph (bb) of this proviso as has been accounted for under paragraph [(d) of the definition of ‘formula B’ in paragraph 1 of the Second Schedule or the first proviso to paragraph 6] 5(1) or 6(1)(b) or (3) of [that] the Second Schedule;”;
- (i) by the substitution for paragraph (n) of the following paragraph:
- “(n) (i) (aa) so much of the total current contributions to any retirement annuity fund or funds made during the year of assessment by any [person] taxpayer as a member of such fund or funds as does not in the case of the taxpayer exceed the greatest of—
- (A) 15 per cent of an amount equal to the amount remaining after deducting from, or setting off against, the income derived by the taxpayer during the year of assessment (excluding income derived from any retirement-funding employment (being the income or part thereof referred to in the definition of ‘retirement-funding employment’ in section 1), and any retirement fund lump sum benefit and retirement fund lump sum withdrawal benefit) the deductions or assessed losses admissible against such income under this Act (excluding this paragraph, sections 17A, 18 and 18A [of this Act] and items (c) to (i), inclusive, of paragraph 12(1) of the First Schedule); or
- (B) the amount, if any, by which the amount of R3 500 exceeds the amount of any deduction to which the taxpayer is entitled under paragraph (k)(i) in respect of the said year; or
- (C) the amount of R1 750;
- (bb) so much of the total of any contributions to any retirement annuity fund or funds made during the year of assessment by any [person] taxpayer as a member of such fund or funds as does not exceed R1 800 in the case of the taxpayer, where such contributions are made under conditions prescribed in the rules of the fund whereby a member who has discontinued his or her contributions prematurely is entitled to be reinstated as a full member thereof and the current contributions to the fund have been paid in full:
- Provided that—

- [(i)](aa) no deduction shall be made under subparagraph [(aa)] (i)(aa) in respect of any amount paid into a retirement annuity fund for the benefit of a taxpayer as a member of such fund where such amount is a lump sum benefit derived by the [member] taxpayer from a pension fund, a pension preservation fund, a provident fund, a provident preservation fund or a retirement annuity fund and that amount has under the provisions of paragraph [6(a)(i), (ii), (iii) and (iv)] 6(1)(a)(i)(aa), (bb), (cc) or (dd) of the Second Schedule qualified for deduction from any amount to be included in the [member's] taxpayer's gross income; 5
- [(ii)](bb) the deductions in terms of subparagraph [(aa)] (i)(aa) shall not exceed an amount equal to the amount remaining after deducting from or setting off against the income derived by the taxpayer during the year of assessment the deductions and assessed losses admissible against such income under this Act (excluding [the said subparagraph] subparagraph (i)(aa), sections 17A and 19(3) [of this Act] and paragraph 12(1)(c) to (i), inclusive, of the First Schedule); 15
- [(iii)](cc) any current contributions (excluding any amount referred to in [paragraph (i)] item (aa) of this proviso) to any retirement annuity fund or funds which are made by [such person] the taxpayer as a member of such fund or funds during a year of assessment and do not qualify for deduction from his or her income for that year under subparagraph [(aa)] (i)(aa) shall be carried forward and, except to the extent that such contributions have been accounted for under paragraph [(d) of the definition of 'formula B' in paragraph 1 of the Second Schedule or the first proviso to paragraph 6] 5(1) or 6(1)(b) or (3) of [that] the Second Schedule, be deemed for the purposes of [the said subparagraph] subparagraph (i)(aa) to be current contributions made to the fund or funds in question during the next succeeding year of assessment; 25
- [(iv)](dd) no deduction shall be made under subparagraph [(bb)] (i)(bb) in respect of any contribution relating to any year of assessment which, if such contribution had been made during that year, would not have qualified for deduction under this paragraph, as applicable in relation to the said year; 35
- [(v)](ee) any amount being a portion of a contribution made as contemplated in subparagraph [(bb)] (i)(bb) and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment, shall be carried forward and be deemed for the purposes of [the said paragraph] subparagraph (i) to be a contribution so made in the next succeeding year of assessment; 40
- [(vi)](ff) the provisions of this paragraph shall apply for the purpose of determining the taxpayer's total taxable income whether derived from the carrying on of any trade or otherwise; 50
- [(viii)](gg) where any such contribution was allowed as a deduction to a [person] taxpayer, no deduction in respect of such contribution shall be allowed to such [person's] taxpayer's spouse; and 55
- (ii) for the purposes of subparagraph (i), any contribution contemplated in that subparagraph which has been made by an employer of the taxpayer for the benefit of the taxpayer must, to the extent that the amount has been included in the income of the taxpayer as a taxable benefit in terms of the Seventh Schedule, be deemed to have been made by the taxpayer;". 60

(2) Paragraphs (b), (c), (d) and (e) of subsection (1) are deemed to have come into operation on 1 January 2009 and apply in respect of any pipeline, transmission line or cable or railway line first brought into use on or after that date.

(3) Paragraph (f) of subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of buildings or improvements brought into use on or after that date. 5

(4) Paragraph (g) of subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of improvements brought into use on or after that date.

(5) Paragraph (i) of subsection (1)— 10

(a) to the extent that it amends references to the Second Schedule, is deemed to have come into operation on 1 March 2009; and

(b) in any other case, comes into operation on 1 March 2010 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 11A of Act 58 of 1962, as inserted by section 28 of Act 45 of 2003 and amended by section 12 of Act 8 of 2007 15

15. (1) Section 11A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) which would have been allowed as a deduction in terms of section 11 (other than section 11 (x)), 11B [or], 11D or 24J, had the expenditure or losses been incurred after that person commenced carrying on that trade; and” 20

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

Amendment of section 11D of Act 58 of 1962, as inserted by section 13 of Act 20 of 2006 and amended by section 13 of Act 8 of 2007, section 3 of Act 9 of 2007, section 19 of Act 35 of 2007, section 11 of Act 3 of 2008 and section 19 of Act 60 of 2008 25

16. Section 11D of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (2), (3) and (4) of the following subsections:

“(2) There shall be allowed as a deduction by a taxpayer in respect of any building [or], part thereof, machinery, plant, implement, utensil or article or improvement thereto which— 30

(a) is owned by that taxpayer, or acquired by that taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of ‘instalment credit agreement’ in section 1 of the Value-added Tax Act, 1991 (Act No. 89 of 1991); and 35

(b) is [first] new and unused when brought into use by that taxpayer solely and directly for purposes contemplated in subsection (1); and

(c) **prior to first being brought into use by that taxpayer solely and directly for purposes contemplated in subsection (1), was not used by any person for any purpose;**]; 40

an amount equal to 50 per cent of the cost to that taxpayer of that new and unused building, part thereof, machinery, plant, implement, utensil [or], article or improvement in the year of assessment that it is [bought] brought into use [for the first time] by that taxpayer and 30 per cent in the first succeeding year of assessment and 20 per cent in the second succeeding year of assessment: Provided that no deduction shall be allowed to a taxpayer under this section in respect of any building, part thereof, machinery, plant, implement, utensil [or], article or improvement if that taxpayer ceased to use that building, part thereof, machinery, plant, implement, utensil [or], article or improvement solely and directly for purposes contemplated in subsection (1) during any previous year of assessment. 45

(3) For the purposes of this section, the cost to the taxpayer of any building, part thereof, machinery, plant, implement, utensil [or], article or improvement thereto shall be deemed to be the lesser of— 50

(a) the actual cost to the taxpayer in respect of the acquisition, installation and erection thereof; 55

(b) the cost which a person would, if he or she had acquired, installed or erected that building, part thereof, machinery, plant, implement, utensil [or], article or improvement under a cash transaction concluded at arm’s length on the date on which the transaction for the acquisition, installation or erection thereof

was in fact concluded, have incurred in respect of the cost of such acquisition, installation or erection; or

- (d) where the building, part thereof, machinery, plant, implement, utensil [or], article or improvement has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8(4)(e), whether in the current or any previous year of assessment. 5

(4) Notwithstanding any other provision of this section, any building [or], any part thereof or any improvement thereto shall be deemed not to have been used for purposes contemplated in subsection [(2)] (1) unless such building [or], part thereof or improvement is regularly used for those purposes and is specifically equipped for such use." 10

Amendment of section 11E of Act 58 of 1962, as inserted by section 20 of Act 35 of 2007 15

17. (1) Section 11E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (i) of the following subparagraph:

“(i) any company [**formed and incorporated under**] contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973); or”.

- (2) Subsection (1) is deemed to have come into operation on 1 January 2008. 20

Amendment of section 12B of Act 58 of 1962, as inserted by section 11 of Act 90 of 1988 and amended by section 13 of Act 101 of 1990, section 10 of Act 113 of 1993, section 6 of Act 140 of 1993, section 13 of Act 28 of 1997, section 17 of Act 59 of 2000, section 11 of Act 16 of 2004, section 7 of Act 9 of 2005, section 19 of Act 31 of 2005 and section 21 of Act 35 of 2007 25

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

- (a) by the insertion in subsection (1) of the following paragraph:

“(i) improvements (other than repairs) to any machinery, plant, implement, utensil or article referred to in paragraph (f), (g) or (h) which is during the year of assessment used as contemplated in that paragraph;” and 30

- (b) by the substitution for the words following paragraph (i) of the following words:

“a deduction calculated in terms of subsection (2) shall be allowed in respect of the year of assessment during which such machinery, plant, implement, utensil or article or any improvement thereto (hereinafter referred to as an asset) is so brought into use and each of the two succeeding years of assessment, such succeeding years of assessment hereinafter in this section referred to as the second and third years, in chronological order.”. 40

Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990 and amended by section 11 of Act 113 of 1993, section 7 of Act 140 of 1993, section 11 of Act 21 of 1994, section 13 of Act 21 of 1995, section 10 of Act 46 of 1996, section 18 of Act 59 of 2000, section 11 of Act 19 of 2001, section 15 of Act 30 of 2002, section 30 of Act 45 of 2003, section 8 of Act 9 of 2005, section 20 of Act 31 of 2005, section 14 of Act 8 of 2007, section 22 of Act 35 of 2007 and section 20 of Act 60 of 2008 45

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

- (a) by the insertion in subsection (1) of the following paragraph:

“(h) improvement (other than repairs) to any machinery, plant, implement, utensil or article referred to in paragraph (a), (b), (c), (d) or (e), which is during the year of assessment used as contemplated in that paragraph;” 50

- (b) by the substitution for the words following paragraph (h) of the following words: 55

“a deduction equal to 20 per cent of the cost to that taxpayer to acquire that machinery, plant, implement, utensil, article, ship [or], aircraft or improvement (hereinafter referred to as the asset) shall, subject to the

provisions of subsection (4), be allowed in the year of assessment during which the asset is so brought into use and in each of the four succeeding years of assessment: Provided that where—

- (a) such asset is a ship or aircraft, the deduction shall be calculated on the adjustable cost as determined in terms of section 14 or 14*bis*, as the case may be; and 5
- (c) any new or unused machinery or plant referred to in paragraph (a) of this subsection or improvement referred to in paragraph (h) of this subsection, is or was—
 - (i) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement on or after 1 March 2002; and 10
 - (ii) brought into use by the taxpayer on or after that date in a process of manufacture or process which in the opinion of the Commissioner is of a similar nature, carried on by that taxpayer in the course of its business (other than banking, financial services, insurance or rental business), 15

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

Amendment of section 12D of Act 58 of 1962, as amended by section 23 of Act 30 of 2000, section 19 of Act 59 of 2000, section 28 of Act 60 of 2001, section 16 of Act 30 of 2002, section 23 of Act 35 of 2007 and section 21 of Act 60 of 2008 25

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

- (a) by the substitution in subsection (1) for paragraph (c) of the definition of “affected asset” of the following paragraph:
 - “(c) [telephone] line or cable used for the transmission of [any signal for the purposes of telecommunication] electronic communications; and”; 30
- (b) by the substitution in subsection (1) for the words following paragraph (d) of the definition of “affected asset” of the following words:
 - “and includes any earthworks or supporting structures forming part of such pipeline, transmission line or cable or railway line and any improvement to such pipeline, transmission line or cable or railway line;”; and 35
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - “There shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of any new and unused affected asset, [or the improvement of any affected asset,] which—”. 40

(2) Subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of any pipeline, transmission line or cable or railway line first brought into use on or after that date. 45

Amendment of section 12E of Act 58 of 1962, as amended by section 12 of Act 19 of 2001, section 17 of Act 30 of 2002, section 21 of Act 74 of 2002, section 37 of Act 12 of 2003, section 31 of Act 45 of 2003, section 9 of Act 9 of 2005, section 21 of Act 31 of 2005, section 14 of Act 20 of 2006, section 24 of Act 9 of 2006, section 15 of Act 8 of 2007, section 25 of Act 35 of 2007, section 13 of Act 3 of 2008 and section 23 of Act 60 of 2008 50

21. Section 12E of the Income Tax Act, 1962, is hereby amended by the addition to subsection (4)(a)(ii) of the following item: 55

- “(hh) any company, close corporation or co-operative if the company, close corporation or co-operative—
 - (A) has not during any year of assessment carried on any trade; and

(B) has not during any year of assessment owned assets, the total market value of which exceeds R5 000;”.

Amendment of section 12F of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 26 of Act 35 of 2007 and section 24 of Act 60 of 2008

22. Section 12F of the Income Tax Act, 1962, is hereby amended— 5
- (a) by the substitution in subsection (1) for the definition of “airport asset” of the following definition: 10
- “**‘airport asset’** means any [**new and unused**] aircraft hangar, apron, runway or taxiway on any designated airport, and includes any earthworks or supporting structures forming part of such aircraft hangar, apron, runway or taxiway and any improvements to such aircraft hangar, apron, runway or taxiway; and”;
- (b) by the substitution in subsection (1) for the definition of “port asset” of the following definition: 15
- “**‘port asset’** means any [**new and unused**] port terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or off-dock container depot, and includes any earthworks or supporting structures forming part of such terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or depot and any improvements thereto.”; and 20
- (c) by the substitution for subsection (2) of the following subsection: 25
- “(2) In respect of any new and unused airport asset or port asset which— 25
- (a) is brought into use for the first time by such taxpayer; and
- (b) is used directly by such taxpayer [**in**] solely for the purposes of carrying on [his] the taxpayer’s business as airport, terminal or transport operator or port authority, 30
- there shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition (including the construction, erection or installation) of such asset to the extent that such asset is used in the production of the taxpayer’s income.”.

Substitution of section 12H of Act 58 of 1962 35

23. The Income Tax Act, 1962, is hereby amended by the substitution for section 12H of the following section:

“Additional deduction in respect of learnership agreements

- 12H.** (1) For the purposes of this section— 40
- ‘employer’** means—
- (a) where only one employer is party to a registered learnership agreement, that employer; or
- (b) in the case where more than one employer is a party to a registered learnership agreement, the employer which is identified in that agreement as the lead employer; 45
- ‘learner’** means a learner as defined in section 1 of the Skills Development Act, 1998;
- ‘registered learnership agreement’** means—
- (a) a contract of apprenticeship entered into before 1 October 2011 and registered in terms of section 18 of the Manpower Training Act, 1981 (Act No. 56 of 1981), if the minimum period of training required in terms of the Conditions of Apprenticeship prescribed in terms of section 13(2)(b) of that Act before the apprentice is permitted to undergo a trade test is more than 12 months; or 50
- (b) a learnership agreement that is— 55
- (i) registered in accordance with the Skills Development Act, 1998; and

- (ii) entered into between a learner and an employer before 1 October 2011;

‘**SETA**’ means a sector education and training authority established in terms of section 9(1) of the Skills Development Act, 1998, and defined as such in section 1 of that Act;

‘**Skills Development Act, 1998**’ means the Skills Development Act, 1998 (Act No. 97 of 1998).

(2) (a) In addition to any deductions allowable in terms of this Act and subject to paragraph (b), where—

- (i) during any year of assessment a learner is a party to a registered learnership agreement with an employer; and
(ii) that agreement was entered into pursuant to a trade carried on by that employer,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R30 000.

(b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) for a period of less than 12 full months during the year of assessment contemplated in paragraph (a), the amount that is allowed to be deducted in terms of that paragraph must be limited to an amount which bears to an amount of R30 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12.

(3) In addition to any deductions allowable in terms of this Act, where—

- (i) during any year of assessment a learner is a party to a registered learnership agreement with an employer for a period of less than 24 full months;
(ii) that agreement was entered into pursuant to a trade carried on by that employer; and
(iii) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R30 000.

(4) In addition to any deductions allowable in terms of this Act, where—

- (i) during any year of assessment a learner is a party to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months;
(ii) that agreement was entered into pursuant to a trade carried on by that employer; and
(iii) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R30 000 multiplied by the number of consecutive 12 month periods within the duration of that agreement.

(5) Where a learner contemplated in subsection (2), (3) or (4) is a person with a disability (as defined in section 18(3)) at the time of entering into the learnership agreement, the amounts contemplated in subsection (2), (3) or (4) must be increased by an amount of R20 000.

(6) This section does not apply in respect of any registered learnership agreement where the learner that is the party to that agreement previously failed to complete any other registered learnership agreement and the registered learnership agreement contains the same education and training component as that other registered learnership agreement.

(7) Any SETA with which a learnership agreement has been registered as contemplated in the Skills Development Act, 1998, must submit to the Minister any information relating to that learnership agreement required by the Minister in the form and manner and at the place and time that the Minister prescribes.

(8) In respect of each year of assessment during which an employer is eligible for any allowance contemplated in this section, the employer must submit to the SETA with which the learnership agreement is registered any information relating to that learnership agreement required by the SETA in the form and manner and at the place and time indicated by the SETA.”.

Amendment of section 12I of Act 58 of 1962, as inserted by section 26 of Act 60 of 2008

24. (1) Section 12I of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the definition of “manufacturing asset” of the following definition: 5
- “**‘manufacturing asset’** means any [**new and unused**] building, plant or machinery acquired, contracted for or brought into use by a company, which—
- (a) will mainly be used by that company in the Republic for the purposes of carrying on an industrial project of that company within the Republic; and 10
- (b) will qualify for a deduction in terms of section 12C(1)(a), 13 or 13quat[;], and includes any improvement to such building, plant or machinery.”;
- (b) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs: 15
- “(a) 55 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or
- (b) 35 per cent of the cost of any new and unused manufacturing asset used in any other industrial policy project.”; 20
- (c) by the substitution in subsection (7)(a) for subparagraph (iii) of the following subparagraph:
- “(iii) the project is not integrally related to any other project of the company (or any other company that forms part of the same group of companies as that company) that has been approved as contemplated in [**section 12G or**] subsection (8).”; and 25
- (d) by the deletion in subsection (7)(b) of subparagraph (i).
- (2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009.

