

The draft Revenue Laws Amendment Bill, 2008, is hereby published for comment. This Bill, together with the draft Revenue Laws Second Amendment Bill, 2008 (and the Taxation Laws Amendment Bills, 2008, which were promulgated earlier this year) gives effect to the tax proposals presented by the Minister of Finance in the 2008 National Budget as tabled in Parliament earlier this year.

The National Treasury is scheduled to brief Parliament's Portfolio Committee on Finance on the draft Bill on 19 August, 2008. The Committee through its own procedures and processes will request public comments on the draft Bill, and will hold public hearings commencing on 20 August 2008. In addition to the submissions to the Portfolio Committee on Finance, the National Treasury invites members of the public to submit comments on this draft Bill preferably before the Committee briefing on 19 August 2008 but not later than 5 September 2008 to:

Mr. Greg Smith:

greg.smith@treasury.gov.za

National Treasury will endeavour to consider all such comments submitted to it and to the Portfolio Committee on Finance, as well as any recommendations arising from the hearings of the Portfolio Committee, when finalising the Bill for tabling in Parliament in late September or early October 2008, for formal consideration and adoption.

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REPUBLIC OF SOUTH AFRICA

**REVENUE 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 xx—2008]

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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 provide for exemptions from duty;
- amend the Estate Duty Act, 1949, so as to exclude proceeds from life insurance policies and retirement funds from estate duty; to amend time limits for notices of assessment; to provide general rules against undue tax benefits;
- amend the Pension Funds Act, 1956, so as to effect a technical correction;
- amend the Income Tax Act, 1962, so as to amend and insert certain definitions; to effect technical corrections; to amend provisions relating to: deductions, values of trading stock, asset-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions, liquidation distributions, retirement, withholding taxes, employment benefits and capital gains and losses; to lower a rate of tax;
- amend the Customs and Excise Act, 1964, so as to—
 - provide for the removal of dutiable imported goods from a customs and excise storage warehouse on issuing of a certificate, an invoice or other document when the licensee and the importer are both accredited in terms of the Act and payment of duty at the time and in the manner prescribed by rule;
 - provide for losses in respect of certain liquid bulk goods in a special customs and excise storage warehouse;
 - amend certain provisions regarding entitlement to payment of storage charges from the proceeds of sale of goods stored in a place deemed to be a State warehouse;
 - limit liability for underpayments of duty in instances where it was not paid or not paid in full in accordance with a practice generally prevailing;
 - provide for certain registrations and exemptions in respect of environmental levy goods to be specified by rule;
 - effect amendments to provisions regulating the determination of customs value;

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- further regulate the period within which application for refunds must be made;
 - provide for the dutiability of waste and scrap after the destruction of goods;
 - delete certain provisions relating to refunds of duty on goods destroyed or lost;
 - prohibit a refund of duty where the duty was paid in accordance with a practice generally prevailing at the time of entry for home consumption;
 - provide for the continuation of certain amendments to the Schedules;
 - deem a date on which an international trade agreement came into operation;
 - effect consequential and textual amendments;
 - repeal the Stamp Duties Act, 1968;
 - amend the Value-Added Tax Act, 1991, so as to amend certain definitions; to amend provisions relating to zero rating and calculation of tax payable; to raise a limit; to update a reference;
 - amend the Restitution of Land Rights Act, 1994, so as to delete provisions relating transfer duty and stamp duty;
 - amend the Taxation Laws Amendment Act, 2007, so as to effect a technical correction;
 - amend the Revenue Laws Amendment Act, 2007, so as to amend commencement dates;
 - amend the Taxation Laws Amendment Act, 2008, so as to effect a technical correction,
- and to provide for matters connected therewith.

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

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

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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 and section 2 of Act 35 of 2007

1. Section 9 of the Transfer Duty Act, 1949, is hereby amended by the addition to subsection (1) of the following paragraphs:

- “(n) any person in terms of section 10(1) (b)(i) of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993), or section 42E of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);
- (o) any person to the extent of any advance or subsidy granted to that person in terms of section 10(1)(d) of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993).”.

Amendment of section 3 of Act 45 of 1955, as amended by section 2 of Act 65 of 1960, section 8 of Act 77 of 1964, section 2 of Act 81 of 1965, section 4 of Act 92 of 1971, section 3 of Act 89 of 1972, section 3 of Act 102 of 1979, section 10 of Act 106 of 1980, section 2 of Act 92 of 1983, section 4 of Act 81 of 1985, section 9 of Act 87 of 1988, section 7 of Act 97 of 1993, section 6 of Act 27 of 1997, section 13 of Act 30 of 1998, section 7 of Act 30 of 2000, section 5 of Act 31 of 2005

2. (1) Section 3 of the Estate Duty Act, 1955, is hereby amended—

- (a) by the deletion in subsection (3) of paragraph (a); and
- (b) by the deletion in subsection (3) of paragraph (a)*bis*.

(2) Subsection (1) comes into operation on 1 January 2009 and applies in respect of the estate of a person who dies on or after that date.

Amendment of section 9 of Act 45 of 1955

3. (1) Section 9 of the Estate Duty Act, 1955, is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection:

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“(3) [A] Subject to subsection (1), a notice of assessment shall be issued in respect of each return submitted in respect of any estate in which liability for duty is disclosed, due regard being had in the calculation of the duty to any duty chargeable on any previous returns submitted in respect of the same estate.”; and
(b) by the addition of the following subsection:

“(4)(a) A notice of assessment shall be deemed to have been issued in terms of section 9(3), if—

(i) a liquidation and distribution account is rendered to a Master, on the date on which the account is approved by the Master; or

(ii) a liquidation and distribution account is not rendered to a Master as contemplated in item (i), on the date on which a death notice is given to a Master in terms of section 7 of the Administration of Estates Act, 1965 (Act No. 66 of 1965),

unless a notice of assessment has already been issued.

(b) If an additional asset is found, the liquidation and distribution account rendered in respect of that asset shall be deemed to be a supplementary account, as contemplated in section 35(1A) of the Administration of Estates Act, 1965 (Act No. 66 of 1965), and a notice of assessment shall be deemed to have been issued in respect of that estate on the date on which the supplementary account is approved by the Master.”.

(2) Subsection (1) comes into operation on 1 January 2009.

Insertion of section 25B into Act 45 of 1955

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

“Transaction, operation, scheme or understanding for obtaining undue tax benefit

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25B. (1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any transaction, operation, scheme or understanding (whether enforceable or not), including all steps by which it is carried into effect—

(a) has the effect of granting a tax benefit to any person;

(b) having regard to the substance of the transaction, operation, scheme or understanding—

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

(ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and

(c) was entered into or carried out solely or mainly for the purposes of obtaining a tax benefit,

the Commissioner shall determine the liability for any duty imposed by this Act, and the amount thereof, as if the transaction, operation, scheme or understanding had not been entered into or carried out, or in the manner that in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of that tax benefit.

(2) For the purposes of this section 'tax benefit' means—

(a) any reduction in the liability of any person to pay duty;

(b) any increase in the entitlement of any person to the refund of duty; or

(c) any other avoidance or postponement of liability for the payment of any duty imposed by this Act or any tax, duty or levy imposed by any other Act administered by the Commissioner.

(3) Any decision of the Commissioner under subsection (1) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it shall be presumed, until the contrary is proved, that that transaction, operation, scheme or understanding was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.”

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(2) Subsection (1) comes into operation on 23 September 2009 and applies in respect of any transaction, operation, scheme or understanding, including all steps by which it is carried into effect, entered into or carried out on or after that date.

Amendment of section 37D of Act 24 of 1956, as inserted by section 14 of Act 94 of 1977 and amended by section 14 of Act 80 of 1978, section 4 of Act 65 of 2001, section 4 of Act 35 of 2007 and section 16 of the Financial Services Laws General Amendment Act of 2008

5. (1) Section 37D of the Pension Funds Act, 1956, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) deduct from a member’s benefit or minimum individual reserve, as the case may be—

- (i) any amount assigned from such benefit or individual reserve to a non-member spouse in terms of a decree granted under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979);
- (iA) any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998); and
- (ii) employees’ tax required to be deducted or withheld in terms of the Fourth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), as a result of the deduction in subparagraph (i);”.

(2) Subsection (1) is deemed to have come into operation on [the commencement date of the Financial Services General Amendment Act, 2008].

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 95 of 1967, section 5 of Act 76 of 1968, 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

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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 14 April 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, 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, 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 2000, 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 and section 2 of Act 3 of 2008

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

- (a) by the deletion in the definition of “benefit fund” of the word “or” at the end of paragraph (b);
- (b) by the insertion after the definition of “connected person” of the following definition:

“ **‘contributed tax capital’**, in relation to any class of shares issued by a company, means the amount received by or accrued to the company as consideration for the issue of the shares, reduced by so much of that amount as is transferred by the company to shareholders in relation to shares of that class: Provided that—

- (a) if on or after 1 January 2009 an asset is disposed of by a person to the company as consideration for the issue of shares by the company, and immediately after the issue of shares the person to whom the shares are issued together with any connected person in relation to that person holds more than 20 per cent of the shares of the company, the amount

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received or accrued as consideration for the issue of the shares is deemed to be equal to—

(i) if the asset is trading stock—

(aa) the amount taken into account by that person in respect of the asset in terms of section 11(a) or 22(1) or (2);

(bb) increased by any amount by which the amount received by or accrued to that person in respect of the disposal exceeds the amount taken into account as contemplated in item (aa);

(cc) reduced by any amount by which the amount taken into account as contemplated in item (aa) exceeds the amount received by or accrued to that person in respect of the disposal; or

(ii) if the asset is an asset other than trading stock—

(aa) the base cost, as defined in the Eighth Schedule, of that asset determined at the time of that disposal in relation to the person disposing of that asset;

(bb) increased by any capital gain resulting from that disposal to the extent the capital gain is not disregarded in terms of the Eighth Schedule;

(cc) increased by any amount of gross income arising as a result of the disposal;

(dd) reduced by the amount of any capital loss determined in respect of that disposal to the extent the capital loss is not disregarded in terms of the Eighth Schedule; and

(b) if a share is issued by any other company as consideration for the issue of shares by that company, the amount received or accrued in respect of that issue of shares is deemed to be nil.”;

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

“ **‘dividend’** means any amount transferred by a company to a shareholder in relation to a share held by the shareholder, to the extent the amount transferred

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does not constitute contributed tax capital: Provided that for purposes of this definition, the amount of contributed tax capital transferred to a shareholder of any class is deemed to be an amount that bears to the total contributed tax capital so transferred to all shareholders of that class 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;”;

- (d) by the substitution for the definition of “**foreign dividend**” of the following definition:

“ ‘**foreign dividend**’ means any dividend, as defined prior to the coming into operation of Part VIII of Chapter II of this Act, received by or which accrued to any person from a foreign company as defined in section 9D;”;

- (e) by the substitution in the definition of “gross income” for subparagraphs (ii), (iii) and (iv) of paragraph (cA) of the following subparagraphs:

“(ii) is or was a personal service provider as defined in the Fourth Schedule; or (iii) was a labour broker, personal service company or personal service trust as defined in the Fourth Schedule prior to section xx of the Revenue Laws Amendment Act, 2008, coming into operation (other than a labour broker in respect of which a certificate of exemption was issued in terms of that Schedule).”;

- (f) by the substitution in the definition of “pension fund” for subparagraph (i) of the proviso to paragraph (c) of the following subparagraph:

“(i) that the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement from employment or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid, and for providing any benefit contemplated in paragraph 2C of the Second Schedule; and”;

- (g) by the substitution in the definition of “pension preservation fund” for paragraph (b) of the proviso of the following paragraph:

“(b) [**contributions**] a payment or transfer to the fund [are] in respect of a member is limited to any amount contemplated in paragraph (2)(b)[(ii)] of

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the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that is paid to the fund by—

- (i) a pension fund or any other pension preservation fund of which such member was previously a member; or
- (ii) a pension fund, pension preservation fund, provident preservation fund or retirement annuity fund of which such [the] member's former spouse is or was previously a member;”;

(h) by the substitution in the definition of “pension preservation fund” for paragraph (c) of the proviso of the following paragraph:

“(c) with the exception of amounts transferred to any other pension preservation fund, not more than one amount contemplated in paragraph (2)(b)(ii) of the Second Schedule [(**excluding amounts transferred to any other pension preservation fund**)] is allowed to be paid to the member during the period of membership of the fund [**and**] or any other pension preservation fund: Provided that this paragraph applies separately to each payment to the fund contemplated in paragraph (b);”;

(i) by the addition to the definition of “pension preservation fund” of the following further proviso:

“: Provided further that—

- (i) the rules of a pension fund that is doing the business of a preservation fund as prescribed by the Commissioner from time to time must be submitted to the Commissioner for approval in terms of the provisions of this definition before 30 September 2009, failing which the approved status of the pension fund will cease on that date; and
- (ii) the rules of a pension fund contemplated in subparagraph (i) that are submitted before 30 September 2009, are deemed to have been approved under this definition with effect from the date that the rules are submitted until the date that the Commissioner notifies the fund of its status under this definition;”;

(j) by the substitution in the definition of “provident fund” for paragraph (a) of the proviso of the following paragraph:

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- “(a) subject to paragraph 2C of the Second Schedule, that the fund is a permanent *bona fide* fund established solely for the purpose of providing benefits for employees on retirement from employment or solely for the purpose of providing benefits for the dependants or nominees of deceased employees or deceased former employees or solely for a combination of such purposes; and”;
- (k) by the substitution in the definition of “**provident preservation fund**” for paragraph (b) of the following paragraph:
- “(b) **[contributions]** a payment or transfer to the fund **[are]** in respect of a member is limited to **[amounts]** any amount contemplated in paragraph (2)(b)**[(ii)]** of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that is paid by—
- (i) a provident fund or any other provident preservation fund of which **[the]** such member was previously a member; or
- (ii) a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund of which such **[the]** member’s former spouse is or was previously a member;”;
- (l) by the substitution in the definition of “provident preservation fund” for paragraph (c) of the proviso of the following paragraph:
- “(c) with the exception of amounts transferred to any other provident preservation fund, not more than one amount contemplated in paragraph (2)(b)(ii) of the Second Schedule **[(excluding amounts transferred to any other pension preservation fund)]** is allowed to be paid to the member during the period of membership of the fund **[and]** or any other provident preservation fund: Provided that this paragraph applies separately to each payment to the fund contemplated in paragraph (b);”;
- (m) by the addition to the definition of “provident preservation fund” of the following proviso:
- “: Provided further that—
- (i) the rules of a provident fund that is doing the business of a preservation fund as prescribed by the Commissioner from time to time must be submitted to

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the Commissioner for approval in terms of the provisions of this definition before 30 September 2009, failing which the approved status of the provident fund will cease on that date; and

(ii) the rules of the provident fund contemplated in subparagraph (i) that are submitted before 30 September 2009, will be deemed to have been approved under this definition with effect from the date that the rules are submitted until the date that the Commissioner notifies the fund of its status under this definition;”;

(n) by the substitution in the definition of “retirement-funding employment” for subparagraph (i) of paragraph (a) of the following subparagraph:

“(i) in the case of such employee, derives in respect of his employment any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule (but leaving out of account the provisions of **[paragraph]** paragraphs (c) and (cA) of that definition and including the amount of any allowance or advance in respect of transport expenses contemplated in section 8(1)(b), but not an allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance traveled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under the said section (8)(1)(b)(iii), and excluding any retirement fund lump sum benefit and any retirement fund lump sum withdrawal benefit) and is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived; or”;

(o) by the substitution for the definition of “securities lending arrangement” of the following definition:

“ ‘**securities lending arrangement**’ means a ‘lending arrangement’ as defined in the **[Uncertificated Securities Tax Act, 1998 (Act No. 31 of 1998)]** Securities Transfer Tax Act, 2007 (Act No. 25 of 2007);”; and

(p) by the substitution for the definition of “tax” of the following definition:

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“ ‘tax’ or ‘the tax’ or ‘taxation’ means any levy[,] tax leviable under this Act or administrative penalty [**leviable under this Act**] imposed in terms of section 75B, and for the purposes of Part IV of Chapter III includes any levy or tax leviable under any previous Income Tax Act;” and

(q) by the substitution in the definition of “trading stock” for subparagraph (i) of paragraph (a) of the following subparagraph:

“(i) produced, manufactured, constructed, assembled, purchased or in any other way acquired by a [**taxpayer**] person for the purposes of manufacture, sale or exchange by him or on his behalf[,] or”.

(2) Paragraphs (b), (c) and (d) 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 (f) and (j) of subsection (1) are deemed to have come into operation on 1 January 2006.

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 and section 3 of Act 3 of 2008

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

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

“Where any taxpayer’s income includes any special remuneration, or where the provisions of section (7A)(4A) or paragraph 15(3), 17 or 19(1) of the First Schedule [**or paragraph 7 of the Second Schedule**] are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax payable by the taxpayer in respect of such year (as determined before the deduction of any rebate) shall be determined in accordance with the formula—”; and

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

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“(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;”.

Amendment of section 6 of Act 58 of 1962, as amended by section 4 of Act 90 of 1962, section 3 of Act 6 of 1963, section 5 of Act 72 of 1963, section 8 of Act 55 of 1966, section 7 of Act 95 of 1967, section 7 of Act 76 of 1968, section 8 of Act 89 of 1969, section 7 of Act 88 of 1971, section 5 of Act 104 of 1980, section 5 of Act 96 of 1981, section 5 of Act 91 of 1982, section 4 of Act 94 of 1983, section 4 of Act 121 of 1984, section 3 of Act 96 of 1985, section 4 of Act 85 of 1987, section 4 of Act 90 of 1988, section 4 of Act 70 of 1989, section 3 of Act 101 of 1990, section 4 of Act 129 of 1991, section 4 of Act 141 of 1992, section 5 of Act 21 of 1995, section 4 of Act 36 of 1996, section 3 of Act 28 of 1997, section 22 of Act 30 of 1998, section 5 of Act 32 of 1999, section 15 of Act 30 of 2000, section 6 of Act 19 of 2001, section 11 of Act 30 of 2002, section 35 of Act 12 of 2003, section 6 of Act 16 of 2004, section 3 of Act 9 of 2005, section 7 of Act 31 of 2005, section 20 of Act 9 of 2006 and section 5 of Act 8 of 2007

8. Section 6 of the Income Tax Act, 1962, is hereby amended—

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

“(1) There shall be deducted from the normal tax payable by any natural person, other than normal tax in respect of any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit, an amount equal to the sum of the amounts allowed to the taxpayer by way of rebates under subsection (2).”; and

(b) by the insertion after subsection (2) of the following subsections:

“(3) There shall be deducted from the normal tax payable by any person in respect of any retirement fund lump sum withdrawal benefit an amount equal to 50 per cent of the primary rebate contemplated in subsection (2)(a).

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(4) The deduction allowed in terms of subsection (3) shall be reduced by the sum of any other deductions allowed to that person in terms of that subsection in the current or any previous year of assessment.”.

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 and section 4 of Act 3 of 2008

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

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

“(a) any benefit paid or payable to a spouse in his or her capacity as a member or past member of a pension fund, pension **[presevation]** preservation fund, provident fund, provident preservation fund, benefit fund, retirement annuity fund or any other fund of a similar nature shall be deemed to be income derived by such spouse from a trade carried on by him or her;”;

(b) by the addition of the following subsection:

“(12) Any deduction of a recurrent nature from the minimum individual reserve of a person in terms of section 37D(1)(d) of the Pension Funds Act, 1956 (Act No. 24 of 1956), shall be deemed for purposes of this Act to be income accrued to that person on the date of the deduction.”.

Amendment of section 8B of Act 58 of 1962, as inserted by section 6 of Act 104 of 1980, and amended by section 6 of Act 121 of 1984, section 6 of Act 101 of 1990, section 8 of Act 32 of 2004, section 11 of Act 31 of 2005, section 6 of Act 20 of 2006 and section 10 of Act 35 of 2007

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10. Section 8B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3)—

(a) for paragraphs (b) and (c) of the definition of “broad-based employee share plan” of the following paragraph:

“(b) employees who participate in any other equity scheme of that employer or of a company in the same group of companies as that employer are not entitled to participate and where at least [90] 80 per cent of all other employees who are employed by that employer on a permanent basis on the date of grant (and who have continuously been so employed on a full-time basis for at least one year) are entitled to participate;

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

(b) for subparagraph (ii) of paragraph (d) of the definition of “broad-based employee share plan” of the following subparagraph:

“(ii) a right of any—

(aa) person to acquire those equity shares from the [person] employee or former employee who acquired the equity shares as contemplated in paragraph (a) at market value on the date of acquisition by that person;
or

(bb) employer to acquire those equity shares from the employee or former employee who acquired the equity shares as contemplated in paragraph (a) at market value on the date of grant, if the employee or former employee is or was guilty of misconduct or poor performance;
or”;

(c) for subparagraph (iii) of paragraph (d) of the definition of “broad-based employee share plan” of the following subparagraph:

“(iii) a restriction in terms of which the [person] employee or former employee who acquired the equity shares as contemplated in paragraph (a) may not dispose of those equity shares for a period, which may not extend beyond five years from the date of grant;” and

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- (d) for the definition of “qualifying equity share” of the following definition:
- “ ‘**qualifying equity share**’, in relation to a person, means an equity share acquired in a year of assessment in terms of a broad-based employee share plan, where the market value of all equity shares (as determined by the relevant date of grant of each equity share and excluding the market value of any qualifying equity share acquired in the circumstances contemplated in subsection (2A)), which were acquired by that person in terms of that plan in that year and the **[two]** four immediately preceding years of assessment, does not in aggregate exceed **[R9 000]** R50 000.”.