Amendment of section 12J of Act 58 of 1962, as inserted by section 27 of Act 60 of 2008 30

25. (1) Section 12J of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for paragraphs (e) and (f) of the definition of “qualifying company” of the following paragraphs: 35
- “(e) the company is not carrying on any [**trade or will carry on any trade within a period of—**
- (i) in the case of a junior mining company, 36 months;
- (ii) in the case of any other company, 18 months,
- after the issue of any shares by that company as contemplated in the definition of “qualifying share”, and the trade mainly carried on or that will be mainly carried on by that company is not an] impermissible trade; and** 40
- (f) [**within a period of—**
- (i) in the case of junior mining companies, 36 months; or
- (ii) in the case of any other company, 18 months,] 45
- the sum of the investment income, as defined in section 12E(4)(c), derived by that company during [**a**] any year of assessment does not exceed an amount equal to 20 per cent of the gross income of that company for that year; [**and**]”;
- (b) by the deletion in subsection (1) of paragraph (g) of the definition of ‘qualifying company’; 50
- (c) by the substitution in subsection (1) for the definition of “venture capital company” of the following definition:
- “**‘venture capital company’** means a company that has been approved by the Commissioner in terms of subsection (5) and in respect of which such approval has not been withdrawn in terms of subsection (6) or (6A).”; 55
- (d) by the substitution in subparagraph (3) for paragraph (b) of the following paragraph:

- “(b) any company is the expenditure incurred in respect of shares which, together with other shares held by that company and any other company forming part of the same group of companies as defined in section 41 as that company in the venture capital company, do not constitute more than [10] 40 per cent of the equity shares of the venture capital company.”; 5
- (e) by the substitution for subsection (5) of the following subsection:
 “(5) The Commissioner must approve a venture capital company if that company has applied for approval and the Commissioner is satisfied that— 10
- (a) the company is a resident;
 - (b) the sole object of the company is the management of investments in qualifying companies;
 - (c) the company is an unlisted company as defined in section 41;
 - (d) the company is not a controlled group company in relation to a group of companies contemplated in paragraph (d)(i) of the definition of ‘connected person’; 15
 - (e) the tax affairs of the company are in order and the company has complied with all the relevant provisions of the laws administered by the Commissioner; 20
 - (f) the company together with any connected person in relation to that company does not control any qualifying company in which the company holds shares; and
 - (g) the company is licensed in terms of section 7 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002).”; 25
- (f) by the substitution for subsection (6) of the following subsection:
 “(6) If the Commissioner is satisfied that any venture capital company approved in terms of subsection (5) has during a year of assessment— 30
- (a) failed to comply with the provisions of that subsection; or
 - (b) derived more than 20 per cent of its gross income from investment income as defined in section 12E(4)(c), other than— 30
 - (i) dividends from qualifying shares; and
 - (ii) proceeds derived from investment in qualifying shares,
- the Commissioner must after due notice to the company withdraw that approval from the commencement of that year if corrective steps acceptable to the Commissioner are not taken by the company within a period stated in that notice.”; 35
- (g) by the insertion of the following subsection:
 “(6A) If, after the expiry of a period of 36 months commencing on the date of approval by the Commissioner of a company as a venture capital company in terms of subsection (5), the Commissioner is not satisfied that— 40
- (a) the expenditure incurred by the company in that period to acquire qualifying shares— 45
 - (i) in a junior mining company, was at least R150 million; or
 - (ii) in any qualifying company other than a junior mining company, was at least R30 million; or
 - (b) at least 80 per cent of the expenditure incurred by the company in that period to acquire assets held by the company was incurred to acquire qualifying shares issued to the company by qualifying companies, each of which, immediately after the issue, held assets with a book value not exceeding— 50
 - (i) R100 million, where the qualifying company was a junior mining company; or
 - (ii) R10 million, where the qualifying company was a company other than a junior mining company; or
 - (c) no more than 15 per cent of the expenditure incurred by the company to acquire qualifying shares held by the company was incurred for qualifying shares issued to the company by any one qualifying company, 55
- the Commissioner must after due notice to the company withdraw that approval with effect from the date of approval by the Commissioner of 60

that company as a venture capital company if corrective steps acceptable to the Commissioner are not taken by the company within a period stated in the notice.”; and

(h) by the substitution for subsections (7) and (8) of the following subsections:

“(7) A company may apply for approval in terms of subsection (5) in respect of the year of assessment following the year of assessment during which approval was withdrawn in respect of that company in terms of subsection (6) or (6A) if the non-compliance which resulted in the withdrawal has been rectified to the satisfaction of the Commissioner.

(8) If the Commissioner withdraws the approval of a company in terms of subsection (6) or (6A) [**as a result of non-compliance with subsection (5)**], an amount equal to 125 per cent of the expenditure incurred by any person for the issue of shares held in the company must be included in the income of the company [**during the year of withdrawal**] in the year of assessment in which the approval is withdrawn by the Commissioner.”.

(2) Subsection (1) is deemed to have come into operation on 1 July 2009.

Insertion of section 12K in Act 58 of 1962

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

“Exemption of certified emission reductions

12K. (1) For the purposes of this section—

‘**certified emission reduction**’ means a certified emission reduction as defined in paragraph 1(b) of the Modalities;

‘**Clean Development Mechanism project**’ means a CDM Project as defined in regulation 1 of the Regulations;

‘**Designated National Authority**’ means the DNA as defined in regulation 1 of the Regulations and designated in regulation 2 of the Regulations;

‘**Kyoto Protocol**’ means the Protocol to the United Nations Framework Convention on Climate Change adopted at the third session of the Conference of the Parties to the United Nations Framework Convention on Climate Change in Kyoto, Japan, on 11 December 1997;

‘**Modalities**’ means the Modalities and procedures for a clean development mechanism as contained in the Annex to Decision 3/CMP.1 in Part Two of the Addendum to the Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its first session, held at Montreal from 28 November to 10 December 2005 (FCCC/KP/CMP/2005/8 Add.1);

‘**qualifying CDM project**’ means a Clean Development Mechanism project—

(a) in respect of which a letter of approval as contemplated in regulations 3(1)(a) and 7(3) of the Regulations has been issued by the Designated National Authority; and

(b) that has been registered as contemplated in paragraph 36 of the Modalities on or before 31 December 2012;

‘**Regulations**’ means the Regulations for the Establishment of a Designated National Authority for the Clean Development Mechanism, 2005 (Government Notice No. R.721 published in *Government Gazette* No. 27788 of 22 July 2005), made by the Minister responsible for environmental affairs in terms of section 25(3) of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

(2) There must be exempt from normal tax any amount received by or accrued to or in favour of any person in respect of the disposal by that person of any certified emission reduction derived by that person in the furtherance of a qualifying CDM project carried on by that person.”.

(2) Subsection (1) is deemed to have come into operation on 11 February 2009 and applies in respect of disposals on or after that date.

Insertion of section 12L in Act 58 of 1962

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

“Allowance for energy efficiency savings

12L. (1) For the purposes of this section—

‘energy efficiency savings certificate’ means a certificate issued by an institution, board or body determined by the Regulations, reflecting—

- (a) the baseline at the beginning of the year of assessment, with the criteria and methodology determined in accordance with the Regulations;
- (b) the baseline at the end of the year of assessment, with the criteria and methodology determined in accordance with the Regulations;
- (c) the annual energy efficiency savings expressed in kilowatt hours or kilowatt hours equivalent for the year of assessment including the full criteria and methodology used to calculate the energy efficiency savings determined in accordance with the Regulations; and
- (d) any other information that may be required by the institution, board or body determined by the Regulations in the form and manner and at the time and place that that institution, board or body may require;

‘Regulations’ means the Regulations issued by the Minister of Energy in terms of the National Energy Act, 2008 (Act No. 34 of 2008), after consultation with the Minister of Finance and the Minister of Trade and Industry.

(2) In determining the taxable income derived by any person in any year of assessment ending before 1 January 2020 from carrying on any trade, there must be allowed as a deduction from the income of that person so derived an allowance as determined in accordance with the formula in subsection (3).

(3) The amount of the allowance contemplated in subsection (1) must be determined in accordance with the formula—

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

in which formula—

- (a) ‘A’ represents the amount to be determined;
- (b) ‘B’ represents the energy efficiency savings expressed in kilowatt hours or kilowatt hours equivalent for the year of assessment of the taxpayer as contemplated in paragraph (c) of the definition of energy efficiency savings certificate in section 1;
- (c) ‘C’ represents the applied rate as the lowest feed-in-tariff expressed in rands per kilowatt hour in effect at the beginning of the year of assessment as determined in terms of the Regulatory Guidelines of the National Energy Regulator of South Africa issued in terms of sections 4(a)(ii) and 47(1) of the National Energy Regulator Act, 2004 (Act No. 40 of 2004); and
- (d) ‘D’ represents the number two, unless a different number has been announced by the Minister in the *Gazette* in which case ‘D’ represents that number.

(4) A deduction must not be allowed in terms of this section if the person contemplated in subsection (2) receives any concurrent benefit as prescribed in the Regulations.”

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Insertion of section 12M in Act 58 of 1962

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

“Deduction of medical lump sum payments

12M. (1) For the purposes of this section— 5

‘**dependant**’, in relation to a former employee, means a spouse or any dependant (as defined in section 1 of the Medical Schemes Act, 1998 (Act No. 131 of 1998));

‘**insurer**’ means an insurer as defined in section 29A.

(2) In determining the taxable income derived by any taxpayer in any year of assessment from carrying on any trade, there must be allowed as a deduction from the income of that taxpayer so derived any amount, to the extent that the amount is not otherwise deductible, paid by way of a lump sum during the year of assessment by that taxpayer— 10

(a) to any former employee of the taxpayer who has retired from the taxpayer’s employ on grounds of old age, ill health or infirmity or to any dependant of that former employee; or 15

(b) under any policy of insurance taken out with an insurer solely in respect of one or more former employees or dependants contemplated in paragraph (a), 20

but only to the extent that the amount is paid for the purposes of making any contribution, in respect of any former employee or dependant contemplated in paragraph (a), to any medical scheme or fund contemplated in section 18(1)(a)(i) or (ii): Provided that no deduction may be allowed in terms of this section if the taxpayer making the payment, or a connected person in relation to that taxpayer, retains any further obligation, whether actual or contingent, relating to the mortality risk of any former employee or dependant contemplated in paragraph (a).” 25

(2) Subsection (1) is deemed to have come into operation on 1 September 2009 and applies in respect of any lump sum paid on or after that date. 30

Amendment of section 13quat of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004, section 19 of Act 32 of 2004, section 23 of Act 31 of 2005, section 16 of Act 8 of 2007, section 5 of Act 4 of 2008 and section 29 of Act 60 of 2008

29. (1) Section 13quat of the Income Tax Act, 1962, is hereby amended— 35

(a) by the deletion in subsection (1) of the definition of “certificate of occupancy”; and

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

“There must be allowed to be deducted from the income of the taxpayer an allowance determined in terms of subsection [(3)(a)] (3) or [(3A)(a)] (3A), in respect of the cost of the erection, extension, addition or improvement of any commercial or residential building or part of a building which is owned by the taxpayer and is used solely for purposes of that taxpayer’s trade, if—” 40

(2) Subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of any building, part thereof or improvement thereto that is brought into use on or after that date. 45

Insertion of section 15A in Act 58 of 1962

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

“Amounts to be taken into account in respect of trading stock derived from mining operations

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15A. For the purposes of section 22, trading stock related to mining operations—

(a) includes anything that is—

(i) won or in any other manner acquired during the course of mining operations by a taxpayer for the purposes of extraction, processing, separation, refining, beneficiation, manufacture, sale or exchange by the taxpayer or on the taxpayer’s behalf; and

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(ii) taken into account as inventory in terms of South African Generally Accepted Accounting Practice; and

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(b) must not be valued at an amount less than the amount so taken into account.”.

Amendment of section 18 of Act 58 of 1962, as amended by section 15 of Act 95 of 1967, section 12 of Act 76 of 1968, section 17 of Act 89 of 1969, section 14 of Act 52 of 1970, section 15 of Act 88 of 1971, section 12 of Act 104 of 1980, section 15 of Act 96 of 1981, section 15 of Act 121 of 1984, section 11 of Act 96 of 1985, section 14 of Act 90 of 1988, section 11 of Act 70 of 1989, section 16 of Act 101 of 1990, section 19 of Act 129 of 1991, section 18 of Act 141 of 1992, section 16 of Act 21 of 1995, section 23 of Act 53 of 1999, section 26 of Act 59 of 2000, section 19 of Act 30 of 2002, section 25 of Act 31 of 2005, sections 2 and 17 of Act 8 of 2007, section 30 of Act 35 of 2007, section 1 of Act 3 of 2008 and section 33 of Act 60 of 2008

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

(a) by the substitution in subsection (2)(c)(i) for items (aa), (bb) and (cc) of the following items:

“(aa) [R570] R625 for each month in that year in respect of which those contributions were made solely with respect to the benefits of that taxpayer;

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(bb) [R1 140] R1 250 for each month in that year in respect of which those contributions were made with respect to the benefits of that taxpayer and one dependant; or

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(cc) where those contributions are made with respect to the taxpayer and more than one dependant, the amount referred to in item (bb) in respect of the taxpayer and one dependant plus [R345] R380 for every additional dependant for each month in that year in respect of which those contributions were made;”;

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(b) by the deletion in subsection (2)(c)(i) of the proviso.

(2) Paragraph (a) of subsection (1) comes into operation for years of assessment commencing on 1 March 2009.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2010.

Amendment of section 20 of Act 58 of 1962, as amended by section 13 of Act 90 of 1964, section 18 of Act 88 of 1965, section 13 of Act 76 of 1968, section 18 of Act 89 of 1969, section 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 16 of Act 113 of 1993, section 15 of Act 65 of 1973, section 15 of Act 28 of 1997, section 19 of Act 101 of 1990, section 17 of Act 21 of 1995, section 26 of Act 30 of 2000, section 27 of Act 59 of 2000, section 23 of Act 74 of 2002, section 35 of Act 45 of 2003, section 19 of Act 8 of 2007, section 32 of Act 35 of 2007, section 15 of Act 3 of 2008 and section 35 of Act 60 of 2008 5

32. (1) Section 20 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of paragraph (a) of the proviso. 10

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009.

Amendment of section 20A of Act 58 of 1962, as inserted by section 36 of Act 45 of 2003 and amended by section 27 of Act 31 of 2005

33. Section 20A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (6) for paragraph (a) of the following paragraph: 15

“(a) which is included in the income of that person in terms of section [8(4)] 8 in respect of an amount deducted in any year of assessment in carrying on that trade; or”.

Insertion of section 22B in Act 58 of 1962 20

34. (1) The Income Tax Act, 1962, is hereby amended by the insertion of the following section after section 22A:

“Dividends treated as income on disposal of certain shares

22B. (1) For the purposes of this section—

‘**resident company**’ means a company that is a resident; 25
‘**shareholder**’, in relation to a share, means a resident company to the extent that the resident company is entitled to the benefit of the rights and participation in the profits, income or capital attaching to the share.

(2) Where a shareholder disposes of shares in a resident company, the amount of any dividend received by or accrued to the shareholder in respect of any share held by the shareholder in the resident company must be included in the income of the shareholder— 30

(a) to the extent that the dividend is received by or accrues to the shareholder within a period of 18 months prior to or as part of the disposal; 35

(b) if the shareholder—
(i) held the shares disposed of as trading stock immediately before the disposal; and
(ii) holds more than 50 per cent of the equity share capital of the resident company; and 40

(c) if the resident company or any company in which that resident company directly or indirectly holds more than 50 per cent of the equity share capital has, within a period of 18 months prior to the disposal, obtained any loan or advance or incurred any debt— 45

(i) owing to the person acquiring the shares or any connected person in relation to that person; or
(ii) that is guaranteed or otherwise secured by the person acquiring the shares or any connected person in relation to that person, by reason of or in consequence of the disposal. 50

(3) For the purposes of subsection (2), the amount that must be included in the income of the shareholder is limited to the amount of the loan, advance or debt contemplated in paragraph (c) of that subsection.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 23A of Act 58 of 1962, as inserted by section 21 of Act 121 of 1984 and amended by section 13 of Act 96 of 1985, section 15 of Act 65 of 1986, section 12 of Act 70 of 1989, section 22 of Act 101 of 1990, section 24 of Act 129 of 1991, section 34 of Act 30 of 1998, section 32 of Act 60 of 2001, section 33 of Act 35 of 2007 and section 17 of Act 3 of 2008

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

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “operating lease” of the following words:

“**‘operating lease’** means a lease of movable property concluded by a lessor in the ordinary course of a business (not being **[the business of a banker or financier]** a banking, financial services or insurance business) of letting such property, if—”; and

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- (b) by the substitution in subsection (1) for the definition of “rental income” of the following definition:

“**‘rental income’** means income derived by way of rent from the letting of any affected asset in respect of which an allowance has been granted to the lessor under section 11(e), 12B, 12C, 12DA or 37B(2)(a), whether in the current or any previous year of assessment, and includes any amount—

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- (a) which is included in the income of that person in terms of section 8(4) in respect of an amount deducted in any year of assessment in respect of any affected asset; and

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(b) derived from the disposal of any affected asset.”.

Amendment of section 23I of Act 58 of 1962, as substituted by section 38 of Act 60 of 2008

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36. (1) Section 23I of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “tainted intellectual property” of the following paragraph:

- “(a) which was the property of the end user or of a taxable person that is or was a connected person, as defined in section 31(1A), in relation to the end user;”.

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(2) Subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of expenditure incurred on or after that date.