Amendment of section 8C of Act 58 of 1962, as inserted by section 7 of Act 96 of 1981 and amended by section 7 of Act 121 of 1984, section 7 of Act 101 of 1990, section 8 of Act 32 of 2004, section 12 of Act 31 of 2005, section 7 of Act 20 of 2006 and section 11 of Act 35 of 2007

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

- (a) by the insertion of the following subsection:
- “(1A) If a capital distribution as contemplated in paragraph 74 of the Eighth Schedule is received by or accrues to a taxpayer in respect of a restricted equity instrument, the amount of the capital distribution must be taken into account in the calculation of the taxpayer’s gain or loss in terms of subsection (2) when that restricted equity instrument vests.”;
- (b) by the deletion in subsection (2)(a)(i) of the word “or” at the end of item (aa);
- (c) by the addition in subsection (2)(a)(i) of the expression “; or” at the end of item (bb);
- (d) by the insertion in subsection (2)(a)(i) of the following item:
- “(cc) a disposal of an equity instrument as contemplated in paragraph (c) of the definition of ‘equity instrument’.”;
- (e) by the deletion in the definition of “equity instrument” of the word “and” at the end of paragraph (a);

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(f) by the substitution for paragraph (b) of the definition of “equity instrument” in subsection (7) of the following paragraph:

“(b) any [other] financial instrument that is convertible to a share, part of a share or member’s interest; and”;

(g) by the addition to the definition of “equity instrument” in subsection (7) of the following paragraph:

“(c) any financial instrument contemplated in paragraph (c) of the definition of ‘financial instrument’ in section 1;” and

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

“(b) which is subject to any restriction that could result in the taxpayer—
(i) forfeiting ownership or the right to acquire ownership of that equity instrument otherwise than at market value; or
(ii) being penalised financially in any other manner for not complying with the terms of the agreement for the acquisition of that equity instrument;”.

(2) Subsection (1)(a) is deemed to have come into operation on 23 September 2008 and applies to an equity instrument acquired by and a capital contribution received by or accrued to a taxpayer on or after that date.

Amendment of section 9D of Act 58 of 1962 as inserted by section 9 of Act 28 of 1997, 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 and section 8 of Act 3 of 2008

12. Section 9D of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (10)(a) for subparagraphs (ii) and (iii) of the following subparagraphs:

“(ii) disregards the application of [subsection (9)(b)(ii)] paragraph (ii) of the proviso to subsection (9)(b) in respect of the sale of goods or performance of

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services by a controlled foreign company where the foreign business establishment of that controlled foreign company situated in that company's country of residence mainly serves as a central location for the sale or performance of identical or similar goods or services in at least two countries that are contiguous to the country of residence of that company;

- (iii) disregards the application of **[subsection (9)(b)(iii)]** paragraph (iii) of the proviso to subsection (9)(b) to royalties received by or accrued to a controlled foreign company where that company directly and regularly creates, develops, substantially upgrades or adds value to (or provides substantial support services in respect of) intangibles giving rise those royalties: Provided that the ruling may not be issued if those royalties, or any amounts determined directly or indirectly with reference to those royalties, are allowed to be deducted by any resident holding participation rights in that company or by any other person if that resident and that other person form part of the same group of companies as defined in section 41;”.

Insertion of section 9E into Act 58 of 1962

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

“Companies deriving income mainly from financial instruments

9E.(1) For purposes of this section—

(a) ‘excluded company’ means any company—

- (i) that is a listed company;
- (ii) that forms part of the same group of companies as defined in section 41 in relation to a listed company;
- (iii) where more than 50 per cent of the equity share capital or voting rights in the company are held by—
 - (aa) any person that is not a resident;
 - (bb) the Government, a provincial administration or a municipality;

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- (cc) any public benefit organisation as defined in section 30 that has been approved by the Commissioner in terms of that section;
- (dd) any recreational club approved defined in section 30A that has been approved by the Commissioner in terms of that section;
- (ee) a company or trust contemplated in section 37A;
- (ff) any fund contemplated in section 10(1)(d)(i) or (ii); or
- (gg) any person contemplated in section 10(1)(t); or
- (iv) that is a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);
- (v) that is an authorised user as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);
- (vi) that is a long-term insurer as defined in section 1 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998);
- (vii) that is a short-term insurer as defined in section 1 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
- (viii) that is a company contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1;
- (ix) that is a public benefit organisation as defined in section 30 approved by the Commissioner in terms of that section; or
- (x) that is a recreational club as defined in section 30A approved by the Commissioner in terms of that section;
- (b) ‘gross income’ means gross income as defined in section 1, other than any—
 - (i) receipt or accrual of a capital nature;
 - (ii) royalty received or accrued;
 - (iii) amount recovered or recouped in terms of section 8(4)(m); and
 - (iv) receipt or accrual derived by a person from the disposal of a debt due to that person, where the amount of the debt is included in the income of that person and is an integral part of a business conducted as a going concern by that person;
- (c) ‘passive income’ means an amount equal to so much of the gross income of a company for a year of assessment as is derived by the company from financial

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instruments, but excluding any taxable income so derived by the company if—

- (i) 50 per cent or less of the gross income of the company for the year of assessment is derived from financial instruments;
- (ii) the company during that year distributes an amount equal to that taxable income;
- (iii) the company during that year actually incurs expenditure for purposes of any trade carried on by that company equal to the gross income derived from financial instruments;
- (iv) an amount equal to the taxable income is reasonably required to meet the expenditure of the company to be incurred within the period commencing on the first day of that year and ending on the last day of the second successive year after that year and that the expenditure is to be incurred for purposes of any trade carried on by that company; or
- (v) the company is an excluded company.

(2) A dividend paid by a company is not subject to the dividends tax imposed in terms of Part V of Chapter III to the extent the sum of that dividend and all other dividends paid on or after the effective date defined in section 64D does not exceed the passive income derived by the company on or after 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 section 9G of Act 58 of 1962, as inserted by section 25 of Act 60 of 2001 and amended by section 17 of Act 74 of 2002, section 25 of Act 45 of 2003 and section 15 of Act 31 of 2005

14. Section 9G of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs:

“(a) expenditure incurred by a person in any foreign currency in respect of any foreign equity instrument acquired during any year of assessment ending

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before 8 November 2005 which is allowable as a deduction in terms of the provisions of this Act; or

- (b) amount in any foreign currency which is taken into account in the determination of the taxable income of any person in respect of any foreign equity instrument acquired during any year of assessment ending before 8 November 2005,”.

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 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 16 of Act 35 of 2007 and section 9 of Act 3 of 2008

15. Section 10 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1)(cN)(ii) for item (*dd*) of the following item:

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- “(dd) other than an undertaking or activity in respect of which item (aa), (bb) or (cc) applies and do not exceed the greater of—
- (i) 5 per cent of the total receipts and accruals of that public benefit organisation during the relevant year of assessment; or
 - (ii) **[R100 000] R150 000;**”;
- (b) by the substitution in subsection (1)(cO)(iv) for item (bb) of the following item:
- “(bb) **[R50 000] R100 000;**”;
- (c) by the substitution in subsection (1)(u) for subparagraph (i) of the following subparagraph:
- (i) from or on behalf of such person’s spouse or former spouse by way of alimony or allowance or maintenance of such person under an order of judicial separation or divorce granted in consequence of proceedings instituted after the twenty-first day of March, 1962, or under any agreement of separation entered into or after that date; **[or]**”;
- (d) by the addition in subsection (1)(u) of the word “or” at the end of subparagraph (ii);
- (e) by the addition to subsection (1)(u) of the following subparagraph:
- “(iii) by way of deduction from the minimum individual reserve of any other person in terms of section 37D(1)(d) of the Pension Funds Act, 1956 (Act No. 24 of 1956), if that deduction is of a recurrent nature, other than any amount accrued to that person in terms of section 7(12);”.
- (f) by the deletion in subsection (1) of paragraph (z); and
- (g) by the deletion in subsection (1) of paragraph (zD); and
- (h) by the addition in subsection (1) of the following paragraph:
- “(zJ) any amount received by or accrued to or in favour of a registered very small business as defined in the Sixth Schedule, from the carrying on of a business in the Republic, other than an amount received by or accrued to a natural person registered as a very small business that constitutes—
- (i) investment income as defined in section 12E; or
 - (ii) remuneration as defined in the Fourth Schedule.”.

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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 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 and section 10 of Act 3 of 2008

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

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

“(ii) is not incurred in respect of any claim made against the taxpayer for the payment of damages or compensation if by reason of the nature of the claim or the circumstances any payment which is or might be made in satisfaction or settlement of the claim does not or would not rank for deduction from his income under paragraph (a) [or (b)]; and”; and

(b) by the substitution in paragraph (cA) for subparagraphs (ii), (iii) and (iv) of the following subparagraphs:

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- “(ii) is or was a personal service provider as defined in the Fourth Schedule; or
(iii) was a labour broker, personal service company or personal service trust as defined in the Fourth Schedule prior to section xx of the Revenue Laws Amendment Act, 2008, coming into operation (other than a labour broker in respect of which a certificate of exemption was issued in terms of that Schedule).”;
- (c) by the substitution for paragraph (1A) of the following paragraph:
“(1A) an amount equal to the market value of any qualifying equity share granted to an employee of that person as contemplated in section 8B, as determined on the date of the grant as defined in that section less any consideration given by that employee for that qualifying equity share, which applies *in lieu* of any other deduction which may otherwise be allowed to that person or any other person in respect of the granting of that share: Provided that the deduction under this paragraph may not during any year of assessment in aggregate exceed an amount of ~~[R3 000]~~ R10 000 in respect of all qualifying equity shares granted to a single employee and so much as exceeds that amount may be carried forward to the immediately succeeding year of assessment and that excess is deemed to be the market value of qualifying equity shares granted to the relevant employee during that immediately succeeding year for purposes of this paragraph;”;
- (d) by the substitution in paragraph (n)(aa) for item (A) of the following item:
“(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 paragraphs 12(1)(c) to (i), inclusive, of the First Schedule); or”.
- (e) by the deletion in paragraph (n) of paragraph (ix) of the proviso;

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(f) by the insertion of the following paragraph:

“(nA) an amount equal to any remuneration which must be refunded by that person;”;

(g) by the deletion of paragraph (p);

(h) by the deletion of paragraph (q); and

(h) by the deletion of paragraph (t).

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 and section 19 of Act 3 of 2008

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

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

“(iii) computer program as defined in section 1 of the Copyright Act, 1978 (Act No. 98 of 1978), which is a novel and inventive computer program;”;

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

“(7) Subject to subsection (8), if a taxpayer during a year of assessment recovers or recoups expenditure in respect of which a deduction was allowed in terms of subsection (1) during that year or a previous year, an amount equal to that deduction shall be included in the income of the taxpayer.

(8) If an amount constituting gross income is received by or accrues to a taxpayer during a year of assessment to fund expenditure which is allowable as a deduction in terms of subsection (1) during—

(a) that year or a previous year, there shall be included in the income of the taxpayer an amount equal to so much of that deduction as exceeds the expenditure; or

(b) a subsequent year, the deduction for that expenditure shall—

(i) if that amount constitutes a government grant referred to in section 10(1)(y), be limited to 100 per cent in lieu of 150 per cent to the extent of twice that amount; or

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- (ii) in any other case, be limited to 100 per cent in lieu of 150 per cent to the extent of that amount.”; and
- (c) by the deletion of subsections (9) and (10).
- (2) Subsection (1) is deemed to have come into operation on 2 November 2006 and applies in respect of any activities undertaken on or after that date.

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 31 of Act 45 of 2003, section 37 of Act 12 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 and section 13 of Act 3 of 2008

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

- (a) by the deletion in subsection (4)(a)(ii) of the word “or” at the end of item (bb);
- (b) by the deletion in subsection (4)(a)(ii) of the word “and” at the end of item (cc);
- (c) by the substitution in subsection (4)(a) for subparagraph (iv) of the following subparagraph:
 - “(iv) such company is not [**an employment company**] a personal service provider as defined in the Fourth Schedule;”;
- (d) by the deletion in subsection (4) of paragraph (b).

Amendment of section 12H of Act 58 of 1962, as amended by section 32 of Act 45 of 2003, section 22 of Act 31 of 2005, section 25 of Act 9 of 2006 and section 2 of Act 8 of 2007

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

- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 - “(b) the completion of a registered learnership agreement contemplated in—
 - (i) paragraph (a) or (d) of the definition of ‘registered learnership agreement’ in subsection (6), is an amount equal to the lesser of—
 - (aa) in the case of a learnership with a duration of—

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- (A) less than 12 months, the total amount of the remuneration of that learner for the period of that learnership as stipulated in the agreement of employment between that learner and employer; or
- (B) 12 months or more, the annual equivalent of the remuneration of that learner stipulated in the agreement of employment between that learner and employer; or
- (bb) R30 000;
- (ii) paragraph (b) of the definition of ‘registered learnership agreement’ in subsection (6), is an amount equal to the sum of the deductions that would have been allowed in terms of paragraphs (a) and (b)(i) during—
- (aa) the year that such agreement was entered into, had the employer and the learner entered into any other agreement contemplated in paragraph (a) of that definition on the date on which such agreement was entered into and had the learner completed that other agreement at the end of that year;
- (bb) any year subsequent to the year contemplated in item (aa), other than the year during which the minimum period contemplated in paragraph (b) of that definition terminates and any year subsequent to that year, had the employer and the learner entered into any other agreement as contemplated in paragraph (a) of that definition at the beginning of each such year and had the learner completed that other agreement at the end of each such year; and
- (cc) the year that the minimum period contemplated in paragraph (b) of that definition terminates, had the employer and the learner entered into any other agreement as contemplated in paragraph (a) of that definition at the beginning of that year and had the learner completed that other agreement at the end of that period.

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less the deduction allowed in terms of paragraph (a) in respect of such agreement; or

(iii) paragraph (c) of the definition of ‘registered learnership agreement’ in subsection (6), is an amount equal to the sum of the deductions that would have been allowed in terms of paragraphs (a) and (b)(i) during—

(aa) the year that such agreement was entered into, had the employer and the learner, on the date on which such agreement was entered into, and on each date on which each level test as contemplated in that agreement was successfully completed, entered into any other agreement contemplated in paragraph (a) of that definition, and had the learner completed any other agreement on the date on which each level test was successfully completed;

(bb) any year subsequent to the year contemplated in item (aa), other than the year during which the minimum period of practical training required in terms of that agreement terminates and any year subsequent to that year, had the employer and the learner, on each date that the learner successfully completed each level test as contemplated in that agreement, entered into any other agreement contemplated in paragraph (a) of that definition, and had the learner completed any other agreement on each date that the learner successfully completed each level test; and

(cc) the year during which the minimum period as contemplated in item (bb) terminates, had the employer and the learner entered into any other agreement contemplated in paragraph (a) of that definition on each date, other than the date of termination, on which the learner successfully completed each level test of that agreement during the period commencing at the beginning of that year and ending on the date of termination, and had the

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learner completed any other agreement on each date on which the learner during that period successfully completed each level test,

less the deduction allowed in terms of paragraph (a) in respect of such agreement.”;

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

“(b) the completion of a registered learnership agreement contemplated in—

(i) paragraph (a) or (d) of the definition of ‘registered learnership agreement’ in subsection (6), is an amount equal to the lesser of—

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

(A) less than 12 months, 175 per cent of the total amount of the remuneration of that learner for the period of that learnership as stipulated in the agreement of employment between that learner and employer; or

(B) 12 months or more, 175 per cent of the annual equivalent of the remuneration of that learner stipulated in the agreement of employment between that learner and employer; or

(bb) R50 000;

(ii) paragraph (b) of the definition of ‘registered learnership agreement’ in subsection (6), is an amount equal to the sum of the deductions that would have been allowed in terms of paragraphs (a) and (b)(i) during—

(aa) the year that such agreement was entered into, had the employer and the learner entered into any other agreement contemplated in paragraph (a) of that definition on the date on which such agreement was entered into and had the learner completed that other agreement at the end of that year;

(bb) any year subsequent to the year contemplated in item (aa), other than the year during which the minimum period contemplated in paragraph (b) of that definition terminates and any year subsequent to that year, had the employer and the

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learner entered into any other agreement as contemplated in paragraph (a) of that definition at the beginning of each such year and had the learner completed that other agreement at the end of each such year; and

(cc) the year that the minimum period contemplated in paragraph (b) of that definition terminates, had the employer and the learner entered into any other agreement as contemplated in paragraph (a) of that definition at the beginning of that year and had the learner completed that other agreement at the end of that period,

less the deduction allowed in terms of paragraph (a) in respect of such agreement; or

(iii) paragraph (c) of the definition of 'registered learnership agreement' in subsection (6), is an amount equal to the sum of the deductions that would have been allowed in terms of paragraphs (a) and (b)(i) during—

(aa) the year that such agreement was entered into, had the employer and the learner, on the date on which such agreement was entered into, and on each date on which each level test as contemplated in that agreement was successfully completed, entered into any other agreement contemplated in paragraph (a) of that definition, and had the learner completed any other agreement on the date on which each level test was successfully completed;

(bb) any year subsequent to the year contemplated in item (aa), other than the year during which the minimum period of practical training required in terms of that agreement terminates and any year subsequent to that year, had the employer and the learner, on each date that the learner successfully completed each level test as contemplated in that agreement, entered into any other agreement contemplated in

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paragraph (a) of that definition, and had the learner completed any other agreement on each date that the learner successfully completed each level test; and

(cc) the year during which the minimum period as contemplated in item (bb) terminates, had the employer and the learner entered into any other agreement contemplated in paragraph (a) of that definition on each date, other than the date of termination, on which the learner successfully completed each level test of that agreement during the period commencing at the beginning of that year and ending on the date of termination, and had the learner completed any other agreement on each date on which the learner during that period successfully completed each level test.

less the deduction allowed in terms of paragraph (a) in respect of such agreement.”;

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

“(4) The provisions of this section shall not apply—

- (a) in respect of the substitution of any employer which is party to an existing registered learnership agreement by any other employer, as contemplated in regulation **[5(1)] 8(1)** of the Learnership Regulations, **[2001] 2007**;
- (b) where an employer enters into a registered learnership agreement with a learner as a result of the substitution of an existing registered learnership agreement, as contemplated in regulation **[5(2)] 7(4)** of the Learnership Regulations, **[2001] 2007**; or
- (c) where an employer enters into a registered learnership agreement with a learner, and a deduction is or was allowable to that employer during any year of assessment in respect of any other registered learnership agreement entered into by that employer with that learner in respect of the same learnership registered by the Director General of Labour, as contemplated in regulation **[3(3)] 5(3)** of the Learnership Regulations, **2007**.”;

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(d) by the substitution in subsection (6) for paragraph (b) of the definition of “learner” of the following paragraph:

“(b) an apprentice in a contract of apprenticeship contemplated in paragraph (b) or (d) of the definition of ‘registered leadership agreement’;”;

(e) by the substitution in subsection (6) for the definition of “Learnership Regulations, 2001” of the following definition:

“ **‘Learnership Regulations, 2007’** means the Learnership Regulations, 2007 (Government Notice No. R.519 published in *Government Gazette* No. 30010 of 29 June 2007), made by the Minister of Labour in terms of section 36, read with sections 16 and 17, of the Skills Development Act, 1998;” and

(f) by the substitution in subsection (6) for the definition of “registered learnership agreement” of the following definition:

“**‘registered learnership agreement’** means—

(a) a learnership agreement entered into between a learner and an employer before 1 October 2011, which has been registered with a SETA, as contemplated in section 17(3) of the Skills Development Act, 1998; **[or]**

(b) a contract of apprenticeship if, in terms of section 13(2)(b) of the Manpower Training Act, 1981 (Act No. 56 of 1981), the minimum period of practical training required before the apprentice is permitted to undergo a trade test is more than 12 months;

(c) a contract of apprenticeship contemplated in Government Notice No. R.959 of 14 June 1996; or

(d) **[a]** any other contract of apprenticeship registered with the Department of Labour in terms of section 18 of the Manpower Training Act, 1981 (Act No. 56 of 1981);”.

Insertion of section 12I into Act 58 of 1962

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

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“Additional investment and training allowance in respect of industrial policy projects

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

“manufacturing asset” means—

(a) any plant or machinery acquired, contracted for or brought into use by a company, which—

(i) will be brought into use for the first time by that company within four years from the date of approval in terms of subsection (8);

(ii) will mainly be used by that company in the Republic for purposes of carrying on an industrial policy project of that company within the Republic; and

(iii) will qualify for a deduction in terms of section 12C(1)(a);

“industrial policy project” means a trade solely or mainly for the manufacture of products, goods, articles, or other things within the Republic that—

(a) is classified under “Major Division 3: Manufacturing” in the most recent Standard Industrial Classification Code (referred to as “SIC Code”) issued by Statistics South Africa; or

(b) in the case of products, goods, articles or things which are not yet classified, the adjudication committee is of the view will be classified as contemplated in subparagraph (i),

but does not include the manufacture of:

(i) spirits and ethyl alcohol from fermented products and wine (SIC Code 3051);

(ii) beer and other malt liquors and malt (SIC Code 3052); and

(iii) tobacco products (SIC Code 3060); and

(iv) arms and munitions (SIC Code 3577);

“cost of training” means—

(a) in the case of training provided by persons other than employees of the taxpayer, the cost to the taxpayer of the training and the cost of the training materials; or

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(b) in the case of training provided by the taxpayer, the cost of remuneration of employees of the taxpayer who are employed exclusively to provide training to the taxpayer's employees and the cost of training material;

“greenfield project” means a project that represents a wholly new industrial policy project which does not utilise any manufacturing assets other than wholly new and unused manufacturing assets;

“brownfield project” means a project that represents an expansion of an existing industrial policy project;

“substantial upgrade” means a project—

(a) that represents a replacement of the used manufacturing assets of a person, unless the expenditure incurred to replace that percentage of assets does not exceed R30 million; or

(b) whereby R30 million of expenditure is incurred to replace used manufacturing assets of a person.

(2) In addition to any other deductions allowable in terms of this Act, a company may, subject to subsection (3), deduct an amount (hereinafter referred to as an additional manufacturing investment allowance) equal to—

(a) 55 per cent of the cost of any manufacturing asset used in a qualifying industrial policy project determined to have preferred status; or

(b) 35 per cent of the cost of any manufacturing asset used in any other qualifying industrial policy project,

in the year of assessment during which that asset is first brought into use by the company as owner thereof for the furtherance of the project carried on by that company.

(3) The additional manufacturing investment allowance contemplated in subsection (2) may not exceed—

(a) R900 million in the case of any greenfield project with preferred status, or R550 million in the case of any other greenfield project;

(b) R550 million in the case of any brownfield project with preferred status, or R350 million in the case of any other brownfield projects project

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(4) In addition to any other deductions allowable in terms of this Act, a company may, subject to subsection (5), deduct an amount (hereinafter referred to as an additional manufacturing investment allowance) equal to the cost of training provided to employees in the year of assessment during which the costs of training are incurred for the furtherance of the project carried on by that company;

(5)(a) The costs of the training contemplated in subsection (4) must be incurred within four years from the date of approval in terms of subsection (8), and the additional training allowance contemplated in subsection (4) allowed to a company may not exceed R36 000 per employee.

(b) The additional training allowance contemplated in subsection (4) allowed to a company within the four year period from the date of approval in terms of subsection (8) may not exceed—

(i) R20 million in the case of projects with qualifying status; and

(ii) R30 million in the case of projects with preferred status.

(6)(a) Any balance of assessed loss as contemplated in section 20(1)(a) arising from the application of this section incurred by the company in any previous year of assessment which has been carried forward from the preceding year (including any increase provided for in this subsection) shall be increased by an amount determined in terms of paragraph (a) of the definition of “prescribed rate”;

(b) The increase contemplated in subparagraph (b) applies only to the balance of assessed loss existing within four years from the date of approval in terms of subsection (8);

(7) A manufacturing project of a company constitutes an industrial policy project where, the Minister of Trade and Industry, after taking into account the recommendations of the adjudication committee, is satisfied that—

(a) the cost of all manufacturing assets to be acquired by the company, which will be brought into use for that industrial policy project within 4 years after the date of approval in terms of subsection (8), will exceed—

(i) R200 million in the case of greenfield projects; and

(ii) the higher of R30 million or 25 per cent of the value of manufacturing assets in the case of brownfield projects;

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- (b) the industrial policy project will not receive any concurrent investment incentive provided by any national sphere of government;
- (c) the company and any person which is a connected person in relation to that company in terms of—
- (i) paragraph (d)(i), (ii) or (iii) of the definition of “connected person” in section 1; or
- (ii) paragraph (d)(iv) or (v) of that definition, taking into account only holdings of 50 per cent or more,
- are taxpayers in good standing and must in this regard submit—
- (aa) a declaration of good standing stating that all their tax affairs are in order and that they have complied with all the relevant provisions of the laws administered by the Commissioner; and
- (bb) a certificate obtained from the Commissioner confirming that the company and all connected persons are registered for tax purposes, that all returns required to be rendered by that company and connected persons in terms of this Act, or any other Act administered by the Commissioner, have been timeously rendered and that any tax, duties or levies due to the Commissioner have been paid, or that arrangements acceptable to the Commissioner have been made for the submission of any outstanding returns or the payment of any outstanding taxes, duties or levies: Provided that where the company submits a request to the Commissioner for a certificate and the Commissioner fails to respond within 60 days, the company shall, in the absence of any proof to the contrary, be deemed to have complied with the provisions of this subparagraph; and
- (d) the application for approval of the project by the company is received by the Minister of Trade and Industry not later than 31 December 2014, in such form and containing such information as the Minister of Trade and Industry may prescribe.
- (8) The Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, approve an industrial policy, either

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with or without preferred status, where that Minister is satisfied that the industrial policy project will significantly contribute to the Industrial Policy Programme within the Republic having regard to—

- (a) the extent to which the industrial policy project will upgrade an industry within the Republic by—
 - (i) utilising innovative processes;
 - (ii) utilising new technology that results in improved environmental protection as a result of—
 - (aa) improved energy efficiency; and
 - (bb) cleaner production technology;
- (b) the extent to which the industrial policy project will provide general business linkages within the Republic by acquiring goods or services from small, medium and micro enterprises;
- (c) the extent to which the industrial policy project will create direct employment within the Republic;
- (d) the extent to which the industrial policy project will provide skills development in the Republic; and
- (e) the location of the industrial policy project within an Industrial Development Zone.

(9) Notwithstanding subsection (8), the Minister of Trade and Industry may not approve any project where the potential additional manufacturing investment allowances in respect of that project and all other approved industrial policy projects (other than those projects where the approval thereof has been withdrawn under subsection (12)), will in the aggregate exceed R20 billion.

(10) The Minister of Finance, in consultation with the Minister of Trade and Industry, must make regulations—

- (a) prescribing the factors to be taken into account in determining whether the industrial policy project will significantly contribute to the Industrial Policy Programme within the Republic in terms of subsection (8)(a) by—
 - (i) utilising innovative processes;

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- (ii) utilising new technology that results in improved environmental protection as a result of—
 - (aa) improved energy efficiency; and
 - (bb) cleaner production technology;
- (b) what factors need to be taken into account for purposes of subsection 8(b) in determining whether goods or services will be acquired from small, medium and micro enterprises;
- (c) prescribing the extent to which the industrial policy project must create direct employment within the Republic for purposes of subsection 8(c);
- (d) prescribing the extent to which the industrial policy project must provide skills development in the Republic in terms of subsection (8)(d); and
- (e) prescribing the factors to be taken into account in determining the location of the industrial policy project within an Industrial Development Zone in terms of subsection (8)(e).

(11) Within twelve months after the close of each year of assessment starting with the year in which approval is granted in terms of subsection (8), a company with a industrial policy project must annually report to the Committee with respect to the progress of the project in terms of the requirements of subsections (7) and (8) in such form and in such manner as the Minister of Finance may prescribe.

(12) Where—

- (a) in respect of any company carrying on an industrial policy project, any material fact changes during any year of assessment or the company during any year fails to comply with any requirement contemplated in subsection (7) or (8), which would have had the effect that approval in terms of subsection (8) would not have been granted had such change in fact or such failure been known to the Minister of Trade and Industry at the time of granting approval; or
- (b) any company carrying on an industrial policy project during any year of assessments fails to submit a report to the Minister of Trade and Industry, as required in terms of subsection (11); or

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(c) the approval granted in terms of this section to a company carrying on an industrial policy project, was based on any fraudulent information, material misrepresentation or material omission,
the Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, withdraw the approval granted in respect of that project with immediate effect and direct that the Commissioner must disallow all additional manufacturing investment allowances (including any additional manufacturing investment allowance allowed during that year or any previous year of assessment) in respect of any asset used in that project: Provided that where the change in material facts or failure to meet any requirement, as contemplated in paragraph (a), takes place as a result of any event which is outside the control of the company, that Minister may, taking into account the circumstances of that event—

- (i) disregard that change in material facts; or
- (ii) withdraw the approval granted in terms of this section with immediate effect and may direct that the Commissioner must disallow any additional manufacturing investment allowance in respect of that year of assessment or any subsequent year of assessment.

(13) The Commissioner may, notwithstanding the provisions of section 4

- (a) promptly notify the Minister of Trade and Industry whenever the Commissioner discovers information that may cause a full or part withdrawal of deductions in terms of subsection (12);
- (b) disallow all deductions otherwise provided under this section starting with the date of approval in terms of subsection (8) where the company has provided any fraudulent information, material misrepresentation or material omission with respect to any tax, duty or levy administered by the Commissioner and must notify the Minister of Trade and Industry accordingly; and
- (c) inform the Minister of Trade and Industry where any company has requested the Commissioner to issue a certificate contemplated in subsection (7)(d)(bb) and that certificate was denied.

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(14) For purposes of subsections (12) and (13), the Commissioner may, notwithstanding the provisions of sections 79, 81(5) and 83(18), raise an additional assessment for any year of assessment where an additional manufacturing investment allowance which has been allowed in any previous year must be disallowed in terms of subsection (12) or (13).

(15) Where the approval of a project has been withdrawn as contemplated in subsection (12), a company shall in addition to any normal tax, be liable for an amount of additional tax not exceeding twice the difference between the tax as calculated in respect of its taxable income returned by it and the tax properly chargeable in respect of its taxable income as determined after disallowing the additional manufacturing investment allowance provided by this section.

(16) There shall for the purposes of this section be an adjudication committee which must consist of at least—

(a) three persons employed by the Department of Trade and Industry, appointed by the Minister of Trade and Industry; and

(b) three persons employed by either the National Treasury or the South African Revenue Service, appointed by the Minister of Finance:

Provided that the Minister of Trade and Industry or the Minister of Finance, as the case may be, may appoint alternative persons so employed if any person appointed in terms of paragraph (a) of (b) is not available to perform any function as a member of the committee.

(17) The adjudication committee contemplated in subsection (16) is an independent committee which performs its functions impartially and without fear, favour or prejudice and for the purpose of this section, the committee may—

(a) evaluate any application and make recommendations to the Minister of Trade and Industry for purposes of the approval of any industrial policy project in terms of subsection (8);

(b) investigate or cause to be investigated any project for the purposes of this section;

(c) monitor all industrial policy projects—

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- (i) to determine whether the objectives of this section are being achieved;
and
 - (ii) to advise the Minister of Finance and the Minister of Trade and Industry on any future proposed amendment or adjustment thereof;
 - (d) require any company applying for approval of any project as an industrial policy project in terms of this section, to furnish such information or documents as are necessary for the committee and Minister of Trade and Industry to perform their functions in terms of this section;
 - (e) for a specific purpose and on such conditions and for such period as it may determine obtain the assistance of any person to advise the committee relating to any function assigned to the committee in terms of this section; and
 - (f) appoint its own chairperson and determine the procedures for its meetings provided that all procedures must be properly recorded and minuted.
- (18) The adjudication committee and any person whose assistance has been obtained by that committee may not—
- (a) act in any way that is inconsistent with the provisions of subsection (17) or expose themselves to any situation involving the risk of a conflict between their responsibilities and private interests; or
 - (b) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.
- (19) The Minister of Trade and Industry—
- (a) may, after taking into account the recommendations of the adjudication committee, extend the four year period contemplated in the definition of “**manufacturing asset**” in subsection (1) by a period not exceeding one year;
 - (b) must provide written reasons for any decision to grant or deny any application for approval of an industrial policy project as an industrial policy project in terms of subsection (8), or any withdrawal of approval as contemplated in subsection (12);
 - (c) must inform the Commissioner of the approval of any project in terms of subsection (8) as an industrial policy project, setting out such particulars

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required by the Commissioner to determine the amount of the additional manufacturing investment allowance allowable in terms of this section;

- (d) must publish the particulars of any application received from a company for approval of an industrial policy project in the *Gazette* not later than 30 days after providing to that company the written reasons for any decision as contemplated in paragraph (b);
- (e) must submit an annual report to Parliament, and must provide a copy of that report to the Auditor-General, setting out the following information in respect of each company that received approval in terms of subsection (8):
- (i) the name of each company;
 - (ii) the description of each project;
 - (iii) the potential national revenue forgone by virtue of the deductions allowable in respect of that project in terms of this section;
 - (iv) the annual progress relating to the direct benefits of the project in terms of economic growth or employment, setting out the details of the factors contemplated in subsections (7) and (8) on which approval for the industrial policy project was granted;
 - (v) any decision to withdraw the approval of a project in terms of subsection (12); and
 - (vi) any decisions not to withdraw the approval of a project, despite any material change in facts, as contemplated in paragraph (i) of the proviso to subsection (12).

(20) The Commissioner must submit an annual report to the Auditor-General containing a list of all—

- (a) certificates issued under subsection (7)(d); and
- (b) failures to respond within 60 days as provided in subsection (7)(d).

(21) Notwithstanding the provisions of section 7, the Commissioner must disclose to the Minister of Trade and Industry and the adjudication committee, including any person whose assistance has been obtained by that committee, such information relating to the affairs of any company carrying on an industrial policy

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project as is necessary to enable the Minister of Trade and Industry and the adjudication committee to perform its functions in terms of this section.

(22) Every employee of the Department of Trade and Industry and every member of the adjudication committee, including any person whose assistance has been obtained by that committee, must preserve and aid in preserving secrecy with regard to all matters that may come to their knowledge in the performance of their functions in terms of this section, and may not communicate any such matter to any person whatsoever other than to the company concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of that Department or committee, except in terms of the law or an order of court.

(23) Any person who contravenes the provisions of subsections (18) and (21), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(24) For the purposes of this section the cost to a taxpayer of any manufacturing asset shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he had acquired that manufacturing asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition was in fact concluded, have incurred in respect of the direct cost of the acquisition of the manufacturing asset.”.

Insertion of section 12J into Act 58 of 1962

21. The Income Tax Act, 1962, is hereby amended by the insertion after section 12I of the following section:

“Deductions in respect of expenditure incurred in exchange for the issue of certain shares

12J.(1) For purposes of this section—

(a) ‘impermissible trade’ means—

(i) any trade carried on in respect of land, or the improvement or letting thereof;

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- (ii) any trade carried on in respect of financial services, including trade carried on by a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), a long-term insurer as defined in the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), a short term insurer as defined in the Short-Term Insurance Act, 2008 (Act No. 53 of 1998), and any trade carried on in respect of money-lending or hire-purchase financing;
- (iii) any trade carried on in respect of professional services, including trade in respect of legal services, tax advisory services, stock broking services, management consulting services, auditing or accounting services;
- (iv) any trade carried on in respect of gambling;
- (v) any trade carried on with respect to liquor, tobacco, arms or munitions;
or
- (vi) franchising;
- (b) ‘junior mining company’ means any company that is solely carrying on a trade of mining exploration or production which is either an unlisted company as defined in section 41 or listed on the alternative exchange division of the JSE Limited;
- (c) ‘qualifying company’ means any company if—
 - (i) the company is a resident;
 - (ii) 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’;
 - (iii) 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;
 - (iv) the company is registered for tax purposes, all returns required to be rendered by the company in terms of this Act, or any other Act administered by the Commissioner, have been timeously rendered and any tax, duties or levies due to the Commissioner have been paid, or arrangements acceptable to the Commissioner have been made for the

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submission of any outstanding returns or the payment of any outstanding taxes, duties or levies;

(v) the company is an unlisted company as defined in section 41 or a junior mining company;

(vi) the company or any other company that forms part of the same group of companies as defined in section 41 in relation to that company is carrying on any trade or will carry on any trade within a period of 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 or that other company is not an impermissible trade;

(vii) the sum of the investment income, as defined in section 12E(4)(c), derived by that company and all other companies that forms part of the same group of companies as defined in section 41 as that company does not exceed an amount equal to 20 per cent of the sum of the income of that company and those other companies; and

(viii) within 18 months after an amount is received by or accrued to the company for the issue of any shares by the company as contemplated in the definition of 'qualifying share', the company actually incurs an amount of expenditure which is allowable as a deduction in terms of this Act for purposes other than determining any capital gain or capital loss, equal to the amount so received or accrued;

(c) 'qualifying share' means an equity share held by a venture capital company which is issued to that company by a qualifying company, unless that venture capital company has an option to dispose of the share for an amount other than the market value of the share at the time of that disposal; and

(d) 'venture capital company' means a company as defined in section 1 that has been approved by the Commissioner in terms of subsection (5).

(2) There must be allowed as a deduction from the income of a natural person or listed company, or a controlled group company in relation to a listed company as contemplated in the definition of group of companies in section 41, a deduction

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determined in terms of subsection (3) in respect of expenditure actually incurred by that person or company in acquiring shares issued to that person or listed company by a venture capital company.

(3) The deduction to be allowed in terms of subsection (2) during a year of assessment in respect of expenditure incurred by—

(a) any natural person, is the lesser of the expenditure incurred or R750 000;

(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 per cent of the equity shares of the venture capital company.

(4) A claim for a deduction in terms of subsection (2) must be supported by a certificate issued by the venture capital company stating the amounts invested in that company and that the Commissioner approved that company as contemplated in subsection (5).

(5) The Commissioner must approve a venture capital company if the company has submitted to the Commissioner a copy of its business plan and the Commissioner is satisfied that within 36 months of its incorporation—

(i) the company will comply with the conditions contemplated in the definition of **‘qualifying company’** in subsection (1);

(ii) the expenditure incurred by the company in acquiring qualifying shares will be at least R50 million or, where the company acquires qualifying shares in any junior mining company, at least R250 million;

(iii) the gross income of the company will be derived solely from financial instruments;

(iv) at least 10 per cent of the expenditure incurred by the company in acquiring qualifying shares will be for qualifying shares issued to it by qualifying companies that hold assets with a market value not exceeding R5 million immediately after that issue;

(v) at least 80 per cent of the expenditure incurred by the company in acquiring qualifying shares will be for qualifying shares issued to it by qualifying

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companies that hold assets with a market value not exceeding R10 million immediately after that issue or, if any such company is a junior mining company, not exceeding R100 million;

- (vi) no more than 15 per cent of the expenditure incurred by the company in acquiring qualifying shares issued to it by any one qualifying company;
- (vii) the company together with any connected person in relation to that company will not hold more than 40 per cent of the equity share capital of any one qualifying company; and
- (viii) the company is licensed in terms of section 7 of the Financial and Intermediary Services Act.

(6) If the Commissioner is satisfied that any venture capital company approved in terms of subsection (5) has during a year of assessment failed to comply with the provisions of that subsection, 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 that company within a period stated in that notice.

(7) A company may apply for approval in terms of subsection (5) in respect of the year following the year during which approval was withdrawn in respect of that company in terms of subsection (6) 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) as a result of non-compliance with—

- (a) subsection (5)(b), (c), (d) or (e) that company is deemed to recover or recoup during the year of withdrawal an amount equal to the lesser of—
 - (i) the sum of all expenditure incurred by the company in the current or any previous year to acquire any qualifying shares; or
 - (ii) the sum of all deductions allowed to any person in the current or any previous year in respect of expenditure incurred for the issue of shares by the company; or
- (b) subsection (5)(a) that company is deemed to recover or recoup during the year of withdrawal the amount contemplated in paragraph (a)(i).

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(9) A venture capital company must submit to the Commissioner an annual return in respect of qualifying shares within such time and containing such information as the Commissioner may prescribe.”.

Amendment of section 13ter of Act 58 of 1962

22. Section 13ter of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “residential unit” of the following words:

“ **‘residential unit’** means any self-contained residential accommodation consisting of more than one room (but excluding any hostel, hotel or similar accommodation), the erection of which was commenced by the taxpayer on or after 1 April 1982 and before 23 September 2008 and which was erected under a housing project of the taxpayer—”.

Amendment of section 13quat of Act 58 of 1962

23. Section 13quat 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:

“There must be allowed to be deducted from the income of the taxpayer an allowance determined in terms of subsection (3) and (3A) in respect of the cost of the erection, extension, addition or improvement of any commercial building (or part thereof) or residential building (or part thereof) consisting of at least five residential units within the same geographical vicinity, which is owned by the taxpayer and is to be used solely for purposes of that taxpayer’s trade, if—”;

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

“(iii) if the developer improved the building or part as contemplated in **[subsection]** subsections (3)(b) and (3A)(b), that developer has incurred expenditure in respect of those improvements which is equal to at least 20

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per cent of the purchase price paid by the taxpayer in respect of that building or part; and”;

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

“(a) in the case of the erection of any new building or the extension of or addition to any building (other than a building in respect of which paragraph (b) applies), is equal to—

- (i) 20 per cent of the cost to the taxpayer of the erection or extension of or addition to that building, which is deductible in the year of assessment during which that building is brought into use by that taxpayer solely for the purposes of that taxpayer’s trade; and
- (ii) 8 per cent of that cost in each of the 10 succeeding years of assessment;”;

- (d) by the substitution for subsection (3A) of the following subsections:

“(3A) The amount of the allowance contemplated in subsection (2)—

(a) in the case of any new or unused low-income residential unit or any extension or any addition to any building (other than a building in respect of which paragraph (b) applies) , is equal to:

- (i) 25 per cent of the cost to the taxpayer of the new and unused extension or addition to that building, which is deductible in the year of assessment during which that low-income residential unit is brought into use by that taxpayer (as contemplated in subsection 2 of section 13sex);
- (ii) 13 per cent of that const in each of the six succeeding years of assessment; and
- (iii) 10 per cent of that cost in the year of assessment following the last year contemplated in subparagraph (ii).

(b) in the case of any new or unused improvement a low-income residential unit to any existing building or part of a building (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved, is equal to:

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- (i) 25 per cent of the cost to the taxpayer of the improvement, extension or addition which is deductible in the year of assessment during which the part of the building so improved, extended or added is brought into use by the taxpayer solely for the purpose of that taxpayer's (as contemplated in subsection 2 of section 13sex); and
- (ii) 25 per cent of that cost in each of the three succeeding years of assessment.

(3B) For purposes of subsections (3) and (3A), where the taxpayer purchased part of a building from a developer—

(a) 55 per cent of the purchase price of that part of a building, in the case of a new and unused low-income residential unit which is extended or added to by that developer as contemplated in subsections (3)(a) and (3A)(a); and

(b) 30 per cent of the purchase price of the new or unused low-income residential unit that is part of a building, in the case of a building improved by that developer as contemplated in subsections (3)(b) and (3A)(b),

is deemed to be costs incurred by that taxpayer in respect of the erection, extension, addition to or improvement of that building or part.”;

- (e) by the substitution in subsection (5) for paragraph (c) of the following paragraph:
“(c) which is brought into use by the taxpayer after 31 March [2009] 2014;”;
- (f) by the deletion in subsection (7)(d) of subparagraph (iii).

Insertion of section 13sex into Act 58 of 1962

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

“Deduction in respect of certain residential units

13sex.(1) For the purposes of this section—

“residential unit” means a residential building or self-contained apartment unless the building or apartment is utilised as a hotel, motel, inn, guest house, boarding house, or other holiday accommodation; and

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“low-income residential unit” means—

(a) a building located within the Republic that qualifies as a residential unit if—

(i) the cost of the building does not exceed R200 000 (excluding land and bulk infrastructure); and

(ii) the owner of the building does not charge a monthly rental that exceeds one per cent of the cost contemplated in subparagraph (i);

(b) an apartment located within the Republic that qualifies as a residential unit if—

(i) the cost of the apartment does not exceed R250 000; and

(ii) the owner of the building does not charge a monthly rental that exceeds one per cent of the cost contemplated in subparagraph (i).