Amendment of section 24B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1978 and amended by section 13 of Act 104 of 1979, section 20 of Act 113 of 1993, section 32 of Act 30 of 2000, section 22 of Act 32 of 2004, section 39 of Act 35 of 2007 and section 39 of act 60 of 2008

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

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

“(2) **[For purposes of this Act, other than Part V of Chapter II, if]** If a company acquires any share **[or debt instrument]** which is issued to that company **[by reason of or in consequence of and within a period of 18 months after]** directly or indirectly in exchange for the issue of shares by that company or any connected person in relation to that company[—

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- (a)], that company is deemed not to have incurred any expenditure in respect of the acquisition of that share **[or debt instrument]** so acquired[; and

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(b) **that company or that connected person, as the case may be, is deemed to have issued that share for an amount of nil.**”;

- (b) by the insertion of the following subsection:

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“(2C) Notwithstanding any provision of subsection (2) to the contrary, if—

- (a) a company acquires any asset from a person (other than a share issued by that person) as consideration for shares issued by that company; and

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- (b) within a period of 18 months after that issue, any controlled group company in relation to that company acquires the asset directly or indirectly as consideration for the issue of shares by the controlled group company to that company, that company is deemed to have actually incurred an amount of expenditure in respect of those shares issued by the controlled group company which is equal to the lesser of the market value of the asset immediately after that acquisition or the market value of the shares issued by the controlled group company immediately after that acquisition.”; and
- (c) by the deletion of subsection (3).

(2) Subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of shares or debt instruments acquired, issued or disposed of on or after that date.

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 90 of 1988 and amended by section 21 of Act 113 of 1993, section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998, section 26 of Act 53 of 1999, section 31 of Act 59 of 2000, section 36 of Act 60 of 2001, section 27 of Act 74 of 2002, section 42 of Act 45 of 2003, section 23 of Act 32 of 2004, section 33 of Act 31 of 2005, section 26 of Act 9 of 2006, section 19 of Act 20 of 2006, section 23 of Act 8 of 2007, section 40 of Act 35 of 2007 and section 20 of Act 3 of 2008

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

- (a) by the addition in subsection (3) of the word “and” at the end of paragraph (a);
- (b) by the deletion in subsection (3) of the word “and” at the end of paragraph (b); and
- (c) by the deletion in subsection (3) of paragraph (c).

Insertion of section 25BA in Act 58 of 1962

39. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 25B of the following section:

“Amounts received by or accrued to portfolios of collective investment schemes in securities and holders of participatory interests in portfolios

25BA. Any amount, other than an amount of a capital nature, received by or accrued to any portfolio of a collective investment scheme in securities must—

- (a) to the extent that the amount is distributed by that portfolio—
- (i) to any person who is entitled to the distribution by virtue of the person being a holder of a participatory interest in that portfolio; and
- (ii) within 12 months of its receipt by that portfolio, be deemed to have directly accrued to the person on the date of the distribution; and
- (b) to the extent that the amount is not distributed as contemplated in paragraph (a) within 12 months of its receipt by that portfolio, be deemed to have accrued to that portfolio on the last day of the period of 12 months commencing on the date of its receipt by that portfolio.”.

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2010 and applies in respect of—

- (a) amounts received by or accrued to a portfolio of a collective investment scheme; and
- (b) amounts distributed by a portfolio of a collective investment scheme that are derived from amounts contemplated in paragraph (a),
- on or after that date.

Amendment of section 28 of Act 58 of 1962, as amended by section 17 of Act 90 of 1962, section 22 of Act 55 of 1966, section 24 of Act 89 of 1969, section 21 of Act 88 of 1971, section 19 of Act 65 of 1973, section 19 of Act 91 of 1982, section 22 of Act 94 of 1983, section 17 of Act 65 of 1986, section 23 of Act 90 of 1988, section 13 of Act 70 of 1989, section 25 of Act 101 of 1990, section 29 of Act 129 of 1991, section 24 of Act 113 of 1993, section 19 of Act 21 of 1994, section 33 of Act 30 of 2000, section 42 of Act 35 of 2007 and section 40 of Act 60 of 2008 5

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

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 10

“In determining the taxable income derived by any person that is a resident from the carrying on of short-term insurance business as defined in the Short-Term Insurance Act, 1998 (Act No. 53 of 1998), there shall be deducted from the sum of all premiums (including reinsurance premiums) received by or accrued to that person in respect of the insurance or reinsurance of any risk and other amounts derived from the carrying on of that business, the sum of—”; and 15

(b) by the addition of the following subsections:

“(7) In determining the net income, as contemplated in section 9D(2A), derived by any person that is a controlled foreign company from the carrying on outside the Republic of short-term insurance business as defined in the Short-Term Insurance Act, 1998 (Act No. 53 of 1998), there shall be deducted from the sum of all premiums (including reinsurance premiums) received by or accrued to that person in respect of the insurance or reinsurance of any risk and other amounts derived from the carrying on of that business, the sum of— 20

(a) the total amount of the liability incurred in respect of premiums on reinsurance; 25

(b) the actual amount of the liability incurred in respect of any claims during the foreign tax year, as defined in section 9D(1), of that person in respect of that business, less the value of any claims recovered or recoverable under any contract of insurance, reinsurance, guarantee, security or indemnity; and 30

(c) (i) the amount of the liability estimated by that person to become payable in respect of claims incurred under short-term insurance policies; and 35

(ii) an unearned premium provision.

(8) The deduction contemplated in subsection (7) shall be allowed only— 40

(a) if the estimate and the provision contemplated in subsection (7) relate to the carrying on of short-term insurance business as contemplated in subsection (7) by that controlled foreign company; 40

(b) if the estimate and the provision contemplated in subsection (7)(c) are required by the law of the country in which the controlled foreign company is subject to tax by virtue of residence, domicile or place of effective management; 45

(c) to the extent that the estimate and provision contemplated in subsection (7)(c) would have been allowed or required in terms of the Short-Term Insurance Act, 1998 (Act No. 53 of 1998), had the liability or provision been incurred in the Republic; and 50

(d) if the person to whom the income of the controlled foreign company is attributed submits to the Commissioner the information in respect of paragraphs (a), (b) and (c) prescribed by the Commissioner, in the form and manner and at the time and place prescribed by the Commissioner. 55

(9) The deduction contemplated in subsection (7) shall be subject to such adjustments as may be made by the Commissioner.

(10) The sum of all amounts deducted from the sum of all premiums and other amounts received by or accrued to a controlled foreign company in respect of any foreign tax year, as defined in section 9D(1), in terms of subsection (7)(c) shall be included in the income of that controlled foreign company in the following foreign tax year. 60

(11) In determining the taxable income derived by any person from the carrying on of short-term insurance business as contemplated in subsection (7)—

- (a) no deduction shall be allowed in terms of section 11(a), in respect of any liability incurred in respect of reinsurance premiums and any claims in respect of that business; and
- (b) the provisions of section 23(e) shall not apply in respect of the liability contemplated in subsection (7)(c)."

(2) Subsection (1) is deemed to have come into operation on 1 September 2009 and applies as from the commencement of years of assessment commencing on or after that date.

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by section 36 of Act 59 of 2000, section 16 of Act 19 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002, section 45 of Act 45 of 2003 section 16 of Act 16 of 2004, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007, section 22 of Act 3 of 2008 and section 41 of Act 60 of 2008

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

- (a) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the definition of "public benefit organisation" of the following subparagraph:
 - "(i) a company **[formed and incorporated under]** contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or a trust or an association of persons that has been incorporated, formed or established in the Republic; or"; and

- (b) by the substitution for subsection (3B) of the following subsection:
 - "(3B) Where an organisation applies for approval **[before the later of 31 December 2004 or the last day of its first year of assessment]**, the Commissioner may approve that organisation for the purposes of this section, **or for the purposes of any provision contained in section 10 which was repealed on 15 July 2001]** with retrospective effect, to the extent that the Commissioner is satisfied that that organisation during the period prior to its application complied with the requirements of a 'public benefit organisation' as defined in subsection (1)."

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2008.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of years of assessment ending on or after that date.

Amendment of section 30A of Act 58 of 1962, as inserted by section 25 of Act 20 of 2006 and amended by section 26 of Act 8 of 2007 and section 42 of Act 60 of 2008

42. (1) Section 30A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

- "(4) Where a club applies for approval **[before the later of 31 March 2009 or the last day of its first year of assessment, then]**, the Commissioner may approve that club for purposes of this section, or for the purposes of any provision contained in section 10 prior to its amendment by section 10(1)(k) of the Revenue Laws Amendment Act, 2006 (Act No. 20 of 2006), with retrospective effect, to the extent that the Commissioner is satisfied that that club during the period prior to its application complied with the requirements of a 'recreational club' as defined in subsection (1)."

(2) Subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of years of assessment ending on or after that date.

Amendment of section 36 of Act 58 of 1962, as amended by section 12 of Act 72 of 1963, section 15 of Act 90 of 1964, section 20 of Act 88 of 1965, section 23 of Act 55 of 1966, section 16 of Act 95 of 1967, section 14 of Act 76 of 1968, section 26 of Act 89 of 1969, section 21 of Act 65 of 1973, section 28 of Act 85 of 1974, section 20 of Act 104 of 1980, section 25 of Act 94 of 1983, section 16 of Act 96 of 1985, section 14 of Act 70 of 1989, section 26 of Act 101 of 1990, section 30 of Act 129 of 1991, section 24 of Act 141 of 1992, section 29 of Act 113 of 1993, section 17 of Act 36 of 1996, section 41 of Act 60 of 2001, section 31 of Act 32 of 2004, section 26 of Act 20 of 2006, section 46 of Act 35 of 2007, section 23 of Act 3 of 2008 and section 44 of Act 60 of 2008

43. (1) Section 36 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (11) for subparagraphs (i) and (iA) of paragraph (d) of the definition of “capital expenditure” of the following subparagraph:

“(i) **[new and unused low-cost residential units or improvements to low-cost residential units]** housing for residential occupation by the taxpayer’s employees (other than housing intended for sale) and furniture for such housing;

[(iA) new and unused residential units (other than low-cost residential units) or improvements to residential units for occupation by the taxpayer’s employees;]”;

(b) by the substitution in subsection (11) for paragraph (aa) of the proviso to paragraph (d) of the definition of “capital expenditure” of the following paragraph:

“(aa) such expenditure shall for the purposes of this definition be deemed to be payable[—

(A) where subparagraphs (i), (ii), (iii), (iv) and (v) are applicable,] in ten successive equal annual instalments[;

(B) where subparagraph (iA) is applicable, in 20 successive equal annual instalments;] or,

[(C)] where subparagraph (vi) is applicable, five successive equal annual instalments,

the first of which shall be deemed to be payable on the date on which payment of the relevant expenditure became due and the succeeding instalments on the appropriate anniversaries of that date, but if any such anniversary falls on a date after the asset to which such expenditure relates has been sold, disposed of or scrapped by the taxpayer, the instalment of such expenditure so deemed to be payable on such anniversary shall be disregarded;”;

(c) by the deletion in subsection (11) of item (dd) of the proviso to paragraph (d) of the definition of “capital expenditure”; and

(d) by the substitution in subsection (11) for paragraph (e) of the definition of “capital expenditure” of the following paragraph:

“(e) where that trade constitutes mining, any expenditure **[other than in respect of infrastructure]** incurred **[to acquire]** in terms of a mining right pursuant to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), **[where that expenditure is incurred in terms of the right: Provided that such expenditure shall for the purposes of this definition be deemed to have been incurred in successive annual instalments equal to the amount of the expenditure divided by the number of years for which the taxpayer has the right after the date on which the expenditure was incurred]** other than in respect of infrastructure or environmental rehabilitation;”.

(2) Paragraphs (a), (b) and (c) of subsection (1) are deemed to have come into operation on 21 October 2008 and apply in respect of a residential unit or improvement acquired, or the erection of which commences, on or after that date.

(3) Paragraph (d) of subsection (1) is deemed to have come into operation on 1 January 2008 and applies in respect of years of assessment ending on or after that date.

Amendment of section 37B of Act 58 of 1962, as inserted by section 48 of Act 35 of 2007 and amended by section 45 of Act 60 of 2008

44. Section 37B of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the definitions of “environmental treatment and recycling asset” and “environmental waste disposal asset” of the following definitions: 5

“**‘environmental treatment and recycling asset’** means any [**new and unused**] air, water, and solid waste treatment and recycling plant or pollution control and monitoring equipment (and any improvement to the plant or equipment) if the plant or equipment is— 10

(a) utilised in the course of a taxpayer’s trade in a process that is ancillary to any process of manufacture or any other process which, in the opinion of the Commissioner, is of a similar nature; and

(b) required by any law of the Republic for purposes of complying with measures that protect the environment; and 15

‘environmental waste disposal asset’ means any [**new and unused**] air, water, and solid waste disposal site, dam, dump, reservoir, or other structure of a similar nature, or any improvement thereto, if the structure is—

(a) of a permanent nature; 20

(b) utilised in the course of a taxpayer’s trade in a process that is ancillary to any process of manufacture or any other process which, in the opinion of the Commissioner, is of a similar nature; and

(c) required by any law of the Republic for purposes of complying with measures that protect the environment.”; and 25

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

“(2) There shall be allowed to be deducted from the income of the taxpayer, in respect of any year of assessment, an allowance equal to—

(a) in the case of [**an**] a new and unused environmental treatment and recycling asset, 40 per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and 20 per cent in each succeeding year of assessment; and 30

(b) in the case of [**an**] a new and unused environmental waste disposal asset, five per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and five per cent in each succeeding year of assessment.”. 35

Amendment of section 38 of Act 58 of 1962, as amended by section 21 of Act 90 of 1962, section 16 of Act 90 of 1964, section 28 of Act 89 of 1969, section 31 of Act 85 of 1974, section 27 of Act 94 of 1983, section 24 of Act 121 of 1984, section 32 of Act 53 of 1999, section 36 of Act 30 of 2000, section 43 of Act 60 of 2001, section 34 of Act 74 of 2002, section 213 of Act 45 of 2003, section 30 of Act 8 of 2007 and section 24 of Act 3 of 2008 40

45. (1) Section 38 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (2) of paragraph (i). 45

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

Insertion of section 40D in Act 58 of 1962

46. (1) The Income Tax Act, 1962, is hereby amended by the insertion in Part II of Chapter II after section 40C of the following section:

“Communications licence conversions

40D. (1) Where existing licences referred to in Chapter 15 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), are converted to new licences in terms of section 93 of that Act, a licensee of an existing licence or licences must not recover, recoup or include in the licensee’s income for the year of assessment in which that conversion takes place any allowance allowed to the licensee in respect of the existing licence or licences. 5 10

(2) The licensee of a new licence contemplated in subsection (1) is deemed to have acquired the new licence—

- (a) in the case where an existing licence is converted to a new licence, at a cost equal to the amount taken into account by the licensee in respect of the existing licence; 15
- (b) in the case where two or more existing licences are converted to a new licence, at a cost equal to the aggregate of the amounts taken into account by the licensee in respect of each of the existing licences; and
- (c) in the case where an existing licence is converted to two or more new licences, at a cost equal to an amount that bears to the amount taken into account by the licensee in respect of the existing licence the same ratio as the value of that new licence bears to the aggregate value of the new licences, 20

which cost must be treated as expenditure actually incurred by the licensee in respect of the new licence or licences for the purposes of sections 11 and 22(1) and (2). 25

(3) For the purposes of subsection (2) the new licence or licences must be deemed to have been acquired by the licensee on the day immediately after the conversion.”. 30

(2) Subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of licences converted on or after that date.

Amendment of section 41 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 49 of Act 45 of 2003, section 32 of Act 32 of 2004, section 37 of Act 31 of 2005, section 28 of Act 20 of 2006, section 32 of Act 8 of 2007, section 52 of Act 35 of 2007, section 25 of Act 3 of 2008 and section 128 of 60 of 2008 35

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

- (a) by the insertion in subsection (1) after the definition of “capital asset” of the following definition:
 - “**company**, for the purposes of sections 42 and 44, includes any portfolio of a collective investment scheme in securities;”;
- (b) by the insertion after the definition of “domestic financial instrument holding company” of the following definition:
 - “**equity share**, for the purposes of sections 42 and 44, includes a participatory interest in a portfolio of a collective investment scheme in securities;”.

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2010. 45

Amendment of section 42 of Act 58 of 1962, as amended by section 21 of Act 88 of 1965, section 17 of Act 95 of 1967, section 29 of Act 89 of 1969, section 19 of Act 52 of 1970, section 23 of Act 88 of 1971, section 18 of Act 90 of 1972, section 22 of Act 65 of 1973, section 32 of Act 85 of 1974, section 22 of Act 69 of 1975, section 18 of Act 103 of 1976, section 19 of Act 113 of 1977, section 20 of Act 91 of 1982, section 28 of Act 94 of 1983, section 31 of Act 129 of 1991, section 27 of Act 141 of 1992, section 23 of Act 21 of 1994, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 34 of Act 8 of 2007, section 53 of Act 35 of 2007, section 26 of Act 3 of 2008 and section 49 of Act 60 of 2008

48. (1) Section 42 of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in subsection (1) of the definition of “equity share”; and
 - (b) by the substitution in subsection (1) for paragraph (b) of the definition of “qualifying interest” of the following paragraph:
 - “(b) an equity share held by that person in a **[company which is a company contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1 or will become such a company within 12 months after the transaction as a result of which that person holds that share]** portfolio of a collective investment scheme in securities;”.
- (2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

Amendment of section 44 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and amended by section 34 of Act 74 of 2002, section 52 of Act 45 of 2003, section 40 of Act 31 of 2005, section 34 of Act 8 of 2007, section 55 of Act 35 of 2007, section 27 of Act 3 of 2008 and section 50 of Act 60 of 2008

49. (1) Section 44 of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in subsection (1) of the definition of “equity share”;
 - (b) by the substitution in subsection (1) for paragraph (b) of the definition of “qualifying interest” for the following paragraph:
 - “(b) an equity share held by that person in a **[company which is a company contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1 or will become such a company within 12 months after the transaction as a result of which that person holds that share]** portfolio of a collective investment scheme in securities; or”; and
 - (c) by the substitution for subsection (4A) of the following subsection:
 - “(4A) For purposes of the definition of ‘contributed tax capital’, if the resultant company issues shares in exchange for the disposal of an asset in terms of an amalgamation transaction, the amount received by or accrued to the resultant company as consideration for the issue of shares is deemed to be equal to an amount which bears to the contributed tax capital of the amalgamated company at the time of termination contemplated in paragraph (b) of the definition of ‘amalgamation transaction’ in subsection [(1)(b)] (1) the same ratio as the value of the shares held in the amalgamated company at that time by shareholders other than the resultant company bears to the value of all shares held in the amalgamated company at that time.”.
- (2) Paragraphs (a) and (b) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 January 2010.
- (3) Paragraph (c) of subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 47 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 34 of Act 74 of 2002, section 55 of Act 45 of 2003, section 37 of Act 32 of 2004, section 43 of Act 31 of 2005, section 31 of Act 20 of 2006, section 37 of Act 8 of 2007, section 58 of Act 35 of 2007, section 31 of Act 3 of 2008 and section 53 of Act 60 of 2008

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50. (1) Section 47 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(a)(i) for item *(dd)* of the following item:

“(*dd*) a person contemplated in section 10(1)(*cA*), (*cP*), (*d*), (*e*) or (*t*); and”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of any liquidation distribution on or after that date.