(2) There shall be allowed to be deducted from the income of the taxpayer an allowance equal to five per cent of the cost to the taxpayer of any new or unused residential unit (or of any new or unused improvement to a residential unit) owned by the taxpayer if—

(a) that unit or improvement is wholly or mainly used by the taxpayer for the purposes of producing income in the course of the taxpayer’s trade, or that unit is wholly or mainly used for occupation by full-time employees of the taxpayer (or of employees of the same group of companies as the taxpayer); and

(b) the taxpayer owns at least five residential units within the same geographical vicinity.

(3) There shall be allowed to be deducted from the income of the taxpayer an additional allowance of 5 per cent of the cost of a low-income residential unit of a taxpayer for a year of assessment if deductions are allowable to a taxpayer in respect of that unit in terms of subsection (2) during that year of assessment.

(4) For the purposes of this section, the cost to the taxpayer of a residential unit (or an improvement thereon) shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if that person had acquired or improved the residential unit under a cash transaction concluded at arm’s

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length on the date on which the transaction for the acquisition of the new or unused residential unit (or of the new and unused improvement to the residential unit) was in fact concluded, have incurred in respect of the direct cost of the acquisition or erection of the residential unit or improvement.

(5) Where any residential unit (or an improvement to the residential unit) in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purpose of any trade carried on by such taxpayer (or to be occupied by the employees of a taxpayer or by the employees of the same group of companies as the taxpayer), the receipt and accruals of which were included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such a residential unit (or an improvement to the residential unit) was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(6) No deduction shall be allowed under this section in respect of the cost of any residential unit (or an improvement to a residential unit) that has been disposed of by the taxpayer during any previous year of assessment.

(7) No deduction shall be allowed under this section in respect of the cost of a residential unit (or an improvement to a residential unit) if any of the cost has qualified or will qualify for deduction from the taxpayer's income as a deduction of expenditure or an allowance in respect of expenditure under any other section of this Act.

(8) The deduction which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any residential unit (or any improvement to a residential unit) shall not in the aggregate exceed the amount of such cost.

(9) For purposes of subsections (2) and (3), to the extent that the taxpayer acquires a residential unit (or improvement to a residential unit) representing only a part of a building without erecting or constructing that unit or improvement—

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- (a) 55 per cent of the acquisition price, in the case of the unit acquired; and
- (b) 30 per cent of the acquisition price, in the case of the improvement acquired,

is deemed to be the cost incurred by that taxpayer in respect of that unit or improvement, as the case may be.”.

(2) Subsection (1) comes into operation on 23 September 2008 and applies to all residential units or improvements thereon acquired or the erection of which was commenced on or after that date.

Insertion of section 13sept into Act 58 of 1962

25. The Income Tax Act, 1962, is hereby amended by the insertion after section 13sex of the following section:

“Deduction in respect of the sale of certain residential units

13sept.(1) For the purposes of this section any word or expression to which a meaning has been assigned in section 13sex bears the meaning so assigned for purposes of this section.

(2) There must be allowed as a deduction from the income of the taxpayer an amount determined in terms of subsection (3) in respect of the disposal of any low cost residential unit by the taxpayer to an employee of the taxpayer or any employee of any employer that forms part of the same group of companies in relation to the taxpayer.

(3) The deduction contemplated in subsection (2) is an amount equal to 10 per cent of the lesser of—

- (a) the amount owing at the time of the disposal; or
- (b) the cost to the taxpayer to erect the low cost residential unit and to acquire that part of the land on which the unit is erected,

which amount must be allowed in the year of that disposal and in each succeeding year.

(4) No deduction is allowed in terms of this section in respect of any disposal by the taxpayer if—

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- (a) the disposal is subject to any condition other than a condition whereby the employee is required on termination of employment to—
 - (i) dispose of the unit to the taxpayer for an amount equal to the market value of the unit at the time of that disposal; or
 - (ii) repay or secure any balance of the debt owing to the taxpayer;
 - (b) an amount is owed to a person in respect of the disposal other than the taxpayer or any company that forms part of the same group of companies as the taxpayer;
 - (c) the amount owing is guaranteed by a person other than the taxpayer or any company that forms part of the same group of companies as the taxpayer;
 - (d) if the amount is no longer owing; or
 - (e) if the employee must pay interest in respect of the amount owing.
- (5) If the amount owing or any part thereof is paid to the employer or is guaranteed by any person other than the taxpayer or any company that forms part of the same group of companies as the taxpayer, the taxpayer is deemed to have recovered or recouped an amount equal to the lesser of—
- (a) amount so recovered or guaranteed; or
 - (b) the amount allowed as a deduction in terms of this section in the current or any previous year of assessment.”.

Insertion of section 13oct into Act 58 of 1962

26. The Income Tax Act, 1962, is hereby amended by the insertion after section 13sept of the following section:

“Deductions in respect of license fees

13oct.(1) There must be allowed as a deduction from the income of the taxpayer any expenditure incurred by the taxpayer in respect of any initial license fee or annual license fee payable to any sphere of Government if the taxpayer is required to hold the license for purposes of any trade carried on by the taxpayer.

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(2) The deduction to be allowed in subsection (1) in respect of any initial license fee must not exceed for any one year such portion of the amount of the expenditure as is equal to such amount divided by the number of years representing the duration of the license.

(3) For purposes of subsection (1), any expenditure incurred in respect of the annual license fee is deemed to have been incurred in the production of the taxpayer's income."

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 and section 30 of Act 35 of 2007

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

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

“(d) any expenditure that is prescribed by the Commissioner (other than expenditure recoverable by the taxpayer or his or her spouse) necessarily incurred and paid by the taxpayer in consequence of any **[physical]** disability suffered by the taxpayer, his or her spouse or **[any]** child, or any dependant of the taxpayer contemplated in paragraph (b)(i).”;

(b) by the substitution in subsection (2)(c)(ii) for the words following item (bb) of the following words:

“as in the aggregate exceeds 7,5 per cent of the taxpayer's taxable income (excluding any retirement fund lump sum benefit and retirement fund lump sum withdrawal benefit) as determined before allowing any deduction under this subparagraph.”;

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

“(2A) For purposes of this section ‘disability’ means—

(i) a moderate to severe limitation of a person’s ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment; and

(ii) the limitation has lasted or has a prognosis of lasting more than a year, and is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner.”;

(e) by the deletion of subsection (3); and

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

“(b) in the case of any other child, was incapacitated by [physical or mental infirmity] a disability from maintaining himself or herself and was wholly or partially dependent for [his] maintenance upon the taxpayer and has not become liable for the payment of normal tax in respect of [the] such year [of assessment].”.

Amendment of section 18A of Act 58 of 1962, as inserted by section 15 of Act 52 of 1970, substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007 and section 31 of Act 35 of 2007

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

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

“(bA) any agency contemplated in the definition of ‘specialized agencies’ in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), which—

(i) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from

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time to time by the Minister by notice in the *Gazette* for the purposes of this section; and

(ii) furnishes the Commissioner with a written undertaking that such agency will comply with the provisions of this section and will waive diplomatic immunity for purposes of subsection (5)(i); or”;

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

“as does not exceed 10 per cent of the taxable income (excluding any retirement fund lump sum benefit and retirement fund lump sum withdrawal benefit) of the taxpayer as calculated before allowing any deduction under this section or section 18.”;

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

“(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by—

(a) a receipt issued by the public benefit organisation, institution, board **[or]**, body or agency or the government, provincial administration or municipality concerned, on which the following details are given, namely—

[(a)] (i) the reference number of the public benefit organisation, institution, board **[or]**, body or agency issued by the Commissioner for the purposes of this section;

[(b)] (ii) the date of the receipt of the donation;

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

[(d)] (iv) the name and address of the donor;

[(e)] (v) the amount of the donation or the nature of the donation (if not made in cash);

[(f)] (vi) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit

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organisation, institution, board **[or]**, body or agency concerned or, in the case of the government, provincial administration or municipality in carrying on the relevant public benefit activity; or

- (b) an employees' tax certificate as defined in the Fourth Schedule on which the amount of donations contemplated in paragraph 2(4)(f) of that Schedule, for which the employer has received a receipt contemplated in paragraph (a), is given."; and
- (d) by the substitution for subsection (5) of the following subsection:
- “(5) If the Commissioner has reasonable grounds for believing that any person who is in a fiduciary capacity responsible for the management or control of the income or assets of any public benefit organisation, institution, board **[or]**, body or agency (other than an institution, board or body in respect of which subsection (5B) applies) has—
- (a) in any material way failed to ensure that the objects for which the public benefit organisation, institution, board **[or]**, body or agency was established are carried out or has expended moneys belonging to the public benefit organisation, institution, board **[or]**, body or agency for the purposes not covered by such objects;
- (b) issued or allowed a receipt to be issued to any taxpayer for the purposes of this section in respect of any fees or other emoluments payable to that organisation, institution, board **[or]**, body or agency by that taxpayer; or
- (c) issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection,
- the Commissioner may by notice in writing addressed to that person direct that—
- (i) any donation in respect of which a receipt was issued by that public benefit organisation, institution, board **[or]**, body or agency during any year of assessment specified in that notice, will be deemed to be taxable income of that public benefit organisation, institution, board **[or]**, body or agency in that year; and

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

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 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 and section 15 of Act 3 of 2008

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

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

“that is a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit included in taxable income, any—”; and

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

“(ii) ‘assessed loss’ as defined in subsection (2) incurred in such year before taking into account that retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit,”.

Amendment of section 22 of Act 58 of 1962, as amended by section 58 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990, section 22 of Act 129 of 1991, section

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17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000, section 12 of Act 5 of 2001, section 24 of Act 74 of 2002 and section 37 of Act 45 of 2003

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

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

“(i) subject to **[subparagraph]** subparagraphs (iA) and (ii), be the cost incurred by such person, whether in the current or any previous year of assessment in acquiring such trading stock, plus, subject to the provisions of paragraph (b), any further costs incurred by him up to and including the said date in getting such trading stock into its then existing condition and location, but excluding any exchange difference as defined in section 24I(1) relating to the acquisition of such trading stock; **[or]**”;

(b) by the insertion in subsection (3)(a) of the following subparagraph:

“(iA) include an amount that has been included in that person’s income in terms of section 8(5), which was applied in reduction or towards settlement of the purchase price of that trading stock;”;

(c) by the insertion in subsection (3)(a) of the word “or” at the end of subparagraph (ii);

(d) by the insertion in subsection (3)(a) of the following subparagraph:

“(iii) in the case of—

(aa) a right in a controlled foreign company held directly by a resident, include an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10 of the Eighth Schedule of that company and of any other controlled foreign company in which that controlled foreign company and that resident directly or indirectly have an interest, which was included in the income of that resident in terms of section 9D during any year of assessment,

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less the amount of any foreign dividend distributed by that company to that resident during any year of assessment which was exempt from tax in terms of section 10(1)(k)(ii)(cc); or

(bb) a right in a controlled foreign company held directly by another controlled foreign company, include an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10 of the Eighth Schedule) of that first-mentioned controlled foreign company and of any other controlled foreign company in which both the first- and second-mentioned controlled foreign companies directly or indirectly have an interest, which during any year of assessment would have been included in the income of that second-mentioned controlled foreign company in terms of section 9D had it been a resident, less the amount of any foreign dividend distributed by that first-mentioned controlled foreign company to the second-mentioned controlled foreign company if that dividend would have been exempt from tax in terms of section 10(1)(k)(ii)(cc) had that second-mentioned controlled foreign company been a resident;’’; and

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

“(4) If any trading stock has been acquired by any person for no consideration or for a consideration which is not measurable in terms of money, such person shall for the purposes of subsection (3), unless subsection (3)(a)(iA) applies, be deemed to have acquired such trading stock at a cost equal to the current market price of such trading stock on the date on which it was acquired by such person[: **Provided that any capitalization shares awarded by any company to shareholders of that company on or after 1 July 1957 shall have no value as trading stock in the hands of such shareholders: Provided further that options or any other rights to acquire shares in any company which have been acquired as aforesaid shall have no value].’’.**

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Amendment of section 23 of Act 58 of 1962, as amended by section 18 of Act 65 of 1973, section 20 of Act 121 of 1984, section 23 of Act 129 of 1991, section 20 of Act 141 of 1992, section 18 of Act 113 of 1993, section 15 of Act 21 of 1994, section 28 of Act 30 of 2000, section 21 of Act 30 of 2002, section 38 of Act 45 of 2003, section 13 of Act 16 of 2004, section 28 of Act 31 of 2005, section 17 of Act 20 of 2006 and section 20 of Act 8 of 2007

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

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

“(i) any expenditure, loss or allowance to the extent to which it is claimed as a deduction from any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit;”;

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

“(k) any expense incurred by a personal service provider as defined in the Fourth Schedule other than any expense which constitutes an amount paid or payable to any employee of a personal service provider for services rendered by the employee, which is or will be taken into account in the determination of the taxable income of the employee and any expense, deduction or contribution contemplated in paragraphs (c), (i) and (l) of section 11, expenses in respect of premises, finance charges, insurance, repairs, fuel and maintenance in respect of assets, if the premises or assets are used wholly and exclusively for purposes of trade;”;

(c) by the insertion in paragraph (m) after subparagraph (ii) of the following subparagraph:

“(iiA) a deduction in respect of remuneration which must be refunded by that person;”.

Substitution of section 23I of Act 58 of 1962, as inserted by section 37 of Act 35 of 2007

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

“Prohibition of deductions in respect of certain intellectual property

23I.(1) For the purposes of this section—

‘end user’ means a taxable person that uses intellectual property mainly to derive income from trade carried on by that person, other than income derived by virtue of that person granting the use, right of use or permission to use intellectual property to any other person;

‘intellectual property’ means any—

(a) patent as defined in the Patents Act, 1978 (Act No. 57 of 1978);

(b) design as defined in the Designs Act, 1993 (Act No. 195 of 1993);

(c) trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993;

(d) copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978);

(e) patent, design, trade mark or copyright defined or described in any similar law to that in paragraph (a), (b), (c) or (d) of a country other than the Republic;

(f) property or right of a similar nature to that in paragraph (a), (b), (c), (d) or (e);

and

(g) knowledge connected to the use of such patent, design, trade mark, copyright, property or right;

‘non taxable person’ means any person—

(a) where any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or to accrue to that person; or

(b) that is not a resident if any amount of expenditure contemplated in subsection (2)(a) or (b) received by or accrued to that person is not attributable to any permanent establishment of that person in the Republic, or is subject to a reduced rate of tax in the Republic as a result of the application of an agreement for the avoidance of double taxation; and

‘taxable person’ means any person other than a non taxable person.

(2) Subject to sections 11(gC) and 22(1) or (2), a deduction is not allowed in respect of an amount of expenditure incurred—

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- (a) for the use, right of use or permission to use intellectual property, or
(b) that is determined directly or indirectly with reference to expenditure incurred
for the use, right of use or permission to use intellectual property,
if—
- (i) that amount is received by or accrues to a non taxable person; and
(ii) the intellectual property—
- (aa) is or was the property of the end user of the intellectual property or of
a taxable person that is a connected person, as defined in section
31(1A), in relation to the end user;
- (bb) is or was the property of a taxable person within a period of two years
preceding the use of the intellectual property by the end user; or
- (cc) or a material part thereof, was discovered, devised, developed, created
or produced by the end user, or by a taxable person that is a connected
person, as defined in section 31(1A), in relation to the end user, and if
the end user, together with any connected person, as defined in section
1, in relation to the end user, other than a non taxable person, holds at
least 20 per cent of the participation rights, as defined in section 9D, in
the non taxable person.

(3) Notwithstanding any provision of subsection (2) to the contrary, an
amount equal to one third of any expenditure contemplated in subsection (2) shall
be allowed to be deducted by the taxpayer if the tax contemplated in section 35 is
payable in respect of that amount: Provided that the deduction contemplated in this
subsection shall not be allowed if, in terms of any agreement for the avoidance of
double taxation, the tax contemplated in this subsection is payable at a rate of less
than 10 per cent in respect of the amount contemplated in this subsection.”.

(2) Subsection (1) comes into operation on 1 January 2009 and applies in respect of any 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,

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section 32 of Act 30 of 2000, section 22 of Act 32 of 2004 and section 39 of Act 35 of 2007

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

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

“(1) Subject to subsection (2), for purposes of this Act, other than Part V of Chapter II, if a company acquires any asset, as defined in paragraph 1 of the Eighth Schedule, from any person **[in exchange]** as consideration for shares issued by that company—

(a) that company is **[for purposes of this Act]** deemed to have actually incurred an amount of expenditure in respect of the acquisition of that asset, which is equal to the lesser of the market value of that asset **[as determined]** at the time of acquisition or the market value of the shares at that time; and

(b) that person is **[for purposes of this Act]** deemed to have disposed of that asset for an amount equal to **[that]** the market value of the shares at that time.”;

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

“(2) If a company acquires any share or debt instrument which is issued to that company **[directly or indirectly in exchange for]** by reason of or in consequence of the issue of shares by that company or any connected person in relation to that company, that company is for purposes of this Act deemed not to have incurred any expenditure in respect of the acquisition of that share or debt instrument so acquired.”; and

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

“(3) If a company issues any debt instrument **[directly or indirectly in exchange for]** by reason of or in consequence of the issue of shares or of a debt instrument **[which is issued]** to that company or to a connected person in relation to that company, that company or that connected person, as the case may be, is for purposes of this Act deemed to have incurred expenditure in respect of the

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acquisition of that share or debt instrument so acquired, only to the extent that the amounts are paid by that company in terms of the debt instrument so issued.”.

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 and section 42 of Act 35 of 2007

34. Section 28 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (cA) of the following paragraph:

“(cA) the sum of the liabilities contemplated in section 32(1)(a)[,] and (b) [**and** (d)] of the Short-Term Insurance Act, 1998 (Act No. 53 of 1998), that have been included as liabilities of that person in respect of a year of assessment, subject to such adjustments as may be made by the Commissioner.”.

Amendment of section 36 of Act 58 of 1962

35. Section 36 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (11) of subparagraph (i) of paragraph (d) of the definition of “capital expenditure”.

Insertion of section 37C into Act 58 of 1962

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

“Deductions in respect of environmental conservation and maintenance

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37C.(1) Notwithstanding section 23(g), there must be allowed as a deduction from the income of a taxpayer expenditure actually incurred by the taxpayer in the production of income, other than expenditure of a capital nature, to conserve or maintain land owned by the taxpayer, if—

(a) the conservation or maintenance is carried out in terms of a biodiversity management agreement of at least 5 years duration entered into by the taxpayer in terms of section 44 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); and

(b) the land utilised by the taxpayer for the production of income consists of or includes the land that is the subject of the biodiversity management agreement.

(2)(a) The deduction contemplated in subsection (1) must not be allowed to the extent that the expenditure exceeds the income of the taxpayer derived from trade carried on by the taxpayer on the land in any year of assessment.

(b) The amount by which the deduction exceeds the income of the taxpayer so derived must be deemed to be expenditure incurred by the taxpayer in the following year of assessment.

(3) An amount equal to the expenditure actually incurred by a taxpayer to conserve or maintain land owned by the taxpayer is for purposes of section 18A deemed to be a donation—

(i) by the taxpayer actually paid or transferred during the year to the government to be used for purposes of an activity contemplated in Part II of the Ninth Schedule; and

(ii) for which a receipt has been issued in terms of section 18A(2), if the conservation or maintenance is carried out in terms of a declaration of at least 30 years duration in terms of section 28 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003).

(4) If during the current or any previous year of assessment a deduction is or was allowed to the taxpayer in terms of subsection (1) or (3) in respect of expenditure incurred to conserve or maintain land in terms of an agreement or declaration contemplated in those subsections, and the taxpayer subsequently is in breach of that agreement or violates that declaration, an amount equal to the deductions allowed in

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respect of expenditure incurred within the period of five years preceding the breach or violation must be included in the income of the taxpayer for the current year of assessment, as contemplated in section 8(4).

(5) If land (or a portion thereof) is declared a national park or nature reserve in terms of an agreement under section 20(3) or 23(3) of the National Environmental Management: Protected Areas Act, 2003, the amount of the cost to the taxpayer to acquire the land (or portion thereof) plus capital expenditure incurred by the taxpayer in respect thereof is for purposes of section 18A and paragraph 62 of the Eighth Schedule deemed to be a donation—

- (i) paid or transferred by the taxpayer to the government to be used for purposes of an activity contemplated in Part II of the Ninth Schedule;
- (ii) for which a receipt has been issued in terms of section 18A(2), if the declaration is endorsed on the title deed of the land and has a duration of at least 99 years.

(6)(a) If a taxpayer retains the right of use of a portion of land contemplated in subsection (5), the amount deemed to be a donation in terms of that subsection is an amount which bears to the value of the land the same proportion as the area of the land of which the taxpayer does not retain right of use bears to the area of the land.

(b) If any deduction is claimed by a taxpayer under section 18A in respect of any donation of land, the amount of such deduction shall be deemed to be an amount equal to the lower of the fair market value of that land on the date of that donation or the cost to the taxpayer of such land less any allowance (other than any investment allowance) allowed to be deducted from the income of the taxpayer under this Act in respect of that land.”.

Repeal of section 40A of Act 58 of 1962

37. The Income Tax Act, 1962, is hereby amended by the repeal of section 40A.

Repeal of section 40B of Act 58 of 1962

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38. The Income Tax Act, 1962, is hereby amended by the repeal of section 40B.

Insertion of section 40C into Act 58 of 1962

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

“Issue of shares or options for no consideration

40C. Where a company issues shares, or an option or other right for the issue of shares, to a person for no consideration, the expenditure actually incurred by the person to acquire the shares, option or right is deemed to be nil.

Amendment of section 41 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001, 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 and section 25 of Act 3 of 2008

40. (1) Section 41 of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection:

“(9) Where a person has made an election in respect of an asset under paragraph 65 or 66 of the Eighth Schedule and disposes of or distributes any replacement asset in relation to that asset in terms of sections 42, 44, 45 or 47—

(a) the person so disposing of or distributing that replacement asset must disregard any capital gain or amount recovered or recouped which was apportioned to that asset under paragraph 65 or 66 of the Eighth Schedule or section 8(4)(e) and (eA) as the case may be, and which otherwise would have had to be brought to account at the time of that disposal or distribution; and

(b) the company acquiring that replacement asset and the person referred to in paragraph (a) must be treated as one and the same person for the purposes

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of applying section 8(4)(eB), (eC) or (eD) and paragraphs 65 and 66 of the Eighth Schedule.”.