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Amendment of section 64B of Act 58 of 1962, as inserted by section 20 of Act 95 of 1967 and amended by section 35 of Act 89 of 1969, section 20 of Act 52 of 1970, section 19 of Act 90 of 1972, section 41 of Act 85 of 1974, section 33 of Act 94 of 1983, section 7 of Act 108 of 1986, section 32 of Act 90 of 1988, section 34 of Act 113 of 1993, section 34 of Act 113 of 1993, section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001, section 25 of Act 30 of 2002, section 36 of Act 74 of 2002, section 58 of Act 45 of 2003, section 40 of Act 32 of 2004, section 47 of Act 31 of 2005, section 32 of Act 20 of 2006, section 39 of Act 8 of 2007, section 85 of Act 35 of 2007, section 32 of Act 3 of 2008 and section 55 of Act 60 of 2008

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

(a) by the addition in subsection (1) to the definition of “dividend cycle” of the following proviso:

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“: Provided that—

(i) any dividend cycle of a company that has commenced and that has not ended before the effective date defined in section 64D must be deemed to have ended on the day immediately before that effective date and must be deemed to be the final dividend cycle of that company; and

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(ii) where a dividend cycle of a company ends on the day immediately before the effective date defined in section 64D, that dividend cycle must be deemed to be the final dividend cycle of that company”;

(b) by the deletion in subsection (3A) of paragraph (*b*);

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(c) by the deletion in subsection (3A) of paragraph (*d*);

(d) by the deletion of the proviso to subsection (3A)(*d*)(ii);

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

“dividends declared by any company (other than a company that is a registered micro business as defined in the Sixth Schedule) the entire receipts and accruals of which, or so much of the receipts and accruals of which as are derived otherwise than from investments, are exempt from tax under the provisions of section 10”;

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(f) by the deletion in subsection (5) of paragraph (*j*);

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(g) by the addition to subsection (5) of the following paragraphs:

“(k) any dividend declared to a natural person which constitutes a transfer of an interest in a residence contemplated in paragraph 51 of the Eighth Schedule; and

(l) any dividend declared by any company that is a registered micro business as defined in the Sixth Schedule during any year of assessment during which such company is a registered micro business, to the extent that such dividend does not exceed the amount of R200 000 during such year.”; and

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

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“(13) In the determination of the net amount of any dividend declared by a company which carries on long-term insurance business, the amount to be taken into account in terms of subsection (3) in respect of dividends accrued to the company shall be limited [**where the company has established or deemed to have established separate funds as**

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contemplated in section 29A,] to dividends accrued on shares constituting an asset in its corporate fund.”.

- (2) Paragraphs (a) and (c) of subsection (1) come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.
- (3) Paragraphs (b) and (f) of subsection (1) come into operation on 1 January 2010 and apply in respect of any dividend declared on or after that date. 5
- (4) Paragraph (d) of subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2010.
- (5) Paragraph (e) of subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of any dividend declared on or after that date. 10
- (6) Paragraph (g) of subsection (1)—
- (a) to the extent that it inserts paragraph (k) into section 64B(5) is deemed to have come into operation on 11 February 2009 and applies to distributions made on or after that date and before 1 January 2012; and
- (b) to the extent that it inserts paragraph (l) into section 64B(5), is deemed to have come into operation on 1 March 2009 and applies in respect of any dividend declared on or after that date. 15

Amendment of section 64C of Act 58 of 1962, as inserted by section 20 of Act 95 of 1967 and amended by section 15 of Act 76 of 1968, section 36 of Act 89 of 1969, section 21 of Act 52 of 1970, section 26 of Act 88 of 1971, section 20 of Act 90 of 1972, section 42 of Act 85 of 1974, section 22 of Act 113 of 1977, section 14 of Act 104 of 1979, section 22 of Act 104 of 1980, section 24 of Act 96 of 1981, section 21 of Act 91 of 1982, section 34 of Act 94 of 1983, section 29 of Act 121 of 1984, section 18 of Act 65 of 1986, section 8 of Act 108 of 1986, section 22 of Act 85 of 1987, section 33 of Act 90 of 1988, section 34 of Act 113 of 1993, section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000, section 37 of Act 74 of 2002, section 38 of Act 12 of 2003, section 59 of Act 45 of 2003, section 41 of Act 32 of 2004, section 48 of Act 31 of 2005, section 60 of Act 35 of 2007 and section 33 of Act 3 of 2008 20 25 30

52. (1) Section 64C of the Income Tax Act, 1962, is hereby amended—
- (a) by the addition to subsection (2) of the following proviso: 35
- “: Provided that, for purposes of this subsection, in determining whether a person is a shareholder in relation to any company, no regard must be had to any share that is a listed share”;
- (b) by the substitution in subsection (4)(k) for the words following subparagraph (i) of the following words: 40
- “(ii) a connected person in relation to a shareholder if the connected person and the shareholder form part of the same group of companies as the company that is deemed to have declared the dividend[, 40
- and] : Provided that if the profits of the company declaring the deemed dividend [is taken into account in the determination of] are reduced as a result of the dividend, this paragraph applies only to the extent that the profits of the shareholder or connected person, as the case may be, [to the extent that the company which is deemed to have declared the dividend has reduced its profits as a result of the dividend] are correspondingly increased; and”;** 45
- and
- (c) by the substitution in subsection (4) for paragraph (l) of the following paragraph: 50
- “(l) to any amount contemplated in subsection (2)(a), (b), (c), (d) or (g) distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available by a company for the benefit of any [controlled group company in relation to that company] other company if— 55
- (i) the company (whether alone or together with any other company forming part of the same group of companies as the company) directly or indirectly holds at least 20 per cent of the total equity share capital of that other company; and

(ii) that other company does not hold any equity shares in the company, or in any company forming part of the same group of companies as the company.”.

(2) Subsection (1)(a) is deemed to have come into operation on 1 January 2009.

(3) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation on 1 October 2007 and apply in respect of an amount distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available on or after that date.

Substitution of Part VIII of Chapter II of Act 58 of 1962

53. (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the substitution for Part VIII of the following Part: 10

“Part VIII

Dividends Tax

Definitions

64D. In this Part—

‘beneficial owner’ means the person entitled to the benefit of the dividend attaching to a share; 15

‘dividend’ means any dividend as defined in section 1 that is—

- (a) paid by a company that is a resident; or
- (b) paid by a company that is not a resident if the share in respect of which that dividend is paid is a listed share; 20

‘dividend cycle’ means a dividend cycle as defined in section 64B;

‘effective date’ means the date on which this Part comes into operation;

‘regulated intermediary’ means any—

- (a) central securities depository participant contemplated in section 34 of the Securities Services Act, 2004 (Act No. 36 of 2004); 25
- (b) authorised user as defined in section 1 of the Securities Services Act, 2004;
- (c) approved nominee contemplated in section 36(2) of the Securities Services Act, 2004;
- (d) nominee that holds investments on behalf of clients as contemplated in section 9.1 of Chapter 1 and section 8 of Chapter II of the Codes of Conduct for Administrative and Discretionary Financial Service Providers, 2003 (Board Notice 79 of 2003) published in *Government Gazette* No. 25299 of 8 August 2003; or 30
- (e) portfolio of a collective investment scheme in securities; 35

‘STC credit’ means an amount determined in terms of section 64J(2).

Levy of tax

64E. (1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the dividends tax, calculated at the rate of 10 per cent of the amount of any dividend paid by a company. 40

(2) For the purposes of this Part, a dividend is deemed to be paid on the date on which it accrues to a shareholder.

(3) Where a dividend paid by a company consists of a distribution of an asset *in specie*, the amount of that dividend must, for the purposes of subsection (1)— 45

- (a) where the company is a listed company, be deemed to be equal to the market value of the asset on the date of approval of the distribution by—
 - (i) the directors of the company; or
 - (ii) some other person or body of persons with comparable authority conferred under the memorandum and articles of association of the company making the distribution or under a law, rule or regulation to which that company is subject; or 50

- (b) where the company is a company other than a listed company, be deemed to be equal to the market value of the asset on the date of distribution as defined in paragraph 74 of the Eighth Schedule.

Exemption from tax

- 64F.** A dividend is exempt from the dividends tax if the beneficial owner is—
- (a) a company which is a resident;
 - (b) the Government, a provincial administration or a municipality;
 - (c) a public benefit organisation approved by the Commissioner in terms of section 30(3);
 - (d) a trust contemplated in section 37A;
 - (e) an institution, board or body contemplated in section 10(1)(cA);
 - (f) a fund contemplated in section 10(1)(d)(i) or (ii);
 - (g) a person contemplated in section 10(1)(t);
 - (h) a shareholder in a registered micro business, as defined in the Sixth Schedule, paying that dividend, to the extent that the aggregate amount of dividends paid by that registered micro business to its shareholders during the year of assessment in which that dividend is paid does not exceed the amount of R200 000;
 - (i) a shareholder that is a natural person and the dividend constitutes a transfer of an interest in a residence contemplated in paragraph 51(2) of the Eighth Schedule; or
 - (j) a person that is not a resident and the dividend is a dividend contemplated in paragraph (b) of the definition of 'dividend' in section 64D.

Withholding of dividends tax by companies declaring and paying dividends

- 64G.** (1) Subject to subsections (2) and (3), a company that declares and pays a dividend must withhold dividends tax from that payment at a rate of 10 per cent of the amount of that dividend.
- (2) A company must not withhold any dividends tax from the payment of a dividend contemplated in subsection (1) if—
- (a) the person to whom the payment is made has—
 - (i) by a date determined by the company; or
 - (ii) if the company did not determine a date as contemplated in subparagraph (i), by the date of payment of the dividend, submitted to the company a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is exempt from the dividends tax in terms of section 64F;
 - (b) the beneficial owner forms part of the same group of companies, as defined in section 41, as the company that paid the dividend; or
 - (c) the payment is made to a regulated intermediary.
- (3) A company must withhold dividends tax from the payment of a dividend contemplated in subsection (1) at a reduced rate if the person to whom the payment is made has—
- (a) by a date determined by the company; or
 - (b) if the company did not determine a date as contemplated in paragraph (a), by the date of payment of the dividend, submitted to the company a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation.

Withholding of dividends tax by regulated intermediaries

64H. (1) Subject to subsections (2) and (3), a regulated intermediary that pays a dividend that was declared by any other person must withhold dividends tax from that payment at a rate of 10 per cent of the amount of that dividend.

(2) A regulated intermediary must not withhold any dividends tax from the payment of a dividend contemplated in subsection (1) if—

(a) the person to whom the payment is made has—

(i) by a date determined by the regulated intermediary; or

(ii) if the regulated intermediary did not determine a date as contemplated in subparagraph (i), by the date of payment of the dividend,

submitted to the regulated intermediary a written declaration by the beneficial owner in such form as the Commissioner may prescribe that the dividend is exempt from the dividends tax in terms of section 64F; or

(b) the payment is made to another regulated intermediary.

(3) A regulated intermediary must withhold dividends tax from the payment of a dividend contemplated in subsection (1) at a reduced rate if the person to whom the payment is made has—

(a) by a date determined by the regulated intermediary; or

(b) if the regulated intermediary did not determine a date, by the date of payment of the dividend,

submitted to the regulated intermediary a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation.

Withholding of dividends tax by insurers

64I. If a dividend is paid to an insurer as defined in section 29A, the insurer must be deemed to be a regulated intermediary and the dividend must, to the extent that the dividend is allocated to a fund contemplated in section 29A(4)(b), be deemed to be paid to a natural person that is a resident by the regulated intermediary on the date that the dividend is paid to the insurer.

STC credit

64J. (1) A dividend paid by a company is not subject to the dividends tax to the extent that—

(a) the dividend does not exceed the STC credit of the company; and

(b) the company has by the date of payment notified the person to whom the dividend is paid of the amount by which the dividend reduces the STC credit of the company.

(2) The STC credit of a company is an amount equal to the sum of—

(a) the amount by which the dividends accrued to that company during the dividend cycle ending on the day immediately before the effective date and the dividends which are deemed in terms of section 64B to have accrued to that company during that dividend cycle exceed the dividends declared on that day by that company; and

(b) the dividends accrued to that company to the extent that the person paying the dividend submits prior written notice to the company of the amount by which the dividend reduces the STC credit of that person or any other person on behalf of whom the dividend is paid by that person,

reduced by the dividends declared and paid by the company to the extent that the dividends are paid by the company on or after the effective date.

(3) For purposes of subsections (1)(b) and (2)(b), the amount by which the STC credit of a company or person is reduced is deemed to be equal to an amount which bears to the dividend paid by that company or person to the person or company contemplated in those subsections the same ratio as

the amount by which the STC credit of that company or person is reduced as a result of the payment of that dividend to all shareholders bears to the total dividend paid to all shareholders.

(4) In the determination of the STC credit of a company that is an insurer as defined in section 29A, the amount to be taken into account in terms of subsection (2)(b) in respect of dividends accrued to that company must be limited to dividends accrued on shares constituting an asset in the corporate fund of the company.

(5) The STC credit of a company or person on or after the fifth anniversary of the effective date is deemed to be nil.

Payment and recovery of tax

64K. (1) A beneficial owner is liable for the dividends tax and must pay the tax by the last day of the month following the month during which the dividend is paid by the company that declared the dividend, unless the tax has been paid by any other person.

(2) (a) Any person that withholds any dividends tax in terms of this Part must pay the tax to the Commissioner by the last day of the month following the month during which the dividend is paid by the company that declared the dividend.

(b) The amount of tax that must be paid to the Commissioner may be reduced by any amount refundable in terms of section 64L or 64M.

(3) Any person that fails to withhold tax as required in terms of this Part or withholds tax but fails to pay the tax to the Commissioner as required by this Part is liable for the payment of the tax as if it were tax due by that person in terms of this Act, unless the tax is paid by any other person.

(4) Where a person has, in terms of section 64G(3) or 64H(3), withheld dividends tax in accordance with a reduced rate in respect of the payment of any dividend, the person must submit to the Commissioner any declaration—

- (i) submitted to the person by or on behalf of a beneficial owner; and
- (ii) relied upon by the person in determining the amount of dividends tax so withheld,

at the time and in the manner prescribed by the Commissioner.

(5) If the Commissioner is satisfied that any dividends tax has not been paid in full, he or she may estimate the unpaid amount and issue to the person by whom the tax is due a notice of assessment of the unpaid amount.

(6) If a person fails to pay any dividends tax within the required period, interest must be paid by that person on the balance of the tax outstanding at the prescribed rate reckoned from the end of that period.

(7) The provisions of this Act relating to assessment and recovery of tax and administrative penalties in the event of default or omission apply, with the changes required by the context, in respect of the dividends tax.

(8) Every person that controls or is regularly involved in the management of the overall financial affairs of an unlisted company as defined in section 41 that is liable to withhold tax and that is a shareholder or director of that company is personally liable for the dividends tax, additional tax, penalty or interest for which that company or intermediary is liable.

Refund of tax in respect of dividends declared and paid by companies

64L. (1) If—

- (a) an amount is withheld by a company from the payment of a dividend in terms of section 64G(1);
- (b) a declaration contemplated in subsection (2)(a) or (3) of that section in respect of that dividend is not submitted to the company by the date contemplated in the relevant subsection; and
- (c) a declaration contemplated in section 64G(2)(a) or (3) is submitted to the company within three years after the payment of the dividend in respect of which it is made,

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable to the person to whom the dividend was paid.

(2) Any amount that is refundable in terms of subsection (1) must be refunded by the company that withheld that amount to the person to whom the dividend was paid—

- (a) from any amount of dividends tax withheld by that company within a period of one year after the submission of the declaration contemplated in subsection (1)(c); or
- (b) to the extent that the amount that is refundable exceeds the amount of dividends tax withheld as contemplated in paragraph (a), from an amount recovered by the company from the Commissioner in terms of subsection (3).

(3) Subject to subsection (4), if any amount is refundable to any person by a company in terms of subsection (1) and that amount exceeds the amount of dividends tax withheld as contemplated in subsection (2)(a), the company contemplated in subsection (2) may recover the excess from the Commissioner.

(4) No amount may be recovered in terms of subsection (3) if the company submits the claim for recovery to the Commissioner after the expiry of a period of four years reckoned from the date of the payment contemplated in subsection (1)(a).

Refund of tax in respect of dividends paid by regulated intermediaries

64M. (1) If—

- (a) an amount is withheld by a regulated intermediary from the payment of a dividend in terms of section 64H(1);
- (b) a declaration contemplated in subsection (2)(a) or (3) of that section in respect of that dividend is not submitted to the regulated intermediary by the date contemplated in the relevant subsection; and
- (c) a declaration contemplated in section 64H(2)(a) or (3) is submitted to the regulated intermediary within three years after the payment of the dividend in respect of which it is made,

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable to the person to whom the dividend was paid.

(2) Any amount that is refundable in terms of subsection (1) must be refunded by the regulated intermediary contemplated in subsection (1)(a) from any amount of dividends tax withheld by the regulated intermediary after the submission of the declaration as contemplated in subsection (1)(c).

Rebate in respect of foreign taxes on dividends

64N. (1) A rebate determined in accordance with this section must be deducted from the dividends tax payable in respect of a dividend contemplated in paragraph (b) of the definition of 'dividend' in section 64D.

(2) The amount of the rebate contemplated in subsection (1) is equal to the amount of any tax paid to any sphere of government of any country other than the Republic, without any right of recovery by any person, on a dividend contemplated in subsection (1).

(3) The amount of the rebate contemplated in subsection (2) must not exceed the amount of the dividends tax imposed in respect of the dividend contemplated in subsection (1).

(4) For the purposes of this section, the amount of any tax paid as contemplated in subsection (2) must be translated to the currency of the Republic by applying the exchange rate used to convert the amount of the dividend in respect of which that tax is paid to the currency of the Republic.”.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*, which date must be at least three months after the date of the notice, and applies in respect of any dividend paid on or after that date.