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 and section 26 of Act 3 of 2008

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

- (a) by the addition in subsection (1) of the word “and” at the end of paragraph (a);
- (b) by the deletion in subsection (1) of the word “and” at the end of paragraph (b);
- (c) by the deletion in subsection (1) of paragraph (c);
- (d) by the substitution in subsection (2) for paragraph (bA) of the following paragraph:
 - “(bA) that company must, where that company is a listed company or a company contemplated in paragraph (e)(i) of the definition of ‘company’ and the asset was acquired by that company from any person who does not hold more than 20 per cent of the equity share capital of that company after the asset-for-share transaction, be deemed to have acquired the asset at a cost equal to the market value of the asset; and”;
- (e) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
 - “(a) **[where]** a person disposes of an asset to a company in terms of an asset-for-share transaction; and”;
- (f) by the substitution in subsection (6) for the words preceding the proviso of the following words:

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“Where a person disposed of any asset in terms of an asset-for-share transaction and that person ceases to hold a qualifying interest in that company, as contemplated in paragraphs (c) and (d) of the definition of ‘qualifying interest’, within a period of 18 months after the date of the disposal of that asset (whether or not by way of the disposal of shares in that company), or ceases within that period to be engaged on a full-time basis in the business of that company, or controlled group company in relation to that company, of rendering the service contemplated in subsection (1)(a)(ii)(bb), an amount equal to the lesser of—

(a) the capital gain that would, if subsection (2) did not apply, have been determined in respect of that disposal; or

(b) the capital gain that would be determined if the asset was disposed of on the date that person ceased to hold that interest, or to render that service, for an amount equal to the market value of the asset on that date,

is deemed to be a capital gain of that person for the current year of assessment, and the base cost of the shares acquired in terms of that transaction must be increased by that amount”; and

(g) by the addition of the following subsection:

“(8A) This section must not apply to the disposal of an asset by a person to a company if that person holds more than 20 per cent of the equity share capital of the company after the disposal and that person and the company jointly elect that this section must not apply.”.

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 and section 27 of Act 3 of 2008

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

(a) by the insertion of the following subsection:

“(4A) Where the resultant company issues shares in exchange for the disposal of an asset on or after 21 February 2007 in terms of an amalgamation transaction,

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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 subsection (1)(b) 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.”.

- (b) by the substitution in subsection (11) for the words preceding the proviso of the following words:

“Where a person disposed of any equity share in an amalgamated company in terms of a qualifying transaction contemplated in subsection (6) and that person ceases to hold a qualifying interest in the resultant company, as contemplated in paragraph (c) of the definition of ‘qualifying interest’ in subsection (1), within a period of 18 months after the disposal in terms of that qualifying transaction (whether or not by way of the disposal of any shares in the resultant company), an amount equal to the lesser of—

(a) the capital gain that would, if subsection (6) did not apply, have been determined in respect of the disposal; or

(b) the capital gain that would be determined if the share was disposed of on the date on which the person ceases to hold that interest for an amount equal to the market value of the share,

is deemed to be a capital gain of that person for the current year of assessment, and the base cost of any equity shares acquired as contemplated in that section must be increased by that amount”;

- (2) Subsection (1)(b), to the extent that it refers to paragraph (c) of the definition of “qualifying interest” in section 44(1) of the Income Tax Act, 1962, is deemed to have come into operation on 1 January 2007 and applies in respect of a transaction entered into on or after that date.

Amendment of section 45 of Act 58 of 1962, as amended by section 24 of Act 55 of 1966, section 18 of Act 95 of 1967, section 25 of Act 21 of 1995, section 44 of Act 60

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of 2001, section 34 of Act 74 of 2002, section 53 of Act 45 of 2003, section 35 of Act 32 of 2004, section 41 of Act 31 of 2005, section 35 of Act 8 of 2007, section 56 of Act 35 of 2007 and section 28 of Act 3 of 2008

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

- (a) by the addition in subsection (1) of the word “and” at the end of paragraph (a);
- (b) by the deletion in subsection (1) of the word “and” at the end of paragraph (b);
- (c) by the deletion in subsection (1) of paragraph (c);
- (d) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) Where a transferee company which has acquired an asset as contemplated in paragraph (a) ceases within a period of six years after the acquisition to form part of any group of companies in relation to the transferor company contemplated in paragraph (a)(i) or a controlling group company in relation to the transferor company, and the transferee company has not disposed of that asset—

(i) an amount equal to the lesser of—

(aa) the greatest capital gain that would, if subsection (2) did not apply, have been determined in respect of any disposal of the asset in terms of an intra-group transaction within the period of six years preceding the date on which the transferee company ceased to form part of the group of companies; or

(bb) the capital gain that would be determined if the asset was disposed of on the date on which the transferee company ceases to form part of the group of companies for an amount equal to the market value of the asset on that date,

is deemed to be a capital gain of the transferee company for the current year of assessment, and the base cost of the asset must be increased by that amount;

(ii) an amount equal to the lesser of—

(aa) the greatest amount of taxable income that would, if subsection (2) did not apply, have been determined in respect of any disposal of the asset in terms of an intra-group transaction within the period of six years

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preceding the date on which the transferee company ceases to form part of the group of companies; or

(bb) the taxable income that would be determined if the asset was disposed of on the date on which the transferee company ceases to form part of the group of companies for an amount equal to the market value of the asset on that date,

must be included in the taxable income of the transferee company for the current year of assessment, and, subject to subparagraph (iv), the base cost of the asset must be increased by that amount;

(iii) an amount equal to the greater of—

(aa) the greatest of the sum of the amounts contemplated in paragraph (n) of the definition of ‘gross income’ that would, if subsection (3) did not apply, be included in income as a result of any disposal of the asset in terms of an intra-group transaction within the period of six years preceding the date on which the transferee company ceases to form part of the group of companies; or

(bb) the sum of the amounts contemplated in paragraph (n) of the definition of ‘gross income’ that would be included in income if the asset was disposed of on the date on which the transferee company ceases to form part of the group of companies for an amount equal to the market value of the asset on that date,

must be included in the gross income of the transferee company for the current year of assessment: Provided that the amount must not exceed the capital gain determined in terms of subparagraph (i); and

(iv) the cost or value of the asset for purposes of any deduction allowable as contemplated in the definition of ‘allowance asset’ in section 41 must be increased by an amount equal to the sum of—

(aa) 50 per cent of any capital gain determined in terms of subparagraph (i); and

(bb) any inclusion in gross income in terms of subparagraph (iii).”;

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

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“(4A) Subsection (4)(b) does not apply in respect of any asset disposed of **[by a company]** prior to **[the coming into operation of section 52(1)(c) of the Revenue Laws Amendment Act, 2007 (Act No. 35 of 2007)]** 21 February 2008, where that transferee company and that transferor company contemplated in that subsection cease to form part of a group of companies by reason of the coming into operation of **[that]** section 52(1)(c) of the Revenue Laws Amendment Act, 2007 (Act No. 35 of 2007).”;

(f) by the substitution in subsection (6) for the words preceding paragraph (b) of the following words:

“This section must not apply in respect of the disposal of an asset if—”;

(g) by the deletion in subsection (6) of the word “or” at the end of paragraph (d);

(h) by the addition to subsection (6) of the following paragraph:

“(f) the asset constitutes a share in the transferee company; or”; and

(i) by the addition to subsection (6) of the following paragraph:

“(g) the transferor company and the transferee company jointly elect that this section must not apply.”.

(2) Subsection (1)(d) comes into operation on 1 January 2009.

(3) Subsection (1)(e) is deemed to have come into operation on 21 February 2008.

(4) Subsection (1)(h) is deemed to have come into operation on 23 September 2008 and applies in respect of a disposal on or after that date.

Amendment of section 46 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 54 of Act 45 of 2003, section 36 of Act 32 of 2004, section 42 of Act 31 of 2005, section 36 of Act 8 of 2007, section 57 of Act 35 of 2007 and section 29 of Act 3 of 2008

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

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

“(d) where that unbundled company is a controlled foreign company, to a person that holds at least 95 per cent of the equity shares in that unbundling company:”;

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(b) by the insertion of the following subsection:

“(3A) If shares are distributed in terms of an unbundling transaction, the contributed tax capital of—

(a) the unbundling company immediately after the distribution is deemed to be an amount which bears to the contributed tax capital of that company immediately before distribution the same ratio as the aggregate market value, immediately after the distribution, of the shares in that company bears to the aggregate market value of the shares immediately before distribution; and

(b) the unbundled company immediately after the distribution is deemed to be an amount equal to the sum of—

(i) an amount which bears to the contributed tax capital of the unbundling company immediately after the distribution the same ratio as the aggregate market value of the distributed shares before the distribution bears to the aggregate market value of the shares in the unbundling company immediately before distribution; and

(ii) an amount which bears to the contributed tax capital of the unbundled company immediately after the distribution the same ratio as the shares held in that company immediately before the distribution by persons other than the unbundling company bear to all shares held in that company immediately before the distribution.”.

(2) Subsection (1)(a) is deemed to have come into operation on 21 February 2008 and applies in respect of a disposal on or after that date.

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 and section 31 of Act 3 of 2008

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

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- (a) by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:
- “(ii) on the date of that disposal forms part of the same group of companies as the liquidating company or holds at least 95 per cent of the equity shares in that company; [and]”;
- (b) by the deletion in subsection (1) of paragraph (b);
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “**[Where]** Subject to subsection (2A), where a liquidating company disposes of—”;
”; and
- (d) by the insertion after subsection (2) of the following subsection:
- “(2A) Where a liquidating company disposes of an asset in terms of a liquidation distribution to a holding company that does not form part of the same group of companies as the liquidating company, the holding company is deemed to acquire the asset for an amount equal to the market value of the asset.”;
- (e) by the substitution for subsection (5) of the following subsection:
- “(5) In determining its taxable income, assessed loss, aggregate capital gain or aggregate capital loss a holding company must disregard—
- (a) any disposal of an equity share or part of that share in a liquidating company as a result of the receipt or accrual of a liquidation distribution from that liquidating company; and
- (b) any capital gain arising under paragraph 77(2) of the Eighth Schedule after the disposal of those shares.”;
- (f) by the deletion in subsection (6) of the word “or” at the end of paragraph (a); and
- (g) by the insertion in subsection (6) after paragraph (a) of the following paragraph:
- “(b) if the holding company and the liquidating company jointly elect that this section must not apply; or”.

Insertion of Part IV into Chapter II of Act 58 of 1962

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

“Part IV

Turnover tax payable by very small businesses

Imposition of tax

48. There must be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the turnover tax, payable by a registered very small business as defined in the Sixth Schedule, in respect of its taxable turnover for any year of assessment as determined in terms of that Schedule.

Rates

48A. (1) The rates of tax chargeable in terms of section 48 must be fixed annually by Parliament.

(2) The rates fixed by Parliament in respect of any year of assessment continues to apply until the next such determination of rates and will be applied for the purposes of calculating the tax payable in respect of the taxable turnover of a registered very small business during the next succeeding year of assessment, if in the opinion of the Commissioner, the calculation and collection of the tax chargeable in respect of such taxable turnover cannot without the risk of loss of revenue be postponed until after the rates for that year have been determined.”.

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of any year of assessment commencing on or after that date.

Amendment of section 64B of Act 58 of 1962, as inserted by section 20 of Act 95 of 1967, 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

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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 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 and section 32 of Act 3 of 2008

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

(a) by the addition to subsection (5) of the following paragraph:

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

(b) by the addition of the following subsections:

“(18) For purposes of this section, a company that has not declared a dividend on the day immediately before the effective date defined in section 64D is deemed to have declared a dividend of nil on that day.

(19) Secondary tax on companies must not be levied in respect of a dividend declared on or after the effective date as defined in section 64D.”.

Insertion of Part VIII into Chapter II of Act 58 of 1962

48. Chapter II of the Income Tax Act, 1962, is hereby amended by the insertion of the following Part:

*“Part VIII
Dividends Tax*

Definitions

64D. In this Part—

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

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- (b) ‘certificated share’ means a share other than an uncertificated share;
- (c) ‘dividend cycle’ means a dividend cycle as defined in section 64B;
- (d) ‘effective date’ means the date on which this Part comes into operation;
- (e) ‘intermediary’ means a regulated or unregulated intermediary;
- (f) ‘regulated intermediary’ means any—
- (i) central securities depository participant as contemplated in section 34 of the Securities Services Act, 2004 (Act No. 36 of 2004);
 - (ii) stockbroker as defined in the Securities Services Act, 2004;
 - (iii) collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
 - (iv) insurer as defined in section 29A; or
 - (v) an approved nominee as contemplated in section 36(2) of the Securities Services Act, 2004;
- (g) ‘uncertificated share’ means a share that is not evidenced by a certificate or written instrument and is transferable by entry without a written instrument; and
- (h) ‘unregulated intermediary’ means a registered shareholder in respect of a share, other than a regulated intermediary, where that shareholder is not entitled to the benefit of a dividend attaching to that share.

Levy of tax

64E. 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 that is a resident.

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;

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- (c) an institution, board or body contemplated in section 10(1)(cA);
- (d) a person contemplated in section 10(1)(t);
- (e) a fund contemplated in section 10(1)(d)(i) or (ii);
- (f) a public benefit organisation approved by the Commissioner in terms of section 30(3); or
- (g) a trust contemplated in section 37A.

Withholding of tax by company declaring dividend

64G. (1) A company that declares and pays a dividend must withhold from that payment any dividends tax imposed in respect of that dividend.

(2) Subject to subsection (4), a company must not withhold any dividends tax if—

- (a) the share in respect of which the dividend is paid is a certificated share and the beneficial owner—
 - (i) has by a date determined by the company submitted to the company—
 - (aa) a written declaration that the beneficial owner is exempt from the dividends tax; and
 - (bb) a written undertaking to forthwith inform the company in writing should the beneficial owner cease to be the beneficial owner; or
 - (ii) forms part of the same group of companies, as defined in section 41, as the company that paid the dividend; or
- (b) the share in respect of which the dividend is paid is an uncertificated share.

(3) Subject to subsections (2) and (4), if the beneficial owner has by a date determined by the company submitted to the company—

- (a) a declaration in such form as may be prescribed by the Commissioner that the dividend is subject to a reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation; and
- (b) a written undertaking to forthwith inform the company in writing should the beneficial owner cease to be the beneficial owner,

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the company must withhold the dividends tax as determined in accordance with the reduced rate.

(4) A beneficial owner that submits a declaration contemplated in subsection (2)(a)(i)(aa) or (3)(a) is deemed to be the beneficial owner from the period commencing on the date of submission and terminating on the earlier of—

- (a) the submission of the undertaking contemplated in subsection (2)(a)(i)(bb) or (3)(b);
- (b) the registered shareholder as at the date contemplated in that subsection ceasing to be the registered shareholder; or
- (c) a date three years after that date.

Withholding of tax by intermediaries

64H. (1) An intermediary that pays a dividend that was declared by any other person must withhold from that payment any dividends tax imposed in respect of that dividend.

(2) Subject to subsection (4), an intermediary must not withhold any dividends tax if—

- (a) any other person has paid the tax;
- (b) the share in respect of which the dividend is paid is a certificated share and the beneficial owner has by a date determined by the intermediary submitted to the intermediary—
 - (i) a written declaration that the beneficial owner is exempt from the dividends tax; and
 - (ii) a written undertaking to forthwith inform the intermediary in writing should the beneficial owner cease to be the beneficial owner; or
- (c) the share in respect of which the dividend is paid is an uncertificated share and—
 - (i) the person to whom the dividend is to be paid—
 - (aa) is a person which the register of the intermediary indicates is exempt from the dividends tax, unless that person has by a date

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determined by the intermediary submitted to the intermediary a written declaration requiring that the intermediary withhold the dividends tax; or

(bb) is a regulated intermediary; or

(ii) the beneficial owner has by a date determined by the intermediary submitted to the intermediary—

(aa) a written declaration that the beneficial owner is exempt from the dividends tax; and

(bb) a written undertaking to forthwith inform the intermediary in writing should the beneficial owner cease to be the beneficial owner.

(3) Subject to subsections (2) and (4), if the beneficial owner has by a date determined by the company submitted to the company—

(a) a declaration in such form as may be prescribed by the Commissioner that the dividend is subject to a reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation; and

(b) a written undertaking to forthwith inform the company in writing should the beneficial owner cease to be the beneficial owner,

the company must withhold the dividends tax as determined in accordance with the reduced rate.

(4) A beneficial owner that submits a declaration contemplated in subsection (2)(b)(i) or (2)(c)(aa) is deemed to be the beneficial owner in relation to any dividend contemplated in that subsection from the period commencing on the date of submission and terminating on the earlier of—

(a) the submission of the undertaking contemplated in subsection (2)(b)(ii) or (2)(c)(ii)(bb);

(b) the registered shareholder as at the date contemplated in that subsection ceasing to be the registered shareholder; or

(c) a date three years after that date.

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STC credit

64I. (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 submitted prior written notice to 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 by that company on that day; and
- (b) the dividends accrued to that company to the extent 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 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 is reduced is deemed to be equal to an amount which bears to the dividend paid by that company to the person contemplated in that subsection the same ratio as the amount by which the STC credit of that company is reduced as a result of the payment of that dividend to all shareholders bears to the total dividend paid to all shareholders.

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

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Transitional exemption

64J. Any dividend declared before the effective date is exempt from the dividends tax.

Recovery of tax

64K.(1) The 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) Any person that is otherwise required to withhold tax in terms of this Part in respect of a dividend paid to any person is not required to withhold the tax to the extent that the other person is entitled to recover an amount from that person in terms of section 64L.

(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 was tax due by that person in terms of this Act, unless the tax is paid by any other person.

(4) Where 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 concerned a notice of assessment of the unpaid amount.

(5) 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.

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

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

Refund of tax

64L. (1) If an amount is withheld by a person in respect of a dividend paid to any other person and subsequent to that withholding the declaration and undertaking contemplated in section 64G(2)(a)(i), 64G(3), 64H(2)(b), 64H(2)(b), 64H(2)(c)(ii) or 64H(3) is submitted in respect of that dividend, that other person may recover that amount from that person upon payment of any subsequent dividend.

(2) If a claim contemplated in subsection (1) has not been recovered within a period of one year after the amount was withheld that amount may be recovered from the Commissioner.

(3) No amount may be recovered in terms of subsection (2) or (3) after a period of three years reckoned from the date on which the amount was withheld.

Notification

64M. Every person that pays any dividend to any other person must by the time of the payment notify that other person in writing of the extent to which that dividend constitutes a capital distribution as defined in paragraph 74 of the Eighth Schedule.”.

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(2) Subsection (1) comes into operation on a date determined by the Minister by notice in the *Gazette*, which date must be at least three months after the date of the notice.

Amendment of section 73B of Act 58 of 1962, as inserted by section 22 of Act 5 of 2001 and amended by section 44 of Act 74 of 2002

49. Section 73B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Where a person has disposed of assets in respect of which the capital gain or capital loss is not disregarded or excluded in terms of the Eighth Schedule and all capital gains or capital losses determined in respect of the disposal of those assets exceed **[R10 000]** the amount contemplated in paragraph 5(1) of the Eighth Schedule in respect of the year of assessment, but that person is not required to render a return, that person must retain the records required to determine those capital gains or capital losses for a period of five years from the date of disposal of each of those assets.”.

Amendment of section 74 of Act 58 of 1962, as substituted by section 14 of Act 46 of 1996 and amended by section 27 of Act 28 of 1997, section 51 of Act 60 of 2001 and section 67 of Act 45 of 2003

50. Section 74 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the definition of “administration of this Act” of the following paragraphs:

- “(a) obtaining of full information in relation to any—
 - (i) amount received by or accrued to any person;
 - (ii) property disposed of **[under a donation by any person]** for no consideration; and
 - (iii) **[dividend declared by any company]** payment made or liability incurred by any person;

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- (b) ascertaining the correctness of any return, financial statement, document, declaration of facts **[or]**, valuation or other information in the Commissioner's possession;"

Amendment of section 76G of Act 58 of 1962, as inserted by section 12 of Act 34 of 2004 and amended by section 4 of Act 9 of 2007

51. Section 76G of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “Notwithstanding any provision to the contrary in this Act, the Commissioner may **[not accept]** reject an application for an advance tax ruling in any of the following circumstances—”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
- “(b) the application relates to the duty of an employer to determine whether a person is an independent contractor**[, labour broker, personal service company or personal service trust]** or a personal service provider.”; and
- (c) by the substitution for subsection (3) of the following subsection:
- “(3) In addition to the exclusions and refusals set forth in subsections (1) and (2) of this section, the Commissioner may publish lists of issues in respect of which applications **[will not be accepted]** may be rejected.”.

Amendment of paragraph 12 of First Schedule to Act 58 of 1962, as amended by section 27 of Act 55 of 1966, section 42 of Act 89 of 1969, section 24 of Act 113 of 1977, section 24 of Act 104 of 1980, section 27 of Act 96 of 1981, section 28 of Act 91 of 1982, section 39 of Act 90 of 1988, section 45 of Act 113 of 1993, section 80 of Act 45 of 2003 and section 2 of Act 8 of 2007

52. Paragraph 12 of the First Schedule to the Income Tax Act, 1962, is hereby amended—

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

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- “(a) the eradication of noxious plants and alien invasive vegetation.”;
- (b) by the substitution in subparagraph (1) for item (f) of the following item:
- “(f) the erection of, or extensions, additions or improvements (other than repairs) to, buildings used in connection with farming operations, other than those used for **[the] domestic purposes [of persons who are not employees of such farmer]**;
- (c) by the addition in subparagraph (1) of the word “and” at the end of item (i);
- (d) by the addition to subparagraph (1) of the following item:
- “(j) the creation and maintenance of fire barriers.”;
- (e) by the insertion of the following subparagraph:
- “(1A) Any expenditure incurred in respect of any matter contemplated in subparagraph (1) shall be deemed to be expenditure incurred in the carrying on of pastoral, agricultural or other farming operations, as contemplated in section 26(1), if—
- (a) the expenditure is incurred to conserve and maintain land owned by the taxpayer; and
- (b) the conservation and maintenance is carried out in terms of a biodiversity management agreement of at least 5 years duration entered into by the taxpayer in terms of section 44 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).”;
- (f) by the insertion after subparagraph (1C) of the following subparagraph:
- “(1D) If during the current or any previous year of assessment deductions are allowed to the taxpayer in terms of subparagraph (1A) in respect of capital expenditure incurred to conserve or maintain land in terms of an agreement contemplated in that subparagraph and—
- (a) the taxpayer is in breach of that agreement, an amount equal to the deductions allowed must be included in the income of the taxpayer for the current year; or
- (b) the agreement is terminated, an amount equal to the deductions allowed in respect of expenditure incurred within the period of 5 years preceding

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termination must be included in the income of the taxpayer for the current year.”; and

(g) by the deletion of subparagraph (5).

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 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 and section 36 of Act 3 of 2008

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

(a) by the substitution in the definition of “formula B” for paragraph (c) of the following paragraph:

“(c) ‘D’ represents the sum of the deductions [**which may have been**] allowed to the taxpayer in terms of paragraph 5 of this Schedule in respect of the current year or any previous years of assessment; and”;

(b) by the deletion in the definition of “formula B” of the word “and” at the end of paragraph (d)(i); and

(c) by the insertion in paragraph (d) of the definition of “formula B” of the following subparagraph:

“(iA) any amount that is deemed to have accrued to the taxpayer as contemplated in paragraph 2(b)(iB); and”; and

(d) by the substitution for the definition of “lump sum benefit” of the following definition:

“**‘lump sum benefit’** includes any amount determined by the commutation of an annuity or portion of an annuity and any fixed or ascertainable amount (other than an annuity) payable by or provided in consequence of membership or past

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membership of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund whether in one amount or in instalments, other than any amount deemed to be income accrued to a person in terms of section 7(12);”.

(2) Subsection (1)(a) is deemed to have come into operation on 1 October 2007 and ceases to apply on 1 March 2008.

Amendment of paragraph 2 of Second Schedule to Act 58 of 1962, as amended by section 42 of Act 28 of 1997, section 48 of Act 30 of 1998, section 47 of Act 8 of 2007, section 62 of Act 35 of 2007 and section 37 of Act 3 of 2008

54. (1) Paragraph 2 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

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

“subject to the provisions of item (iA), the amounts deducted from the minimum individual reserve of the person during that year in terms of section 37D(1)(d) of the Pension Funds Act, 1956 (Act No. 24 of 1956), which [**aggregate**] amount must be deemed to be a [**retirement fund**] lump sum [**withdrawal**] benefit received by or accrued to the person on the date of the deduction”;

(b) by the insertion in subparagraph (b) of the following items:

“(iA) the amount awarded to the person in terms of an order of divorce; and
(iB) any amount that is transferred for the benefit of the person to any provident fund or provident preservation fund from any pension fund or pension preservation fund of which the person is or was previously a member, which amount is deemed to have accrued to the person on the date of transfer; and”;

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

“(ii) [**the aggregate of**] any amounts, other than any amount contemplated in paragraphs (a) and (b)(i), received by or accrued to such person during that year by way of lump sum benefits from or in consequence of

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membership or past membership of any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, less the deductions permitted under the provisions of paragraph 6 of this Schedule.”.

(2) Subsection (1)(a) comes into operation of the date on which the Financial Services Laws General Amendment Act, 2008, comes into operation.

(3) Subsection (1)(b), to the extent that it inserts item (iA) into paragraph 2(b) of the Second Schedule to the Income Tax Act, 1962, comes into operation on 1 March 2009.

(4) Subsection (1)(c) is deemed to have come into operation on 13 September 2007 and applies in respect of a lump sum benefit 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 and section 38 of Act 3 of 2008

55. 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 the member or any other person in terms of paragraph 2(b), 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 2C of Second Schedule to Act 58 of 1962, as inserted by section 49 of Act 8 of 2007 and amended by section 39 of Act 3 of 2008

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56. The Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 2C of the following paragraph:

“2C. Any lump sum benefit, or part thereof, received by or accrued to a person subsequent to the person’s retirement or death, or withdrawal or resignation from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or the winding up of any such fund, and in consequence of or following upon an event that is prescribed by the Minister by notice in the *Gazette* and contemplated by the rules of any such fund or the approval of a scheme in terms of section 15B of the Pensions Funds Act, 1956 (Act No. 24 of 1956), or [regulation] paragraph 5.3(1)(b) of the Schedule which amends regulation 30 of the Regulations under the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), shall not constitute gross income of that person.”.

Insertion of paragraph 2D into Second Schedule to Act 58 of 1962

56. The Second Schedule to the Income Tax Act, 1962, is hereby amended by the insertion of the following paragraph:

“2D. If any part of a member’s interest in a pension fund or pension preservation fund is transferred for the benefit of the member to any provident fund or provident preservation fund, that interest is deemed to have accrued to the member on the date of transfer.”.

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 and section 41 of Act 3 of 2008

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

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

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“(1) **[If in terms of]** Notwithstanding the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, any lump sum benefit arising out of a member’s withdrawal or resignation **[is payable at a fixed or ascertainable future date, such benefit]** shall be deemed to have accrued to such member on **[that date]** the date that he or she elects to have the benefit paid to him or her or the date on which the benefit is transferred to another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or on the date of his or her death, whichever is the earlier, and shall be assessed to tax in respect of the year of assessment during which such benefit is deemed to accrue as though it were a lump sum benefit derived by him or her upon his or her withdrawal or resignation from the fund or upon his or her retirement or immediately prior to his or her death, as the case may be.”; and

(b) by the addition of the following subparagraph:

“(1A) Where a person who is a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund was 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 on the date that person makes an election contemplated in section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956).”.

(2) Subsection (1) comes into operation on the date on which the Financial Services Laws General Amendment Act, 2008, comes into operation.

Amendment of paragraph 6 of Second Schedule to Act 58 of 1962, section 26 of Act 90 of 1964, section 18 of Act 104 of 1979, section 5 of Act 30 of 1984, as amended by section 32 of Act 141 of 1992, section 51 of Act 30 of 1998, section 38 of Act 20 of 2006, section 52 of Act 8 of 2007 and section 42 of Act 3 of 2008

59. Paragraph 6 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:

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“The deduction to be allowed in determining the amount required to be included in the taxpayer’s gross income for a year of assessment in terms of paragraph [2(b)(ii)] 2(b)(iA) and (ii) is the sum of the following amounts—”;

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

“(b) any amount received by or accrued to the taxpayer as contemplated in paragraph 2(b)(iA) as is paid or transferred for the benefit of the taxpayer into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund”;

(c) by the deletion of the word “and” at the end of paragraph (i)(bb)(A) of the proviso;

(d) by the substitution in the proviso for the comma at the end of paragraph (i)(bb)(B) of the expression “; and”; and

(e) by the insertion in paragraph (i)(bb) of the proviso of the following item:

“(C) any pension interest received by or accrued to the person as contemplated in section 7(13).”.

Repeal of paragraph 7 of Second Schedule to Act 58 of 1962

60. The Income Tax Act, 1962, is hereby amended by the repeal of paragraph 7 of the Second Schedule.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001, section 32 of Act 30 of 2002, section 46 of Act 32 of 2004, section 49 of Act 31 of 2005, section 28 of Act 9 of 2006, section

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39 of Act 20 of 2006, section 54 of Act 8 of 2007, section 64 of Act 35 of 2007 and section 43 of Act 3 of 2008

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

(a) by the substitution in the definition of “employee” for paragraphs (b) and (c) of the following paragraphs:

“(b) any person who receives any remuneration or to whom any remuneration accrues by reason of any services rendered by such person to or on behalf of a **[labour broker] personal service provider**;

(c) any **[labour broker] personal service provider; [and]**”;

(b) by the addition in the definition of “employee” of the word “and” at the end of paragraph (d);

(c) by the deletion in the definition of “employee” of paragraphs (e) and (f);

(d) by the deletion of the definition of “labour broker”;

(e) by the deletion of the definitions of “personal service company” and “personal service trust”; and

(f) by the addition of the following definition:

“ **‘personal service provider’** means any person where any service is rendered to a client—

(a) by that person personally; or

(b) on behalf of or for the benefit of that person by a connected person in relation to that person, and that connected person would be regarded as an employee of the client if the service was rendered on behalf of or for the benefit of that connected person; and

(i) the service or the duties that are performed must be performed mainly at the premises of the client and that person or connected person is subject to the control or supervision of the client as to the manner in which the service is rendered; or

(ii) more than 80 per cent of the income of that person during the year of assessment from services rendered consists of or is likely

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to consist of amounts received directly or indirectly from any one client or an associated institution as defined in the Seventh Schedule in relation to the client,

except where—

- (aa) that person throughout the year of assessment employs three or more employees who are on a full-time basis engaged in the business of that person of rendering the service, other than an employee who is a connected person in relation to that person; or
- (bb) that person has provided the client with an affidavit or solemn declaration stating that the person complies with item (aa) or stating that subparagraph (ii) does not apply, and the client relies on the affidavit or declaration in good faith;”.

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 28 of Act 113 of 1977, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000, section 54 of Act 59 of 2000, section 20 of Act 19 of 2001, section 21 of Act 16 of 2004, section 40 of Act 20 of 2006, section 55 of Act 8 of 2007 and section 65 of Act 35 of 2007

62. Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of subparagraph (1A);
- (b) by the insertion in subparagraph (4) after item (c) of the following item:
 - “(cA) an amount equal to so much of the deduction allowable under section 11 in respect of remuneration refunded by the employee concerned as has not been previously deducted under this item;”;
- (c) by the deletion in subparagraph (4) of the word “and” at the end of item (d);

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- (d) by the substitution in subparagraph (4) for the full stop at the end of item (e) of the expression “; and”;
- (e) by the insertion in subparagraph (4) of the following item:
 - “(f) so much of any donation made by the employer on behalf of the employee—
 - (i) as does not exceed 5 per cent of that remuneration after deducting therefrom the amounts contemplated in items (a) to (e); and
 - (ii) for which the employer will be issued a receipt as contemplated in section 18A(2)(a).”; and
- (f) by the deletion of subparagraph (5).

Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962, as amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980, section 46 of Act 101 of 1990, section 55 of Act 59 of 2000, section 21 of Act 19 of 2001, section 41 of Act 20 of 2006, section 56 Act 8 of 2007 and section 66 of Act 3 of 2008

63. (1) Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of the proviso to subparagraph (3).

(2) Subsection (1) comes into operation on 1 January 2009 and applies in respect of any lump sum benefit accrued on or after that date.

Amendment of paragraph 11 of Fourth Schedule to Act 58 of 1962, as substituted by section 84 of Act 45 of 2003 and amended by section 42 of Act 20 of 2006

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

“in order to alleviate hardship to that employee due to circumstances outside the control of the employee or to correct any error in regard to the calculation of employees’ tax, or in the case of remuneration constituting commission or where the remuneration is **[received by a personal service company or a personal**

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service trust] paid or payable to a personal service provider and that directive must be complied with; or”.

Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962, as amended by section 41 of Act of Act 90 of 1988, section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992, section 3 of Act 168 of 1993, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996, section 48 of Act 28 of 1997, section 53 of Act 30 of 1998, section 56 of Act 59 of 2000, section 33 of Act 30 of 2002, section 56 of Act 74 of 2002, section 22 of Act 16 of 2004, section 43 of Act 20 of 2006, section 57 of Act 8 of 2007 and section 44 of Act 3 of 2008

65. (1) Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for paragraph (j) of the definition of “net remuneration” of the following paragraph:

“(j) any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit;”.

Insertion of Sixth Schedule into Act 58 of 1962

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

“SIXTH SCHEDULE

DETERMINATION OF TURNOVER TAX PAYABLE BY VERY SMALL BUSINESSES

(Part IV of Chapter II)

- Part I: Interpretation**
- Part II: Application of Schedule**
- Part III: Taxable turnover**
- Part IV: Registration**
- Part V: Administrative provisions**

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Part VI: Miscellaneous

Part I

INTERPRETATION

1. DEFINITIONS

In this Schedule, unless the context indicates otherwise, any meaning ascribed to a word or expression in this Act must bear the meaning so ascribed and—

“**professional service**”, means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, broking, commercial arts, consulting, draftsmanship, education, engineering, entertainment, health, information technology, journalism, law, management, performing arts, real estate, research, secretarial services, sport, surveying, translation, valuation or veterinary science;

“**qualifying turnover**” means the total amount received by a natural person or company for the year of assessment, from carrying on business activities in or outside the Republic, excluding any—

(a) amount of a capital nature received by that natural person or company from carrying on business; and

(b) amount as contemplated in section 10, other than an amount contemplated in section 10(1)(zJ).

“**registered very small business**” means a very small business that elected to register in terms of paragraph 8;

“**very small business**” means a person that meets the requirements as set out in Part II of this Schedule;

“**taxable turnover**” means the amount as determined in terms of Part III of this Schedule;

Part II

APPLICATION OF THE SCHEDULE

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2. PERSONS WHO QUALIFY AS A VERY SMALL BUSINESS

(1) The provisions of this Schedule apply to any—

(a) natural person; or

(b) company

where the qualifying turnover of that natural person or company for the year of assessment, does not exceed an amount of R1 million.

(2) The provisions of this Schedule will continue to apply to the deceased or insolvent estate of a natural person, where that natural person was a registered very small business at the time of death or insolvency.

(3) Where the natural person or company as contemplated in subparagraph (1) during the relevant year of assessment carries on any business for a period which is less than 12 months, the amount of R1 million must be adjusted proportionally taking into account the number of months that are less than 12 months, and for that purpose a part of a month must be reckoned as a full month.

3. PERSONS WHO DO NOT QUALIFY AS A VERY SMALL BUSINESS

The provisions of this Schedule do not apply to any natural person or company as described in paragraph 2(1) where—

(a) subject to paragraph 4, the natural person or company at any time during the year of assessment holds any shares or has any interest in the equity of any other company as defined in section 1;

(b) more than 10 per cent of the total receipts and accruals of the natural person or company during the relevant year of assessment consists collectively of investment income as defined in section 12E;

(c) that natural person or company is a ‘personal service provider’ as defined in the Fourth Schedule during the year of assessment;

(d) the natural person or company renders a professional service during the year of assessment;

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- (e) the total of all amounts received by that natural person or company from the disposal of—
 - (i) immovable property, to the extent it was used for business purposes; and
 - (ii) any other asset of a capital nature used mainly for business purposes, exceed the amount of R1 million over a period of 3 years comprising the current year of assessment and the immediately preceding 2 years of assessment;
- (f) in the case of a company, that company does not have a year of assessment ending on the last day of February;
- (g) in the case of a company, at any time during that year of assessment, any of the shareholders of that company were persons other than natural persons;
- (h) in the case of a company, that company is a public benefit organisation approved by the Commissioner in terms of section 30 of the Act and exempt from tax in terms of section 10(1)(cN) of the Act;
- (i) in the case of a company, that company is a recreational club as approved by the Commissioner in terms of section 30A of the Act and exempt from tax in terms of section 10(1)(cO) of the Act;
- (j) the natural person or company (or a partnership, in which that natural person or company is a partner) is registered for value-added tax in terms of section 23 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991);
- (k) in the case of a natural person or company that is a partner in a partnership during that year of assessment, any of the partners in that partnership are not natural persons;
- (l) in the case of a natural person that is a partner in a partnership during the relevant year of assessment, the total amounts received from the carrying on of business by that partnership for that year of assessment exceeds the amount of R1 million; or
- (m) that natural person is a partner in more than one partnership during the relevant year of assessment.

4. PERMISSIBLE SHARES AND INTERESTS

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A natural person or company will not be disqualified in terms of paragraph 3(a) where that natural person or company holds any shares or has any interest—

- (a) in a company contemplated in paragraph (a) of the definition of a “listed company”;
- (b) in any portfolio in a collective investment scheme contemplated in paragraph (e) of the definition of a company;
- (c) in a company contemplated in section 10(1)(e)(i), (ii) or (iii);
- (d) that constitutes less than 5 per cent of the interest in a social or consumer co-operative or a co-operative burial society as defined in section 1 of the Co-operatives Act, 2005 (Act No. 14 of 2005), or any other similar co-operative if all of the income derived from the trade of that co-operative during any year of assessment is solely derived from its members;
- (e) that constitutes less than 5 per cent of the interest in a primary savings co-operative bank or a primary savings and loans co-operative bank as defined in the Co-operative Banks Act, 2007, that may provide, participate in or undertake only banking services as contemplated in section 14(2)(a) or (b) of that Act; or
- (f) in any friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956).

Part III

TAXABLE TURNOVER

5. TAXABLE TURNOVER

The taxable turnover of a very small business consists of all amounts not of a capital nature received by that very small business for its own benefit during the relevant year of assessment, from carrying on business activities in the Republic.

6. INCLUSIONS IN TAXABLE TURNOVER

There shall be included in the taxable turnover of a registered very small business—

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- (a) 50 per cent of all receipts from the disposal by that registered very small business of—
 - (i) immovable property, to the extent that it was used for business purposes;
 - (ii) any other asset of a capital nature used mainly for business purposes;
- (b) during the year of assessment that it is first registered as a very small business, any allowance claimed by that very small business in terms of this Act, in the year of assessment prior to its registration, where that allowance is required to be included in the income of a taxpayer in the following year of assessment; and
- (c) in the case of a company any investment income as defined in section 12E, other than dividends, received by that company otherwise than from conducting a business.

7. EXCLUSIONS FROM TAXABLE TURNOVER

There shall be excluded from the taxable turnover of a very small business—

- (a) in the case of a natural person, any investment income as defined in section 12E received by that natural person during the year of assessment;
- (b) any amount as contemplated in section 10 other than an amount contemplated in section 10(1)(zJ).
- (c) any amount received by that very small business where that amount accrued to the very small business in a year of assessment prior to its registration as a very small business and that amount was subject to tax in terms of the Act in that year.

Part IV

REGISTRATION

8. REGISTRATION

- (1) A natural person or company that meets the requirements as set out in Part II may elect to register as a very small business in terms of this paragraph—

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- (a) within two months from the beginning of the year of assessment of that natural person or company; or
- (b) where that natural person commenced the business activities during the year of assessment, within 2 months from the date of commencement of the business activities.
- (2) A very small business that was deregistered in terms of paragraphs 9 or 10 may not re-register as a very small business for a period of 3 years commencing from the year of assessment following the year of assessment during which that very small business was so de-registered.

9. VOLUNTARY DEREGISTRATION

- (1) If a very small business has been registered in terms of paragraph 8 for a period of at least 3 years, that very small business may elect to deregister as a very small business within 2 months after the end of any year of assessment.
- (2) The provisions of this Schedule will no longer apply to a registered very small business that elected to deregister as contemplated in subparagraph (1) as from the beginning of the year of assessment during which that registered very small business was deregistered.

10. COMPULSORY DEREGISTRATION

- (1) Where—
 - (a) the qualifying turnover of a registered very small business exceeds the amount of R1 million during any year of assessment or there are reasonable grounds for believing that the qualifying turnover of that very small business during any year of assessment will exceed the amount of R1 million; or
 - (b) a registered very small business becomes disqualified in terms of paragraph 3, that registered very small business must deregister as a very small business within 30 days from the date the qualifying turnover exceeded that amount or the reasonable

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grounds existed that the qualifying turnover will exceed that amount or it became disqualified.

(2) The provisions of this Schedule will no longer apply to a very small business as from the beginning of the month during which it was required to deregister in terms of subparagraph (1).

(3) Notwithstanding the provisions of subparagraph (1), the Commissioner may direct that a registered very small business remains a registered very small business if he or she is satisfied that the increase in qualifying turnover of that registered very small business to an amount greater than R1 million is of a nominal and temporary nature.

Part V

ADMINISTRATION

11. RETURNS AND PAYMENT OF TAX

OPTION 1

(1) The registered very small business must within 21 days after the expiry of a period of 6 calendar months from the first day of the year of assessment of that registered very small business submit—

(a) a first return reflecting an estimate of the taxable turnover in respect of the year of assessment to which that estimate relates;

(b) a calculation of the amount of turnover tax payable in respect of the taxable turnover so estimated; and

(c) a payment equal to one-half of the amount of the turnover tax so calculated.

(2) A registered very small business must within 21 days after the last day of the year of assessment of that registered very small business submit—

(a) a final return reflecting the taxable turnover in respect of the year of assessment to which that turnover tax relates;

(b) a calculation of the amount of turnover tax payable in respect of the taxable turnover; and

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(c) a payment equal to the amount of turnover tax so calculated less the amount paid as mentioned in subparagraph (1).

OPTION 2

(1) The registered very small business must within 6 calendar months after the first day of the year of assessment of that registered very small business submit—

(a) a first return reflecting an estimate of the taxable turnover in respect of the year of assessment to which that estimate relates;

(b) a calculation of the amount of turnover tax payable in respect of the taxable turnover so estimated; and

(c) a payment equal to one-half of the amount of the turnover tax so calculated.

(2) A registered very small business must by the last day of the year of assessment of that registered very small business submit—

(a) a second return reflecting an estimate of the taxable turnover in respect of the year of assessment to which that estimate relates;

(b) a calculation of the amount of turnover tax payable in respect of the taxable turnover so estimated; and

(c) a payment equal to the amount of turnover tax so calculated less the amount paid as mentioned in subparagraph (1).

(3) A registered very small business must within 6 calendar months after the last day of the year of assessment of that registered very small business submit a final return calculating the turnover tax payable in respect of the taxable turnover for the year of assessment to which that turnover tax relates.

(4) If the turnover tax mentioned in subparagraph (3) exceeds the sum of the two payments made in terms of subparagraphs (1) and (2) in respect of the year of assessment to which that turnover tax relates, that excess must be paid on the last day of the period as mentioned in subparagraph (3).

12. PLACE, TIME, FORM AND MANNER OF RETURNS AND PAYMENTS

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All returns, forms and payments required in terms of this Schedule must contain such information, be in such form, and be submitted in such manner (including electronically), within such time-periods and at such place as may be prescribed by the Commissioner.