Insertion of Part IX in Chapter II of Act 58 of 1962

54. (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the insertion of the following Part after Part VIII:

“Part IX

Value Extraction Tax

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Definitions

64O. In this Part—

- ‘financial assistance’** means any loan or advance;
- ‘market-related interest’**, in relation to financial assistance provided by a company, means the amount of interest that would be payable to that company on the amount owing to that company in respect of that financial assistance for a period during a year of assessment if the financial assistance had been provided for that period at a market-related rate;
- ‘market-related rate’**, in relation to financial assistance provided by a company for a period during a year of assessment, means—
- (a) where the financial assistance is provided to a natural person or a trust, the average of the official rate of interest, as defined in paragraph 1 of the Seventh Schedule, for that period; or
 - (b) where the financial assistance is provided to a person other than a natural person or a trust—
 - (i) in the case of financial assistance that is denominated in rands, a rate of interest equal to the average of the South African repurchase rate plus 100 basis points for the period; or
 - (ii) in the case of financial assistance that is denominated in any currency other than rands, a rate of interest equal to the average of the equivalent of the South African repurchase rate applicable in that currency plus 100 basis points for the period;
- ‘share incentive scheme’** means a scheme in terms of which not more than 20 per cent of the equity share capital of a company is—
- (a) held by the directors and full-time employees of—
 - (i) that company; or
 - (ii) an associated institution, as defined in paragraph 1 of the Seventh Schedule, in relation to that company,
 in terms of a share incentive scheme carried on for their own benefit;
 - (b) held by a trustee for the benefit of those directors and employees under a scheme referred to in section 38(2)(b) of the Companies Act, 1973 (Act No. 61 of 1973); or
 - (c) held collectively by those directors and employees and that trustee;
- ‘value extraction’** means an amount determined in terms of section 64P(4).

Levy of tax

- 64P.** (1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the value extraction tax, calculated at the rate of 10 per cent of the amount of any value extraction effected by a company that is a resident.
- (2) For the purposes of subsection (1), a company must be deemed to have effected a value extraction if the company—
- (a) provides any financial assistance during a year of assessment of the company to a person that is a connected person in relation to the company;
 - (b) releases or relieves any connected person in relation to the company from any obligation measurable in money which is owed to the company;
 - (c) pays or settles any debt owed to any third party by a connected person in relation to the company to the extent that the amount of the debt that is paid or settled is not repayable to the company by the connected person; or

- (d) ceases to be a resident.
- (3) A value extraction that is deemed to have been effected in terms of subsection (2) is, in the case of—
- (a) financial assistance contemplated in paragraph (a) of that subsection, deemed to have been effected in favour of the connected person contemplated in that paragraph; 5
 - (b) a release or relief contemplated in paragraph (b) of that subsection, deemed to have been effected in favour of the connected person contemplated in that paragraph;
 - (c) a payment or settlement contemplated in paragraph (c) of that subsection, deemed to have been effected in favour of the connected person contemplated in that paragraph; or 10
 - (d) a company ceasing to be a resident as contemplated in paragraph (d) of that subsection, deemed to have been effected in favour of a person that is not a resident and is not a shareholder in that company. 15
- (4) The amount of the value extraction that is deemed to have been effected in terms of subsection (2) is, in the case of—
- (a) financial assistance contemplated in paragraph (a) of that subsection, the greater of—
 - (i) the market-related interest in respect of that financial assistance, less the amount of interest that is payable to that company on the amount owing to that company in respect of that financial assistance for that year of assessment; or 20
 - (ii) nil;
 - (b) a release or relief from an obligation contemplated in paragraph (b) of that subsection, the amount of the obligation in respect of which the release or relief applies; 25
 - (c) a payment or settlement of a debt contemplated in paragraph (c) of that subsection, the amount of the debt to the extent that it is not repayable as contemplated in that paragraph; or 30
 - (d) a company ceasing to be a resident as contemplated in paragraph (d) of that subsection, an amount equal to the market value of all the assets of that company on the date immediately before the day on which the company ceases to be a resident less—
 - (i) the liabilities of that company as at that date; and 35
 - (ii) the sum of the contributed tax capital of all the classes of shares of the company as at that date,
- less any amount thereof that constitutes a dividend in terms of the definition of 'dividend' in section 64D.
- (5) Where a company is deemed to have effected a value extraction in terms of subsection (2), that value extraction must, in the case of—
- (a) financial assistance contemplated in paragraph (a) of that subsection, be deemed to have been effected by the company on the last day of the year of assessment of the company during which the financial assistance is provided by the company; 45
 - (b) a release or relief contemplated in paragraph (b) of that subsection, be deemed to have been effected by the company on the date on which the release or relief takes place;
 - (c) a payment or settlement contemplated in paragraph (c) of that subsection, be deemed to have been effected by the company on the date on which the payment or settlement takes place; and 50
 - (d) a company ceasing to be a resident as contemplated in paragraph (d) of that subsection, be deemed to have been effected by the company on the date immediately before the day on which the company ceases to be a resident. 55

Exemptions from value extraction tax

- 64Q.** (1) The amount of a value extraction is deemed to be nil to the extent that the value extraction is effected in favour of a person that is—
- (a) a company which is a resident;
 - (b) the Government, a provincial administration or a municipality; 60

- (c) a public benefit organisation approved by the Commissioner in terms of section 30(3);
 - (d) a trust contemplated in section 37A;
 - (e) an institution, board or body contemplated in section 10(1)(cA);
 - (f) a fund contemplated in section 10(1)(d)(i) or (ii); or
 - (g) a person contemplated in section 10(1)(t).
- (2) Notwithstanding section 64P(2)(a), where a company has provided financial assistance as contemplated in that paragraph, the provision of that financial assistance must not be deemed to be a value extraction to the extent that—
- (a) the financial assistance is provided for the purpose of the provision of goods, services or rights in the ordinary course of trade of the business carried on by the company;
 - (b) that company carries on business as a money lender and the provision of the financial assistance arises in the ordinary course of business of the company; or
 - (c) the financial assistance is provided to a trust by the company to enable that trust to acquire shares in the company or any other company which forms part of the same group of companies as that company with a view to the disposal of those shares by that trust to employees of the company under a share incentive scheme operated by the company for the benefit of those employees.
- (3) Notwithstanding section 64P(2)(a), (b) and (c), where a company has provided financial assistance, released or relieved any person from any obligation measurable in money or paid or settled any debt as contemplated in that section, that provision, release, relief, payment or settlement must not be deemed to be a value extraction to the extent that the provision, release, relief, payment or settlement is effected by the company in favour of any other company and—
- (a) the company (whether alone or together with any other company forming part of the same group of companies as the company) directly or indirectly holds at least 20 per cent of the total equity share capital of that other company; and
 - (b) that other company does not hold any equity shares in the company (or in any company forming part of the same group of companies as the company).

Payment and recovery of tax

64R. (1) Any company that effects a value extraction is liable for the value extraction tax relating to that value extraction.

(2) A company that is liable for value extraction tax must pay the tax to the Commissioner by the last day of the month following the month during which the value extraction is effected.

(3) If the Commissioner is satisfied that any value extraction tax has not been paid in full, he or she may estimate the unpaid amount and issue to the person by whom the tax is due a notice of assessment of the unpaid amount.

(4) If a company that is liable to pay fails to pay any value extraction tax within the required period, interest must be paid by that company on the balance of the tax outstanding at the prescribed rate reckoned from the end of that period.

(5) The provisions of this Act relating to assessment and recovery of tax and administrative penalties in the event of default or omission apply, with the changes required by the context, in respect of the value extraction tax.”

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 102 of Act 58 of 1962, as substituted by section 30 of Act 30 of 2002 and amended by section 35 of Act 20 of 2006 and section 8 of Act 9 of 2007

55. (1) Section 102 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:

“Any amount, other than an amount that is refundable by a company in terms of section 64L or an amount that is refundable by a regulated intermediary (as defined in section 64D) in terms of section 64M, paid by any person in terms of the provisions of this Act [shall be] is refundable by the Commissioner, subject to the provisions of section 102A, to the extent that such amount exceeds—”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of paragraph 1 of Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 23 of Act 90 of 1964, section 34 of Act 88 of 1971, section 34 of Act 69 of 1975, section 26 of Act 113 of 1977, section 17 of Act 104 of 1979, section 27 of Act 104 of 1980, section 28 of Act 96 of 1981, section 46 of Act 94 of 1983, section 24 of Act 65 of 1986, section 17 of Act 104 of 1979, section 24 of Act 65 of 1986, section 43 of Act 101 of 1990, section 35 of Act 21 of 1995, section 41 of Act 28 of 1997, section 47 of Act 30 of 1998, section 82 of Act 45 of 2003, section 43 of Act 32 of 2004, section 46 of Act 8 of 2007, section 61 of Act 35 of 2007, section 36 of Act 3 of 2008 and section 58 of Act 60 of 2008

56. (1) Paragraph 1 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of the definition of “formula B”; and
 (b) by the substitution in paragraph (b)(i) of the definition of “formula C” for item (bb) of the following item:

“(bb) years of pensionable service [**purchased after 1 March 1998 by a ‘former member of a non-statutory force or service’ as defined in the Government Employees’ Pension Law, 1996 (Proclamation No. 21 of 1996), in respect of any previous or other periods of service accounted for prior to 1 March 1998**] recognised as such in terms of Rule 10.5 or 10.6 of the Rules of the Government Employees Pension Fund, contained in Schedule 1 to the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), to the extent that those years are not taken into account under item (aa); or”.

(2) Paragraph (b) of subsection (1) comes into operation on 1 March 2009 and applies in respect of lump sum benefits received or accrued on or after that date.

Substitution of paragraph 2 of Second Schedule to Act 58 of 1962

57. (1) The Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 2 of the following paragraph:

“2. (1) Subject to the provisions of section 9(1)(g) and paragraphs 2A, 2B and 2C, the amount to be included in the gross income of any person in terms of paragraph (e) of the definition of ‘gross income’ in section 1 shall be—

- (a) any amount received by or accrued to that person by way of a lump sum benefit derived in consequence of or following upon—

- (i) his or her retirement or death; or
 (ii) the termination of his or her employment due to—
 (AA) his or her employer having ceased to carry on or intending to cease carrying on the trade in respect of which he or she was employed; or
 (BB) that person having become redundant in consequence of his or her employer having effected a general reduction in personnel or a reduction in personnel of a particular class:

Provided that this subitem does not apply to any amount received by or accrued to a person by way of a lump sum benefit where that person’s employer is a company and that person was at any time a director of that company or at any time held more than five per cent

- of the issued share capital or members' interest in that company,
 less any deduction permitted under the provisions of paragraph 5; and
- (b) any amount—
- (iA) assigned in terms of a divorce order under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), to the extent that the amount so assigned is deducted from the minimum individual reserve of that person's former spouse in terms of section 37D(1)(d)(i) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or is so deducted in terms of section 37D(1)(d)(ii) of that Act as a result of the deduction contemplated in section 37D(1)(d)(i) of that Act;
 - (iB) that is transferred for the benefit of that person to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund of which that person is or previously was a member; and
 - (ii) other than an amount contemplated in item (a) or subitem (iA) or (iB), received by or accrued to that person by way of a lump sum benefit from or in consequence of membership or past membership of any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund,
- less any deduction permitted under paragraph 6.
- (2) An amount contemplated in subparagraph (1)(b) shall be deemed to accrue to a person—
- (a) in the case of an amount contemplated in subparagraph (1)(b)(iA), on the date on which an election is made as contemplated in section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or on the date on which the amount is paid in terms of section 37D(4)(b)(iv) of that Act; and
 - (b) in the case of an amount contemplated in subparagraph (1)(b)(iB), on the date of its transfer.”.
- (2) Subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of—
- (a) paragraph 2(1)(a) of the Second Schedule to the Income Tax Act, 1962, to receipts and accruals on or after that date;
 - (b) paragraph 2(1)(b)(iA) of the Second Schedule to the Income Tax Act, 1962, to amounts deducted on or after that date;
 - (c) paragraph 2(1)(b)(iB) of the Second Schedule to the Income Tax Act, 1962, to amounts transferred on or after that date;
 - (d) paragraph 2(1)(b)(ii) of the Second Schedule to the Income Tax Act, 1962, to receipts and accruals on or after that date; and
 - (e) paragraph 2(2) of the Second Schedule to the Income Tax Act, 1962, to amounts deemed to have accrued on or after that date.

Amendment of paragraph 2B of Second Schedule to Act 58 of 1962, as inserted by section 42 of Act 53 of 1999 and amended by section 64 of Act 60 of 2001, section 45 of Act 32 of 2004, section 63 of Act 35 of 2007, section 38 of Act 3 of 2008 and section 60 of Act 60 of 2008

58. Paragraph 2B of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso of the following words:

“For the purposes of paragraphs 2 and 2A, where a court has made an order that any part of the pension interest of a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund shall be paid to the former spouse of that member, as provided for in the Divorce Act, 1979 (Act No. 70 of 1979), the amount of that part is, to the extent that that amount is not **[deemed to have been received by or to have accrued to a person other than the member in terms of paragraph 2(b)]** deducted from the minimum individual reserve of that member in terms of section 37D(1)(d)(i) of the Pension Funds Act, 1956 (Act No. 24 of 1956), deemed to be an amount that

accrues to that member on the date on which the pension interest, of which that amount forms part, accrues to that member”.

Amendment of paragraph 3 of Second Schedule to Act 58 of 1962, as amended by section 47 of Act 94 of 1983, section 50 of Act 30 of 1998, section 50 of Act 8 of 2007, section 40 Act 3 of 2008 and section 62 of Act 60 of 2008 5

59. (1) Paragraph 3 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

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

“Any lump sum benefit which becomes recoverable in consequence of or following upon the death of a member or past member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund **[shall be deemed to be a lump sum benefit which accrued to such member or past member immediately prior to his or her death on the date of payment in terms of section 37C of the Pension Funds Act, 1956, where applicable]** must, on the date of payment of that lump sum benefit in terms of section 37C of the Pension Funds Act, 1956 (Act No. 24 of 1956), be deemed to have accrued to that member or past member immediately prior to the death of that member or past member”;

(b) by the substitution for paragraph (ii) of the proviso of the following paragraph:

“(ii) where any annuity (including a living annuity) which becomes payable on or in consequence of or following upon the death of a member or past member of any such fund has been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum benefit which has become recoverable in consequence of or following upon the death of such member or past member;”;

(c) by the deletion of paragraph (iv) of the proviso. 30

(2) Paragraphs (a) and (b) of subsection (1) are deemed to have come into operation on 1 March 2009.

(3) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of lump sum benefits that—

(a) accrue on or after that date; and 35

(b) are not paid to a beneficiary fund as defined in section 1 of the Income Tax Act, 1962, on or after 1 March 2009 and before 1 September 2009.

Amendment of paragraph 4 of Second Schedule to Act 58 of 1962, as amended by section 20 of Act 72 of 1963, section 24 of Act 90 of 1964, section 36 of Act 21 of 1995, section 41 of Act 3 of 2008 and section 63 of Act 60 of 2008 40

60. (1) Paragraph 4 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(4) If a person is awarded an amount in terms of an order of divorce **[granted before 13 September 2007]**, that amount shall be deemed to have accrued to **[that person]** the member of the pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund on the date on which that person makes an election contemplated in section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or to that person on the date the amount is **[payable]** paid in terms of section 37D(4)(b)(iv) of that Act, to the extent that the amount is payable by a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.”;

(b) by the deletion of subparagraph (4). 55

(2) Subsection (1)(a) is deemed to have come into operation on 1 November 2008 and applies in respect of an amount awarded on or after that date.

(3) Subsection (1)(b) is deemed to have come into operation on 1 March 2009 and applies in respect of an amount awarded on or after that date.

Substitution of paragraph 5 of Second Schedule to Act 58 of 1962

61. (1) The Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 5 of the following paragraph:

- “5. (1) The deduction to be allowed for the purposes of paragraph 2(1)(a) is an amount equal to so much of—
- (a) the taxpayer’s own contributions that did not rank for a deduction against the taxpayer’s income in terms of section 11(k) or (n) to any pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund of which he or she is or previously was a member;
 - (b) any amount transferred for the benefit of the taxpayer to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as a result of an election made in terms of section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
 - (c) any amount that is deemed to have accrued to the taxpayer as contemplated in paragraph 2(2)(b);
 - (d) any amount, to the extent that that amount was paid or transferred to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and was subject to tax prior to that transfer or payment; and
 - (e) any other amounts in respect of which formula C applies, which have been paid into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the taxpayer’s benefit by a pension fund contemplated in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1, less the amount represented by symbol A when so applying that formula,

as has not previously been allowed to the taxpayer as a deduction in terms of this Schedule in determining the amount to be included in that taxpayer’s gross income.

(2) The amount determined in terms of subparagraph (1) may not exceed the amount of the lump sum benefit in respect of which it is allowable as a deduction.

(3) For the purposes of this paragraph, the surrender value of any policy of insurance ceded or otherwise made over to the taxpayer by any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund and ceded or otherwise made over by the taxpayer to any other such fund, or any amount paid by the taxpayer into the latter fund in lieu of or as representing such surrender value or a portion thereof, shall be deemed to be an amount paid into the latter fund by the former fund for the benefit of the taxpayer.”

(2) Subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of any lump sum benefit accrued on or after that date.

Substitution of paragraph 6 of Second Schedule to Act 58 of 1962

62. (1) The Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 6 of the following paragraph:

- “6. (1) The deduction to be allowed for the purposes of paragraph 2(1)(b) is an amount equal to—
- (a) in the case of—
 - (i) a lump sum benefit contemplated in paragraph 2(1)(b)(iA), so much of the benefit as is paid or transferred for the benefit of the taxpayer from a—
 - (aa) pension fund into any pension fund, pension preservation fund or retirement annuity fund;
 - (bb) pension preservation fund into any pension fund or pension preservation fund;
 - (cc) provident fund into any pension fund, provident fund, provident preservation fund or retirement annuity fund;
 - (dd) provident preservation fund into any provident fund or provident preservation fund; and
 - (ee) retirement annuity fund into any retirement annuity fund; and

- (ii) a lump sum benefit contemplated in paragraph 2(1)(b)(iB), so much of the benefit as is paid or transferred for the benefit of the taxpayer from a—
- (aa) pension fund into any pension fund, pension preservation fund or retirement annuity fund; 5
 - (bb) pension preservation fund into any pension fund or pension preservation fund;
 - (cc) provident fund into any pension fund, provident fund, provident preservation fund or retirement annuity fund;
 - (dd) provident preservation fund into any provident fund or provident preservation fund; and 10
 - (ee) retirement annuity fund into any retirement annuity fund; and
- (b) in any other case, so much of the aggregate of—
- (i) the taxpayer's own contributions that did not rank for a deduction against the taxpayer's income in terms of section 11(k) or (n) to any pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds of which he or she is or previously was a member; 15
 - (ii) any amount transferred for the benefit of the taxpayer to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as a result of an election made as contemplated in section 37D(4)(b)(ii)(cc) of the Pension Funds Act, 1956 (Act No. 24 of 1956); 20
 - (iii) any amount that is deemed to have accrued to the taxpayer as contemplated in paragraph 2(1)(b)(iB); 25
 - (iv) any amount, to the extent that that amount was paid or transferred to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and was subject to tax prior to that transfer or payment; and 30
 - (v) any other amounts in respect of which formula C applies, which have been paid into such funds for the taxpayer's benefit by a pension fund contemplated in paragraph (a) or (b) of the definition of 'pension fund' in section 1, less the amount represented by symbol A when applying that formula, 35
as has not previously been allowed to the taxpayer as a deduction in terms of this Schedule in determining any amount to be included in that taxpayer's gross income. 40
- (2) The amount determined in terms of subparagraph (1) may not exceed the amount of the lump sum benefit in respect of which it is allowable as a deduction.
- (3) For the purposes of this paragraph, the surrender value of any policy of insurance ceded or otherwise made over to the taxpayer by any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund and ceded or otherwise made over by the taxpayer to any other such fund, or any amount paid by the taxpayer into the latter fund *in lieu* of or as representing such surrender value or a portion thereof, shall be deemed to be an amount paid into the latter fund by the former fund for the benefit of the taxpayer.”. 45
- (2) Subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of any lump sum benefit accrued on or after that date. 50

Amendment of paragraph 3 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008

63. Paragraph 3 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to subparagraph (f)(iii) of the following proviso: 55
- “: Provided that the provisions of this item do not apply to the holding of any shares in or interest in the equity of a company, if the company—
- (aa) has not during any year of assessment carried on any trade; and
 - (bb) has not during any year of assessment owned assets, the total market value of which exceeds R5 000”.
- 60

Amendment of paragraph 2 of Seventh Schedule to Act 58 of 1962, as inserted by section 46 of Act 121 of 1984 and amended by section 27 of Act 96 of 1985, section 56 of Act 101 of 1990, section 49 of Act 28 of 1997, section 54 of Act 30 of 1998, section 50 of Act 32 of 2004 and section 55 of Act 31 of 2007

64. (1) Paragraph 2 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (i) of the following subparagraph: 5

“(i) the employer has during any period directly or indirectly[,] made any contribution or payment to any fund contemplated in paragraph (b) of the definition of ‘benefit fund’ in section 1[,] for the benefit of any employee or the dependants of any employee [**which exceeds the amount contemplated in paragraph 12A**]; or” 10

(2) Subsection (1) comes into operation on 1 March 2010 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 9 of Seventh Schedule to Act 58 of 1962, as amended by section 31 of Act 96 of 1985, section 34 of Act 65 of 1986, section 29 of Act 85 of 1987, section 59 of Act 101 of 1990, section 53 of Act 113 of 1993, section 33 of Act 21 of 1994, section 51 of Act 28 of 1997, section 55 of Act 30 of 1998, section 55 of Act 30 of 2000, section 57 of Act 31 of 2005, section 29 of Act 9 of 2006, section 2 of Act 8 of 2007, section 68 of Act 35 of 2007 and sections 1 and 48 of Act 3 of 2008 15

65. Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3)(a)(ii) for the words preceding the proviso of the following words: 20

“‘B’ represents an abatement equal to an amount of [**R46 000**] R54 200”.

Amendment of paragraph 12A of Seventh Schedule to Act 58 of 1962, as inserted by section 56 of Act 30 of 1998 and amended by section 59 of Act 31 of 2005, section 2 of Act 80 of 2007 and section 1 of Act 3 of 2008 25

66. (1) Paragraph 12A of the Seventh 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: 30

“The cash equivalent of the value of the taxable benefit contemplated in paragraph 2(i) is [**so much of**] the amount of any contribution or payment made by the employer [**during the**] in respect of a year of assessment, directly or indirectly, to any medical scheme registered under the Medical Schemes Act, 1998 (Act No. 131 of 1998), or to any fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered, for the benefit of any employee or dependants, as defined in that Act, of that employee[, **as exceeds—**].” 35

(b) by the deletion in subparagraph (1) of items (a), (b) and (c). 40

(2) Paragraph (b) of subsection (1) comes into operation on 1 March 2010 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 5 of Eighth Schedule to Act 58 of 1962, as amended by section 32 of Act 9 of 2006, section 2 of Act 8 of 2007 and section 1 of Act 3 of 2008

67. Paragraph 5 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph: 45

“(1) Subject to subparagraph (2), the annual exclusion of a natural person and a special trust in respect of a year of assessment is [**R16 000**] R17 500”.

Amendment of paragraph 13 of Eighth Schedule to Act 58 of 1962, as amended by section 69 of Act 74 of 2002, section 57 of Act 32 of 2004, section 51 of Act 3 of 2008 and section 76 of Act 60 of 2008

68. (1) Paragraph 13 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)(g) for subitem (i) of the following subitem: 5

“(i) paragraph 12(2)(a), (b), (c), (d) or (e), [paragraph] 12(3) or 12(4), is the date immediately before the day that the event occurs; or”.

(2) Subsection (1) is deemed to have come into operation on 21 February 2008 and applies in respect of an asset disposed of on or after that date, unless that disposal is the subject of an application for an advance tax ruling accepted by the Commissioner for the South African Revenue Service before that date. 10

Amendment of paragraph 19 of Eighth Schedule to Act 58 of 1962, as amended by section 94 of Act 45 of 2003 and section 72 of Act 35 of 2007

69. (1) Paragraph 19 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 15

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

“(1) Where a person disposes of a share in a company that person must disregard so much of any capital loss resulting from the disposal as does not exceed any extraordinary dividends received by or accrued to that person in respect of that share within a period of [two years] 18 months prior to or as part of the disposal.”; 20

(b) by the substitution in subparagraph (3)(a) for the words preceding subitem (i) of the following words:

“the period of [two years] 18 months does not include any days during which the person disposing of a share—”; 25

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

“(b) ‘dividend’ means any dividend [as defined in section 1, but excludes—

(i) any foreign dividend that has been included in the income of the person disposing of the share and any foreign dividend which is exempt from tax in terms of section 10(1)(k)(ii)(cc); 30

(ii) any dividend declared by a company contemplated in paragraph (e) of the definition of company; and 35

(iii) any dividend contemplated in section 11(s) that is exempt from the dividends tax in terms of section 64F; and”;

(d) by the substitution in subparagraph (3) for item (c) of the following item:

“(c) ‘extraordinary dividends’ means so much of any dividends received or accrued within the period of [two years] 18 months contemplated in subparagraph (1)[,] as exceed 15 per cent of the proceeds received or accrued from the disposal of the share[; and].” 40

(2) Subsection (1), except insofar as it inserts the words “or as part of”, comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation. 45

Amendment of paragraph 25 of Eighth Schedule to Act 58 of 1962, as substituted by section 73 of Act 74 of 2002 and amended by section 60 of Act 32 of 2004

70. Paragraph 25 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph: 50

“(3) The amount of capital gain or capital loss redetermined in the current year of assessment in terms of subparagraph (2), must be taken into account in determining any capital gain or capital loss from that disposal in that current year, as contemplated in paragraph [3(1)(b)(iii)] 3(b)(iii) or [4(1)(b)(iii)] 4(b)(iii).”.

Amendment of paragraph 40 of Eighth Schedule to Act 58 of 1962, as amended by section 89 of Act 60 of 2001, section 82 of Act 74 of 2002, section 50 of Act 20 of 2006, section 54 of Act 3 of 2008 and section 79 of Act 60 of 2008

71. (1) Paragraph 40 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 5

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

“**[to his or her deceased estate]** for an amount received or accrued equal to the market value of those assets at the date of that person’s death[, **and the deceased estate must be treated as having acquired those assets at a cost equal to that market value, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).**”]; 10

(b) by the insertion of the following subparagraph:

“(1A) If any asset of a deceased person is treated as having been disposed of as contemplated in subparagraph (1) and is transferred directly to— 15

(a) the estate of the deceased person, the estate must be treated as having acquired that asset at a cost equal to the market value of that asset as at the date of death of that deceased person; or 20

(b) an heir or legatee of the person, the heir or legatee must be treated as having acquired that asset at a cost equal to the market value of that asset as at the date of death of that deceased person, which cost must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a).”; and 25

(c) by the substitution in subparagraph (2) for item (b) of the following item:

“(b) the heir[,] or legatee [**or trustee**] must be treated as having acquired that asset at a cost equal to the base cost of the deceased estate in respect of that asset, which cost must be treated as an amount of expenditure actually incurred [**and paid**] for the purposes of paragraph 20(1)(a).” 30

(2) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 March 2006.

Insertion of paragraph 43A in Eighth Schedule to Act 58 of 1962

72. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 43 of the following paragraph: 35

“Dividends treated as proceeds on disposal of certain shares

43A. (1) For the purposes of this paragraph—

‘**resident company**’ means a company that is a resident—; 40
‘**shareholder**’, in relation to a share, means a resident company to the extent that the resident company is entitled to the benefit of the rights and participation in the profits, income or capital attaching to the share.

(2) The proceeds from the disposal by a shareholder of shares in a resident company must be increased by an amount equal to the amount of any dividend received by or accrued to the shareholder in respect of any share held by the shareholder in the resident company— 45

(a) to the extent that that dividend is received by or accrues to that shareholder within a period of 18 months prior to or as part of the disposal; 50

(b) if the shareholder— 50
(i) held the shares disposed of as a capital asset (as defined in section 41) immediately before the disposal; and
(ii) holds more than 50 per cent of the equity share capital of that resident company; and

(c) if the resident company (or any company in which that resident company directly or indirectly holds more than 50 per cent of the equity share capital) has, within a period of 18 months prior to the disposal, obtained any loan or advance or incurred any debt— 55

- (i) owing to the person acquiring the shares or any connected person in relation to that person; or
- (ii) that is guaranteed or otherwise secured by the person acquiring the shares or any connected person in relation to that person, by reason or in consequence of the disposal.

(3) For the purposes of subparagraph (2), the amount by which the proceeds must be increased is limited to the amount of the loan, advance or debt contemplated in item (c) of that subparagraph.”

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of paragraph 45 of Eighth Schedule to Act 58 of 1962, as substituted by section 93 of Act 60 of 2001 and amended by section 33 of Act 9 of 2006 and section 2 of Act 8 of 2007

73. (1) Paragraph 45 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) Subject to subparagraphs (2) [and] (3) and (4), a natural person or a special trust must, when determining an aggregate capital gain or aggregate capital loss, disregard—

(a) so much of a capital gain or capital loss determined in respect of the disposal of the primary residence of that person or that special trust as does not exceed R1,5 million; or

(b) a capital gain or capital loss determined in respect of the disposal of the primary residence of that person or that special trust if the proceeds from the disposal of that primary residence do not exceed R2 million.”; and

(b) by the addition of the following subparagraph:

“(4) Subparagraph (1)(b) does not apply where a natural person or a special trust disposes of an interest in a residence which is or was a primary residence, and that person or a beneficiary of that special trust or a spouse of that person or beneficiary—

(a) was not ordinarily resident in that residence throughout the period commencing on or after the valuation date during which that person or special trust held that interest; or

(b) used that residence or a part thereof for the purposes of carrying on a trade for any portion of the period commencing on or after the valuation date during which that person or special trust held that interest.”

(2) Subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of years of assessment commencing on or after that date.

Substitution of paragraph 51 of Eighth Schedule to Act 58 of 1962

74. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 51 of the following paragraph:

“Transfer of residence from company or trust

51. (1) Where an interest in a residence has been transferred from a company or a trust to a natural person as contemplated in subparagraph (2)—

(a) that company or trust must be deemed to have disposed of that interest for an amount equal to the base cost of that interest on the date of transfer thereof;

(b) that company or trust and that natural person must, for purposes of determining any capital gain or capital loss in respect of the transfer of that interest, be deemed to be one and the same person with respect to—

(i) the date of acquisition of that interest by that company or trust and the amount and date of incurral by that company or trust of

- any expenditure in respect of that interest allowable in terms of paragraph 20; and
- (ii) any valuation of that interest effected by that company or trust as contemplated in paragraph 29(4);
- (c) no allowance allowed to that company or trust in respect of that interest must be recovered or recouped by that company or trust or be included in the income of that company or trust in the year in which the transfer takes place; and
- (d) that company or trust and that natural person must be deemed to be one and the same person for purposes of determining the amount of any allowance or deduction—
- (i) to which that company or trust may be entitled in respect of that interest; or
- (ii) that is to be recovered or recouped by or included in the income of that company or trust in respect of that interest.
- (2) Subparagraph (1) applies where—
- (a) that natural person acquires that interest from the company or trust no later than 31 December 2011;
- (b) that natural person—
- (i) alone or together with his or her spouse directly held all the share capital or members' interest in that company from 11 February 2009 to the date of registration in the deeds registry of that residence in the name of that natural person or his or her spouse or in their names jointly; or
- (ii) disposed of that residence to that trust by way of donation, settlement or other disposition or financed all the expenditure, as contemplated in paragraph 20, actually incurred by the trust to acquire and to improve the residence;
- (c) that natural person alone or together with his or her spouse personally and ordinarily resided in that residence and used it mainly for domestic purposes as his or her or their ordinary residence from 11 February 2009 to the date of the registration contemplated in item (b)(i); and
- (d) the registration contemplated in item (b)(i) takes place not later than 31 December 2011:
- Provided that this paragraph applies only in respect of the portion of the property contemplated in paragraph 46.”

(2) Subsection (1) is deemed to have come into operation on 11 February 2009 and applies in respect of transfers made on or after that date and before 1 January 2012.

Amendment of paragraph 61 of Eighth Schedule to Act 58 of 1962, as substituted by section 90 of Act 74 of 2002

75. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 61 of the following paragraph:

“Collective investment schemes in securities

61. A portfolio [in] of a collective investment scheme in securities [contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1,] must disregard any capital gain or capital loss.”

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

Amendment of paragraph 64 of Eighth Schedule to Act 58 of 1962, as substituted by section 78 of Act 31 of 2005 and amended by section 54 of Act 20 of 2006

76. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 64 of the following paragraph:

“Asset used to produce exempt income” 5

64. A person must disregard any capital gain or capital loss in respect of the disposal of an asset which is used by that person solely to produce amounts which are exempt from normal tax in terms of—

- (a) section 10, other than receipts or accruals contemplated in paragraphs (cN), (cO), (i)(xv), (k) and (m) of subsection (1) thereof[.]; or 10
(b) section 12K.”.

(2) Subsection (1) is deemed to have come into operation on 11 February 2009 and applies in respect of disposals on or after that date.

Insertion of paragraph 67D in Eighth Schedule to Act 58 of 1962

77. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion of the following paragraph: 15

“Communications licence conversions

67D. (1) Where existing licences referred to in Chapter 15 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), are converted to new licences in terms of section 93 of that Act, a licensee of an existing licence or licences is deemed to have disposed of the existing— 20

- (a) licence for an amount equal to the base cost of the licence; or
(b) licences for an amount equal to the aggregate of the base cost of the licences,

on the date of the conversion. 25

(2) The licensee of a new licence contemplated in subparagraph (1)—

- (a) is deemed to have acquired the new licence— 30
(i) in the case where an existing licence is converted to a new licence, at a cost, recognised as such for the purposes of paragraph 20, equal to the expenditure incurred in respect of the existing licence;
(ii) in the case where two or more existing licences are converted to a new licence, at a cost, recognised as such for the purposes of paragraph 20, equal to the aggregate of the expenditure incurred in respect of the existing licences; and 35
(iii) in the case where an existing licence is converted to two or more new licences, at a cost, recognised as such for the purposes of paragraph 20, that bears to the expenditure incurred in respect of the existing licence the same ratio as the value of that new licence bears to the aggregate value of the new licences, 40

which cost must be treated as expenditure actually incurred by the licensee in respect of the new licence or licences for the purposes of paragraph 20; and

- (b) is deemed to have incurred the cost contemplated in item (a) on the day immediately after the conversion.”. 45

(2) Subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of licences converted on or after that date.

Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962, as amended by section 106 of Act 60 of 2001, section 95 of Act 74 of 2002, section 113 of Act 45 of 2003, section 83 of Act 35 of 2007 and section 59 of Act 3 of 2008

78. (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 5

- (a) by the substitution for the definition of “capital distribution” of the following definition: 5
- “**capital distribution**’ means any distribution (or portion thereof) by a company that[—] 10
- [(a)] does not constitute a dividend; [or 10
- (b) **constitutes a dividend which is exempt from secondary tax on companies by reason of section 64B(5)(c);]**”; and

- (b) by the substitution for the definition of “distribution” of the following definition:

“**‘distribution’** means any amount transferred or applied by a company 15
for the benefit of any shareholder in relation to that company by virtue of any share held by that shareholder in that company, whether—

- (a) by way of a distribution; or 20
- (b) as consideration for the acquisition of any share in that company, but does not include any amount so transferred or applied by the company to the extent that the amount so transferred or applied constitutes—

- (i) shares in that company; 25
- (ii) an acquisition by a company of its own securities as contemplated in paragraph 5.67 of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with the requirements prescribed by paragraphs 5.67 to 5.84 of section 5 of the JSE Limited Listings Requirements; or
- (iii) a redemption of a participatory interest in an arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’.” 30

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of paragraph 75 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 114 of Act 45 of 2003 and section 29 of Act 16 of 2004 35

79. (1) Paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) Where a company makes a distribution of an asset *in specie* to a shareholder [(including an interim dividend)], that company must be treated as having 40
disposed of that asset to that shareholder on the date of distribution for an amount received or accrued equal to the market value of that asset on that date.”