13. ASSESSMENTS

(1) Where—

(a) a registered very small business fails to furnish any return as required by paragraph 11; or

(b) the Commissioner is not satisfied with any return required to be furnished in terms of paragraph 11;

the Commissioner may estimate the taxable turnover upon which turnover tax is payable and issue an assessment of the amount of turnover tax so payable by that registered very small business.

(2) The Commissioner must give the registered very small business a written notice of such assessment, stating the estimated taxable turnover upon which turnover tax is payable, the amount of turnover tax payable, the amount of any additional tax payable in term of section 79, the period within which payment must be made and the year of assessment in relation to which the assessment is made.

(3) The Commissioner must, in the notice of assessment referred to in subparagraph (2), give notice to that registered very small business upon whom it has been made that any objection or appeal to such assessment must be noted in accordance with Part III of the Act.

14. AGREED ASSESSMENTS

If it appears to the Commissioner that any registered very small business is for any reason unable to furnish an accurate return as contemplated in paragraph 11, the Commissioner may agree in writing with that registered very small business as to the taxable turnover on

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which turnover tax will be payable, and to the extent that an assessment is issued upon the taxable turnover so agreed to, such assessment will not be subject to objection.

PART VI MISCELLANEOUS

15. AMOUNTS RECEIVED BY A CONNECTED PERSON MAY BE INCLUDED IN THRESHOLD

The total amount received from the carrying on of business by a connected person in relation to a registered very small business must be included in the qualifying turnover of that registered very small business for purposes of determining the amount as contemplated in paragraph 2(1) where the Commissioner is satisfied that—

- (a) the connected person carries on business activities that should properly be regarded to form part of the business activities carried on by that registered very small business; and
- (b) the main reason or one of the main reasons for the connected person carrying on the business activities in the way he or she does, is to ensure that the qualifying turnover of that very small business does not exceed the amount as contemplated in paragraph 2(1).

16. RECORD KEEPING

A registered very small business must retain a record of—

- (a) all amounts received by that registered very small business during any year of assessment;
- (b) all assets of that registered very small business with a cost price of more than R5000;
- (c) all liabilities of that very small business which exceeds the amount of R5000; and
- (d) all dividends declared by that registered very small business during any year of assessment.

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17. PROVISIONS OF INCOME TAX ACT TO APPLY

Save as otherwise provided for in this Schedule, the provisions of Part II, Part IIA, Part III, IIA, IV, V and VI of Chapter III of the Act will to the extent it applies to turnover tax and with the necessary changes required by the context, apply in respect of turnover tax.

18. TRANSITIONAL PROVISIONS

Where any amount received by the registered very small business during a year of assessment was included in the taxable turnover of that registered very small business for that year of assessment and that amount accrued to that registered very small business in a later year of assessment when it was no longer a registered very small business, that amount will not be subject to tax in terms of the Act.

Rates Schedule

| Turnover | Marginal Rates (R) |
|---------------------|---|
| R0 - R100 000 | 0% |
| R100 001 – R300 000 | 1% of each R1 above R100 000 |
| R300 001 – R500 000 | R2 000 + 3% of the amount above R300 000 |
| R500 001 – R750 000 | R8 000 + 5% of the amount above R500 000 |
| R750 001 - above | R20 500 + 7% of the amount above R750 000 |

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of any year of assessment commencing on or after that date.

Amendment of paragraph 6 of Seventh Schedule to Act 58 of 1962, as amended by section 29 of Act 96 of 1985

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67. Paragraph 6 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (4) of the word “or” at the end of item (b); and
- (b) by the insertion in subparagraph (4) after item (b) of the following item:

“(bA) the asset consists of a telephone or computer which the employer concerned allows his or her employee to use mainly for purposes of the employer’s business; or”.

Amendment of paragraph 10 of Seventh Schedule to Act 58 of 1962, as amended by section 36 of Act 30 of 2002, section 58 of Act 31 of 2005, section 30 of Act 9 of 2006, section 102 of Act 20 of 2006 and section 69 of Act 35 of 2007

68. Paragraph 10 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the insertion in subparagraph (2) after item (b) of the following item:

“(bA) any telephone or computer communication service provided to an employee if the service is used mainly for the purposes of the employer’s business;”.

Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as amended by section 71 of Act 60 of 2001, section 67 of Act 74 of 2002, section 92 of Act 45 of 2003, section 55 of Act 32 of 2004, section 66 of Act 31 of 2005 and section 44 of Act 20 of 2006

69. (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in subparagraph (2) of item (e).

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as amended by section 72 of Act 60 of 2001, section 68 of Act 74 of 2002, section 93 of Act 45 of 2003, section 56 of Act 32 of 2004, section 67 of Act 31 of 2005, section 71 of Act 35 of 2007 and section 50 of Act 3 of 2008

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70. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (4) of the following subparagraph:

“(4) In the event of a person ceasing to be a controlled foreign company as a result of becoming a resident that person must, subject to paragraph 24, be treated for purposes of this Schedule as having disposed of each of that person’s assets, other than—

(a) assets in the Republic listed in paragraph 2(1)(b)(i) and (ii); and

(b) assets held by that person if any amount received or accrued from the disposal of those assets would have been taken into account for purposes of determining the net income, as contemplated in section 9D, of that person, and as having immediately reacquired each of those assets at an expenditure equal to that market value, which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”.

(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 before that date.

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 and section 51 of Act 3 of 2008

71. (1) Paragraph 13 of the Eighth Schedule is hereby amended—

(a) by the insertion in subparagraph (1)(a) after subitem (ii) of the following subitem:

“(iiA) the distribution of an asset of a trust by a trustee to a beneficiary to the extent that that beneficiary has a vested interest in that asset, is the date on which that interest vests;”;

(b) by the deletion in subparagraph (1) of item (d); and

(c) by the substitution in subparagraph (1)(g) for subitem (i) of the following subitem:

“(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”.

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(2) Paragraph (c) of subsection (1) is deemed to have come into operation on 22 July 2008.

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as amended by section 26 of Act 19 of 2001, section 75 of Act 60 of 2001, section 71 of Act 74 of 2002, section 95 of Act 45 of 2003, section 58 of Act 32 of 2004, section 68 of Act 31 of 2005, section 45 of Act 20 of 2006, section 60 of Act 8 of 2007, section 73 of Act 35 of 2007 and section 52 of Act 3 of 2008

72. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1)(h)(iii) for subsubitem (aa) of the following subsubitem:

“(aa) a right in a controlled foreign company held directly by a resident, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) of that company and of any other controlled foreign company in which that controlled foreign company and that resident directly or indirectly have an interest, which was included in the income of that resident in terms of section 9D during any year of assessment, less the amount of any foreign dividend distributed by that company to that resident during any year of assessment which was exempt from tax in terms of section 10(1)(k)(ii)(cc); or”;

(b) by the substitution in subparagraph (1)(h)(v) for the words preceding subsubitem (aa) of the following words:

“subject to paragraph 12(5), an asset which was acquired on or after the valuation date by a resident by way of inheritance from the deceased estate of a person who at the time of his or her death was not resident—”;

(c) by the substitution in subparagraph (1)(h) for the colon at the end of the proviso to subitem (v) of a semi-colon; and

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(d) by the insertion in subparagraph (1)(h) after the proviso to subitem (v) of the following item:

“(vi) subject to paragraph 12(5), an asset which was acquired on or after the valuation date by a person from a person who at the time of that acquisition was not a resident by way of a disposal contemplated in paragraph 38(1), the market value of that asset on the date of its acquisition:”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 22 July 2008.

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 and section 54 of Act 3 of 2008

73. Paragraph 40 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subparagraph (1) of item (b);

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

“to his or her deceased estate for **[proceeds]** 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).”;

(c) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

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

(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 1 March 2006.

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Insertion of paragraph 57A into Eighth Schedule to Act 58 of 1962

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

“57A. Disposal of very small business assets

A registered very small business as defined in terms of the Sixth Schedule must disregard any capital gain or capital loss in respect of the disposal, by that registered very small business, of—

- (a) any asset which constitutes immovable property, to the extent that it was used for business purposes; and
- (b) any asset (other than immovable property) used mainly for business purposes.”.

Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 45 of 2003 and amended by section 79 of Act of Act 31 of 2005, section 35 of Act 9 of 2006, section 65 of Act 8 of 2007, section 77 of Act 35 of 2007 and section 58 of Act 3 of 2008

75. (1) Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (5) for the words preceding the proviso of the following words:

“A person must disregard any capital gain or capital loss determined in respect of any capital distribution contemplated in paragraph 67A, 76, 76A or 77 received by or accrued to that person from a ‘foreign company’ as defined in section 9D (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2(2)) where that person (whether alone or together with any other person forming part of the same group of companies as that person) holds at least 20 per cent of the total equity share capital and voting rights in that company”.

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Amendment of paragraph 67A of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 60 of 2001, substituted by section 93 of Act 74 of 2002 and amended by section 109 of Act 45 of 2003 and section 81 of Act 35 of 2007

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

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

“(3) Subject to subparagraph (3A), where an amount of cash or an asset is received by or accrues to a holder of a participatory interest contemplated in subparagraph (1) in respect of that interest from the collective investment scheme in which that interest is held and that amount and that market value do not constitute gross income in the hands of that holder, that holder must where the date of receipt or accrual of that cash or asset occurs—

(a) on or after valuation date but before 1 October 2007—

(i) if that interest is disposed of on or before 1 July 2011, treat the amount of that cash or the market value of that asset as proceeds when that interest is disposed of; or

(ii) if that interest is not disposed of on or before 1 July 2011, treat the amount of that cash or the market value of that asset as proceeds when that interest is partly disposed of in terms of paragraph 67AB(1)(a); and

(b) on or after 1 October 2007, treat the amount of that cash or the market value of that asset as proceeds when that interest is partly disposed of in terms of paragraph 67AB(1)(b):

Provided that for the purposes of this subparagraph the market value of any asset so acquired must be determined on the date of receipt or accrual of that asset.”;
and

(b) by the addition of the following subparagraph after subparagraph (3):

“(3A)(a) This subparagraph applies where—

(i) a holder of a participatory interest contemplated in subparagraph (1) has adopted the weighted average method under paragraph 32(3A) in respect of

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such participatory interests held and not disposed of on 30 September 2007, and

(ii) an amount contemplated in subparagraph (3) had been received by or accrued to that holder before 1 October 2007 in respect of those participatory interests.

(b) Where subparagraph (a) applies, the weighted average base cost of those interests at the end of the day on 30 September 2007 must be determined by—

(a) deducting the amount of that cash or that market value from the base cost of those interests at the end of the day on 30 September 2007; and

(b) dividing the result by the number of those interests held at the end of the day on 30 September 2007.”.

(2) Subsection (1) is deemed to have come into operation on 1 October 2007.

Amendment of paragraph 67AB of Eighth Schedule to Act 58 of 1962, as inserted by section 82 of Act 35 of 2007

77. (1) Paragraph 67AB of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(a) except where paragraph 67A(3A) applies, on 1 July 2011 if any cash has been received or assets have been acquired by that holder in the manner contemplated in [subparagraph (3) of that paragraph] paragraph 67A(3)(a)(ii) before 1 October 2007 and that participatory interest has not been disposed of on or before 1 July 2011 by that holder; and”;

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

“(1A) If paragraph 67A(3A) applies and the base cost of those participatory interests is a negative amount at the end of 30 June 2011—

(a) that holder must be treated as having a capital gain on 30 June 2011 equal to that negative amount; and

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(b) the base cost of those participatory interests at the end of 30 June 2011 must be treated as nil.”.

(2) Subsection (1) is deemed to have come into operation on 1 October 2007.

Amendment of paragraph 78 of Eighth Schedule to Act 58 of 1962, as amended by section 97 of Act 74 of 2002, section 116 of Act 45 of 2003 and section 31 of Act 16 of 2004

78. Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraphs (2) and (3).

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 and section 62 of Act 3 of 2008

79. Paragraph 80 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“Subject to paragraphs 68, 69, 71 and 72, where a capital gain is determined in respect of the vesting by a trust of an asset in a trust beneficiary (other than the Government, a provincial administration, organisation, person or club contemplated in paragraph 62(a) to (e)) who is a resident, that gain—”;

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

“(2) Subject to paragraphs 68, 69, 71 and 72, where a capital gain [**arises in a trust**] is determined in respect of the disposal of an asset by a trust in a year of assessment during which a trust beneficiary (other than a person, organisation, entity or club contemplated in paragraph 62(a) to (e)) who is a resident has a vested interest or acquires a vested interest (including an interest caused by the

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exercise of a discretion) in that capital gain but not in the asset, the disposal of which gave rise to the capital gain, the whole or the portion of the capital gain so vested—”; and

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

“(a) that capital arose from—

(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,

determined in any previous year of assessment during which that resident had a contingent right to that capital; and”.

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 and section 63 of Act 3 of 2008

80. Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in paragraph 4 for subparagraph (o) of the following subparagraph:

“(o) The provision of scholarships, bursaries [**and**], awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.”.

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 and section 64 of Act 3 of 2008

81. Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in paragraph 3 for subparagraph (o) of the following subparagraph:

“(o) The provision of scholarships, bursaries [**and**], awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.”.

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Amendment of paragraph 2 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 71 of Act 8 of 2007

82. (1) Paragraph 2 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) The rate of tax on taxable income derived from oil or gas income of any oil and gas company that—

(a) is a resident will not exceed [~~29~~] 28 cents on each rand of taxable income; and

(b) is not a resident and carries on a trade within the Republic will not exceed [~~32~~] 31 cents on each [~~Rand~~] rand of taxable income.”; and

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

“(2) Notwithstanding subparagraph (1)(b), the rate of tax on taxable income derived from oil and gas income of an oil and gas company that is not a resident and carries on trade within the Republic will not exceed [~~29~~] 28 per cent in respect of any oil and gas income solely derived (directly or indirectly) by virtue of an OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), previously held by that company.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2008 and applies in respect of years of assessment ending on or after that date.

Amendment of section 38 of Act 91 of 1964, as amended by section 13 of Act 105 of 1969, section 5 of Act 71 of 1975, section 4 of Act 105 of 1976, section 2 of Act 89 of 1983, section 18 of Act 59 of 1990, section 28 of Act 45 of 1995, section 42 of Act 19 of 2001, section 123 of Act 60 of 2001 and section 21 of Act 21 of 2006

83. (1) Section 38 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the addition of the following subsection:

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“(5) (a) Notwithstanding anything to the contrary contained in this Act, the Commissioner may by rule permit the removal of any dutiable imported goods from a licensed customs and excise storage warehouse on the issuing by the licensee of such warehouse of a certificate, an invoice or such other document as the Commissioner may prescribe or approve by rule, if—

- (i) both the licensee of the customs and excise storage warehouse and the importer of the goods are accredited in terms of section 64E;
- (ii) the licensee of the storage warehouse and the importer of the goods both comply with such conditions as the Commissioner may prescribe generally by rule or determine in a specific instance;
- (iii) the licensee of the warehouse keeps such accounts or records of such receipts and removals as the Commissioner may require;
- (iv) the goods are removed from the warehouse for home consumption or such other purpose as the Commissioner may allow; and
- (v) the duty on such goods is paid at the time and in a manner specified by rule.

(b) Any document referred to in subsection (a) and issued by a licensee contemplated in that subsection shall, for the purposes of sections 20(1)(a) and 20(4), and subject to the provisions of section 39(2A), be deemed to be a due entry from the time of removal of those goods from the customs and excise storage warehouse.”; and

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

“(6)(a) Notwithstanding anything to the contrary contained in this Act, if liquid bulk goods, as may be prescribed by rule, are stored in a special customs and excise storage warehouse licensed as contemplated in section 21(3), the licensee of that warehouse may, subject to compliance with such conditions and procedures as the Commissioner may prescribe by rule, deduct from the quantity received in the warehouse, the actual losses arising from the storage in or removal of goods from that warehouse.

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(b) Notwithstanding paragraph (a), the Minister may determine a maximum percentage loss in respect of any class or kind of such goods by notice in the Gazette.”.

(2) Subsection (1) or any part thereof comes into operation on the date or dates fixed by the President by proclamation in the *Gazette*.

Amendment of section 43 of Act 91 of 1964, as amended by section 6 of Act 105 of 1976, section 7 of Act 112 of 1977, section 6 of Act 86 of 1982, section 32 of Act 45 of 1995, section 34 of Act 34 of 1997, section 124 of Act 60 of 2001, section 45 of Act 30 of 2002 and section 23 of Act 34 of 2004

84. (1) Section 43 of the Customs and Excise Act, 1964, is hereby amended—

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

“(1) If entry of any imported goods has not been made under the provisions of section 38—

(a) in the case of goods in a container depot within 28 days from the date the goods were landed; **[or]**

(b) in the case of any other goods, on expiry of the period stated in, or prescribed in any rule contemplated in, subsection (1) of the said section;
or

(c) on expiry of any extended period allowed in terms of subsection (1)(a)(iii) of the said section,

the master, pilot or other carrier, container operator, depot operator, person in control of a container terminal or transit shed or other person who has control of such goods in terms of any provision of this Act shall furnish a list thereof together with all available documents to the Controller and shall remove the goods to—

(d) (i) the State warehouse; or

(ii) **[such]** any other place indicated by the Controller; or

[(c)](e) the Controller may—

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- (i) where any such person fails to remove the goods as required in terms of subparagraph [(i) or (ii)] (d), at the risk and expense of such person, so remove the goods; or
 - (ii) allow the goods, subject to such conditions as the Controller may impose, to remain under the control of such person.”;
- (b) by the substitution in subsection (2)(b) for subparagraph (iii) of the following subparagraph:
 - “(iii) be entitled to payment of [**State warehouse rent as prescribed in the rules for section 17 to the extent that any amount becomes payable from the proceeds of sale as charges due to the Commissioner**] the outstanding amount due in respect of the storage of those goods at the time of sale from the proceeds of the sale of those goods as charges according to the order contemplated in subsection (3) [**or, if the goods are entered and delivery granted by the Controller before such sale, 50 per cent of any such rent paid on entry of the goods**].”;
- (c) by the insertion in subsection (2) of the following paragraph:
 - “(bA) Where any person who has control of premises as contemplated in paragraph (b) is entitled to payment in terms of that paragraph, that person may not, whether or not he or she receives any amount from the proceeds of sale as contemplated in that paragraph, collect any storage charges from the purchaser of the goods on a sale.”;
- (d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 - “If after the expiration of 60 days from the date of removal to the State warehouse or other place indicated by the Controller or, where no such removal has taken place, from the date of expiry of the period prescribed in section 38(1), any goods remain unentered the Commissioner may cause them, except if they have been imported in contravention of any law, to be sold, and if so sold the proceeds thereof shall be applied in discharge of any duty, expenses incurred by the Commissioner, charges due to the Commissioner (including any State warehouse [**rent referred to in subsection (2)**]), a port or railway authority, the Department

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of Transport, a container operator or a depot operator, or any person other than a container operator or depot operator who had control over premises where the goods were so stored as contemplated in subsection (2), freight and salvage as provided for in section 16 of the Wreck and Salvage Act, 1996 (Act No. 94 of 1996), in that order, and the surplus if any, shall, upon application be paid to the owner of the said goods: Provided that—”; and

(e) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) Where any goods are seized and detained under the Counterfeit Goods Act, 1997, as contemplated in section 113A of this Act and the importer is not known or cannot despite reasonable efforts be located and no criminal or civil proceedings are instituted or no instruction is received for the release of the goods as contemplated in section 9(2) of the Counterfeit Goods Act, 1997, such goods shall, notwithstanding anything to the contrary in this Act or the said Counterfeit Goods Act, 1997, contained, be subject to this section.”.

(2) Subsection (1)(a) comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(3) Paragraphs (b), (c), (d) and (e) of subsection (1) come into operation on the date of promulgation of this Act.

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995, section 51 of Act 53 of 1999, section 43 of Act 19 of 2001, section 125 of Act 60 of 2001, section 136 of Act 45 of 2003, section 67 of Act 32 of 2004, section 12 of Act 9 of 2005 and section 64 of Act 20 of 2006

85. Section 44 of the Customs and Excise Act, 1964, is hereby amended by the insertion of the following subsection:

“(11A) Notwithstanding anything to the contrary contained in this Act, there shall be no liability for any underpayment on any goods if the duty which should have

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been paid was, in accordance with the practice generally prevailing at the time of entry for home consumption, not paid or the full amount of duty which should have been paid at the time of entry for home consumption was, in accordance with such practice, not paid, unless the Commissioner is satisfied that the amount of duty which should have been paid was not paid, or that the full amount of duty was not paid due to fraud or misrepresentation or non-disclosure of material facts or any false declaration for the purposes of this Act.”.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 9 of Act 98 of 1980, section 8 of Act 86 of 1982, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 63 of Act 30 of 1998, section 53 of Act 53 of 1999, section 126 of Act 60 of 2001, section 104 of Act 74 of 2002, section 138 of Act 45 of 2003, section 3 of Act 10 of 2005, section 90 of Act 31 of 2005 and section 11 of Act 36 of 2007

86. Section 47 of the Customs and Excise Act, 1964, is hereby amended by the deletion of subsection (2).

Insertion of section 54EA into Act 91 of 1964

87. The Customs and Excise Act, 1964, is hereby amended by the insertion of the following section:

“54EA. Exemption from licensing and payment of environmental levy.—

(1) Notwithstanding anything to the contrary contained in this Chapter or any other provision of this Act, the Commissioner may by rule—

(a) exempt a person or category of persons from—

(i) all or any of the requirements of section 54E; and

(ii) the payment of environmental levy.

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for any period in respect of any quantity of environmental levy goods manufactured by such person or category of persons;

- (b) prescribe conditions and other requirements in respect of such exemption;
and
(c) prescribe circumstances under which such exemption may be cancelled.”.