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of paragraph 80 of Eighth Schedule to Act 58 of 1962, as amended by section 108 of Act 60 of 2001, section 58 of Act 20 of 2006, section 62 of Act 3 of 2008 and section 86 of Act 60 of 2008 45

80. Paragraph 80 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3) for item (a) of the following item:

“(a) that capital arose from— 50

- (i) a capital gain of that trust; or
- (ii) any amount which would have constituted a capital gain of that trust had that trust been a resident, 55
determined in any previous year of assessment during which that resident had a contingent right to that capital; and”

Amendment of paragraph 3 of Part I of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002 and amended by section 125 of Act 45 of 2003, section 60 of Act 20 of 2006 and section 1 of Act 3 of 2008

81. (1) Part 1 of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to paragraph 3 of the following subparagraph: 5

“(h) The provision of training, support or assistance to emerging farmers in order to improve capacity to start and manage agricultural operations.”.

(2) Subsection (1) is deemed to have come into operation on 1 September 2009.

Amendment of paragraph 4 of Part I of Ninth Schedule to Act 58 of 1962, as amended by section 82 of Act 31 of 2005, section 63 of Act 3 of 2008 and section 87 of Act 60 of 2008 10

82. (1) Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to paragraph 4 of the following subparagraph:

“(p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act, 1999 (Act No. 1 of 1999).” 15

(2) Subsection (1) is deemed to have come into operation on 1 September 2009.

Amendment of paragraph 3 of Part II of Ninth Schedule to Act 58 of 1962, as amended by section 129 of Act 45 of 2003, section 84 of Act 31 of 2005, section 64 of Act 3 of 2008 and section 89 of Act 60 of 2008 20

83. (1) Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to paragraph 3 of the following subparagraph:

“(p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act, 1999 (Act No. 1 of 1999).” 25

(2) Subsection (1) is deemed to have come into operation on 1 September 2009.

Amendment of paragraph 1 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006, as amended by section 70 of Act 8 of 2007, section 87 of Act 35 of 2007 and section 65 of Act 3 of 2008 30

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

(a) by the substitution for the definition of “oil and gas company” of the following definition: 35

“**‘oil and gas company’** means any company[—

(a)] that—

(i) holds any oil and gas right; or

(ii) engages in exploration or production in terms of any oil and gas right; or 40

(iii) **engages in refining of gas derived in respect of any oil and gas right held by that company; and**

(b) **engages in no trade other than any of the activities contemplated in item (a);]**”;

(b) by the substitution for the definition of “oil and gas income” of the following definition: 45

“**‘oil and gas income’** means the receipts and accruals derived by an oil and gas company from—

(a) exploration in terms of any oil and gas right;

(b) production in terms of any oil and gas right; or 50

(c) the leasing or disposal of any oil and gas right;”;

- (c) by the substitution for the definition of “production” of the following definition:

“**‘production’** includes—

(a) the separation of oil and gas condensates;

(b) the drying of gas; and

(c) the removal of non-hydrocarbon constituents,

to the extent that these processes are preliminary to refining;”;

- (d) by the deletion of the definition of “refining”.

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Amendment of paragraph 3 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 72 of Act 8 of 2007

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85. Paragraph 3 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (3).

Amendment of paragraph 5 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 73 of Act 8 of 2007

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

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- (a) by the substitution in subparagraph (2) for items (a) and (b) of the following items:

“(a) 100 per cent of all expenditure of a capital nature actually incurred in that year in respect of exploration in terms of an oil and gas right; and

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(b) 50 per cent of all expenditure of a capital nature actually incurred in that year in respect of production in terms of an oil and gas right.”;

- (b) by the substitution for subparagraph (3) of the following subparagraph:

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“(3) For purposes of determining the taxable income of an oil and gas company during any year of assessment, any assessed losses (as defined in section 20) in respect of exploration or production may only be **[set-off]** set off against—

(a) the oil and gas income of that company[,]; and

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(b) income **[derived]** from the refining of gas derived in respect of any oil and gas right held by that company,

to the extent those assessed losses do not exceed that income.”.

Amendment of section 47B of Act 91 of 1964, as inserted by section 59 of Act 30 of 2000 and amended by section 40 of Act 12 of 2003, section 13 of Act 9 of 2005 and section 92 of Act 35 of 2007

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87. (1) Section 47B of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2)(b)(i) for the words preceding the proviso of the following words:

“The tax shall be charged at the rate of **[R120]** R150 on the carriage of each chargeable passenger departing on a flight”.

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(2) Subsection (1) is deemed to have come into operation on 1 October 2009 and applies in respect of the carriage of a chargeable passenger on any flight which commences on or after that date, if the ticket of that passenger in respect of that flight was purchased and issued after the date of promulgation of this Act.

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Amendment of Schedule No. 1 to Act 91 of 1964, as amended by section 19 of Act 95 of 1965, section 15 of Act 57 of 1966, section 2 of Act 96 of 1967, section 22 of Act 85 of 1968, section 37 of Act 105 of 1969, section 9 of Act 98 of 1970, section 2 of Act 89 of 1971, section 12 of Act 103 of 1972, section 6 of Act 68 of 1973, section 3 of Act 64 of 1974, section 13 of Act 71 of 1975, section 13 of Act 105 of 1976, section 38 of Act 112 of 1977, section 3 of Act 114 of 1981, section 27 of Act 86 of 1982, section 10 of Act 89 of 1984, section 14 of Act 101 of 1985, section 11 of Act 69 of 1988, section 19 of Act 68 of 1989, section 40 of Act 59 of 1990, section 3 of Act 111 of 1991, section 15 of Act 105 of 1992, section 13 of Act 98 of 1993, section 12 of Act 19 of 1994, section 74 of Act 45 of 1995, section 8 of Act 44 of 1996, section 15 of Act 27 of 1997, section 75 of Act 30 of 1998, section 7 of Act 32 of 1999, section 64 of Act 30 of 2000, section 52 of Act 19 of 2001, section 53 of Act 30 of 2002, section 41 of Act 12 of 2003, section 155 of Act 45 of 2003, section 36 of Act 16 of 2004, section 14 of Act 9 of 2005, section 36 of Act 9 of 2006, section 76 of Act 8 of 2007 and section 66 of Act 3 of 2008

88. (1) Schedule No. 1 to the Customs and Excise Act, 1964, is hereby amended as set out in Appendix II to this Act. 15

(2) For the purposes of Appendix II to this Act any word or expression to which a meaning has been assigned in the Customs and Excise Act, 1964, bears the meaning so assigned unless the context otherwise indicates.

(3) Subject to section 58(1) of the Customs and Excise Act, 1964, subsection (1) is deemed to have come into operation on 11 February 2009. 20

Continuation of certain amendments of Schedules to Act 91 of 1964

89. (1) Subject to subsection (2), every amendment or withdrawal of or insertion in Schedule No. 1 to 6, 8 and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56, 56A, 57, 60 or 75(15) of that Act during the period 1 August 2008 up to and including 31 July 2009, shall not lapse by virtue of section 48(6), 49, 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act. 25

(2) Subsection (1) shall not include amendments made under sections 48 and 75(15) of the Customs and Excise Act, 1964, by Government Notices R.4, R.5 and R.6 of 1 January 2008. 30

Amendment of section 54 of Act 94 of 1990, as substituted by section 6 of Act 42 of 1992 and amended by sections 12 and 25 of Act 9 of 1993, Proclamation No. 132 of 1994, section 36 of Act 26 of 1994, section 5 of Act 55 of 1996, section 36 of Act 19 of 2003 and section 13 of Act 20 of 2007

90. Section 54 of the Banks Act, 1990, is hereby amended by the substitution for subsection (8A) of the following subsection: 35

“(8A) No transfer duty, **[stamp duty]** securities transfer tax, registration fees, licence duty or other charges shall be payable in respect of—

(a) a transfer contemplated in subsection (8) taking place in the execution of a transaction entered into at the instance of the Registrar in the interest of the effective supervision of banks or the maintenance of a stable banking sector; 40

or

(b) any endorsement or alteration made to record such transfer, upon submission to the Registrar of Companies, or the Master, officer or person referred to in subsection (8), as the case may be, of a written confirmation by the Registrar of Banks that the Minister, on the recommendation of the last-mentioned Registrar and after consultation with the Commissioner **[for Inland Revenue]** of the South African Revenue Service has consented to the waiver of such tax, fees or charges.”. 45

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001, section 151 of Act 60 of 2001, section 166 of Act 45 of 2003, section 95 of Act 32 of 2004, section 102 of Act 31 of 2005, section 172 of Act 34 of 2005, section 42 of Act 9 of 2006, section 79 of Act 20 of 2006, section 27 of Act 36 of 2007 and section 106 of Act 60 of 2008

91. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the insertion after subsection (2D) of the following subsection: 10

“(2E) Where a supply is deemed to have been made by a vendor in terms of subsection (2) and that vendor ceases to be a vendor for the sole reason that the total value of taxable supplies made by that vendor in the preceding period of 12 months has not exceeded the amount contemplated in section 23(1) or 23(3), the Minister may by regulation prescribe the period in which the tax payable in respect of that deemed supply shall be paid.”; and 15

(b) by the substitution for subsection (25) of the following subsection:

“(25) For the purposes of this Act, where any goods or services are supplied by a vendor to another vendor, those vendors must for the purposes of that supply or subsequent supplies of those goods or services, be deemed to be one and the same person provided the provisions of section 42, 44, 45 or 47 of the Income Tax Act[, 1962,] are complied with: Provided that this subsection shall not apply to a supply contemplated in section 42 or 45 of the Income Tax Act, unless— 20

(i) that supply is of an enterprise or part of an enterprise which is capable of separate operation, where the supplier and recipient have agreed in writing that such enterprise or part, as the case may be, is disposed of as a going concern; or 25

(ii) the enterprise or part, as the case may be, disposed of as a going concern has been carried on in, on or in relation to goods or services applied mainly for purposes of such enterprise or part, as the case may be, and partly for other purposes, such goods or services shall, where disposed of to such recipient, for the purposes of this paragraph be deemed to form part of such enterprise or part, as the case may be, notwithstanding the provisions of paragraph (v) of the proviso to the definition of ‘enterprise’ in section 1.”. 30 35

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of any supply made on or after that date.

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998, section 89 of Act 53 of 1999, section 174 of Act 45 of 2003, section 103 of Act 32 of 2004, section 109 of Act 31 of 2005, section 49 of Act 9 of 2006, section 85 of Act 20 of 2006 and section 112 of Act 60 of 2008

92. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) For the purposes of subsections (2) and (5), any reduction or increase in the extent of the application or use of goods or services shall be deemed to take place on the last day of the vendor’s year of assessment as defined in section 1 of the Income Tax Act or, if the vendor is not **[an income tax payer]** a taxpayer as defined in that section, on the last day of February: Provided that where a vendor who is not **[an income tax payer]** a taxpayer as so defined draws up annual financial statements in respect of a year or other period ending on a date other than the last day of February, **[and]** the reduction or increase in the extent of the application or use of goods or services shall be deemed to take place on such first-mentioned date: Provided further that where a vendor ceases to be a vendor prior to any day contemplated in this subsection, any reduction or increase in the extent of the application or use of goods or services shall be deemed to take place immediately before that vendor ceased to be a vendor.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of any supply made on or after that date.

Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005, section 14 of Act 10 of 2006, section 24 of Act 4 of 2008 and section 113 of Act 60 of 2008 5

93. (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (3)(b) for the words following subparagraph (ii) of the following words:
- “and the total value of taxable supplies made by that person in the course of carrying on all enterprises in the preceding period of 12 months has exceeded [R20 000] R50 000; or”; and
- (b) by the substitution in subsection (3) for paragraphs (c) and (d) of the following paragraphs:
- “(c) that person intends to carry on any enterprise from a specified date, where that enterprise will be supplied to him as a going concern and the total value of taxable supplies made by the supplier of the going concern from carrying on that enterprise or part of the enterprise which will be supplied has exceeded [R20 000] R50 000 in the preceding period of 12 months; or
- (d) that person is continuously and regularly carrying on an activity which, in consequence of the nature of that activity, can reasonably be expected to result in taxable supplies being made for a consideration only after a period of time and where the total value of taxable supplies to be made can reasonably be expected to exceed [R20 000] R50 000 in a period of 12 months.”.

(2) Subsection (1) comes into operation on 1 March 2010 and applies in respect of any tax period commencing on or after that date.

Amendment of Schedule 3 to Act 16 of 2004

94. (1) Schedule 3 to the Taxation Laws Amendment Act, 2004, is hereby amended by the substitution in paragraph 4 for subparagraph (2) of the following subparagraph: 30

“(2) Paragraphs 1 and 2 cease to apply on [1 May 2009] 1 March 2010.”.

(2) Subsection (1) is deemed to have come into operation on 30 April 2009.

Amendment of section 10 of Act 20 of 2006, as amended by section 97 of Act 8 of 2007 35

95. (1) Section 10 of the Revenue Laws Amendment Act, 2006, is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection:
- “(3) Paragraph (j) of subsection (1), to the extent that it inserts paragraph (cO) into [subsection (1), and paragraph (k) of subsection (1)] section 10 of the Income Tax Act, 1962, shall come into operation on 1 April 2007 and shall apply in respect of any year of assessment commencing on or after that date.”; and
- (b) by the addition of the following subsection:
- “(4) Paragraph (k) of subsection (1) shall come into operation on 1 April 2007 and applies in respect of any year of assessment commencing on or after that date: Provided that the receipts and accruals of a company, society or other association of persons which was approved by the Commissioner under section 10(1)(d)(iv) of the Income Tax Act, 1962, will continue to be exempt from tax until the earlier of—
- (a) the last year of assessment ending on or before 30 September 2010; or
- (b) the year of assessment preceding the year of assessment during which section 10(1)(cO) applies to the receipts and accruals of that company, society or other association of persons.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2007 and applies in respect of any year of assessment commencing on or after that date. 55

Amendment of section 1 of Act 15 of 2007

96. Section 1 of the Diamond Export Levy Act, 2007, is hereby amended by the insertion after the definition of “unpolished diamond” of the following definition:

“ **‘value’**, in relation to goods exported, means the value determined under section 72 of the Customs and Excise Act, 1964 (Act No. 91 of 1964);”.

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Amendment of section 8 of Act 25 of 2007, as amended by section 127 of Act 60 of 2008

97. (1) Section 8 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution in subsection (1)(a)(vi) for item (A) of the following item:

“(A) in subparagraphs (i) to (v) regardless of whether or not an election has been made **[for the provisions] in terms** of the relevant section **[to apply]**; or”.

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(2) Subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of a transaction entered into on or after that date.

Amendment of section 5 of Act 28 of 2008

98. (1) Section 5 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

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

“(b) so much of the amount allowed to be deducted from income in terms of the Income Tax Act (whether in that year or a previous year of assessment) in respect of the use of assets, or expenditure incurred, **[directly]** in respect of mineral resources transferred on or after **[1 May 2009] 1 March 2010** to win, recover and develop those mineral resources to the condition specified in Schedule 1, as is included in the income of the extractor during that year of assessment **[in terms of section 8(4) of that Act (disregarding the exception in respect of section 15(a) of that Act), but not including an amount that is received or accrued from the disposal of assets the cost of which has in whole or in part been included in capital expenditure taken into account as mentioned in the definition of ‘capital expenditure incurred’ in section 36(11) of that Act]**—

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(i) as a recoupment in terms of any provision of that Act; or
(ii) in terms of paragraph (j) of the definition of ‘gross income’ in section 1 of that Act;”;

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

“less any amount which in terms of that Act is allowed to be deducted from the income of the extractor during that year of assessment in respect of assets used or expenditure incurred **[directly]** to win, recover and develop those refined mineral resources to the condition specified in Schedule 1 for those mineral resources.”;

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

“(b) so much of the amount allowed to be deducted from income in terms of the Income Tax Act (whether in that year or a previous year of assessment) in respect of the use of assets, or expenditure incurred, **[directly]** in respect of mineral resources transferred on or after **[1 May 2009] 1 March 2010** to win, recover and develop those **[unrefined]** mineral resources to the condition specified in Schedule 2, as is included in the income of the extractor during that year of assessment **[in terms of section 8(4) of that Act (disregarding the exception in respect of section 15(a) of that Act), but not including an amount that is received or accrued from the disposal of assets the cost of which has in whole or in part been included in capital expenditure taken into account as mentioned in the definition of ‘capital expenditure incurred’ in section 36(11) of that Act]**—

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- (i) as a recoupment in terms of any provision of that Act; or
(ii) in terms of paragraph (j) of the definition of 'gross income' in section 1 of that Act,";
- (d) by the substitution in subsection (2) for the words following paragraph (b) of the following words: 5
“less any amount which in terms of that Act is allowed to be deducted from the income of the extractor during that year of assessment in respect of assets used or expenditure incurred [**directly**] to win, recover and develop those unrefined mineral resources to the condition specified in Schedule 2 for those mineral resources.”; 10
- (e) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
“(c) (i) in the case of mineral resources refined to the condition specified in Schedule 1 for those mineral resources, any deduction for expenditure incurred in respect of transport, insurance and handling of those refined mineral resources after those mineral resources were refined to that condition or any [**amount received or accrued**] expenditure incurred in respect of transport, insurance and handling to effect the disposal of that mineral resource; or 15
(ii) in the case of mineral resources brought to the condition specified in Schedule 2 for those mineral resources, any deduction for expenditure incurred in respect of transport, insurance and handling of those unrefined mineral resources after those mineral resources were brought to that condition or any [**amount received or accrued**] expenditure incurred in respect of transport, insurance and handling to effect the disposal of that mineral resource;”; and 20
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- (f) by the substitution in subsection (4) for paragraph (b) of the following paragraph: 30
“(b) For purposes of determining ‘earnings before interest and taxes’, if the value of the refined proportion of a composite mineral resource [**as determined in terms of subsection (1)**] does not exceed 10 per cent of the total value of that composite resource, that composite mineral resource may be treated solely as an unrefined mineral resource, and if 35
the value of the unrefined proportion of a composite mineral resource [**as so determined**] does not exceed 10 per cent of the total value of that composite mineral resource, that composite mineral resource may be treated solely as a refined mineral resource.”.
- (2) Subsection (1) comes into operation on 1 March 2010 and applies in respect of a 40
mineral resource transferred on or after that date.