Amendment of section 65 of Act 91 of 1964, as amended by section 5 of Act 85 of 1968, section 21 of Act 105 of 1969, section 20 of Act 112 of 1977, section 5 of Act 93 of 1978, section 7 of Act 110 of 1979, section 13 of Act 86 of 1982, section 8 of Act 101 of 1985, section 8 of Act 52 of 1989, section 9 of Act 68 of 1989, section 48 of Act 45 of 1995, section 5 of Act 44 of 1996, section 59 of Act 53 of 1999, section 128 of Act 60 of 2001, section 144 of Act 45 of 2003 and section 70 of Act 32 of 2004

88. (1) Section 65 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution in subsection (4)(a) for subparagraph (i) of the following subparagraph:

“(i) The Commissioner may in writing determine the transaction value of any imported goods, which is required to be ascertained **[and]** or may be determined as provided in section 66.”; and

- (b) by the substitution in subsection (9) for the definition of “buying commission” of the following definition:

“**‘buying commission’**, **[in relation to imported goods,]** means any fee paid by an importer to **[his]** the importer’s agent for the service of representing **[him]** the importer abroad in the purchase of **[and the payment for]** the goods being valued;”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 66 of Act 91 of 1964, as substituted by section 21 of Act 112 of 1977 and amended by section 8 of Act 110 of 1979, section 14 of Act 86 of 1982, section 10 of Act 68 of 1989 and section 26 of Act 59 of 1990

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89. (1) Section 66 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (11) for paragraph (a) of the following paragraph:

“(a) are [**packed in a container as defined in section 1(2) or, if not so packed in a container,**] placed on board ship or on any vehicle which conveys them from or across the border of that country; or”.

(2) Subsection (1) comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 67 of Act 91 of 1964, as amended by section 6 of Act 85 of 1968, section 22 of Act 112 of 1977, section 15 of Act 86 of 1982, section 6 of Act 69 of 1988, section 11 of Act 68 of 1989, section 27 of Act 59 of 1990 and section 50 of Act 45 of 1995

90. (1) Section 67 of the Customs and Excise Act, 1964, is hereby amended—

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

“(e) to the extent that they are not included in the price actually paid or payable for the goods, the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to delivery of the goods at the port or place of export in the country of exportation and placing those goods on board ship or on any vehicle [**, or in a container as defined in section 1(2),**] at that port or place.”;

(b) by the substitution in subsection (2)(b) for subparagraphs (v), (vi) and (vii) of the following subparagraphs:

“(v) interest charged in respect of the price payable for the goods;

“(vi) any charge for the right to reproduce the imported goods in the Republic.”;

and

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

“(a) are [**packed in a container as defined in section 1(2) or, if not so packed in a container,**] placed on board ship or on any vehicle which conveys them from or across the border of that country; or”.

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(2) Paragraphs (a) and (c) of subsection (1) come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(3) Paragraph (b) of subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 25 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act of 1977, section 28 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000, section 50 of Act 19 of 2001, section 130 of Act 60 of 2001, section 109 of Act 74 of 2002, section 146 of Act 45 of 2003, section 27 of Act 34 of 2004, section 92 of Act 31 of 2005 and section 70 of Act 20 of 2006

91. (1) Section 75 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in subsection (14) for paragraphs (a) and (b) of the following paragraphs:

“(a) in respect of any refund referred to in subsection (1A) within the period contemplated in subsection (4A)(b)(ii); or

(b) in any other case, within any of the relevant periods specified in section 76B.”;

(b) by the insertion in subsection (15)(a) of the following item:

“(iii) amend Schedule No. 4 or 5 in order to give effect to any agreement contemplated in section 49.”; and

(c) by the insertion of the following subsection:

“(22)(a) Where any item provides for a rebate of duty in respect of imported goods destroyed and any waste or scrap remaining after destruction of such goods

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enter home consumption, the extent of rebate shall be reduced by the duty payable on such waste or scrap.

(b) Such waste or scrap shall be deemed to have been imported at the time it is entered for home consumption and shall be liable to duty in that state.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 76B of Act 91 of 1964, as inserted by section 67 of Act 34 of 2004 and amended by section 20 of Act 32 of 2005

92. (1) Section 76B of the Customs and Excise Act, 1964, is hereby amended—

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

“(ii) any application for such refund which is received by the Controller within a period of 12 months from the date of such determination, new determination or amendment of a determination by court or the Commissioner as contemplated in the proviso to subparagraph (i);”;

(b) by the insertion of the following subsection:

“(3) Notwithstanding anything to the contrary in this section or any other provision of this Act, the Commissioner shall not authorise—

(a) a refund of any amount paid under this Act where that amount was paid in accordance with the practice generally prevailing at the time of entry for home consumption of the goods in respect of which such payment was made; or

(b) a drawback of duty that was not claimed or allowed in accordance with the practice generally prevailing at the time the goods in respect of which the drawback could have been claimed or allowed were entered for export.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

Continuation of certain amendments of Schedules Nos. 1 to 6, 8 and 10 to Act 91 of 1964

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93.(1)(a) Subject to paragraph (b), every amendment or withdrawal of or insertion in Schedule Nos. 1 to 6 and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56, 56A, 57, 60 or 75(15) of that Act up to and including 31 July 2008, shall not lapse by virtue of section 48(6), 49, 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act.

(b) Paragraph (a) 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.

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

Date of implementation of Free Trade Agreement between EFTA States and SACU States in Schedules No. 1 and 10 to Act 91 of 1964

94.(1) The amendment of Schedule No. 1 and Schedule No. 10 to the Customs and Excise Act, 1964, made respectively under sections 48(1), 48(1A), 49(1)(a) and (b) and 49(5) of the Act by Government Notices R.1254 and R.1255 of 15 December 2006, shall be deemed to have come into operation on 1 May 2008.

(2) Government Notices R.1228 and R.1231 published in Government Gazette No. 30601 of 21 December 2008, respectively stating that Government Notices R.1254 and R.1255, referred to in subsection (1), will come into effect on 1 January 2008, shall be deemed not to have come into operation and are withdrawn with effect from 21 December 2007.

(3) The rates of duty in the EFTA column of the amendment of Schedule No. 1 to the Customs and Excise Act, 1964, made under section 48 of the Act by Government Notice R.1230 of 21 December 2007, shall be deemed to have come into operation on 1 May 2008.

Repeal of Act 77 of 1968

95. (1) The Stamp Duties Act, 1968, is hereby repealed.

(2) Notwithstanding subsection (1), the provisions of the Stamp Duties Act, 1968 (Act No. 77 of 1968), continue to apply in respect of any instrument described in

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Schedule 1 of that Act executed before the date of the repeal of that Act as if that Act had not been so repealed.

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006, section 81 of Act 8 of 2007, section 104 of Act 35 of 2007 and section 68 of Act 3 of 2008

96. Section 1 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in the definition of “designated entity” for paragraph (iii) of the following paragraph:

“(iii) which is a [**Public Private Partnership**] party to a ‘Public Partnership Agreement’ as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;

(b) by the deletion in the definition of “enterprise” of paragraph (vii) of the proviso;

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

“**‘goods’** means—

(i) corporeal movable things;

(ii) fixed property;

(iii) any real right in any such thing or fixed property; and

(iv) electricity.

but excluding—”;

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- (d) by the insertion after the definition of “imported services” of the following definition:
- “**‘inbound duty and tax free shop’** means an inbound duty and tax free shop as contemplated in the Customs and Excise Act;”;
- (e) by the insertion in the definition of “input tax” after subparagraph (i) of the proviso to paragraph (b) of the following subparagraph:
- “(iA) a share in a share block company in respect of the original issue or registration of transfer of which securities transfer tax is, in terms of the Securities Transfer Tax Act, payable; or”;
- (f) by the substitution in the definition of “input tax” for the words following subparagraph (ii) of the following words:
- “such amount shall not exceed the amount of transfer duty [~~or~~], stamp duty or securities transfer tax, as the case may be, which is or would have been payable in respect of such acquisition, original issue or registration of transfer, as the case may be; and”;
- (g) by the deletion in the definition of “second-hand goods” of the word “and” at the end of paragraph (ii);
- (h) by the addition to the exclusion in the definition of “second-hand goods” of the following paragraphs:
- “(iv) any fixed property acquired in terms of section 10(1)(b)(i) of the Provision of Land Assistance Act, 1993 (Act No. 126 of 1993); and
- (v) any fixed property acquired in terms of section 42E of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);”;
- (i) by the insertion after the definition of “second hand goods” of the following definition:
- “**‘Securities Transfer Tax’** means the securities transfer tax as contemplated in the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007);”.

Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, section 13 of Act 136 of 1992, section 10 of Act 20 of 1994, section 19 of Act 37 of 1996, section 24 of Act 27 of 1997, section 87 of Act 30 of 1998, section 82 of Act

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53 of 1999, section 149 of Act 60 of 2001, section 115 of Act 74 of 2002, section 44 of Act 16 of 2004, section 93 of Act 32 of 2004, section 41 of Act 9 of 2006, and section 78 of Act 20 of 2006

97. (1) Section 2 of the Value-Added Tax Act, 1991, is hereby amended by the deletion in subsection (4) of paragraph (b).

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

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 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 and section 27 of Act 36 of 2007

98. Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the insertion of the following subsections:

“(2C) 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 vendor has registered as a ‘very small business’ as defined in the Sixth Schedule of the Income Tax Act, 1962 (Act No. 58 of 1962), the tax payable to the Commissioner in respect of that deemed supply shall be paid to the Commissioner in six equal instalments or in so many monthly instalments as the Commissioner may allow.

(2D) 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 on or before 30 June 2009 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 R 1 000 000, the tax payable to the Commissioner in respect of that deemed supply shall be paid to the

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Commissioner in six equal instalments or in so many monthly instalments as the Commissioner may allow.”; and

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

“(5) For the purposes of this Act a designated entity shall be deemed to supply services to any public authority or municipality to the extent of any payment made by the public authority or municipality concerned to or on behalf of that designated entity in [**respect of the taxable supply of goods or services**] the course or furtherance of any enterprise carried on by that designated entity.”.

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, section 16 of Act 136 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994, section 21 of Act 37 of 1996, section 22 of Act 46 of 1996, section 27 of Act 27 of 1997, section 84 of Act 53 of 1999, section 68 of Act 19 of 2001, section 152 of Act 60 of 2001, section 168 of Act 45 of 2003, section 97 of Act 32 of 2004, section 104 of Act 31 of 2005, section 43 of Act 9 of 2006, section 80 of Act 20 of 2006 and section 82 of Act 8 of 2007

99. Section 10 of the Value-Added Tax Act, 1991, is hereby amended by the insertion of the following subsection:

“(5A) Where goods or services are deemed to be supplied by a vendor in terms of section 8 (2) and section 8 (2C) is applicable, the supply shall be deemed to be made for a consideration in money equal to the consideration as determined in subsection (5) less R 100 000;”.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of act 30 of 2000, section 43 of Act 5 of 2001, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003, section 46 of Act 16 of 2004, section 98 of Act 32 of 2004, section 21 of Act 9 of 2005, section 105 of Act 31 of 2005, section 44

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of Act 9 of 2006, section 81 of Act 20 of 2006, section 105 of Act 35 of 2007 and section 29 of Act 36 of 2007

100. Section 11 of the Value-Added Tax Act, 1991, is hereby amended by the insertion in subsection (1) of the following paragraphs:

“(s) the goods (being fixed property) are acquired in terms of section 10(1)(b)(i) of the Provision of Land Assistance Act, 1993 (Act No. 126 of 1993), or section 42E of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); or

(t) the goods (being fixed property) are acquired by way of an advance or subsidy granted in terms of section 10(1)(d) of the Provision of Land Assistance Act, 1993 (Act No. 126 of 1993), to the extent of such advance or subsidy;

(u) the supply of any goods, other than the supply of goods by an inbound duty and tax free shop, which have been imported and entered for storage in a licensed Customs and Excise storage warehouse but have not been entered for home consumption; or

(v) the supply of any goods by an inbound duty and tax free shop.”

Amendment of section 12 of Act 89 of 1991, as amended by section 18 of Act 136 of 1992, section 14 of Act 20 of 1994, section 154 of Act 60 of 2001, section 117 of Act 74 of 2002, section 99 of Act 32 of 2004, section 45 of Act 9 of 2006 and section 82 of Act 20 of 2006

101. Section 12 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in paragraph (h)(i) for item (aa) of the following item:

“(aa) provided by the State or a school registered under the South African Schools Act, 1996 (Act No. 84 of 1996), or a **[further education and training institution] public college or private college** established by the State or such institution registered under the **[Further Education and Training Act, 1998 (Act No. 98 of 1998)] Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006).**”; and

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(b) by the insertion of the following paragraph:

“(k) the supply of goods, other than the supply of goods by an inbound duty and tax free shop, which have been imported and entered for storage in a licensed Customs and Excise storage warehouse but have not been entered for home consumption. Provided that this paragraph shall not apply to the supply of goods where the person supplying such goods applies to register as a vendor in terms of section 23 of this Act.”.

Amendment of section 13 of Act 89 of 1991

102. Section 13 of the Value-Added Tax Act, 1991, is hereby amended by the deletion in subsection (1) of paragraph (ii) of the proviso.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 67 of Act 16 of 2004, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007 and section 30 of Act 36 of 2007

103. Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(bb) in respect of supplies of second-hand goods to which paragraph (b) of the definition of “input tax” in section 1 applies which consist of—

(A) fixed property in respect of the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable; or

(B) a share in a share block company in respect of the original issue of registration of transfer of which stamp duty or securities transfer tax

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is, in terms of the Stamp Duties Act or the Securities Transfer Tax, payable,

if the full or final amount of such transfer duty, [or] stamp duty or securities transfer tax, as the case may be, has been paid during that tax period.”;

(b) by the deletion of the colon in paragraph (m) of subsection (3); and

(c) by the insertion in subsection (3) of the following paragraph:

“(n) an amount equal to the tax fraction of the lesser of the amount contemplated in section 10(25) or the open market value of the goods on the date the goods are returned to the customs controlled area:”.

Amendment of section 18 of Act 89 of 1991

104. Section 18 of the Value-Added Tax Act, 1991, is hereby amended by the insertion in subsection (4)(b) of the following subparagraph:

“(iv) where the person making such deduction has previously applied section 8 (2C), the ‘B’ determined in accordance with the aforementioned formula shall be reduced by R100 000.”.

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 and section 24 of Act 4 of 2008

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

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

“(a) at the end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying on all enterprises has exceeded [R300 000] R1 million.”;

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(b) by the substitution in subsection (2) for subitem (bb) of item (ii) of the proviso of the following subitem:

“(bb) opened a banking account with any bank, mutual bank or other similar institution, registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), for the purposes of his enterprise carried on in the Republic and furnished the Commissioner with the particulars of such banking account.”; and

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

“(a) that person is a ‘municipality’ as defined in section 1 or is carrying on any enterprise as contemplated in paragraph (b)(ii), (iii) [or], (v) or (vi) of the definition of ‘enterprise’ in section 1; or”.

(2) Subsection (1)(a) comes into operation on 1 March 2009.

Amendment of section 39 of Act 89 of 1991

106. Section 39 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsection:

“(9) If any person who is liable for the payment of tax in accordance with the provisions of section 8(2C) or 8(2D) fails to pay any amount of such tax within the period allowed for the payment of such tax in terms of that section, the person shall, in addition to such amount of tax, pay where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.”.

Amendment of section 41B of Act 89 of 1991

107. Section 41B of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (i) of the proviso of the following paragraph:

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“(i) the provisions of subsections (2) (k), (2) (l) and (5) of section[s] 76E [(other than subsection 76E (2) (m))] and section 76F of the Income Tax Act shall not apply to any VAT class ruling or VAT ruling;”.

Amendment of section 44 of Act 89 of 1991

108. (1) Section 44 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (3)(d) for the proviso of the following proviso:

“: Provided that where the vendor which is—

- (i) a company that is not a resident of the Republic requests that a refund or other amount be transferred to a bank account or an account with a similar institution in the Republic other than that of the vendor; or
- (ii) a ‘subsidiary company’ (excluding a close corporation) of a ‘holding company’ as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973), and that subsidiary company requests that a refund or other amount be transferred to its holding company’s bank account or that holding company’s account with a similar institution in the Republic,
the vendor must notify the Commissioner in writing and must indemnify the Commissioner against any loss by the vendor or the State as a result of such instruction.”.

(2) Subsection (1) comes into operation on 1 April 2009.

Amendment of section 45 of Act 89 of 1991

109. Section 45 of the Value-Added Tax Act, 1991, is hereby amended by the insertion in the proviso to subsection (1) of the following paragraph:

“(iiA) where the vendor—

- (aa) has not furnished the Commissioner with the particulars of a bank account or an account with a similar institution in the Republic of the enterprise; or
- (bb) as contemplated in the proviso to section 44(3)(d) has not notified the Commissioner that a refund or other amount be transferred to a bank account or

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an account with a similar institution in the Republic other than that of the vendor,
the said period of 21 days shall be reckoned from the date the vendor furnishes the Commissioner with the information required in terms of subparagraphs (aa) and (bb).”.

Amendment of section 42 of Act 22 of 1994

110. (1) Section 42 of the Restitution of Land Rights Act, 1994, is hereby amended by the substitution for subsection (2) of the following subsection—

“(2) The Minister may, in consultation with the Minister of Finance, direct that no [**transfer duty, stamp duty or other**] fees contemplated in subsection (1) shall be paid in respect of a particular transfer under this Act.”

Amendment of section 42A of Act 22 of 1994, as amended by section 30 of Act 63 of 1997 and section 2 of Act 48 of 2003

111. (1) Section 42A of the Restitution of Land Rights Act, 1994, is hereby amended by the substitution for subsection (2) of the following subsection—

“(2) No [**duty,**] fee or other charge is payable in respect of any registration in terms of subsection (1).”

Amendment of Schedule 1 to Act 20 of 2006, as amended by section 70 of Act 3 of 2008

112. (1) Schedule 1 to the Revenue Laws Amendment Act, 2006, is hereby amended—

(a) by the substitution in paragraph 7(1)(b) for subitem (iii) of the following subitem:

“(iii) paid for by [**an individual**] a member of the general public or by *FIFA*, a *FIFA subsidiary* or the *Local Organising Committee*.”; and

(b) by the substitution for paragraph 8 of the following paragraph:

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“Value-added tax treatment of supply of goods or services

8. Notwithstanding anything contrary contained in the *Value-Added Tax Act, 1991*—

(a) an entity contemplated in paragraph 6 must levy *value-added tax* at the zero rate on all supplies by that entity of goods or services as contemplated in paragraph 7(1)(a) or (b) at a *Championship site*;

(b) the supply of goods or services by a national supporter, referred to in subparagraph (c) of the definition of *commercial affiliate*, to *FIFA* in respect of which such national supporter receives consideration in the form of a supply services from *FIFA*.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2008 and applies in respect of receipts and accruals and supplies of goods and services on or after that date.”.

Amendment of Appendix I of Act 8 of 2007

113. (1) Appendix I of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution in Part I for the words preceding the table in paragraph 1 of the following words:

“ The rate of tax referred to in section 2(1) of this Act to be levied in respect of the taxable income (excluding any retirement fund lump sum 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 5) in respect of any year of assessment ending on 29 February 2008 is set out in the table below:”.

(2) Subsection (1) is deemed to have come into operation on 8 August 2007.

Amendment of section 5 of Act 25 of 2007

114. Section 5 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution for subsection (3) of the following subsection:

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“(3) Tax payable in terms of subsection (2) must be paid through the member or participant holding the listed security in custody or, in the case where the listed security is not held in custody by either a member or participant, through the company that issued the listed security.”.

Amendment of section 8 of Act 25 of 2007

115. Section 8 of the Securities Transfer Tax Act, 2007, is hereby amended—(a)

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

“(B) in subparagraph (i) or [~~(iii)~~] (ii) regardless of the market value of the asset disposed of in exchange for that security; or”;

(b) by the deletion in subsection (1) of the word “or” at the end of paragraph (p);

(c) by the addition of the word “or” at the end of paragraph (q); and

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

“(r) if that security was transferred during a month in respect of which the company which issued the transferred unlisted security, relevant member in the case of a listed security or relevant participant in the case of a listed security would have had to pay tax of less than R100 to the Commissioner.”.

Amendment of section 52 of Act 35 of 2007, as amended by section 74 of Act 3 of 2008

116. (1) Section 52 of the Revenue Laws Amendment Act, 2007, is hereby amended by the insertion in subsection (4) after paragraph (b) of the following paragraph:

“(bA) section 45 of that Act, comes into operation on 1 January 2009, if the disposal contemplated in that section was the subject of an application for an advance tax ruling regarding the interpretation or application of the definition of ‘group of companies’ that was accepted by the Commissioner before 21 February 2008;”.

(2) Subsection (1) is deemed to have come into operation on 8 January 2008.

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Amendment of section 55 of Act 35 of 2007

117. Section 55 of the Revenue Laws Amendment Act, 2007, is hereby amended by the addition of the following subsection:

“(2) 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 56 of Act 35 of 2007

118. (1) Section 56 of the Revenue Laws Amendment Act, 2007, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Subsection (1)(d) is deemed to have come into operation on 30 October 2007 and shall apply in respect of any transaction entered into [**during any year of assessment ending**] on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 8 January 2008.

Amendment of section 59 of Act 35 of 2007

119. Section 59 of the Revenue Laws Amendment Act, 2007, is hereby amended by the repeal in subsection (1) of paragraph (f).

Amendment of section 38 of Act 3 of 2008

120.(1) The Taxation Laws Amendment Bill, 2008, is hereby amended by the insertion in section 38 of the following subsection, the existing section becoming subsection (1):

“(2) Subsection (1) is deemed to have come into operation on 13 September, 2007.”.

(2) Subsection (1) is deemed to have come into operation on 22 July 2008.

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Amendment of Appendix I of Act 3 of 2008

121. (1) Appendix I of the Taxation Laws Amendment Act, 2008, is hereby amended by the substitution in Part I for the words preceding the table in paragraph 1 of the following words:

“ The rate of tax referred to in section 1(1) of this Act to be levied in respect of the taxable income (excluding any retirement fund lump sum 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 5) in respect of any year of assessment ending on 28 February 2009 is set out in the table below:”.

(2) Subsection (1) is deemed to have come into operation on 22 July 2008.

Short title and commencement

xx. (1) This Act is called the Revenue Laws Amendment Act, 2008.

(2) Except insofar as is otherwise provided for in this Act or the context indicates otherwise, 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 2009.