Amendment of section 6 of Act 28 of 2008

- 99.** (1) Section 6 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution for subsection (3) of the following subsection:
“(3)(a) For purposes of subsection (1), gross sales is determined without regard 45
to any [**amount received or accrued**] expenditure incurred in respect of transport, insurance and handling of a refined mineral resource after that mineral resource was refined to the condition specified in Schedule 1 for that mineral resource or any [**amount received or accrued**] expenditure incurred in respect of transport, insurance and handling to effect the disposal of that mineral resource. 50
(b) For purposes of subsection (2), gross sales is determined without regard to any [**amount received or accrued for the**] expenditure incurred in respect of transport, insurance and handling of an unrefined mineral resource after that mineral resource was brought to the condition specified in Schedule 2 for that mineral resource or any [**amount received or accrued**] expenditure incurred in respect of transport, insurance and handling to effect the disposal of that mineral resource.” 55
- (2) Subsection (1) comes into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of section 9 of Act 28 of 2008

100. (1) Section 9 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the insertion of the following subsection:

“(1A) For purposes of this Act a disposal of a mineral resource by an extractor to any other extractor is deemed not to be a disposal, if—

- (a) the mineral resource is disposed of to another extractor in terms of—
 - (i) an asset-for-share transaction mentioned in section 42 of the Income Tax Act;
 - (ii) an amalgamation transaction mentioned in section 44 of the Income Tax Act;
 - (iii) an intra-group transaction mentioned in section 45 of the Income Tax Act;
 - (iv) a liquidation distribution mentioned in section 47 of the Income Tax Act; or
 - (v) any transaction which would have constituted a transaction or distribution mentioned in subparagraphs (i) to (iv) regardless of whether that extractor acquired that mineral resource as a capital asset or as trading stock; and
- (b) the extractor to whom the mineral resource is disposed of, immediately after a transaction contemplated in paragraph (a)(i), (ii), (iii), (iv) or (v), qualifies for registration in terms of section 2(1)(a) of the Administration Act.”

(2) Subsection (1) comes into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of section 10 of Act 28 of 2008

101. (1) Section 10 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Notwithstanding any other provision in this Act, an unincorporated body **[that is registered as a person under]** of which the members made an election in terms of section 4(1) of the Administration Act—”

(2) Subsection (1) comes into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of section 18 of Act 28 of 2008

102. (1) Section 18 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) This Act comes into operation—

- (a) in respect of section 1, on 1 November 2009;
- (b) in respect of sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16 and 17, and Schedules 1 and 2, on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date; and
- (c) in respect of sections 13 and 14, on 1 November 2009 and applies in respect of a mineral resource transferred on or after 1 March 2010.”

(2) Subsection (1), to the extent that it relates to—

- (a) section 18(2)(a) of the Mineral and Petroleum Resources Royalty Act, 2008, comes into operation on 1 November 2009;
- (b) section 18(2)(b) of the Mineral and Petroleum Resources Royalty Act, 2008, comes into operation on 1 March 2010; and
- (c) section 18(2)(c) of the Mineral and Petroleum Resources Royalty Act, 2008, comes into operation on 1 November 2009 and applies in respect of a mineral resource transferred on or after 1 March 2010.

Amendment of Schedule 2 to Act 28 of 2008

103. (1) Schedule 2 to the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

- (a) by the substitution for the words in the “Unrefined condition” column corresponding to “Platinum Group Metals” of the following words:

“**[concentrate (150 ppm)]** 150 ppm in concentrate together with all other metals and minerals contained in the concentrate”;

- (b) by the substitution for the words in the “Unrefined condition” column corresponding to “Uranium” of the following words:

“80% Uranium Oxide in the uranium concentrate sold”; and

- (c) by the substitution for the words in the “Unrefined condition” column corresponding to “Other Minerals not listed elsewhere” of the following words:

“Concentrate or where the specific mineral is not rendered into a concentrate, bulk.

e.g. Phosphate Rock, Gypsum, Vermiculite, Semi-precious gemstones (like rose quartz, tiger’s eye, corundum; etc). Precious gemstones (like sugilite), Feldspar, Garnet, Peat, Perlite, Rare Earth Elements, Silica, Soda Ash, Wollastonite, Zeolite, etc.”.

- (2) Subsection (1) comes into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of section 6 of Act 60 of 2008

104. (1) Section 6 of the Revenue Laws Amendment Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) **[Paragraph (b) of subsection (1)]** Subsection (1) comes into operation on 1 March 2009 and applies in respect of lump sum benefits withdrawn on or after that date.”.

- (2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Amendment of section 18 of Act 60 of 2008

105. (1) Section 18 of the Revenue Laws Amendment Act, 2008, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Paragraph (d) of subsection (1) is deemed to have come into operation on 1 January 2008 and applies in respect of **[years of assessment ending]** expenditure incurred on or after that date.”.

- (2) Subsection (1) is deemed to have come into operation on 1 January 2008.

Amendment of section 29 of Act 60 of 2008

106. (1) Section 29 of the Revenue Laws Amendment Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) is deemed to have come into effect on 21 October 2008 and applies in respect of **[an erection, extension, addition or improvement]** any building, part thereof or improvement thereto that **[commences]** is brought into use on or after that date.”.

- (2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Amendment of section 55 of Act 60 of 2008

107. (1) The Revenue Laws Amendment Act, 2008, is hereby amended by the deletion of section 55.

- (2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Amendment of section 59 of Act 60 of 2008

108. Section 59 of the Revenue Laws Amendment Act, 2008, is hereby amended by the addition of the following subsection:

“(4) Subsection (1)(b), to the extent that it inserts item (iB) into paragraph 2(b) of the Second Schedule to the Income Tax Act, 1962, is deemed to have come into operation on 1 August 2008 and applies in respect of any lump sum benefit transferred on or after that date.”.

Special measures relating to sharing of fuel levy revenue

109. (1) Special measures relating to the sharing of fuel levy revenue are set out in Schedule 1 to this Act.

(2) Subsection (1) and Schedule 1 are deemed to have come into operation on 1 April 2009.

5

Special zero-rating in respect of goods or services supplied by Cricket South Africa

110. (1) The supply of goods or services by Cricket South Africa in respect of the staging of the 2009 International Premier League event in the Republic shall be subject to value-added tax imposed in terms of section 7(1) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), at the rate of zero per cent to the extent that consideration for that supply is received from the Board of Cricket Control of India.

(2) Subsection (1) is deemed to have come into operation on 1 March 2009.

Short title and commencement

111. (1) This Act is called the Taxation Laws Amendment Act, 2009.

(2) Except insofar as otherwise provided for in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2010.

15

SCHEDULE 1

SPECIAL MEASURES RELATING TO SHARING OF GENERAL FUEL LEVY REVENUE

(Section 109)

Definitions 5

1. For the purposes of this Schedule, unless the context otherwise indicates—
 - “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
 - “**financial year**” means a year starting 1 April and ending 31 March;
 - “**general fuel levy**” means the fuel levy contemplated in section 1 of the Customs and Excise Act, 1964 (Act No. 91 of 1964), and Part 5A of Schedule No. 1 to that Act, but does not include the Road Accident Fund levy and any rebates, drawbacks and refunds of duty; 10
 - “**metropolitan municipality**” means a metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); 15
 - “**Minister**” means the Minister of Finance;
 - “**municipality**” means a municipality as described in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
 - “**National Revenue Fund**” means the National Revenue Fund contemplated in section 213 of the Constitution. 20

General fuel levy revenue is direct charge

2. An amount equal to a fixed percentage of revenue raised from the collection of the general fuel levy is a direct charge against the National Revenue Fund for the credit of the metropolitan municipalities.

Allocation to which metropolitan municipality is entitled 25

3. (1) (a) The percentage contemplated in paragraph 2 is fixed at 23 per cent.
 (b) The Minister may annually revise the percentage specified in item (a) and must publish the revised percentage by notice in the *Gazette*.
- (2) (a) The Minister must for each financial year determine an equitable allocation to be made to each metropolitan municipality from the amount contemplated in paragraph 2. 30
 (b) The Minister must publish the allocation contemplated in item (a) by notice in the *Gazette*.

Power to make regulations

4. The Minister may make regulations regarding any matter that may facilitate the implementation and administration of this Schedule. 35

Appendix I*(Section 6)***RATES OF NORMAL TAX AND REBATES**

1. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income (excluding any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit) of any natural person, deceased estate, insolvent estate or special trust (other than a public benefit organisation or recreational club referred to in paragraph 7) in respect of any year of assessment commencing on 1 March 2009 is set out in the table below:

Taxable Income	Rate of Tax
Not exceeding R132 000	18 per cent of the taxable income
Exceeding R132 000 but not exceeding R210 000	R23 760 plus 25 per cent of amount by which taxable income exceeds R132 000
Exceeding R210 000 but not exceeding R290 000	R43 260 plus 30 per cent of amount by which taxable income exceeds R210 000
Exceeding R290 000 but not exceeding R410 000	R67 260 plus 35 per cent of amount by which taxable income exceeds R290 000
Exceeding R410 000 but not exceeding R525 000	R109 260 plus 38 per cent of amount by which taxable income exceeds R410 000
Exceeds R525 000	R152 960 plus 40 per cent of amount by which taxable income exceeds R525 000

2.

Description	Reference to the Income Tax Act, 1962	Amount
Primary rebate	Section 6(2)(a)	R9 756
Secondary rebate	Section 6(2)(b)	R5 400

3. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of a trust (other than a special trust or a public benefit organisation referred to in paragraph 7) in respect of any year of assessment ending on 28 February 2010 is 40 per cent.

4. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of a company (other than a public benefit organisation or recreational club referred to in paragraph 7 or a small business corporation referred to in paragraph 8) in respect of any year of assessment ending during the period of 12 months ending on 31 March 2010 is, subject to the provisions of paragraph 13, as follows:

- (a) 28 per cent of the taxable income of any company (excluding taxable income referred to in subparagraphs (b), (c), (d), (e) and (f) or in paragraphs 5 and 6) or, in the case of such a company which mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, 35 per cent;
- (b) in respect of the taxable income derived by any company from mining for gold on any gold mine with the exclusion of so much of the taxable income as the Commissioner for the South African Revenue Service determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the Income Tax Act, 1962, but after the set-off of any assessed loss in terms of section 20(1) of that Act, a percentage determined in accordance with the formula:

$$y = 34 - \frac{170}{x}$$

or, in the case of a company which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, in accordance with the formula:

$$y = 43 - \frac{215}{x} \quad 5$$

in which formulae y represents such percentage and x the ratio expressed as a percentage which the taxable income so derived (with the said exclusion, but before the set-off of any assessed loss or deduction which is not attributable to the mining for gold from the said mine) bears to the income so derived (with the said exclusion); 10

- (c) in respect of the taxable income of any company, the sole or principal business of which in the Republic is, or has been, mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Commissioner for the South African Revenue Service determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the Income Tax Act, 1962, a rate equal to the average rate of normal tax or 28 per cent, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of its aggregate taxable income from mining for gold on any gold mine for the period from which that company commenced its gold mining operations on that gold mine to the end of the period assessed, by the number of rands contained in the said aggregate taxable income; 15 20 25
- (d) in respect of the taxable income derived by any company from carrying on long-term insurance business in respect of its—
- (i) individual policyholder fund, 30 per cent; and
 - (ii) company policyholder fund and corporate fund, 28 per cent; 30
- (e) in respect of the taxable income (excluding taxable income referred to in subparagraphs (b), (c), (d) and (f)) derived by a company which is not a resident, 33 per cent; and
- (f) in respect of the taxable income derived by a qualifying company contemplated in section 37H of the Income Tax Act, 1962, subject to the provisions of the said section, zero per cent. 35

5. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of any employment company as defined in section 12E of the Income Tax Act, 1962, in respect of any year of assessment commencing on or after 1 April 2008 and before 1 March 2009 is 33 per cent. 40

6. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of any company that is a personal service provider as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, in respect of any year of assessment commencing on or after 1 March 2009 is 33 per cent.

7. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of any public benefit organisation that has been approved by the Commissioner for the South African Revenue Service in terms of section 30(3) of the Income Tax Act, 1962, or any recreational club that has been approved by the Commissioner for the South African Revenue Service in terms of section 30A(2) of that Act is 28 per cent— 50

- (a) in the case of an organisation or club that is a company, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2010; or
- (b) in the case of an organisation that is a trust, in respect of any year of assessment ending on 28 February 2010. 55

8. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of any company which qualifies as a small business corporation as defined in section 12E of the Income Tax Act, 1962, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2010 is, subject to the provisions of paragraph 13, set out in the table below: 60

Taxable Income	Rate of Tax	
Not exceeding R54 200	0 per cent of taxable income	
Exceeding R54 200 but not exceeding R300 000	10 per cent of amount by which taxable income exceeds R54 200	5
Exceeding R300 000	R24 580 plus 28 per cent of amount by which taxable income exceeds R300 000	

9. The rate of tax referred to in section 6(2) of this Act to be levied in respect of the taxable turnover of a person that is a registered micro business as defined in paragraph 1 of the Sixth Schedule to the Income Tax Act, 1962, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2010 is set out in the table below:

Taxable turnover	Rate of tax	
Not exceeding R100 000	0 per cent of taxable turnover	15
Exceeding R100 000 but not exceeding R300 000	1 per cent of amount by which taxable turnover exceeds R100 000	20
Exceeding R300 000 but not exceeding R500 000	R2 000 plus 3 per cent of amount by which taxable turnover exceeds R300 000	
Exceeding R500 000 but not exceeding R750 000	R8 000 plus 5 per cent of amount by which taxable turnover exceeds R500 000	25
Exceeding R750 000	R20 500 plus 7 per cent of amount by which taxable turnover exceeds R750 000	

10. (a) (i) If a retirement fund lump sum withdrawal benefit accrues to a person in any year of assessment commencing on or after 1 March 2009, the rate of tax referred to in section 6(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—

- (aa) that retirement fund lump sum withdrawal benefit;
- (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa); and
- (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa),

is set out in the table below:

Taxable income from lump sum benefits	Rate of tax	
Not exceeding R22 500	0 per cent of taxable income	
Exceeding R22 500 but not exceeding R600 000	18 per cent of taxable income exceeding R22 500	45
Exceeding R600 000 but not exceeding R900 000	R103 950 plus 27 per cent of taxable income exceeding R600 000	
Exceeding R900 000	R184 950 plus 36 per cent of taxable income exceeding R900 000	50

(ii) The amount of tax levied in terms of item (i) must be reduced by an amount equal to the tax that would be leviable on the person in terms of that item in respect of taxable income comprising the aggregate of—

- (aa) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in item (i)(aa); and
- (bb) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in item (i)(aa).

(b) (i) If a retirement fund lump sum benefit accrues to a person in any year of assessment commencing on or after 1 March 2009, the rate of tax referred to in section 6(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—

- (aa) that retirement fund lump sum benefit; and
 (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa); and
 (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa),

is set out in the table below:

Taxable income from lump sum benefits	Rate of tax	
Not exceeding R300 000	0 per cent of taxable income	10
Exceeding R300 000 but not exceeding R600 000	R0 plus 18 per cent of taxable income exceeding R300 000	15
Exceeding R600 000 but not exceeding R900 000	R54 000 plus 27 per cent of taxable income exceeding R600 000	
Exceeding R900 000	R135 000 plus 36 per cent of taxable income exceeding R900 000	20

(ii) The amount of tax levied in terms of item (i) must be reduced by an amount equal to the tax that would be leviable on the person in terms of that item in respect of taxable income comprising the aggregate of—

- (aa) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa); and
 (bb) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa).

11. The rates of tax set out in paragraphs 1, 3, 4, 5, 6, 7, 8 and 10 are the rates required to be fixed by Parliament in accordance with the provisions of section 5(2) of the Income Tax Act, 1962.

12. The rate of tax set out in paragraph 9 is the rate required to be fixed by Parliament in accordance with the provisions of section 48B(1) of the Income Tax Act, 1962.

13. For the purposes of this Appendix, income derived from mining for gold includes any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold and any other income which results directly from mining for gold.

Appendix II

AMENDMENT OF SCHEDULE NO. 1 TO THE CUSTOMS AND EXCISE ACT,
1964

(Section 88)

Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.00		Prepared foodstuffs; beverages, spirits and vinegar; tobacco		
104.01	19.01	Malt extract; food preparations of flour, groats, meal starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included		
.10		Traditional beer powder as defined in Additional Note 1 to Chapter 19	34.7 c/kg	34.7 c/kg
104.10	22.03	Beer made from malt		
.10		Traditional beer as defined in Additional Note 1 to Chapter 22	7.82 c/li	7.82 c/li
.20		Other	R46.41 /li absolute alcohol	R46.41 /li absolute alcohol
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must, other than that of heading no. 20.09		
	22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:		
.02		Sparkling wine	R6.16 /li	R6.16 /li
.04		Unfortified wine	R1.98 /li	R1.98 /li
.06		Fortified wine	R3.72 /li	R3.72 /li
104.17	22.06	Other fermented beverages, (for example, cider, perry and mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included		
.05		Traditional beer as defined in Additional Note 1 to Chapter 22	7.82 c/li	7.82 c/li
.15		Other fermented beverages, unfortified	R2.33 /li	R2.33 /li
.17		Other fermented beverages, fortified	R4.73 /li	R4.73 /li
.22		Mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages	R2.33 /li	R2.33 /li
.90		Other	R4.73 /li	R4.73 /li
104.20	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher; ethyl alcohol and other spirits, denatured, of any strength		

	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages:		
.10		Wine spirits, manufactured by the distillation of wine	R77.67 /li absolute alcohol	R77.67 /li absolute alcohol
.15		Spirits, manufactured by the distillation of any sugar cane product	R77.67 /li absolute alcohol	R77.67 /li absolute alcohol
.25		Spirits, manufactured by the distillation of any grain product	R77.67 /li absolute alcohol	R77.67 /li absolute alcohol
.29		Other spirits	R77.67 /li absolute alcohol	R77.67 /li absolute alcohol
.40		Liqueurs and other spirituous beverages	R77.67 /li absolute alcohol	R77.67 /li absolute alcohol
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes		
.10		Cigars, cheroots, and cigarillos, of tobacco or of tobacco substitutes	R1 951.43 /kg net	R1 951.43 /kg net
.20		Cigarettes, of tobacco or of tobacco substitutes	R3.85 /10 cigarettes	R3.85 /10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences:		
.10		Cigarette tobacco and substitutes thereof	R183.04 /kg	R183.04 /kg
.20		Pipe tobacco and substitutes thereof	R100.10 /kg net	R100.10 /kg net

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